

## CHAPTER 197

## MUNICIPAL ACQUISITION OF UTILITIES

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**197.01 Municipalities, powers under utility law. (1)** Any municipality shall have the power, subject to ch. 196 and this chapter, to construct and operate a plant and equipment or any part thereof for the production, transmission, delivery or furnishing of heat, light, water or power, or to acquire, construct and operate a toll bridge.

**(2)** Any municipality shall have the power, subject to ch. 196 and this chapter, to purchase any public utility or any part thereof; provided, that such purchase and the terms thereof shall be approved by the commission after a hearing as provided in s. 197.05.

**(3)** Any municipality shall have the power, subject to ch. 196 and this chapter, to acquire the property of any public utility, wheresoever situated, actually used and useful for the convenience of the public; provided, that in acquiring any property outside of Wisconsin, such property must have been used exclusively by such public utility for furnishing heat, light, water and power to such municipality.

**(4)** Any municipality having secured a declaration of convenience and necessity to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power, or owning any such plant, may contract with any public utility lawfully engaged as such for a division of any of the foregoing service in said municipality, for a period not exceeding ten years, with mutual covenants restricting and obligating operations by each party to service within the respective fields of division so contracted for, and within such fields the commission shall have the right to regulate the charges for, and quality of, service, notwithstanding anything provided in such contract. Nothing in this section shall prevent the commission from terminating such contract and granting a certificate of convenience and necessity for a third or other utility, if in its judgment the public interest requires it.

*History:* 1981 c. 390.

**197.02 Action by municipalities to acquire utility.** If the municipality shall have determined to acquire a plant operated under an indeterminate permit provided in s. 196.54 (2), by a vote of a majority of the electors, such municipality shall bring an action in the circuit court against the public utility for an adjudication as to the necessity of such taking by the municipality. Unless the parties waive a jury, the question as to the necessity of the taking of such property by the municipality shall be submitted to a jury.

*History:* 1983 a. 53 s. 114.

**197.03 Indeterminate permit; notice.** If the municipality shall have determined to acquire an existing plant in the manner provided in s. 197.02, and the public utility owning such plant shall have consented to the taking over of such plant by the municipality by acceptance of an indeterminate permit as provided herein, or, in case such public utility shall not have waived or consented to such taking, if the jury shall have found that a necessity exists for the taking of such plant,

then the municipality shall give speedy notice of such determination and of such consent or such finding to the public utility and to the commission.

**197.04 Discontinuance of condemnation. (1)** Any municipality having determined to acquire an existing plant or any part of the equipment of a public utility may discontinue all proceedings to that end at any time within 90 days after the final determination of compensation by the commission, by a vote of the electors as herein provided, or by a resolution to that effect by its municipal council, provided that such resolution shall not be of force and effect until 90 days after its passage and publication. If within either of said 90-day periods a petition conforming to the requirements of s. 8.40 shall be filed with the clerk of such municipality, in a city of the first class signed by 5% and in all other municipalities by 10% of the electors thereof, requesting that the question of discontinuing said proceeding to acquire such plant or equipment be submitted to the electors, such question shall be submitted to the said electors at any general or regular municipal election that may be held not less than 30, and not more than 35, days from the date of the filing of the petition; and if no general election or regular municipal election is to be held within the stated periods, then the governing body of the municipality shall order the holding of a special election for the purpose of submitting to the electors in case the petition is filed before the adoption of such resolution the question whether said proceedings shall be discontinued, and in case the petition is filed after the adoption of said resolution the question whether the aforesaid resolution shall remain in effect and its adoption be ratified, and such resolution shall not have force or effect unless a majority of the electors voting on such question shall be in favor thereof.

**(2)** The municipal council may provide for the notice, the manner of holding such election and the method of voting thereon and of making returns thereof and the canvassing and determining of the result thereof; provided, that notice of the submission of the question contemplated herein to the electors shall be given by a brief notice of that fact once a week for three weeks in some newspaper of general circulation published in the municipality, and if there be no such newspaper then publication may be made in any newspaper of general circulation in the county seat of the county wherein the municipality is located. The notice of holding any special election shall be incorporated as a part of the aforesaid notice.

**(3)** Upon the discontinuance of proceedings by the municipality no subsequent proceedings shall be instituted within 2 years thereafter.

*History:* 1989 a. 192.

**197.05 Compensation determined by commission; notice; title. (1)** The commission shall thereupon set a time and place for a public hearing upon the matters of the just compensation to be paid for the property of such public utility,

wheresoever situated, actually used and useful for the convenience of the public, and of all other terms and conditions of the purchase, and shall give to the municipality and the public utility interested, not less than 30 days' notice of the time and place such hearing will be held, and such matters considered and determined, and the municipality shall publish in the county in which such public utility is located a class 3 notice, under ch. 985, of the hearing.

(2) The commission shall, by order, fix and determine and certify to the municipal council, to the public utility and to any bondholder, mortgagee, lienor or any other person having or claiming to have any interest in such public utility appearing upon such hearing, just compensation to be paid for the taking of the property of such public utility actually used and useful for the convenience of the public and all other terms and all conditions of purchase which it shall ascertain to be reasonable.

(3) The compensation and other terms and the conditions of purchase thus certified by the commission shall constitute the compensation and terms and conditions to be paid, followed and observed in the purchase of such plant from such public utility. Upon the filing of such certificate with the clerk of such municipality the absolute title of the property taken shall vest in such municipality, and, as to any such property located outside of Wisconsin, the circuit court is vested with power to require such public utility company to convey the same to the municipality. Municipalities in adjoining states which have determined to acquire a public utility, part of which is located in Wisconsin, are authorized to acquire and to hold and operate any part of such public utility located in Wisconsin, provided, such state gives a similar power to Wisconsin municipalities.

**197.06 Court review.** The order of the commission may be reviewed by appeal in the manner provided in ch. 227, and any bondholder, mortgagee, lienholder or other creditor may take such appeal as a party aggrieved.

**197.08 Decision for utility.** If the plaintiff shall establish to the full satisfaction of the court and the court shall adjudge that such compensation is unlawful or that some of such terms or conditions are unreasonable, the court shall remand the same to the commission with such findings of fact and conclusions of law as shall set forth in detail the reasons for such judgment and the specific particulars in which such order of the commission is adjudged to be unreasonable or unlawful.

**197.09 Reconsideration of compensation.** (1) