

CHAPTER 196

REGULATION OF PUBLIC UTILITIES

196.01	Definitions.	196.495	Avoidance of duplication in electric facilities.
196.02	Commission's powers.	196.50	Competing utilities; indeterminate permits, telephones, telegraphs.
196.03	Utility charges and service; reasonable and adequate.	196.51	Prior permits and franchises validated.
196.035	Disconnect notices; assistance information to be furnished.	196.52	Relations with affiliated interests; definition; contracts with affiliates filed and subject to commission control.
196.04	Facilities granted other utilities; physical telephone connections; petition; investigation.	196.525	Loans to officers or directors and loans to and investments in securities of holding companies; penalty.
196.05	Utility property; valuation; revaluation.	196.53	Franchise, foreign corporation not to have.
196.06	Uniform accounting; forms; books; office.	196.54	Grants to be indeterminate.
196.07	Balance sheet filed annually.	196.55	Franchises, made indeterminate.
196.08	Audit and inspection, balance sheet, publication.	196.56	Validation of franchises and permits.
196.09	Depreciation rates and practices; findings by commission; dividends from reserves; retirements.	196.57	Grants after July 11, 1907; consent to municipal purchase.
196.10	Construction; accounting.	196.58	Municipality to regulate utilities; appeal.
196.11	Profit sharing and sliding scales.	196.59	Merchandising by utilities.
196.12	Report by utilities; items.	196.60	Discrimination, definition, penalty.
196.13	Commission's report.	196.605	Telephone co-operatives; federal loans and conditions thereof.
196.14	Records public; exceptions.	196.61	Facilities in exchange for compensation, prohibited; exceptions.
196.15	Units of product or service.	196.62	Discrimination, definition, penalty.
196.16	Standard measurements; accurate appliances.	196.625	Discrimination by telephone companies.
196.17	Tests of meters; fees.	196.627	Railroad telephone service.
196.171	Examination of meters, pipes, fittings, wires and works; entering buildings for.	196.63	Rebates, concessions and discriminations unlawful.
196.175	Construction and occupancy standards.	196.635	Unbilled utility service.
196.18	Entry upon premises.	196.64	Utilities, liability for treble damages.
196.19	Publish schedules; regulations; files; joint rates.	196.645	Reduction in rates; retroactive effect.
196.20	Changes in rates; approval of increases required.	196.65	Public utilities; information, papers and accounting.
196.205	Election of rate regulation of telephone cooperatives.	196.66	General penalty; utility responsible for agents.
196.21	Publicity of revised schedules.	196.665	Unlawful combinations, trusts.
196.22	Discrimination forbidden.	196.67	Warning signs.
196.23	Schedule forms prescribed.	196.675	Unlawful for carriers and utilities to employ municipal attorneys or judicial officers.
196.24	Agents of commission; powers.	196.68	Municipal officers, malfeasance.
196.25	Questionnaires to utilities.	196.69	Interference with commission's equipment.
196.26	Complaint by consumers; hearing; notice; order; costs.	196.70	Temporary alteration or suspension of rates.
196.28	Summary investigations.	196.71	Utility, when not a public utility.
196.29	Procedure after summary investigation.	196.72	Accidents; utility report; investigation.
196.30	Utilities may complain.	196.74	Electric lines; safety and interference.
196.32	Witness fees and mileage.	196.745	Construction and operation; safety; commission orders.
196.33	Depositions.	196.76	Other rights of action; penalties cumulative.
196.34	Stenographic records.	196.78	Voluntary dissolution.
196.36	Transcripts as evidence; free to parties.	196.79	Reorganization subject to commission approval.
196.37	Lawful rates; reasonable service.	196.80	Consolidation or merger of utilities.
196.375	Adequate service; reasonable rates.	196.81	Abandonment; commission approval required.
196.38	Utilities to conform to orders.	196.85	Payment of commission's expenditures by utilities.
196.39	Change, amendment and rescission of orders; reopening cases.	196.855	Assessment of costs against municipalities.
196.395	Test, conditional, emergency and supplemental orders; waiver of conditions in orders.	196.91	Acquisition of existing dams.
196.40	Orders and determinations; time of taking effect.	196.92	Certificate of convenience and necessity; notice of hearing.
196.41	Court review.	196.93	Hearing and determination.
196.43	Injunction procedure.	196.97	Nonessential uses of natural gas.
196.44	Law enforcement.		
196.48	Incriminating evidence.		
196.49	Authorization from commission before transacting business; extensions and improvements to be approved; enforcement of orders; natural gas.		
196.491	Bulk electric generating facilities, large electric generating facilities and high-voltage transmission lines.		

196.01 Definitions. As used in this chapter and ch. 197, unless the context requires otherwise:

(1) "Public utility" means every corporation, company, individual, association, their lessees, trustees or receivers appointed by any

court, and every sanitary district, town, village or city that may own, operate, manage or control any toll bridge or any plant or equipment or any part of a plant or equipment, within the state, for the conveyance of telephone messages, for the receiving, transmitting or delivery of messages

by telegraph, or for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public. No cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members only shall be deemed a public utility under this definition. "Public utility" includes any person engaged in the transmission or delivery of natural gas for compensation within this state by means of pipes or mains. Any privately owned public utility which furnishes sewer services or sewer facilities may elect to have the public service commission establish suitable and proper rates for its services.

(2) "Municipal council" means and embraces the common council or the sanitary commission or the town or village board of any town, village or city wherein the property of the public utility or any part thereof is located.

(3) "Municipality" means any town, village or city wherein property of a public utility or any part thereof is located.

(4) "Service" is used in its broadest and most inclusive sense.

(5) "Indeterminate permit" means and embraces every grant, directly or indirectly, from the state to any public utility, of power, right or privilege to own, operate, manage or control any plant or equipment or any part of a plant or equipment within this state for the production, transmission, delivery or furnishing of any public utility service, and such permit shall continue in force until the municipality shall exercise its option to purchase, or until it shall be otherwise terminated according to law.

(6) "Railroad" has the meaning attributed to it by s. 195.02.

(7) The words "conveyance of telephone messages" or "conveyance of telegraph messages" shall, if the person engaged in such activity is otherwise a telephone or telegraph public utility as defined in sub. (1), also include in addition to voice communication the transmission of information, data or material other than by voice communication.

(8) "Commission" means the public service commission.

History: 1977 c. 29, 418; 1981 c. 390.

196.02 Commission's powers. (1) The commission is vested with power and jurisdiction to supervise and regulate every public utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.

(2) In this subsection, "public utility" does not include a telephone cooperative except as provided under s. 196.205. The commission

shall provide for a comprehensive classification of service for each public utility. The classification may take into account the quantity used, the time when used, the purpose for which used, and any other reasonable consideration. Each public utility shall conform its schedules of rates, tolls and charges to such classification.

(3) The commission may adopt reasonable rules to govern its proceedings and to regulate the mode and manner of all inspections, tests, audits, investigations and hearings.

(4) (a) The commission shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and may obtain from any public utility all necessary information to enable the commission to perform its duties.

(b) Each public utility shall furnish to the commission in such form and at such times as the commission shall require, the following information respecting the identity of the holders of its voting capital stock, in order to enable the commission to determine whether such holders constitute an affiliated interest within the meaning of this chapter: The names of each holder of one per centum or more of the voting capital stock of such public utility; the nature of the property right or other legal or equitable interest which the holder has in such stock; and any other similarly relevant information which the commission shall prescribe and direct.

(c) In the event any public utility shall fail to furnish the commission with information required of it by the commission, the commission may issue an order directing the delinquent public utility to furnish such information forthwith, or to show good cause why such information cannot be obtained. Failure of any public utility to comply with such order of the commission shall be deemed a violation of this chapter, within the meaning of s. 196.66.

(5) The commission or any commissioner or any person employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility, and to examine, under oath, any officer, agent or employe of such public utility in relation to its business and affairs. Any person other than one of said commissioners, who shall make such demand, shall produce his authority to make such inspection.

(6) The commission may require, by order or subpoena, served on any public utility as a summons is served in circuit court, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said public utility without the

196.02 REGULATION OF PUBLIC UTILITIES

3448

state, or verified copies in lieu thereof, if the commission shall so order. Any public utility failing or refusing to comply with any such order or subpoena shall, for each day it shall so fail or refuse, forfeit not less than fifty dollars nor more than five hundred dollars.

(7) COMMISSION INITIATIVE. The commission may upon its own motion initiate and investigate and order a hearing upon such notice as it deems proper, unless a statute prescribes in a particular case a specific manner of giving notice, in every case in which it is authorized to investigate and hear upon complaint or petition or in which it is authorized to investigate or act without complaint or petition and may exercise therein the same jurisdiction as upon complaints filed. The authority herein conferred extends to all matters within the jurisdiction of the commission in whatever chapter of the statutes set forth.

(8) EMPLOY COUNSEL. The commission may employ counsel in any proceeding, investigation, hearing or trial had by it or in which it shall be a party, and the expenses thereby incurred shall be charged to the commission's appropriation.

(9) TECHNICALITIES DISREGARDED. A substantial compliance with the requirements of the statutes shall be sufficient to give effect to all rules, orders, acts and regulations of the commission and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

(10) COMMISSION NOTICES; CERTIFICATIONS. Notices of investigation or hearing or certifications to copies of the records of the commission may be issued or certified by any member of the commission or by its secretary or its assistant secretary.

(11) EXECUTIVE ASSISTANT. The chairman of the commission may appoint, outside the classified service, an executive assistant to serve at his pleasure and perform such duties as he prescribes.

(12) The public service commission may sue and be sued in that name, and may confer with or participate in any proceedings before any regulatory agency of any other state or of the federal government.

History: 1977 c. 29 ss. 1329, 1331, 1333, 1352; 1977 c. 418; 1981 c. 148.

Public service commission ordered rebates for inadequate service. 1976 WLR 584.

196.03 Utility charges and service; reasonable and adequate. (1) Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, water or power produced, transmitted, delivered or furnished or for any telephone message conveyed or for any

service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful.

(2) For rate-making purposes the commission may consider two or more municipalities as a regional unit where the same public utility serves said municipalities, if in its opinion the public interest so requires.

(3) In the case of a public water utility, the commission shall include, in the determination of water rates, the cost of fluorinating the water in the area served by such public water utility, provided the local governing legislative body in which such public water utility is situated authorizes the fluorination of water in the area primarily served by such public water utility.

(4) Any public utility which is not a city, town or village and which supplies gas or electricity to its customers may not recover in rates set by the commission from any customer for any expenditure for costs in a proceeding before the commission which exceed 4 times the total amount assessed to the utility under s. 196.85 (1) and (2) unless the object of the expenditure has been ordered by the commission. The commission, by rule, shall establish procedures whereby a public utility may recover its expenditures under this subsection.

(5) (a) In this subsection "facility" means nuclear-fired electric generating equipment and associated facilities subject to a loss of coolant accident in March 1979.

(b) The commission may not authorize a utility furnishing electricity to recover in rates charged to consumers for the costs of repairing, maintaining or operating any facility owned by another public utility located outside of this state.

(c) The commission may not authorize a utility furnishing electricity to recover in rates charged to consumers for insurance premiums that provide coverage for an accident at a facility in March 1979, if the coverage is first obtained on or after May 7, 1982.

(d) No utility may otherwise pay directly or indirectly for the costs in pars. (b) and (c).

History: 1981 c. 20, 342.

196.035 Disconnect notices; assistance information to be furnished. Any utility furnishing heat, light or power to a residential customer shall include with any notice of intent to disconnect service during the months of December, January, February or March information concerning the heating assistance programs provided by the department of health and social services.

History: 1977 c. 418; 1981 c. 20.

196.04 Facilities granted other utilities; physical telephone connections; petition; investigation. (1) Every public utility and every person having conduits, subways, poles, towers, transmission wires or other equipment on, over or under any street or highway, shall for a reasonable compensation, permit the use of the same by any public utility, whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owner or other users of such equipment, nor in any substantial detriment to the service to be rendered by such owners or other users; and every utility for the conveyance of telephone messages shall permit physical connections to be made, and telephone service to be furnished, between any telephone system operated by it, and the telephone toll line operated by another such public utility, or between its toll line and the telephone system of another such public utility, or between its toll line and the toll line of another such public utility, or between its telephone system and the telephone system of another such public utility, whenever public convenience and necessity require such physical connections, and such physical connections will not result in irreparable injury to the owners or other users of the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such public utilities. The term "physical connection," as used in this section, shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between such public utilities.

(2) In case of failure to agree upon such use or the conditions or compensation for such use, or in case of failure to agree upon such physical connections, or the terms and conditions upon which the same shall be made, any public utility or any other person interested may apply to the commission, and if after investigation the commission shall ascertain that public convenience and necessity require such use or such physical connections, and that such use or such physical connections would not result in irreparable injury to the owner or other users of such equipment or of the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such owner or such public utilities or other users of such equipment or facilities, it shall by order direct that such use be permitted and prescribe reasonable conditions and compensation for such joint use, and that such physical connections be made, and determine how and within what time such connections shall be made, and by whom the expense of making and maintaining such connections shall be paid.

(3) Such use so ordered shall be permitted and such physical connections so ordered shall be made, and such conditions and compensation so prescribed shall be the lawful conditions and compensation for such use, and the lawful terms and conditions upon which such physical connections shall be made, observed, followed and paid. Any such order may be, from time to time, revised by the commission.

(4) Provided the parties cannot agree and the commission finds that public convenience and necessity or the rendition of reasonably adequate service to the public requires that a public utility should be permitted to extend its lines on, over or under the right of way of any railroad, or requires that the tracks of any railroad should be extended on, over or under the right of way of any public utility, the commission is empowered to order such extension by said public utility or railroad on, over or under the right of way of the other when it will not materially impair the ability of the railroad or utility, on, over or under whose right of way such extension would be made, to serve the public. Such use so ordered shall be permitted upon such conditions and such compensation as the commission shall deem equitable and reasonable in the light of all the circumstances, which conditions and compensation so prescribed shall be the lawful conditions and compensation for such use and the lawful terms and conditions upon which such use shall be made, observed, followed and paid.

196.05 Utility property; valuation; revaluation. (1) Whenever the commission shall deem it either proper or necessary in the interest of effective regulation, the commission shall value or revalue all the property of every public utility actually used and useful for the convenience of the public.

196.06 Uniform accounting; forms; books; office. (1) Every public utility shall keep and render to the commission in the manner and form prescribed by the commission uniform accounts of all business transacted.

(2) Every public utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of heat, light, water or power or the conveyance of telephone messages or telegraph messages shall, if required by the commission, keep and render separately to the commission in like manner and form the accounts of all such other business, in which case all the provisions of this chapter shall apply to the books, accounts, papers and records of such other business.

(3) Every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission, and to comply with all directions of the commission relating to such books, accounts, papers and records.

(6) Each public utility shall have an office in one of the towns, villages or cities in this state in which its property or some part thereof is located, in which it shall keep all books, accounts, papers and records required by the commission to be kept within the state. No books, accounts, papers or records required by the commission to be kept within the state shall be removed from the state, except upon conditions prescribed by the commission.

History: 1977 c. 418.

196.07 Balance sheet filed annually. (1)

The accounts of public utilities shall be closed annually on December 31 and a balance sheet of that date promptly taken therefrom. On or before April 1 following, such balance sheet together with such other information as the commission shall prescribe, verified by an officer of the public utility, shall be filed with the commission. The commission may for good cause shown extend the time for the filing of such balance sheet and prescribed information.

(2) If a public utility fails to file a report with the commission containing its balance sheet and other information prescribed by the commission by the date such report is due under sub. (1), the commission may prepare such report from the records of the utility. In this event, all expenses of the commission in preparing such report, plus a penalty equal to 50% of the amount of such expenses, shall be assessed against and collected from such utility in accordance with the procedure in s. 196.85. The amount of any such charge to a utility shall not, however, be limited by s. 196.85 (1) and shall be in addition to any other charges assessable under s. 196.85. The penalty provision of any such charge shall be credited to the general fund in accordance with s. 20.906.

196.08 Audit and inspection, balance sheet, publication. (1) The commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission.

(2) Each public utility with any utility department having operating revenues of \$50,000 or more shall publish, as a class 1 notice, under ch. 985, at least once each year, in the territory served by the utility, a true balance sheet and

income account of its financial affairs. If the accounts of any public utility are kept by districts, a class 1 notice shall be published separately for each district, and shall, in addition to the balance sheet and income account for the entire company, include a condensed income and operating statement for that district. The form and time of making publication shall be prescribed by the commission.

History: 1975 c. 142.

196.09 Depreciation rates and practices; findings by commission; dividends from reserves; retirements. (1)

In this section, "public utility" does not include a telephone cooperative except as provided under s. 196.205. Every public utility shall file with the commission, within such time as may be required by the commission, its estimate of the average annual rate of depreciation required for each of its classes of fixed capital used for public utility purposes, and of the composite annual rate of depreciation required for such fixed capital as an aggregate, which shall constitute the public utility's estimates of the amount which should be returned to it out of its rates for service, to meet the depreciation of its property.

(2) After the submission of such estimates, the commission shall review the same. If it shall determine that the estimates submitted are reasonable and proper, it shall certify that determination to the public utility. If it shall determine that the estimates submitted are not reasonable and proper, it shall certify to the public utility the percentages which it considers reasonable and proper. In case the fixed capital accounts of the public utility are not so subdivided as to permit the rates for the various classes of fixed capital used for public utility purposes to be applied, the estimates submitted by the public utility and the percentages determined by the commission may be based upon the aggregate of such fixed capital.

(3) After the commission shall have certified to the public utility its findings as to the percentages required for depreciation, such public utility shall have thirty days within which to make application to the commission for a hearing and order. If the public utility does not make application to the commission for a hearing and order within the time set, the commission's certification of findings shall have the effect of an order and the public utility shall have the right of appeal therefrom as provided in this chapter.

(4) The commission may provide, in order to meet changing conditions, that public utilities shall submit the estimates herein referred to from time to time, and in case it requires such resubmission of estimates, it shall follow the

procedure with reference to certifying its findings as provided above. In revising the reasonable and proper percentages of depreciation the commission shall give consideration to the experience of the public utility in accumulating a depreciation reserve under previous rates, the retirements actually made, and such other factors as may be relevant.

(5) When the commission shall have established, by certification or order, the reasonable and proper percentages of depreciation, such percentages shall constitute the percentages to be used in any proceeding involving the rates or practices of such public utility, provided that if at the time of such proceeding it is found that the percentages of depreciation previously established are no longer reasonable and proper the commission shall establish reasonable and proper percentages for the purpose of such proceeding and certify such new percentages in the manner provided by this section.

(6) When the commission shall have established for any public utility, by certification or order, the percentages necessary for depreciation on fixed capital used for public utility purposes, such public utility shall credit to its depreciation reserve in each accounting period such amount as may be required to provide for depreciation at the percentage or percentages established. If the public utility is a corporation it shall be unlawful for such corporation to pay any dividend out of earnings for any fiscal period subsequent to the commission's certification or order, or carry any portion of its earnings to its surplus account, except out of earnings remaining after crediting its depreciation reserve in accordance with the rates established by the commission; provided, that after application and hearing the commission may, upon a finding that it is necessary in the public interest, exempt a public utility from the duty of crediting to the depreciation reserve in any accounting period a greater amount than is possible without impairing its ability to pay dividends for the current calendar year. Nothing in this section shall be construed to modify the requirements of s. 180.38.

(7) If a public utility desires to account for depreciation on a sinking fund basis and the commission determines that such basis of accounting for depreciation may reasonably be employed, the commission shall establish, in the manner hereinbefore referred to, the composite rate to be applied to the aggregate fixed capital used for public utility purposes to determine the amount which shall be charged to operating expenses, and the interest rate applicable to the reserve balance at which additional credits to the reserve shall be computed. In such cases the

total amount to be credited to the reserve shall be the amount charged to operating expenses, plus the amount obtained by applying the interest rate to the reserve balance. Public utilities which account for depreciation on a sinking fund basis shall be subject to the same restrictions and regulations in their accounting for the entire amounts to be credited to the depreciation reserve as are applicable to those public utilities which make the entire provision for depreciation by other methods permitted herein.

(8) No public utility shall charge to its depreciation reserve anything except losses on property actually retired from service.

History: 1981 c. 148.

Order establishing depreciation rates for utility's nuclear plant did not require environmental impact statement. *Wis. Environmental Decade v. Public Serv. Comm.* 105 W (2d) 457, 313 NW (2d) 863 (Ct. App. 1981).

196.10 Construction; accounting. The commission shall keep itself informed of all new construction, extensions and additions to the property of public utilities, and shall prescribe the necessary forms, regulations and instructions for the keeping of construction accounts, which shall clearly distinguish all operating expenses from new construction.

196.11 Profit sharing and sliding scales.

(1) A public utility may enter into any reasonable arrangement with its customers or consumers or with its employees, for the division or distribution of its surplus profits, or providing for a sliding scale of charges, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission to be reasonable and just and consistent with the purposes of this chapter. Such arrangement shall be under the supervision and regulation of the commission.

(2) Any arrangement under this section shall be under the supervision and regulation of the commission. The commission may order any rate, charge or regulation which the commission deems necessary to give effect to the arrangement. The commission may make any change in a rate, charge or regulation as the commission determines is necessary and reasonable and may revoke its approval and amend or rescind all orders relative to any arrangement. This subsection does not apply to telephone cooperatives except as provided under s. 196.205.

History: 1981 c. 148.

196.12 Report by utilities; items. (1) Each public utility shall furnish to the commission in such form and at such times as the commission shall require, such accounts, reports and information as shall show in itemized detail: The

196.12 REGULATION OF PUBLIC UTILITIES

3452

depreciation; the salaries and wages; legal expenses; taxes and rentals; the quantity and value of material used; the receipts from residuals, by-products, services or other sales; the total and net cost; the gross and net profit; the dividends and interest; surplus or reserve; the prices paid by consumers; and in addition such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe in order to show completely and in detail the entire operation of the public utility in furnishing its product or service to the public.

(2) No city or village having a population of less than five thousand shall be required to report under this section except as to earnings, operating expenses, including depreciation and maintenance, cost of renewals, extensions and improvements to the property and the nature and amount of service furnished in such detail as the commission shall deem necessary, provided that in case of any investigation by the commission upon formal complaint, the commission may require the detailed reports as to units provided for in this section.

196.13 Commission's report. (1) The commission shall publish biennial reports showing its proceedings together with such financial and other data concerning all public utilities as may be appropriate for all the public utilities, and such monthly or occasional reports as it may deem advisable.

(2) The commission shall publish in its reports the value of all the property actually used and useful for the convenience of the public and the value of the physical property actually used and useful for the convenience of the public, of every public utility as to whose rates, charges, service or regulations any hearing has been held by the commission or the value of whose property has been ascertained by it.

196.14 Records public; exceptions. All facts and information in the possession of the commission shall be public, and all reports, records, files, books, accounts, papers and memoranda of every nature whatsoever in its possession shall be open to inspection by the public at all reasonable times, except that whenever the commission shall determine it to be necessary in the interest of the public to withhold from the public any facts or information in its possession, such facts may be withheld for such period, not exceeding ninety days as the commission may determine.

196.15 Units of product or service. The commission shall prescribe for each kind of

public utility suitable and convenient standard commercial units of product or service.

196.16 Standard measurements; accurate appliances. (1) The commission shall fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other condition pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof.

(2) It shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements.

(3) This section shall not limit powers vested in municipal councils by s. 196.58.

196.17 Tests of meters; fees. (1) The commission shall provide for the examination and testing of all appliances used for measuring any product or service of a public utility.

(2) Any consumer or user may have any such appliance tested upon payment of the fees fixed by the commission.

(3) The commission shall establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user.

(4) The commission may purchase materials, apparatus and standard measuring instruments for such examinations and tests.

196.171 Examination of meters, pipes, fittings, wires and works; entering buildings for. Any officer or agent of any public utility furnishing or transmitting gas or electric current or both or water to the public or for public purposes, for that purpose duly appointed and authorized by such utility, at all reasonable times, upon exhibiting a written authority signed by the president or a vice president and secretary or assistant secretary of the utility, or in the case of a municipally owned plant, the commissioner of public works or such other official in charge of the utility, may enter any dwelling, store, building, room or place supplied with gas, electricity or water by such utility, for the purpose of inspecting, examining, repairing, installing or removing the meters, pipes, fittings, wires and works for supplying or regulating the supply of gas, electricity or water and of ascertaining the quantity of gas, electricity or water supplied. Any person who shall, directly or

indirectly, prevent or hinder any such officer or agent from so entering any such premises, or from making such inspection, examination, removal or installation at any reasonable time, shall be punished by a fine of not more than twenty-five dollars for every such offense.

196.175 Construction and occupancy standards. The commission may not establish or enforce construction or occupancy standards applicable to any public building, as defined in s. 101.01 (2) (h), dwelling, as defined in s. 101.71 (2) or any occupancy standard applicable to any place of employment as defined in s. 101.01 (2) (a).

History: 1979 c. 34.

196.18 Entry upon premises. The commission, its agents, experts or examiners may enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this chapter and set up and use on such premises any apparatus and appliances and occupy reasonable space therefor.

196.19 Publish schedules; regulations; files; joint rates. (1) Every public utility shall file with the commission schedules showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it. The rates, tolls and charges shown on such schedules shall not exceed the rates, tolls and charges in force April 1, 1907.

(2) Every public utility shall file with and as a part of such schedule all rules and regulations that, in the judgment of the commission, in any manner affect the service or product, or the rates charged or to be charged for any service or product, as well as any contracts, agreements or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable as the commission may by general or special order direct.

(3) A copy of so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type, and kept on file in every station or office of such public utility where payments are made by the consumers or users in such form and place as to be readily accessible to the public.

(4) Where a schedule of joint rates or charges is in force between public utilities, such schedules shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the

use of the public, shall be filed in every such station or office as provided in sub. (3).

(5) Whenever public utilities for the conveyance of telephone messages are furnishing joint telephone service to the public, or shall be required to furnish such service, and shall refuse or neglect to establish joint tolls, the commission may after notice and a public hearing, establish, by order, such joint tolls, and if the utilities shall fail to agree upon the apportionment thereof within twenty days after the service of such order, the commission may, upon a like hearing, issue a supplemental order declaring the apportionment of such joint tolls, and the same shall take effect as part of the original order.

196.20 Changes in rates; approval of increases required. (1) The rate schedules of any utility shall include all rules applicable to the rendition or discontinuance of the service to which the rates specified in such schedules are applicable. No change shall be made by any utility in its schedules except by filing the change as proposed with the commission. No change in any utility rule which purports to curtail the obligation or undertaking of service of such utility shall be effective without the written approval of the commission after hearing; provided, that the commission may, by emergency order, make any such rule, as filed, effective from the date of such order, pending final approval thereof after hearing as herein provided. Every such proposed change which constitutes a decrease in rates shall be effective at the time specified in the change as filed but not earlier than 10 days after the date of filing the same with the commission, unless during such 10-day period the commission, either upon complaint or upon its own motion, shall, by order, suspend the operation of any such proposed change. Such suspension shall be effective for a period not exceeding 4 months, during which period the commission shall investigate all matters relative to the reasonableness or lawfulness of the change or changes in schedules as filed; and shall thereafter, by order, approve or disapprove the same. No order disapproving any such change shall be made without first affording to the utility an opportunity for hearing; but a disapproval so made shall render the proposed change ineffective. If the commission shall suspend the proposed change in any schedule as herein provided, it may, on notice to the utility of its objections to the change in schedule as proposed and after opportunity afforded to the utility to be heard with respect to such objections, prescribe a schedule which, revised on the basis of such objections, it finds to be lawful and reasonable, in lieu of any schedule

196.20 REGULATION OF PUBLIC UTILITIES

3454

disapproved as herein provided. The commission upon application of any utility may direct that a proposed reduction in rates shall be made effective less than 10 days after filing the same.

(2) No change in schedules which constitutes an increase in rates to consumers shall be made except by order of the commission, after an investigation and hearing.

(3) This section does not apply to telephone cooperatives except as provided under s. 196.205.

History: 1981 c. 148.

Utility's expanded adjustment clause violated requirement of public hearings prior to rate increases under (2). *Wis. Environmental Decade v. Public Service Comm.* 81 W (2d) 344, 260 NW (2d) 712.

Inclusion of nuclear fuel in adjustment clause does not violate (2). *Wis. Environmental Decade v. Public Serv. Comm.* 105 W (2d) 457, 313 NW (2d) 863 (Ct. App. 1981).

Utility rate increases granted under automatic fuel adjustment clause without hearing probably would not be illegal if clause were limited to purchased fuel or power. 70 Atty. Gen. 108.

196.205 Election of rate regulation of telephone cooperatives. (1) A telephone cooperative may elect to be subject to ss. 196.02 (2), 196.09 (1), 196.11 (2), 196.20 and 196.26 in any of the following ways:

(a) By amendment of the articles of incorporation of the cooperative under s. 185.51.

(b) By a majority of members or stockholders voting by mail ballot initiated by petition of at least 5% of the members or stockholders of the cooperative.

(c) By a majority of the voting members of the board of directors of the cooperative.

(2) The ballot used for the election under sub. (1) (b) shall be approved by the commission. The cooperative shall mail the ballots to the members who shall return the ballots to the commission. The cooperative may enclose the ballot to a member with the regular periodic billing for the cooperative's services. The commission shall keep the ballots sealed until a date agreed upon by the commission and the board of directors of the cooperative. On that date, representatives of the commission and the cooperative shall count the ballots. If the majority of the members who vote elect to become subject to the sections enumerated under sub. (1) (intro.), the election shall be effective 30 days after the date the ballots are counted.

History: 1981 c. 148.

196.21 Publicity of revised schedules. Copies of all new schedules shall be filed as provided in s. 196.19 in every station and office of such public utility where payments are made by consumers or users ten days prior to the time the same are to take effect, unless the commission shall prescribe a less time.

196.22 Discrimination forbidden. It shall be unlawful for any public utility to charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in such schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect or receive any rate, toll or charge not specified in such schedule.

196.23 Schedule forms prescribed. The commission may prescribe the form in which the schedules are issued by any public utility.

196.24 Agents of commission; powers.

(1) For the purpose of making any investigation with regard to any public utility the commission shall have power to appoint, by an order in writing, an agent whose duties shall be prescribed in such order.

(2) In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted to the commission; and all powers of a court commissioner relative to depositions are hereby granted to such agent.

(3) The commission may conduct any number of investigations contemporaneously through different agents, and may delegate to any agent the taking of testimony bearing upon any investigation or at any hearing. The decision of the commission shall be based upon its records and upon the evidence before it as provided by s. 227.09.

History: 1975 c. 414 s. 28.

196.25 Questionnaires to utilities. (1) Any public utility receiving from the commission any blanks with directions to fill the same shall cause the same to be properly filled out so as to answer fully, specifically and correctly each question therein propounded, and in case it is unable to answer any question, it shall give a good and sufficient reason for such failure; and such answer shall be verified under oath by the president, secretary, superintendent or general manager of such public utility and returned to the commission at its office within the period fixed by the commission.

(2) When required every public utility shall deliver to the commission any or all maps, profiles, contracts, reports of engineers and all documents, books, accounts, papers and records or copies of any or all of the same, with a complete inventory of all its property, in such form as the commission may direct.

196.26 Complaint by consumers; hearing; notice; order; costs. (1) **COMPLAINT.** In

this section "complaint" means a complaint filed with the commission that any rate, toll, charge or schedule, joint rate, regulation, measurement or practice relating to the provision of heat, light, water power or telephone service is unreasonable, inadequate, unjustly discriminatory or cannot be obtained.

(1m) COMPLAINT AND INVESTIGATION. If any mercantile, agricultural or manufacturing society, body politic, municipal organization or 25 persons file a complaint against a public utility, the commission, with or without notice, may investigate the complaint as it deems necessary. The commission may not issue an order based on the investigation without a public hearing.

(2) NOTICE AND HEARING. (a) Prior to a hearing under this section, the commission shall notify the public utility complained of that a complaint has been made, and 10 days after the notice has been given the commission may proceed to set a time and place for a hearing and an investigation.

(b) The commission shall give the public utility which is the subject of a complaint filed under sub. (1) and the complainant 10 days' notice of the time and place of the hearing and the matter to be considered and determined at the hearing. The complainant and the public utility may be heard. The commission may subpoena any witness at the request of the public utility or complainant.

(c) Notice under pars. (a) and (b) may be combined. The combined notice may not be less than 10 days prior to hearing.

(3) SEPARATE HEARINGS. If a complaint is made under sub. (1m) of more than one rate or charge, the commission may order separate hearings on each rate and charge, and may consider and determine the complaint on each rate and charge separately and at such times as the commission prescribes. The commission may not dismiss a complaint because of the absence of direct damage to the complainant.

(4) EXCEPTION FOR TELEPHONE COOPERATIVES. This section does not apply to any rate, toll, charge or schedule or any joint rate of any telephone cooperative except as provided under s. 196.205 or unless at least 5% of the customers of the cooperative file a complaint with the commission that the rate, toll, charge or schedule or joint rate is in any respect unreasonable, insufficient or unjustly discriminatory.

History: 1981 c. 148.

196.28 Summary investigations. Whenever the commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of

any matter relating to any public utility should for any reason be made, it may on its own motion summarily investigate the same with or without notice.

History: 1977 c. 29 s. 1654 (10) (c).

See note to 227.15, citing Wis. Environmental Decade v. Public Service Comm. 93 W (2d) 650, 287 NW (2d) 737 (1980).

196.29 Procedure after summary investigation. (1) If, after making such summary investigation, the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters investigated, it shall set a time and place for a hearing.

(2) Notice of the time and place for such hearing shall be given to the public utility, and to such other interested persons as the commission shall deem necessary, as provided in s. 196.26, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint.

History: 1977 c. 29 s. 1654 (10) (c).

See note to 227.15, citing Wis. Environmental Decade v. Public Service Comm. 93 W (2d) 650, 287 NW (2d) 737 (1980).

196.30 Utilities may complain. Any public utility may make complaint as to any matter affecting its own product or service.

196.32 Witness fees and mileage. (1) Each witness who shall appear before the commission or its agent by its order, shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairman of the commission. Said fees and mileage shall be charged to the appropriation for the public service commission.

(2) No witness subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated.

196.33 Depositions. The commission or any party may in any investigation or hearing cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts. Any expense incurred or authorized by the commission in taking such

depositions shall be charged to the appropriation for the commission.

196.34 Stenographic records. A full and complete record shall be kept of all proceedings had before the commission or its agent on any formal investigation or hearing had and all testimony shall be taken down by the stenographer appointed by the commission.

196.36 Transcripts as evidence; free to parties. (1) A transcribed copy of the evidence and proceedings or any specific part thereof, on any investigation or hearing taken by the stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of all the testimony or of a particular witness, or of other specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation or hearing so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified.

(2) A copy of such transcript shall be furnished on demand free of cost to any party to such investigation or hearing.

196.37 Lawful rates; reasonable service.

(1) Whenever upon an investigation made under this chapter and ch. 197 the commission shall find rates, tolls, charges, schedules or joint rates to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise unreasonable or unlawful, the commission shall determine and by order fix reasonable rates, tolls, charges, schedules or joint rates to be imposed, observed and followed in the future in lieu of those found to be unreasonable or unlawful.

(2) Whenever the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or shall find that any service is inadequate, or that any service which can be reasonably demanded cannot be obtained, the commission shall determine and by order fix reasonable measurements, regulations, acts, practices or service to be furnished, imposed, observed and followed in the future in lieu of those found to be unreasonable, inadequate or otherwise unlawful, and shall make such other order respecting such measurement,

regulation, act, practice or service as shall be just and reasonable.

History: 1981 c. 390.

In absence of statutory authority, PSC may not fix rates to be applied retroactively. *Cities & Villages of Algoma, Etc. v. PSC*, 91 W (2d) 252, 283 NW (2d) 261 (Ct. App. 1978).

Allowing utility to charge present ratepayers for storm damage casualty loss occurring in prior year did not constitute retroactive rate making. *Wis. Environmental Decade v. Public Service Comm.* 98 W (2d) 682, 298 NW (2d) 205 (Ct. App. 1980).

Commission order establishing rates was not supported by substantial evidence. *Madison Gas & Elec. Co. v. PSC*, 105 W (2d) 385, 313 NW (2d) 847 (Ct. App. 1981).

196.375 Adequate service; reasonable rates. Upon complaint by any party affected, setting forth that any grantee of a permit to develop hydraulic power and generate hydroelectric energy for sale or service to the public is not furnishing citizens of this state with adequate service at a reasonable rate in consequence of sales of such energy outside of the state, the commission shall have power to declare any or all contracts entered into by said grantee for such sales null and void insofar as they interfere with such service or rate. Such declaration shall be made only after a hearing and investigation and a recorded finding that convenience and necessity require the sale of a specified part or all such energy within this state.

196.38 Utilities to conform to orders. All public utilities to which the order applies shall make such changes in their schedules on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any public utility in such rates, tolls or charges, or joint rates, without the approval of the commission.

196.39 Change, amendment and rescission of orders; reopening cases. The commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the public utility and after opportunity to be heard, rescind, alter or amend any order fixing rates, tolls, charges or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order therein, for the taking of further evidence or for any other reason. Any order rescinding, altering, amending or reopening a prior order shall have the same effect as an original order.

The PSC cannot order a change in rates by order without notice and hearing on the ground that the order is only a clarification of an earlier order. *Mid-Plains Telephone v. Public Serv. Comm.* 56 W (2d) 780, 202 NW (2d) 907.

196.395 Test, conditional, emergency and supplemental orders; waiver of conditions in orders. The commission may issue orders calling for a test of actual results under

the requirements prescribed by such order, during which test period the commission may retain jurisdiction of the subject matter. The commission is empowered to issue conditional, temporary, emergency and supplemental orders. Where an order is issued upon certain stated conditions any party acting upon any part of such order shall be deemed to have accepted and waived all objections to the condition contained in such order.

Temporary and emergency rates may be appropriately and widely used by public service commission where justified by circumstances. *Friends of Earth v. Public Service Commission*, 78 W (2d) 388, 254 NW (2d) 299

196.40 Orders and determinations; time of taking effect. Every decision made by the commission constituting an order or determination shall be in force and effective 20 days after the same has been filed and has been served by personal delivery or by mailing a copy thereof to all parties to the proceeding in which such decision was made or to their attorneys, unless the commission shall specify a different date upon which the same shall be effective. Every such order from and after the effective date thereof shall be prima facie lawful and reasonable until finally adjudged otherwise in a proceeding for the judicial review thereof instituted pursuant to ss. 227.15 and 227.16.

196.41 Court review. Any order or determination of the commission may be reviewed in the manner provided in ch. 227.

See note to 227.15, citing *Friends of Earth v. Public Service Commission*, 78 W (2d) 388, 254 NW (2d) 299.

196.43 Injunction procedure. (1) No injunction shall issue in any proceeding for review under ch. 227 of an order of the commission, suspending or staying any such order except upon application to the circuit court or presiding judge thereof, notice to the commission and any other party, and hearing; and no injunction shall issue in any other proceeding or action, in any court, which shall have the effect of delaying or preventing any order of the commission from becoming effective, unless the parties to the proceeding before the commission in which such order was made are also parties to such proceeding or action.

(2) No injunction shall issue in any such proceeding for review, or in any other proceeding or action, suspending or staying any order of the commission or having the effect of delaying or preventing any order of the commission from becoming effective, unless an undertaking shall be entered into on the part of the petitioner or plaintiff, by at least 2 sureties, in such sum as the court or the presiding judge thereof shall direct to the effect that the petitioner or plaintiff will

pay all damages which the opposite party may sustain by the delay or prevention of the order of the commission from becoming effective, and to such further effect as such judge or court shall in discretion direct, and no order or judgment in any such proceeding or action shall be stayed upon judicial review thereof unless a like undertaking be entered into by the petitioner or plaintiff in addition to the undertaking provided in s. 808.07.

History: Sup. Ct. Order, 67 W (2d) 775; 1977 c. 187 s. 135.

196.44 Law enforcement. (1) DUTY OF COMMISSION. The commission shall inquire into the neglect or violation of the laws of this state by public utilities, or by their officers, agents or employes or by persons operating public utilities, and shall enforce all laws relating to public utilities, and report all violations to the attorney general.

(2) ATTORNEY GENERAL AND DISTRICT ATTORNEY TO PROSECUTE. Upon request of the commission, the attorney general or the district attorney of the proper county shall aid in any investigation, hearing or trial had under this chapter, and shall institute and prosecute all necessary actions or proceedings for the enforcement of all laws relating to public utilities, and for the punishment of all violations.

(3) ACTIONS, CHARACTER, VENUE. Any forfeiture, fine or other penalty provided in this chapter may be recovered as a forfeiture in a civil action brought in the name of the state in the circuit court of Dane county, or in the county that would be the proper place of trial under s. 801.50.

History: Sup. Ct. Order, 67 W (2d) 775; 1977 c. 29 ss. 1337, 1654 (10) (c), 1656 (43); 1977 c. 272; 1981 c. 390 s. 252.

196.48 Incriminating evidence. No person may be excused from testifying or from producing books, accounts and papers in any proceeding based upon or growing out of any violation of chs. 195 to 197, on the ground or for the reason that the testimony or evidence may tend to incriminate or subject the person to penalty or forfeiture, but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person has testified or produced. No person so testifying may be exempted from prosecution or punishment for perjury in testifying.

History: 1977 c. 273; 1981 c. 390.

196.49 Authorization from commission before transacting business; extensions and improvements to be approved; enforcement of orders; natural gas. (1) No

public utility not legally engaged in performing a public utility service on August 1, 1931, in any municipality where there is not in operation under an indeterminate permit a public utility engaged in similar service, shall commence the construction of any public utility plant, extension or facility, or render service in such municipality directly, or indirectly by serving any other public utility or agency engaged in public utility service or otherwise, unless and until it shall have obtained a certificate from the commission authorizing it to transact such public utility business.

(2) No public utility shall begin the construction, installation or operation of any new plant, equipment, property or facility, nor the construction or installation of any extension, improvement or addition to its existing plant, equipment, property, apparatus or facilities unless and until it shall have complied with any applicable general or special order of the commission. If a co-operative association has been incorporated under ch. 185 for the production, transmission, delivery or furnishing of light or power and has filed with the commission a map of the territory to be served by such association and a statement showing that a majority of the prospective customers in the area are included in the project, no public utility shall begin any such construction, installation or operation within said territory until after the expiration of six months from the date of the filing of said map and notice. In the event said co-operative association has entered into a loan agreement with any federal agency for the financing of its proposed system and has given written notice thereof to the commission, no public utility shall begin any such construction, installation or operation within said territory until after the expiration of twelve months from the date of said loan agreement.

(3) The commission may provide by general or special order that any public utility shall submit, periodically or at such times as the commission shall specify and in such detail as the commission shall require, plans, specifications and estimated costs of such proposed construction of any new plant, equipment, property or facility, or such extension, improvement or addition to its existing plant, equipment, property, apparatus or facilities as the commission finds will materially affect the public interest.

(4) In such general or special order the commission may provide that no such project as herein described shall proceed until the commission has certified that public convenience and necessity require such work; but, such general or special order shall not require such certificate for the completion of the construction and in-

stallation of plants and facilities upon which construction work has begun prior to June 7, 1931 or for which contracts may have been entered into prior to such date. The commission may refuse such certificate if it appears that the completion of such project: (a) will substantially impair the efficiency of the service of such public utility; (b) provides facilities unreasonably in excess of the probable future requirements; or (c) will, when placed in operation, add to the cost of service without proportionately increasing the value or available quantity thereof unless the public utility shall waive consideration by the commission, in the fixation of rates, of such consequent increase of cost of service. The commission shall have power to issue a certificate for such project or for such part thereof as complies with the requirements of this section, or the commission may attach to the issuance of its certificate such terms and conditions as will insure that the project meets the requirements of this section. The certificate issued, hereunder, shall not be a condition precedent to the exercise of eminent domain under ch. 32.

(5) (a) No public utility furnishing gas to the public in this state shall construct, install or place in operation any new plant, equipment, property or facility, or construct or install any extension, improvement, addition or alteration to its existing plant, equipment, property or facilities for the purpose of connecting its properties and system to a source of supply of gaseous fuel for sale to the public which is different from that which has been theretofore sold, or for the purpose of adapting its facilities to such different kind of gaseous fuel unless and until the commission shall have found and certified that the general public interest and public convenience and necessity require the same; nor shall any such public utility substitute natural gas or a mixture of natural and manufactured gas in lieu of manufactured gas for distribution and sale to the public without first having obtained from the commission a certificate that the general public interest and public convenience and necessity require the same.

(b) Proceedings for such a certificate shall be commenced by petition to the commission in such form and furnishing such information as the commission shall by general or special order prescribe. The commission shall also prescribe the form of notice, to whom the same shall be given, and how notice shall be given.

(c) A petition may include one or more municipalities, may be made by one or more utilities as a joint petition, or by any other person or corporation interested or by a utility and such other person or corporation so interested, and the commission may direct the con-

solidation, separation or consideration of separate petitions as it may deem necessary or expedient to a prompt hearing and disposition of the issue.

(d) Upon the filing of such petition, notice of hearing thereon shall be given by any utility or person filing such petition by publication of a class 2 notice, under ch. 985, or by mailing or personal service, as the commission directs by the order provided for in par. (b). Such notice shall be given, as herein provided, at least 2 weeks prior to hearing on such petition and proof thereof filed as directed by the commission.

(e) The commission may by order prior to or during any hearing frame and prescribe special issues and limit the issues or the nature and extent of proof so as to avoid unnecessary duplication or may proceed with the hearing as to part of an application as it may find desirable to a full but speedy hearing upon such petition.

(f) The commission may likewise accept the findings and orders of the federal power commission or any other federal agency having jurisdiction as to the availability of adequate supplies of natural gas, the adequacy or sufficiency of equipment and facilities to be employed in the delivery or storage of natural gas for any utility, and any similar findings or determinations affecting the seller or person or corporation furnishing such natural gas to any utility and material to the ultimate determination of the issues in such proceeding as presumptive evidence of the facts so found, and may likewise accept and take judicial notice of its own files and records, including all proceedings and the evidence therein which it may find to be material and relevant, provided, however, that in any such event the commission shall give notice of such fact prior to the conclusion of final hearings upon any proceeding so as to give interested parties the right to object to the acceptance of such evidence or to contradict the same by other competent evidence.

(g) The certificate, when granted, shall be authorized by an order following such hearing which shall contain such conditions and limitations as the commission may deem necessary or practicable, including exceptions or regulations as to specific communities or utilities, provision for protection of employes under existing labor contracts, as well as other employes, so as to avoid unemployment, regulations for accounting for expenses for change-over to the use of natural gas where necessary and to the extent necessary, provision for amortization of any expenditure or other items, and such other regulations, conditions and limitations as the commission may consider necessary in the public interest.

(h) Any certificate may extend to one or more utilities or one or more municipalities when so directed by the order, and may prescribe different conditions and regulations for each, as the commission shall deem necessary to carry out the purposes of this section.

(i) In making its determination, the commission shall give due consideration, among all other appropriate factors, to all matters affecting the public interest, including when the substitution of natural or a mixture of natural and manufactured gas in lieu of manufactured gas, is involved, the social and economic effects thereof by reason of its effect upon employment, existing business and industries, railroads and other transportation agencies and facilities, conveniences, economies and savings to consumers, the likelihood of substantial rate reductions, the effect upon existing gas utilities and their ability to continue to serve the public, the state, any of its political subdivisions or any citizen or resident thereof.

(6) If the commission finds that any public utility has undertaken or is about to undertake such a project as described in this section in violation or disregard of the general or special order, the commission may in its own name either before or after investigation or public hearing and either before or after issuing any additional orders or directions as it may deem proper, bring an action in the circuit court of Dane county to enjoin the violation or disregard of the order. Where necessary to preserve the existing state of affairs the court may issue a temporary injunction pending a hearing upon the merits. From any such order or judgment of the circuit court an appeal may be taken to the court of appeals.

History: Sup. Ct. Order, 67 W (2d) 775; 1977 c. 187; 1979 c. 110 s. 60 (9).

There is no hearing requirement as to the issuance of a certificate authorizing service. *Adams-Marquette E. Coop. v. P.S.C.* 51 W (2d) 718, 188 NW (2d) 515.

196.491 Bulk electric generating facilities, large electric generating facilities and high-voltage transmission lines. (1) DEFINITIONS. In this section:

(a) "Bulk electric generating facility" means electric generating equipment and associated facilities designed for nominal operation at a capacity of 300,000 kilowatts or more.

(b) "Commencement of construction" means site clearing, excavation, placement of facilities or any other substantial action adversely affecting the natural environment of the site, but does not mean borings necessary to determine foundation conditions or other preconstruction monitoring to establish background information related to site or environmental suitability.

(c) "Department" means the department of natural resources.

(d) "Electric utility" means any public utility, as defined in s. 196.01, which is involved in the generation, distribution and sale of electric energy, and any corporation, company, individual or association, and any cooperative association organized under ch. 185 for the purpose of generating, distributing or furnishing electric energy at retail or wholesale to its members only, which owns or operates, or plans within the next 10 years to construct, own or operate, bulk electric generating facilities, large electric generating facilities or high-voltage transmission lines in the state.

(e) "Facility" means a bulk electric generating facility, a large electric generating facility or a high-voltage transmission line.

(f) "High-voltage transmission line" means a conductor of electric energy exceeding one mile in length designed for operation at a nominal voltage of 100 kilovolts or more, together with associated facilities. "High-voltage transmission line" does not include transmission line relocations which the commission determines are necessary to facilitate highway or airport projects.

(g) "Large electric generating facility" means electric generating equipment and associated facilities designed for nominal operation at a capacity of between 12,000 and 300,000 kilowatts.

(2) **ADVANCE PLANNING.** (a) On or before July 1 of each even-numbered year, or such other biennial period as the commission may approve, each electric utility shall file its plan with the commission and with those persons or agencies listed in par. (b). Such plans may be appropriate portions of a single regional plan or may be prepared jointly by 2 or more utilities, and shall:

1. Describe the general location, size and type of facilities which are expected to be owned or operated in whole or in part by such utility and the construction of which is expected to commence during the ensuing 10 years, or such longer period as the commission deems necessary, and shall identify all existing facilities intended to be removed from service during such period or upon completion of such construction;

2. Identify practical alternates to the general location, fuel type and method of generation of the proposed electric generating facilities, and set forth in detail the reasons for selecting the proposed general location, fuel type and method of generation;

3. Identify the location of proposed and alternative specific sites for all bulk electric generating facilities and all large electric generating facilities over 200,000 kilowatts for which a

certificate of public convenience and necessity has not been applied for under sub. (3) but the commencement of whose construction is planned within 3 years, or such longer period as the commission deems necessary and indicate the impacts of the proposed and alternative generating facilities on the environment and the means by which potential adverse effects on such values will be avoided or minimized;

3m. Identify the location of tentative and alternative routes for high-voltage transmission lines on which construction is intended to be commenced in the succeeding 18 months and indicate the effects of such transmission lines on the environment and the means by which potential adverse effects will be avoided or minimized;

4. Indicate in detail the projected demand for electric energy and the basis for determining the projected demand;

5. Describe the utility's relationship to other utilities and regional associations, power pools and networks;

6. Identify and describe all major research projects and programs which will continue or commence in the succeeding 3 years and set forth the reasons for selecting specific areas for research;

7. Identify and describe existing and planned programs and policies to discourage inefficient and excessive power use; and

8. Provide any other information required by the commission.

(am) No local ordinance may prohibit or restrict testing activities undertaken by a utility for purposes of preparing advance plans or determining the suitability of a site for the placement of a facility. Any local unit of government objecting to such testing may petition the commission to impose reasonable restrictions on such activity.

(b) A copy of each advance plan shall, at the time it is filed with the commission, also be filed with each of the following:

1. Department of administration.
2. Department of development.
3. Department of health and social services.
4. Department of justice.
5. Department of natural resources.
6. Department of transportation.

7. The director or chairman of each regional planning commission constituted under s. 66.945 which has jurisdiction over any area where a facility is proposed to be located or which requests a copy of such plan.

(c) Those agencies receiving copies under par. (b) shall review the plans and submit their comments to the commission within 180 days after their receipt of the plans. Comments shall include:

1. A description of any statutory permits or approvals required by the agency.

2. A description of the types and forms of information required for adequate review of an application for each permit or approval.

3. A detailed discussion as to the areas in which the plans coordinate with the agency's plans, policies, functions and programs and the areas in which the plans conflict and the significance of such conflicts.

4. To the extent practicable and consistent with its program responsibilities, a discussion of the environmental impacts of the plan.

(d) The commission shall, within 10 days after the plan is filed, send a copy of such plan, or the applicable portion thereof, to the county planner, or, if none exists, to the county clerk of each county affected by the plan, to the main public library of each such county, and to any other county planner, county clerk or public library which requests copies of such plans or portions of plans. The commission shall send a copy of the applicable portion of the plan to the clerk of each municipality and town in which a bulk or large electric generating facility is proposed to be located, and shall notify each public library in such municipality or town that copies of the plan are available upon request.

(e) Any county, municipality, town or person may submit written comments on any plan to the commission within 180 days after the plan is filed.

(f) Because the planning process for facilities siting otherwise incorporates consideration and analysis of environmental impact, s. 1.11 (2)

(c) shall not apply to advance plans prepared under par. (a) but the commission shall prepare a single environmental assessment on all plans submitted for approval under par. (a), which shall include a discussion of generic issues related thereto. Such assessment shall be made available to the public at least 30 days prior to the hearing under par. (g). The assessment on the plans is different from an environmental impact statement on a particular facility in that it need not identify the environmental effects of proposed sites for facilities in the plan with the same degree of detail as is required when a particular facility is considered for a certificate of public convenience and necessity under sub. (3). The assessment need not repeat information included in an assessment prepared for a plan submitted under par. (a) on a prior reporting date and with respect to which no material additional data is required or as to which there has been no material change in circumstances. Applicable portions of such assessment may be included by reference in any environmental impact statement prepared by the commission, including a statement prepared in connection

with the consideration of an application for a certificate of public convenience and necessity under sub. (3).

(g) Within 180 days after the plan is filed, the commission shall hold a hearing thereon. The hearing shall be held in an administrative district, established by executive order 22, issued August 24, 1970, which the commission determines will be significantly affected by facilities proposed in the plan to be constructed in the following 3 years. The commission may thereafter adjourn the hearing to other locations. Notice of such hearing shall be given by class 1 notice, under ch. 985, published in the official state newspaper and such other regional papers of general circulation as may be designated by the commission. At such hearing the commission shall briefly describe the plan and give all interested persons an opportunity, subject to reasonable limitations on the presentation of repetitious material, to express their views on any aspect of the plan. The presentation of such views need not be under oath nor subject to cross-examination. The commission shall advise all persons present of their right to express their views orally or in writing, under oath or otherwise, and of the legal effect of each such form of testimony. A written record of unsworn testimony shall be made and considered by the commission as comments on the plan under par. (e). Persons presenting such views shall not be parties. The utility, any state agency, county, municipality, town, or any person whose substantial rights may be adversely affected by the testing for or construction of facilities described in an advance plan, shall, upon filing written notice setting forth its interest at least 10 days in advance, be afforded all the rights of a party in a contested case.

(i) A plan shall be approved if, upon the record of the hearing and the written comments submitted under pars. (c) and (e), the commission determines that the plan:

1. Will provide for a reasonably adequate supply of electrical energy to meet the needs of the public during the planning period;

2. Is in the public interest when considering engineering, economic, health, safety, reliability, efficiency and environmental factors and alternate methods of generation or sources of supply; and

3. Is reasonably coordinated with long-range plans and policies of other agencies or that a reasonable effort has been made to coordinate with such plans and policies.

4. Provides for programs which discourage inefficient and excessive power use.

(j) If any portion of the plan does not meet the criteria under par. (i), the commission shall disapprove the plan or portion thereof, or ap-

prove them, subject to such modifications as may be necessary to meet those criteria.

(jm) The commission shall either approve or disapprove each plan within 18 months after it is filed.

(k) Any portion of the plan that is not approved, may be resubmitted by the utility after entry of the order of disapproval, and, if resubmitted, shall be reviewed under this section in the same manner as a new advance plan, except that the commission may reduce the time for comments thereon to not less than 30 days.

(km) A utility may file an amendment to a previously approved plan with the commission at any time. The commission may grant review and approval under pars. (b) to (L), and may reduce the time for comments thereon to not less than 30 days.

(l) Once a plan has been approved, the commission may limit the scope of the issues before it upon review of a subsequent plan to those directly related to material changes.

(m) Any major contract relating to a facility for which a certificate of public convenience and necessity has not been applied for under sub. (3), other than a contract relating to acquisition of real property, shall be reported in writing to the commission, indicating the general nature and amount of that commitment, within 30 days after it has been entered into.

(2m) APPLICANT TO FURNISH ENGINEERING PLAN TO DEPARTMENT. At least 120 days prior to the filing of an application for a certificate of public convenience and necessity under sub. (3) for a bulk or large electric generating facility, the applicant shall notify the department and the commission of its intention to make such application and provide the department with an engineering plan showing the location of the facility, a description of the facility, including the major components thereof having a significant air, water or solid waste pollution potential, and a description of the anticipated effects of such facility on air and water quality. Within 60 days thereafter, the department shall provide the applicant with a listing of each department permit or approval which, on the basis of the information contained in the engineering plan, appears to be required for the construction or operation of the facility. The department shall, in consultation with the commission, also designate which permits and approvals, or portions thereof, must be obtained prior to the issuance of the certificate of public convenience and necessity. Such designation shall be based on a finding by the department that the granting or denial of the same could significantly affect overall facility design or location. At any time prior to the issuance of the certificate of public convenience and necessity, the department may,

in consultation with the commission, waive the necessity of obtaining any such permit or approval in advance of such certificate.

(3) CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY. (a) No person may commence the construction of a facility unless such person has applied for and received a certificate of public convenience and necessity from the commission as provided in this section. An application in the form and containing the information required by commission rules for such certificate shall be filed with the commission not less than 18 months prior to the commencement of construction of a bulk electric generating facility, and not less than 6 months prior to the commencement of construction of a large electric generating facility or a high-voltage transmission line. Within 10 days after filing the application, the commission shall send a copy of the application to the clerk of each municipality and town in which the proposed facility is to be located and to the main public library in each such county. The applicant shall apply for any permits or approvals required by the department prior to the issuance of a certificate of public convenience and necessity within 20 days after the application to the commission. An applicant shall make a preliminary application for all other permits and approvals specified under sub. (2m). Such preliminary application shall be sufficient if it identifies the permits and approvals applied for and contains so much of the information required for each such permit or approval as is then available to the applicant. Thereafter the applicant shall supply necessary additional engineering and design information as it becomes available.

(b) The commission shall hold a public hearing on the application in the area affected pursuant to s. 227.07. A class 1 notice, under ch. 985, shall be given at least 30 days prior to the hearing.

(d) The application for a certificate of public convenience and necessity shall be approved if the commission determines that:

1. The proposed facility is in substantial compliance with the most recent advance plan filed under sub. (2) and approved by the commission under sub. (2) (i), except the commission may waive the requirement of this subdivision for large electric generating facilities or high-voltage transmission lines if it finds that the need for the facilities or lines could not have been reasonably foreseen by the utility at the time of the filing of its most recent advance plan approved by the commission.

2. The proposed facility is necessary to satisfy the reasonable needs of the public for an adequate supply of electric energy.

3. The design and location or route is in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability and environmental factors. In its consideration of environmental factors, the commission may not determine that the design and location or route is not in the public interest because of the impact of air pollution if the proposed facility will meet the requirements of ss. 144.30 to 144.426.

4. The proposed facility will not have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use. In its consideration of the impact on other environmental values, the commission may not determine that the proposed facility will have an undue adverse impact on these values because of the impact of air pollution if the proposed facility will meet the requirements of ss. 144.30 to 144.426.

5. The proposed facility complies with the criteria under s. 196.49 (4) if the application is by a public utility as defined in s. 196.01.

6. The proposed facility will not unreasonably interfere with the orderly land use and development plans for the area involved.

(e) If the application does not meet the criteria under par. (d), the commission shall reject the application or approve the application with such modifications as are necessary for an affirmative finding under par. (d). The commission may not issue a certificate of public convenience and necessity until the department has issued all permits and approvals designated under sub. (2m) as necessary prior to the issuance of the certificate of public convenience and necessity.

(f) The department shall complete action on all necessary permits and approvals required before issuance of a certificate of public convenience and necessity within:

1. 150 days after application under this subsection for large electric generating facilities or high-voltage transmission lines.

2. 480 days after application under this subsection for bulk electric generating stations.

(ff) The department shall complete action on each permit and approval for which preliminary application has been made under par. (a) within 90 days after the applicant has supplied all information required by the rules of the department.

(g) The commission shall take final action on the application within:

1. 180 days after application under this subsection for large electric generating facilities or high-voltage transmission lines.

2. 540 days after application under this subsection for bulk electric generating stations.

(h) The commission may waive compliance with any requirement of this section to the extent necessary to restore service which has been substantially interrupted by a natural catastrophe, accident, sabotage or act of God.

(hm) The commission and the department shall schedule as many hearings under this subsection as practicable at a time and place reasonably convenient to the majority of persons in the area of the facility.

(i) If installation or utilization of a facility for which a certificate of convenience and necessity has been granted is precluded or inhibited by a local ordinance, the installation and utilization of the facility may nevertheless proceed.

(j) Any person whose substantial rights may be adversely affected or any county, municipality or town having jurisdiction over land affected by an advance plan or certificate of public convenience and necessity may petition for judicial review, under ch. 227, of any decision of the commission regarding the advance plan or the certificate.

(k) No person may purchase or acquire an option to purchase, any interest in real property knowing that such property is being purchased to be used for the construction of a high-voltage transmission line unless the person gives written notice to the prospective seller of the size, maximum voltage and structure type of any transmission line planned to be constructed thereon and the electric utility by whom it will be operated. Contracts made in violation of this paragraph are subject to rescission by the seller at any time prior to the issuance of a certificate of public convenience and necessity for the facility by the commission.

History: 1975 c. 68, 199; 1979 c. 221, 361.

NOTE: Chapter 350, laws of 1979, section 26r, states that the public service commission shall submit a comprehensive plan for all utilities by November 1, 1981.

196.495 Avoidance of duplication in electric facilities.

(1) No public utility, and no co-operative association organized under ch. 185 for the purpose of furnishing electric service to its members only, shall (a) extend or render electric service directly or indirectly to the premises of any person already receiving electric service directly or indirectly from another public utility or another such co-operative association, or (b) make a primary voltage extension to serve the premises of any person not receiving electric service and to which such service is available from the facilities of another public utility or another such co-operative association through a secondary voltage extension, unless the other public utility or co-operative associa-

tion consents thereto in writing or unless the public service commission after notice to the interested parties and hearing finds and determines that the service rendered or to be rendered by such other public utility or co-operative association is inadequate and will not likely be made adequate, or that the rates charged therefor are unreasonable and are not likely to be made reasonable.

(2) No co-operative association shall extend any new electric service to the premises of any person inside the corporate limits, existing on January 1, 1961, of any city or village in which city or village a public utility is rendering electric service under an indeterminate permit without the written consent of such public utility. Within any area annexed to a city or village after January 1, 1961, in which annexed area a co-operative association or public utility, other than the public utility serving in said city or village under an indeterminate permit, is rendering service at the time of said annexation, the provisions of sub. (1) shall apply, except that the right of any such co-operative association to make service extensions in any such annexed area shall be subject to the following conditions:

(a) It shall make no new service extension to any premises which are closer to the then existing service facilities of said public utility operating in said city or village under an indeterminate permit than to the then existing service facilities of such co-operative association; and

(b) The distribution service facilities of such co-operative association in said annexed area shall be subject to taxation in the same manner as is the property of public utilities under ss. 76.01 to 76.26; and

(c) The distribution service facilities of such co-operative association or public utility in said annexed area shall be subject to acquisition under ch. 197 by any such city or village, which operates or proposes to operate its own electric public utility.

(d) The rates charged by said co-operative association for service in said annexed area shall be the same rates for the same classes of service as those approved or fixed by the commission for the public utility operating under an indeterminate permit in said city or village and the commission shall have authority by order to so approve or fix the rates of said co-operative association in said annexed area.

(e) The right of the commission, upon its own motion or petition of any interested party, to determine and fix area service boundaries in said annexed area between said co-operative association and any public utility operating in said city or village so as to avoid duplication of electric distribution facilities therein.

(f) The jurisdiction and authority of the commission to enforce the provisions of this subsection and to issue rules and orders in connection therewith.

(g) The authority of the commission to allocate, assess and collect expenditures of the commission against any co-operative association involved in any proceedings under this section in the same manner as provided for public utilities under s. 196.85.

(3) Nothing contained herein shall preclude any public utility or any co-operative association from extending electric service to its own property or facilities or to another such co-operative association for resale.

(4) For the purpose of the enforcement of this section the commission shall have jurisdiction over and power to enforce orders relating to the extension of electric facilities hereunder by co-operative associations serving members only.

(5) As used in this section the term "secondary voltage extension" means an extension normally constructed and operated at a voltage of not to exceed 600 volts. All other extensions shall be deemed primary extensions. The term "person" shall have the meaning as given in s. 990.01 (26).

History: 1971 c. 125 s. 521.

Although one utility was serving a farm, when the farm is annexed to a city and a large shopping center is built, the utility having an indeterminate permit to serve the city cannot be barred from serving the area; the PSC should determine which utility should serve the area. *Adams-Marquette E. Coop. v. P.S.C.* 51 W (2d) 718, 188 NW (2d) 515.

The phrase "premises of a person already receiving electrical service" refers to the premises to be served, not the person. *Adams-Marquette E. Coop. v. P.S.C.* 51 W (2d) 718, 188 NW (2d) 515.

196.50 Competing utilities; indeterminate permits, telephones, telegraphs. (1) CERTIFICATE OF NECESSITY. No license, permit or franchise may be granted to own, operate, manage or control any plant or equipment for the conveyance of telephone messages or telegraph messages, or for the production, transmission, delivery or furnishing of heat, light, water or power in any municipality, if there is in operation under an indeterminate permit a public utility engaged in similar service, without first securing from the commission a declaration, after a public hearing of all parties interested, that public convenience and necessity require such 2nd public utility. This subsection shall not prevent or impose any condition upon the extension of any telephone toll line from any municipality into or through any municipality for the purpose of connecting with any telephone exchange in such municipality or connecting with any other telephone line or system.

(2) **TELEPHONES, EXTENSION.** No public utility furnishing telephone service shall install or extend any telephone exchange for furnishing

local service in any town where there is a public utility engaged in similar service, without first having served notice in writing upon the commission and such other public utility of the installation or extension of such exchange which it proposes to make, or make such installation or extensions if the commission, within twenty days after the service of such notice, shall, upon investigation, find and declare that public convenience and necessity do not require the installation or extensions of such exchange. Any public utility already engaged in furnishing local service to subscribers within any city or village may extend its exchange within such city or village without the authority of the commission. Any public utility operating any telephone exchange in any city or village shall, on demand, extend its lines to the limits of such city or village for the purposes mentioned and subject to the conditions and requirements prescribed in ss. 196.04 and 196.19 (4) and (5).

(3) SECOND UTILITY. Any permit, license or franchise which shall contain any term whatsoever interfering with the existence of a second public utility is hereby amended in such manner as to permit any municipality to grant a franchise for the operation of such second public utility.

(4) MUNICIPALITY RESTRAINED. No municipality shall hereafter construct any public utility where there is in operation under an indeterminate permit in such municipality a public utility engaged in similar service, without first securing from the commission a declaration, after a public hearing of all parties interested, that public convenience and necessity require such municipal public utility.

(5) INJUNCTION. Pending investigation and finding by the commission as to whether public convenience and necessity require a second utility, the furnishing of any public utility service in any municipality contrary to the provisions of this section may be enjoined at the suit of the state or of any public utility having an interest therein.

(6) NO DENIAL ON FEDERAL FINANCING. No certificate of convenience and necessity or permit to any public utility under ss. 196.49 and 196.50 shall be denied by reason of the amount of its notes, bonds or other evidences of indebtedness issued to the United States of America in connection with loans for rural telephone facilities made under the rural electrification act of 1936, as amended, or by reason of the ratio of such indebtedness to the value of its property or to its other classes of securities.

History: 1977 c. 418.

Cross Reference: For division of service between competing utilities, see 197.01 (4).

196.51 Prior permits and franchises validated. All licenses, permits and franchises to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power in any municipality, granted or attempted to be granted prior to April 3, 1911, to any public utility by or by virtue of any ordinance pending or under consideration in the municipal council of any municipality at the time of the obtaining of an indeterminate permit by any other public utility operating therein, are hereby validated and confirmed and shall not be affected by s. 196.50 (1).

196.52 Relations with affiliated interests; definition; contracts with affiliates filed and subject to commission control. (1) "Affiliated interests" with a public utility means and includes the following:

(a) Every corporation and person owning or holding directly or indirectly five per centum or more of the voting securities of such public utility.

(b) Every corporation and person in any chain of successive ownership of 5 per centum or more of voting securities.

(c) Every corporation five per centum or more of whose voting securities is owned by any person or corporation owning five per centum or more of the voting securities of such public utility or by any person or corporation in any such chain of successive ownership of five per centum or more of voting securities.

(d) Every person who is an officer or director of such public utility or of any corporation in any chain of successive ownership of five per centum or more of voting securities.

(e) Every corporation operating a public utility, a railroad, or a servicing organization for furnishing supervisory, construction, engineering, accounting, legal and similar services to utilities or railroads, which has one or more officers or one or more directors in common with such public utility, and every other corporation which has directors in common with such public utility where the number of such directors is more than one-third of the total number of the utility's directors.

(f) Every corporation or person which the commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of such public utility even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section.

(g) Every person or corporation who or which the commission may determine as a mat-

ter of fact after investigation and hearing is actually exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more other corporations and/or persons with which or whom they are related by ownership and/or blood relationship or by action in concert that together they are affiliated with such public utility within the meaning of this section even though no one of them alone is so affiliated.

(2) Provided, however, that in sub. (1) the term "person" shall not be construed to exclude trustees, lessees, holders of beneficial equitable interest, voluntary associations, receivers and partnerships.

(3) (a) No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those above enumerated, made or entered into after June 7, 1931 between a public utility and any affiliated interest as defined in this chapter, shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission. It shall be the duty of every public utility to file with the commission a verified copy of any such contract or arrangement, or a verified summary of any such unwritten contract or arrangement, and also of all such contracts and arrangements, whether written or unwritten, entered into prior to said date and in force and effect at that time. The commission shall approve such contract or arrangement made or entered into after said date only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest; otherwise the contract or arrangement shall not be approved. No such contract or arrangement shall receive the commission's approval unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein to each public utility. No proof shall be satisfactory within the meaning of the foregoing sentence unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom as the commission may deem adequate, properly identified and duly authenticated, provided, however, that the commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

(b) The provisions of this section requiring the written approval of the commission shall not apply to transactions with affiliated interests where the amount of consideration involved is not in excess of \$10,000 or 5 per cent of the par value of outstanding common stock, whichever is smaller; provided, however, that regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within the aforesaid exemption. Such transactions shall be valid or effective without commission approval under this section. However, in any proceeding involving the rates or practices of the public utility, the commission may exclude from the accounts of such public utility any payment or compensation made pursuant to such transaction unless the public utility shall establish the reasonableness of such payment or compensation.

(4) In any proceeding, whether upon the commission's own motion or upon application or complaint, involving the rates or practices of any public utility, the commission may exclude from the accounts of such public utility any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or arrangements with such affiliated interest unless such public utility shall establish the reasonableness of such payment or compensation. In such proceeding the commission shall disallow such payment or compensation, in whole or in part, in the absence of satisfactory proof that it is reasonable in amount. In such proceeding no payment or compensation shall be approved or allowed by the commission, in whole or in part, unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the property or service above described to each public utility. No proof shall be satisfactory, within the meaning of the foregoing sentence, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom as the commission may deem adequate, properly identified and duly authenticated; provided, however, that the commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

(5) The commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or

arrangements as are herein described as it has over such original contracts or arrangements. The fact that the commission shall have approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement it appears that the payments provided for or made were or are unreasonable. Every order of the commission approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the commission to revise and amend the terms and conditions thereof, if, when and as necessary to protect and promote the public interest.

(6) Whenever the commission shall find upon investigation that any public utility is giving effect to any such contract or arrangement without such contract or arrangement having received the commission's approval as required by this section, the commission shall issue a summary order directing the public utility to cease and desist from making any payments or otherwise giving any effect to the terms of such contract or arrangement, until such contract or arrangement shall have received the approval of the commission. The circuit court of Dane county is authorized to enforce such order to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission.

(7) Whenever the commission shall find upon investigation that any public utility is making payments to an affiliated interest, although such payments have been disallowed and disapproved by the commission in a proceeding involving the public utility's rates or practices, the commission shall issue a summary order directing the public utility to cease and desist from making such payments. The circuit court of Dane county is authorized to enforce such order to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission.

History: 1981 c. 390.

196.525 Loans to officers or directors and loans to and investments in securities of holding companies; penalty. (1) No public utility shall, except in accordance with such rules and regulations as the commission after public hearing shall from time to time prescribe, lend its funds or credit to any one or more of its officers or directors or to any corporation (except a public utility subject to the regulatory powers of the commission) which holds, directly or indirectly through any chain of ownership, five per cent or more of the voting stock of such

public utility or renders any managerial, supervising, engineering, legal, accounting or financial service to such public utility by (a) becoming surety, guarantor or indorser upon any obligations, contingent or otherwise, of such officer, director or corporation; (b) by loaning funds, securities or other like assets to any such officer, director or corporation; or (c) by the purchase in the open market, or otherwise, of any obligation upon which such officer, director, or corporation may be liable solely or jointly with others.

(2) Any contract made in violation of this section shall be void and subject to cancellation and recoupment by action at law. Where a contract is made contrary to the provisions of this section the commission may, after notice and hearing, order the public utility to take steps within thirty days to recover the funds or assets thus illegally loaned or transferred by action at law or to take such other proceedings as may be effective to release the public utility from any contract as surety, guarantor or indorser.

(3) Any director, treasurer or other officer or agent of such public utility who makes or votes to authorize a transaction in violation of this section shall be subject to a fine of not more than ten thousand dollars.

(4) The provisions of this section shall extend to the renewal or extension of such existing contracts.

196.53 Franchise, foreign corporation not to have. No license, permit or franchise to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power shall be granted or transferred to a foreign corporation.

196.54 Grants to be indeterminate. Every license, permit or franchise granted after July 11, 1907, to any public utility shall have the effect of an indeterminate permit subject to this chapter and ch. 197.

History: 1981 c. 390.

196.55 Franchises, made indeterminate. Every license, permit or franchise granted prior to July 11, 1907, by the state or by municipality authorizing and empowering the grantee to own, operate, manage or control within this state, either directly or indirectly, a public utility or any part thereof, is so altered and amended as to constitute and to be an indeterminate permit, and subject to all the terms, provisions, conditions and limitations of this chapter and ch. 197, and shall have the same force and effect as a license, permit or franchise granted after July

11, 1907, to any public utility, except as provided by s. 197.02.

History: 1981 c. 390.

196.56 Validation of franchises and permits. No franchise affected by s. 196.55 and no indeterminate permit shall be declared invalid if such franchise or permit shall not have been obtained by fraud, bribery or corrupt practices; and, when the same was granted, no officer of the municipality granting the same was directly or indirectly interested in such franchise or permit or in the corporation obtaining same; and the corporation having the same shall have prior to the surrendering of said franchise or the beginning of its public service under said permit, in good faith purchased or constructed any public utility, or any part thereof by such franchise authorized; and said corporation in obtaining such franchise or permit shall have made substantial compliance with the requirements provided by law for the obtaining of said franchise or permit. Subject to the foregoing exceptions, every such franchise and permit is hereby legalized and confirmed.

196.57 Grants after July 11, 1907; consent to municipal purchase. Any public utility accepting or operating under any license, permit or franchise granted after July 11, 1907, shall by acceptance of such indeterminate permit be deemed to have consented to a future purchase of its property actually used and useful for the convenience of the public by the municipality in which the major part of it is situate for the compensation and under the terms and conditions determined by the commission, and shall thereby be deemed to have waived the right of requiring the necessity of such taking to be established by the verdict of a jury, and to have waived all other remedies and rights relative to condemnation, except such rights and remedies as are provided in this chapter and ch. 197.

History: 1981 c. 390.

196.58 Municipality to regulate utilities; appeal. Every municipal council shall have power:

(1) To determine by contract, ordinance or resolution the quality and character of each kind of product or service to be furnished or rendered by any public utility within the municipality and all other terms and conditions, not inconsistent with this chapter and ch. 197, upon which such public utility may be permitted to occupy the streets, highways or other public places within the municipality, and such contract, ordinance or resolution shall be in force and prima facie reasonable.

(2) To require of any public utility such additions and extensions to its physical plant within said municipality as shall be reasonable and necessary in the interest of the public, and to designate the location and nature of all such additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed, subject to review by the commission as provided in this section.

(3) To provide a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the provisions hereof.

(4) Upon complaint made by such public utility or by any qualified complainant as provided in s. 196.26 the commission shall set a hearing and if it shall find such contract, ordinance or resolution to be unreasonable, such contract, ordinance or resolution shall be void.

(5) The commission shall have original and concurrent jurisdiction with municipalities to require extensions of service and to regulate service of public utilities. Nothing in this section shall be construed as limiting the power of the commission to act on its own motion to require extensions of service and to regulate the service of public utilities.

(6) No public utility furnishing and selling gaseous fuel or undertaking to furnish or sell such gaseous fuel in a town, village or city where such fuel has not theretofore been sold to the public shall change the character or kind of such fuel by substituting for manufactured gas any natural gas or any mixture of natural and manufactured gas for the distribution and sale in any town, village or city, or undertake the sale of natural gas in any town, village or city where no gaseous fuel was previously sold, unless the municipal council thereof shall, by authorization, passage or adoption of appropriate contract, ordinance or resolution, approve and authorize the same; provided that any contract, ordinance or resolution enacted pursuant to this subsection shall not be inconsistent or in conflict with any certificate granted pursuant to proceedings authorized under s. 196.49.

(7) Whenever a municipality operating a water works seeks to serve customers of an area which is part of such municipality and in the same county, but in order to serve such customers it is necessary or economically prudent for such municipality to install either mains, transmission lines, pipes or service connections either through, upon or underground of a public street, highway, road, public thoroughfare or alley located within the boundaries of any adjacent municipality, the municipality seeking such installation may file a petition with the clerk of the legislative body of such adjacent municipality

requesting approval for the installation of either mains, transmission lines, pipes or service connections. The local legislative body of such adjacent municipality shall act on such petition within 15 days following the filing thereof. If the local legislative body of such adjacent municipality fails to act within such time, the petition so filed shall be deemed approved and the municipality may proceed with such installations required for service to its customers. If, however, the local legislative body of such adjacent municipality rejects the petition, then the municipality may make application to the public service commission for authority to install within the boundaries of such adjacent municipality such installations as are necessary to provide service to its customers. The commission shall hold a hearing upon the application of the municipality. If the commission determines that it is necessary or economically prudent that the municipality seeking to serve its customers make such installations within the boundaries of such adjacent municipality, the commission shall promptly issue an order authorizing the installation to proceed, and the municipality making such installation shall have full authority to do so, subject to the commission's establishing the manner in which such installation shall be made. Prior to January 1, 1962, there shall be no appeal from the determination of the commission with respect to orders promulgated by the commission under this subsection, and its order shall be deemed final. A municipality making an installation under this section shall be required to restore the land on or in which such installation has been made to the same condition as it existed prior to the time of making the installation. Failure to make such restoration shall subject the municipality to an action for damages by the adjacent municipality. The adjacent municipality may also require a performance bond from the municipality seeking to make such installation, and if no agreement can be effected between the municipalities as to the amount of the performance bond, the public service commission shall determine the amount of such bond. If the commission issues an order authorizing an installation as provided for in this subsection, the commission shall determine the amount of the performance bond which shall be required of the applicant municipality.

History: 1981 c. 390.

196.59 Merchandising by utilities. Every public utility as defined in s. 196.01 (1) engaged in the production, transmission, delivery, or furnishing of heat, light or power either directly or indirectly to or for the use of the public shall keep separate accounts to show all profits or

losses resulting from the sale of appliances or other merchandise. No such profit or loss shall be taken into consideration by the public service commission in arriving at any rate to be charged for service by any such public utility.

196.60 Discrimination, definition, penalty. If any public utility or any agent or officer thereof, directly or indirectly, charges, demands, collects or receives from any person a greater or less compensation for any service rendered or to be rendered by it in or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power, or the conveyance of telephone messages or telegraph messages, or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force, or established as provided herein, or than it charges, demands, collects or receives from any other person for a like contemporaneous service, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited, and upon conviction thereof shall forfeit not less than \$100 nor more than \$1,000 for each offense. The offending agent or officer shall be fined not less than \$50 nor more than \$100 for each offense. Nothing in this section nor in s. 196.63 or any other provision of law shall be construed to prohibit any public utility engaged in the conveying of telephone messages or telegraph messages from furnishing service to its employes, pensioners and officers, or the receiving of service by such employes, pensioners and officers, at no charge or at charges less than those prescribed in its published schedules or tariffs. The commission may prescribe rules except that such rules may not prohibit or restrict the furnishing of service to employes, pensioners and officers or the receiving of service by employes, pensioners, and officers at no charge or charges less than those prescribed in the utility's published schedules or tariffs. No revenue may accrue or be credited in the accounts of the utility with respect to the service furnished at no charge nor with respect to any amounts by which any charges for such service are less than those prescribed in the utility's published schedules or tariffs.

History: 1977 c. 418

196.605 Telephone co-operatives; federal loans and conditions thereof. (1) Notwithstanding any other provision of this chapter, any public utility which is a co-operative association incorporated under ch. 185 to furnish telephone service in rural areas on a nonprofit basis with a telephone system financed in part through a loan or loans from United States of America under the rural electrification act of

1936, as amended, may require each of its local service telephone patrons to deposit with the association the amount of the membership fee or other form of capital representing the proportional share of the total equity capital of the association required as a condition of such federal financing. Such membership fee or other form of equity capital attributable to each local service patron may be collected by the association in instalments in connection with billings for service. Such required deposits of equity capital shall be segregated in the billing from service charges and shall be credited when received on the membership or equity capital account of the patron.

(2) The amount of the membership fee or equity capital to be so required of each local service telephone patron may be based upon reasonable classifications of service and appropriate factors relating to the cost of rendition of such service. Such amounts, classifications and the manner of collecting such amounts shall be subject to the approval of the commission and the commission is authorized to promulgate rules pertaining thereto.

History: 1979 c. 110 s. 60 (11).

196.61 Facilities in exchange for compensation, prohibited; exceptions. It shall be unlawful for any public utility to demand, charge, collect or receive from any person, firm or corporation less compensation for any service rendered or to be rendered by said public utility in consideration of the furnishing by said person, firm or corporation of any part of the facilities incident thereto; provided nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to the production, transmission, delivery or furnishing of heat, light, water or power or the conveyance of telephone messages and paying a reasonable rental therefor, or as requiring any public utility to furnish any part of such appliances which are situated in and upon the premises of any consumer or user, except telephone station equipment upon the subscribers' premises, and unless otherwise ordered by the commission meters and appliances for measurements of any product or service.

196.62 Discrimination, definition, penalty. If any public utility shall give any unreasonable preference or advantage to any person or shall subject any person to any unreasonable prejudice or disadvantage, such public utility shall be deemed guilty of unjust discrimination which is hereby prohibited. The furnishing of any product or service at the rates and upon the terms and conditions provided for in any existing

contract executed prior to April 1, 1907, shall not constitute a discrimination. Any public utility violating the provisions of this section shall forfeit not less than fifty dollars nor more than one thousand dollars for each offense.

196.625 Discrimination by telephone companies. It shall be the duty of every telephone company, or person, firm or corporation engaged in the business of supplying the public with telephones and telephonic service or operating a telephone exchange to receive and transmit without discrimination messages from and for any other company, person or persons upon tender or payment of the usual or customary charges therefor; and upon such payment or tender of the usual or customary rental sum it shall be the duty of every telephone company, person, firm or corporation engaged in the business of leasing telephones to the public or supplying the public with telephones and telephonic service or operating a telephone exchange to furnish, without unreasonable delay or without discrimination and without any further or additional charge to the person, firm or corporation applying for the same, including all telegraph companies or other telephone companies, a telephone or telephones with all the proper or necessary fixtures, as well as connection with the central office or telephone exchange, if desired, and to connect the telephone of such person, firm or corporation with the telephone of any other person, firm or corporation having a connection with the same or a connecting exchange or central office, whenever requested to do so, without regard to the character of the messages to be transmitted, provided they are not obscene or profane; and every person or corporation neglecting or refusing to comply with any of the provisions of this section shall forfeit not less than \$25 nor more than \$100 for each and every day such neglect or refusal shall continue, one-half of which shall go to the use of the person or corporation prosecuting therefor.

Private person cannot commence forfeiture action under this section and thus forcibly join state as plaintiff. *State v. Wisconsin Telephone Co.* 91 W (2d) 702, 284 NW (2d) 41 (1979).

196.627 Railroad telephone service. Upon complaint to the commission that telephonic service with any railroad is inadequate or in any respect unreasonably or unjustly discriminatory or that such service cannot be had, it shall be the duty of the commission to investigate the same and if upon investigation the commission shall find that any telephonic service is inadequate or unreasonably or unjustly discriminatory or that such service cannot be had it shall determine and by order fix a reasonable regulation, practice or

service to be installed, imposed, observed and followed in the future.

History: 1977 c. 29 s. 1340.

196.63 Rebates, concessions and discriminations unlawful. It shall be unlawful knowingly to solicit, accept or receive any rebate, concession or discrimination from a public utility in respect to any service in or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power or the conveying of telephone messages within this state or for any service in connection therewith whereby any such service shall be rendered free or at a less rate than that named in the schedules and tariffs in force, or whereby any service or advantage is received other than is herein specified. Violations of this section shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars for each offense.

196.635 Unbilled utility service. All service supplied by a public utility must be billed within 2 years of such service. No customer shall be liable for unbilled service 2 years after the date of the service unless:

(1) The utility made a reasonable effort to measure the service, but the customer did not allow the utility access to any device, including but not limited to a meter, necessary to measure service.

(2) The customer obtained the service by fraud or deception, including but not limited to theft or tampering with any device, including but not limited to a meter, necessary to measure service.

History: 1977 c. 62; 1981 c. 179, 391.

196.64 Utilities, liability for treble damages. If any public utility shall do or cause to be done or permit to be done any matter, act or thing prohibited or declared to be unlawful by this chapter or ch. 197, or shall omit to do any act, matter or thing required to be done by it, such public utility shall be liable to the person injured thereby in treble the amount of damages sustained in consequence of such violation.

History: 1981 c. 390.

See note to 195.35, citing *Kania v. C. & N. W. Ry. Co.* 57 W (2d) 761.

196.645 Reduction in rates; retroactive effect. If the rates of any public utility shall be based upon the cost of any energy, commodity or service furnished to said utility which is in turn furnished or distributed by said utility to the public served by it, and the charges for which are regulated by any authority of the federal government, and such charges are changed by such federal authority, the commission upon com-

plaint or upon its own motion may proceed to investigate and determine whether the utility's rates shall be changed by reason of the change in the cost of energy, commodity or service resulting from the change in charges as prescribed by such federal authority; and any such change in rates by the commission may be made effective as of the effective date of the order of the federal authority prescribing such change in charges. In any such case, notwithstanding ss. 196.62 and 196.63, the commission may determine and require payment by the utility to its customers of any sums which it may have received from them subsequent to such effective date of its said order in excess of the rates so prescribed by the commission.

This section does not authorize use of excessive earnings test to determine whether refund received by utility when wholesaler's rate was lowered is to be distributed or retained. *Cities & Villages of Algoma, Etc. v. PSC*, 91 W (2d) 252, 283 NW (2d) 261 (Ct. App. 1978).

196.65 Public utilities; information, papers and accounting. (1) Any officer, agent or employe of any public utility as defined in ss. 195.02 and 196.01, who shall fail or refuse to fill out and return any blanks as required by ch. 195 and this chapter, or shall fail or refuse to answer any question therein propounded, or shall knowingly give a false answer to any such question, or shall evade the answer to any such question where the fact inquired of is within his or her knowledge, or who shall, upon proper demand, fail or refuse to exhibit to the commission or any commissioner or any person authorized to examine the same, any book, paper, account, record or memoranda of such public utility which is in the possession or under control of the officer, agent or employe, or who shall fail to properly use and keep the system of accounting prescribed by the commission, or who shall refuse to do any act or thing in connection with such system of accounting when so directed by the commission or its authorized representative, shall be punished by a fine of not less than one hundred nor more than one thousand dollars for each offense.

(2) And a penalty of not less than five hundred dollars nor more than one thousand dollars shall be recovered from the public utility for each such offense when such officer, agent or employe acted in obedience to the direction, instruction or request of such public utility or any general officer thereof.

History: 1977 c. 29 s. 1654 (10) (c); 1977 c. 273; 1981 c. 390.

196.66 General penalty; utility responsible for agents. (1) If any public utility shall violate this chapter or ch. 197, or shall do any act therein prohibited, or shall fail or refuse to

perform any duty enjoined upon it for which a penalty has not been provided, or shall fail, neglect or refuse to obey any lawful requirement or order made by the commission or the municipal council or any judgment or decree made by any court upon its application, for every such violation, failure or refusal such public utility shall forfeit not less than twenty-five dollars nor more than one thousand dollars.

(2) Every day during which any public utility or any officer, agent or employe thereof shall fail to observe and comply with any order or direction of the commission or to perform any duty enjoined by this chapter or ch. 197, shall constitute a separate and distinct violation.

History: 1981 c. 390.

196.665 Unlawful combinations, trusts.

(1) The state may take possession of any dam maintained under a permit granted under s. 31.06 or 31.08 by proceedings instituted by the commission whenever such dam:

(a) Is owned, leased, trusteeed, possessed or controlled in any manner whatsoever that makes it form a part of or in any way effect an unlawful combination.

(b) Is in any wise controlled by any combination in the form of an unlawful trust.

(c) Forms the subject of any contract or conspiracy to limit the output of any hydraulic or hydroelectric power derived therefrom.

(2) In proceedings under sub. (1), the members of the commission shall be appointed to act as receivers during such period as the court determines.

196.67 Warning signs. (1) Any person constructing, operating or maintaining an overhead electrical supply line with a voltage of 6,000 or more between conductors or between conductors and the ground shall place warning signs from 4 to 6 feet above the ground, upon all poles or other structures supporting the line:

(a) Within 100 feet of school grounds;

(b) Within 100 feet of any place where the line crosses a public highway; and

(c) Within any city or village.

(2) The commission shall establish standards for warning signs on overhead electrical supply line poles and structures.

(3) Any corporation, company or person violating any of the provisions of this section shall be fined not less than fifty dollars nor more than three hundred dollars for each offense.

History: 1979 c. 171.

196.675 Unlawful for carriers and utilities to employ municipal attorneys or judicial officers. (1) It shall be unlawful for any district attorney or assistant district attorney, city

attorney or assistant city attorney or any person holding a judicial office to be retained or employed by any common carrier operating within this state or for any public utility corporation, except a municipality.

(2) If any district attorney or assistant district attorney, city attorney or assistant city attorney or any person holding a judicial office shall violate any provisions of this section his office shall be deemed vacant.

(3) This section shall not apply to court commissioners and shall not prohibit a city attorney or assistant city attorney employed by a city on a part-time basis from being employed and retained by a railroad not operating within the city.

History: 1977 c. 236.

196.68 Municipal officers, malfeasance.

If any officer of any municipality constituting a public utility shall do or cause to be done or permit to be done any matter, act or thing in this chapter and ch. 197 prohibited or declared to be unlawful, or shall omit, fail, neglect or refuse to do any act, matter or thing therein required of such officer, or shall omit, fail, neglect or refuse to perform any duty enjoined upon him and relating directly or indirectly to the enforcement of this chapter and ch. 197, or shall omit, fail, neglect or refuse to obey any lawful requirement or order made by the commission or any judgment or decree made by the court upon its application, for every such violation, failure or refusal such officer shall forfeit not less than fifty dollars nor more than five hundred dollars.

History: 1981 c. 390.

196.69 Interference with commission's equipment.

(1) Any person who shall destroy, injure or interfere with any apparatus or appliance owned or operated by or in charge of the commission or its agent shall be punished by fine not exceeding one hundred dollars or imprisonment not exceeding thirty days or both.

(2) Any public utility permitting the destruction of, injury to, or interference with, any such apparatus or appliance, shall forfeit not exceeding one thousand dollars for each offense.

196.70 Temporary alteration or suspension of rates.

(1) The commission may by order when deemed by it necessary to prevent injury to the business or interests of the people or any public utility in case of any emergency to be judged of by the commission, temporarily alter, amend, or with the consent of the public utility concerned, suspend any existing rates, schedules and order relating to or affecting any public utility or part of any public utility.

(2) Such order shall apply to one or more of the public utilities in this state or to any portion thereof as may be directed by the commission, and shall take effect at such time and remain in force for such length of time as may be prescribed by the commission.

Temporary and emergency rates may be appropriately and widely used by public service commission where justified by circumstances. *Friends of Earth v. Public Service Commission*, 78 W (2d) 388, 254 NW (2d) 299.

196.71 Utility, when not a public utility.

When any municipality owns a public utility and there is no other utility furnishing the same service, the commission may, after a public hearing and determination that said municipally owned utility cannot be operated profitably, authorize a contract between the municipality and any person, firm or corporation not a public utility to furnish light, power or electric current to the municipality upon such terms and conditions as shall be approved by said commission, without the vendor thereof becoming a public utility.

196.72 Accidents; utility report; investigation. (1)

(a) The public service commission is authorized to issue orders or rules after hearing requiring utilities to record or report accidents occurring upon its premises or directly or indirectly arising from or connected with its maintenance or operation.

(b) Notwithstanding any statute to the contrary, any report required to be filed with the commission by reason of an order or rule as provided in par. (a), shall be without prejudice to the person or corporation making the same and shall be for the sole information and use of the commission and its staff and neither it nor its content shall be made available to any other person. No such report shall be used as evidence in any trial, civil or criminal, arising out of the event concerning which said report is submitted.

(2) In the event of any such accident the commission, if it deem the public interest require it, shall forthwith investigate the same, which investigation shall be held in the locality of the accident, unless for greater convenience it shall be held at some other place; and said investigation may be adjourned from place to place. The commission shall seasonably notify the public utility of the time and place of the investigation.

196.74 Electric lines; safety and interference.

Every public utility and every railroad which owns, operates, manages or controls along or across any public or private way any wires over which electricity or messages are transmitted shall construct, operate and maintain such

wires and the equipment used in connection therewith in a reasonably adequate and safe manner and so as not to unreasonably interfere with the service furnished by other public utilities or railroads. The public service commission is authorized to issue orders or rules, after hearing, requiring electric construction and operating of such wires and equipment to be safe and may revise these orders or rules from time to time as may be required to promote public safety. If a complaint is filed with the commission by any interested party to the effect that public safety or adequate service requires changes in construction, location or methods of operation, the commission shall give notice to the parties in interest of the filing of such complaint, and shall proceed to investigate the same and shall order a hearing thereon. After such hearing the commission shall order any alteration in construction or location or change of methods of operation required for public safety or to avoid service interference, and by whom the same shall be made. The commission shall fix the proportion of the cost and expense of such changes, which shall be paid by the parties in interest, and fix reasonable terms and conditions in connection therewith.

196.745 Construction and operation; safety; commission orders. (1)

Every public utility which owns, operates, manages or controls facilities for the production, transmission or distribution of gas shall construct, operate and maintain such facilities in a reasonably adequate and safe manner. The commission is authorized to issue orders or rules, after holding a hearing, requiring the construction and operation of such facilities to be safe, and may revise such orders or rules as required to promote public safety. Upon complaint to the commission that the facilities of a public utility are unsafe, it may proceed under s. 196.26 or 196.28. After holding a hearing the commission shall order any alteration in construction, maintenance or operation required in the interest of public safety.

(2) (a) Any person violating sub. (1) or any order or any rule issued thereunder, shall forfeit an amount not exceeding \$1,000. Each day that the violation persists is a separate violation of sub. (1). No person shall forfeit an amount exceeding \$200,000 for a single persisting violation of sub. (1) or any order or any rule issued thereunder.

(b) The commission may compromise any forfeiture assessed under par. (a).

(c) The commission shall consider the following in determining the amount of a forfeiture or

whether a compromise is appropriate under this section:

1. The appropriateness of the forfeiture to the size of the business violating sub. (1).

2. The gravity of the violation.

3. Any good faith attempt to achieve compliance after notification of the violation.

(3) The commission shall have power to seek injunctive relief for a violation of sub. (1) or any order or rule issued thereunder. The commission shall notify any person against whom an action is contemplated. The commission shall allow such person to present his or her views and give the person a reasonable opportunity to achieve compliance unless the person knowingly and wilfully violates sub. (1) or any order or rule issued thereunder. The failure of the commission to give such notice and opportunity to comply shall not preclude the granting of appropriate relief. The circuit court for Dane county is empowered under s. 196.44 (3) to enforce sub. (1) and shall have power to grant injunctive relief hereunder.

(4) Any person may demand a jury trial when charged with contempt of court because he or she has violated an injunction issued under sub. (3). Chapter 785 is applicable to contempt proceedings for such a violation, except when ch. 785 conflicts with the right to a jury trial.

History: 1977 c. 29 s. 1656 (43); 1977 c. 273; 1979 c. 32. See note to 227.02, citing 63 Atty. Gen. 152.

196.76 Other rights of action; penalties cumulative. This chapter and ch. 197 shall not have the effect to release or waive any right of action by the state or by any person for any right, penalty or forfeiture which may have arisen or which may arise, under any law of this state; and all penalties and forfeitures accruing under this chapter and ch. 197 shall be cumulative and a suit for any recovery of one shall not be a bar to the recovery of any other penalty.

History: 1981 c. 390.

196.78 Voluntary dissolution. No corporation owning or operating a public utility shall be dissolved, except upon consent of the public service commission to be issued only after hearing by the commission, on at least 30 days' notice given to each municipality in which such utility is operated, and an opportunity to be heard furnished to all such municipalities and stockholders in such corporation.

196.79 Reorganization subject to commission approval. Reorganizations of all public utilities shall be subject to the supervision and control of the commission, and no such reorganization shall be had or given effect without the written approval of the commission. No plan of

reorganization shall be approved by the commission unless it is established by the applicant for such approval that the plan of reorganization is consistent with the public interest.

History: 1977 c. 29.

196.80 Consolidation or merger of utilities. (1) With the consent and approval of the commission but not otherwise:

(a) Any 2 or more public utilities may merge or consolidate with one another.

(b) Any public utility may acquire the stock of any other public utility or any part thereof.

(d) Any public utility may consolidate or merge with any Wisconsin corporation substantially all of whose assets consist of the entire stock of such public utility. The total of the resulting securities outstanding of the possessor corporation, if not theretofore authorized pursuant to ch. 184, shall require such authorization as a condition precedent to such merger.

(e) Any public utility may sell, acquire, lease or rent any public utility plant or property constituting an operating unit or system.

(2) Nothing in this section shall be construed as affecting or limiting the operation of ss. 197.01 to 197.10 or of ss. 66.06 to 66.078.

(3) Application for the approval and consent of the commission shall be made by the interested public utility, and shall contain a concise statement of the proposed action, the reasons therefor and such other information as may be required by the commission. Upon the filing of such application the commission shall investigate the same, with or without public hearing, and in case of a public hearing upon such notice as the commission may require, and if it shall find that the proposed action is consistent with the public interest it shall give its consent and approval in writing. In reaching its determination the commission shall take into consideration the reasonable value of the property and assets of the corporation to be acquired or merged.

(5) Any transaction required herein to be submitted to the commission for its consent and approval shall be void unless the commission shall give its consent and approval thereto in writing.

(6) The enumeration of powers, duties and authority conferred by this section shall not be construed as limiting any powers conferred upon the commission before June 27, 1935 by statutes then existing.

History: 1977 c. 29.

196.81 Abandonment; commission approval required. (1) No public utility may abandon or discontinue any line or extension or service thereon without first securing the ap-

proval of the commission. In granting its approval, the commission may impose such terms, conditions or requirements as it deems necessary to protect the public interest. Any public utility abandoning or discontinuing in pursuance of authority granted by the commission shall be deemed to have waived any and all objections to the terms, conditions or requirements imposed by the commission in that regard.

(2) The commission may not approve a request by an electric, telephone, or telegraph utility for permission to abandon a right-of-way without requiring such utility to remove all poles at ground level and other structures extending over 3 feet above ground level belonging to the utility from the right-of-way when abandoned. In approving a request the commission shall also require that the abandoned right-of-way or part thereof which is in a rural area and which was obtained by the utility by condemnation shall be disposed of by the utility within 3 years from the date of the approval of request for abandonment thereof, provided that upon application of the utility within 6 months prior to the end of the 3-year period the commission may remove the disposal requirement if it finds that the application thereof would subject the utility to undue hardship.

History: 1973 c. 157; 1977 c. 29, 203, 418.

196.85 Payment of commission's expenditures by utilities. (1) If the commission in a proceeding upon its own motion, on complaint, or upon an application to it deems it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make appraisals of the property of any public utility, power district or sewerage system or to render any engineering or accounting services to any public utility, power district or sewerage system, the public utility, power district or sewerage system shall pay the expenses attributable to the investigation, including the cost of litigation, appraisal or service. The commission shall mail a bill for the expenses to the public utility, power district or sewerage system either at the conclusion of the investigation, appraisal or services, or during its progress. The bill constitutes notice of the assessment and demand of payment. The public utility, power district or sewerage system shall, within 30 days after the mailing of the bill pay to the commission the amount of the special expense for which it is billed. The payment shall be credited to the appropriation to the commission in s. 20.155 (1) (g). The total amount in any one calendar year for which any public utility, power district or sewerage system is liable, by reason of costs incurred by the commission within the calendar year including

charges under s. 184.10 (3), may not exceed four-fifths of one percent of its gross operating revenues derived from intrastate operations in the last preceding calendar year. Nothing in this subsection shall prevent the commission from rendering bills in one calendar year for costs incurred within a previous year.

(1m) For the purpose of direct assessment under sub. (1) of expenses incurred by the commission in connection with its activities under s. 196.491, the term "public utility" includes electric utilities as defined in s. 196.491 (1) (d).

(2) The commission shall annually, within 90 days of the commencement of each fiscal year, ascertain the total of its expenditures during the prior fiscal year which are reasonably attributable to the performance of its duties relating to public utilities, sewerage systems and power districts under this chapter and chs. 66, 184 and 198. The commission shall deduct from this total all amounts chargeable to public utilities, sewerage systems and power districts under sub. (1) and s. 184.10 (3). The commission shall assess a sum equal to the remainder plus 10% of the remainder to the public utilities and power districts in proportion to their respective gross operating revenues during the last calendar year, derived from intrastate operations. If, at the time of payment, the prior year's expenditures made under this section exceeded the payment made under this section in the prior year, the commission shall charge the remainder to the public utilities and power districts in proportion to their gross operating revenues during the last calendar year. If, at the time of payment it is determined that the prior year's expenditures made under this section were less than the payment made under this section in the prior year, the commission shall credit the difference to the current year's payment. The assessment shall be paid within 30 days after the bill has been mailed to the public utilities and power districts. The bill constitutes notice of the assessment and demand of payment. The payment shall be credited to the appropriation made in s. 20.155 (1) (g).

(3) If any public utility, sewerage system or power district is billed under sub. (1) or (2) and fails to pay the bill within 30 days or fails to file objections to the bill with the commission, as provided in this subsection, the commission shall transmit to the state treasurer a certified copy of the bill, together with notice of failure to pay the bill, and on the same day the commission shall mail by registered mail to the public utility, sewerage system or power district a copy of the notice which it has transmitted to the state treasurer. Within 10 days after the receipt of

notice and certified copy of the bill the state treasurer shall levy the amount stated on the bill to be due, with interest, by distress and sale of any property, including stocks, securities, bank accounts, evidences of debt, and accounts receivable belonging to the delinquent public utility, sewerage system or power district. The levy by distress and sale shall be governed by s. 74.10 except that it shall be made by the state treasurer and that goods and chattels anywhere within the state may be levied upon.

(4) (a) Within 30 days after the date of the mailing of any bill under subs. (1) and (2) the public utility, sewerage system or power district that has been billed may file with the commission objections setting out in detail the grounds upon which the objector regards the bill to be excessive, erroneous, unlawful or invalid. The commission, after notice to the objector, shall hold a hearing upon the objections, from 5 to 10 days after providing the notice. If after the hearing the commission finds any part of the bill to be excessive, erroneous, unlawful or invalid it shall record its findings upon its minutes and transmit to the objector by registered mail an amended bill, in accordance with the findings. The amended bill shall have the same force and effect under this section as an original bill rendered under subs. (1) and (2).

(b) If after such hearing the commission finds the entire bill unlawful or invalid it shall notify the objector by registered mail of such determination, in which case said original bill shall be deemed null and void.

(c) If after such hearing the commission finds that the bill as rendered is neither excessive, erroneous, unlawful or invalid either in whole or in part it shall record such findings upon its minutes, and transmit to the objector by registered mail notice of such finding.

(d) If any bill against which objections have been filed shall not be paid within ten days after notice of a finding that such objections have been overruled and disallowed by the commission has been mailed to the objector as herein provided, the commission shall give notice of such delinquency to the state treasurer and to the objector, in the manner provided in sub. (3). The state treasurer shall then proceed to collect the amount of said bill as provided in sub. (3). If an amended bill is not paid within ten days after a copy thereof is mailed to the objector by registered mail, the commission shall notify the state treasurer and the objector as in the case of delinquency in the payment of an original bill. The state treasurer shall then proceed to collect the amount of said bill as provided in the case of an original bill.

(5) No suit or proceeding may be maintained in any court to restrain or delay the collection or payment of any bill rendered under subs. (1) and (2). Every public utility, sewerage system or power district that is billed shall pay the amount of the bill, and after payment may in the manner provided under this section, at any time within 2 years from the date the payment was made, sue the state to recover the amount paid plus interest from the date of payment, upon the ground that the assessment was excessive, erroneous, unlawful or invalid in whole or in part. If the court finds that any part of the bill for which payment was made was excessive, erroneous, unlawful or invalid, the state treasurer shall make a refund to the claimant as directed by the court. The refund shall be charged to the appropriations to the commission.

(6) No action for recovery of any amount paid pursuant to this section shall be maintained in any court unless objections have been filed with the commission as herein provided. In any action for recovery of any payments made under this section the claimant shall be entitled to raise every relevant issue of law, but the commission's findings of fact made pursuant to this section shall be prima facie evidence of the facts therein stated.

(7) The following shall be deemed to be findings of fact of the commission, within the meaning of this section: (a) Determinations of fact expressed in bills rendered pursuant to this section; (b) determinations of fact set out in those minutes of the commission which record the action of the commission in passing upon said bills, and in passing upon objections thereto.

(8) The procedure by this section providing for determining the lawfulness of bills and the recovery back of payments made pursuant to such bills shall be exclusive of all other remedies and procedures.

History: 1971 c. 40 s. 93; 1971 c. 125; 1973 c. 243 s. 82; 1975 c. 68; 1977 c. 29 ss. 1359, 1360, 1654 (10) (f); 1977 c. 203, 418; 1979 c. 171; 1981 c. 390.

196.855 Assessment of costs against municipalities. Expenses incurred by the commission in making any appraisal or investigation of public utility property under the provisions of ch. 197 shall be charged directly to the municipality making the application. The ascertainment of such expense, and the rendering and review of bills therefor shall be governed by the provisions of s. 196.85 insofar as applicable. If any such bill is not paid within the time required

by s. 196.85, the same shall bear interest at the rate of 6 per cent per year and the amount thereof shall be certified to the department of administration and shall be levied and collected as a special charge in the same manner as a state tax.

History: 1979 c. 110 s. 60 (13).

196.91 Acquisition of existing dams. (1)

Every domestic corporation lawfully engaged in the business of producing, transmitting, delivering or furnishing heat, light, water, power, or street or interurban electric railway service to or for the public may, for the purpose of developing power and generating energy for public use in and about such business, acquire any dam in or across any navigable waters of this state and all flowage and other rights and property necessary to the maintenance thereof, or any undeveloped water power or dam site upon any such waters within this state, except as provided otherwise in sub. (2).

(2) No award in any condemnation proceedings authorized by sub. (1) shall be effective, and no corporation shall purchase or otherwise acquire any such property until it shall have obtained from the commission a certificate that public convenience and necessity require the acquisition of the same, at the amount fixed by such award or agreed upon with the owner thereof.

196.92 Certificate of convenience and necessity; notice of hearing. (1)

Any such corporation desiring to purchase or acquire any property pursuant to s. 196.91 shall apply to the commission for a certificate of public convenience and necessity. Such application shall state the name of the owner or owners of the property sought to be acquired; the business in connection with which it is desired to utilize said property; the specific public purpose or purposes for which it is proposed to use the same; the compensation or price to be paid therefor, and such other information as the commission may require; and shall contain a statement to the effect that the said corporation agrees to cancel all contracts for the sale of hydroelectric power outside this state, which shall at any time be found by the commission to interfere with adequate service and reasonable rates to the people of this state.

(2) Upon receipt of such application the commission shall fix a convenient time and place for a public hearing thereon, which time shall not be more than 8 weeks from the date of filing such application. Notice of the time and place so fixed shall be given to the applicant, who shall cause the same to be published preceding such hearing as a class 3 notice, under ch. 985, and

the applicant shall also, not less than 20 days prior to said date, serve notice thereof upon the owners of such property personally, or by registered mail, if the post-office address of such owners can by due diligence be ascertained. Proof of such publication and service of such notice shall be filed with the commission.

196.93 Hearing and determination. (1)

At such hearing or any adjournment thereof, the commission shall consider such application and shall receive the evidence offered by the applicant and others, in person or by agent, in support thereof and in opposition thereto.

(2) If the commission shall find that the acquisition and use of such property in connection with the business of the applicant for the purpose or purposes and at the price or compensation set forth in the application would be a public convenience; that the applicant possesses the financial ability to utilize the property for such purpose or purposes, and that a public necessity requires such acquisition and use, the commission shall grant and issue a certificate that public convenience and necessity require the utilization of such property as proposed by the applicant.

(3) Section 196.91 shall not apply to the acquisition of flowage rights necessary for the improvement or development of dams or dam sites previously acquired.

196.97 Nonessential uses of natural gas.

(1) No gas utility doing business in this state or other person may install, connect or cause to be installed or connected to the distribution system any device which constitutes a nonessential use of natural gas, unless such devices have been ordered and received by any person prior to the effective date of each rule specifying a nonessential use of natural gas under sub. (2), including item inventories held by retailers or wholesalers.

(2) The commission shall, by rule, specify criteria for determining a nonessential use of natural gas for purposes of this section. The commission shall, by rule, specify each nonessential use of natural gas under this section. The commission may review any nonessential use of natural gas specified under this subsection at any time. Every rule promulgated under this subsection shall be transmitted to the joint committee for review of administrative rules for review by the joint committee.

(3) The commission may make rules as it deems necessary to carry out the purposes of and to enforce this section. The commission shall provide for exemptions for nonessential uses of natural gas for reasons of health, safety or unusual hardship.

(4) Any person who violates this section or any rule promulgated under this section shall be subject to a forfeiture of not more than \$400 for each day of violation.

(5) Enforcement of this section shall be under s. 196.44.

History: 1977 c. 369; 1979 c. 154.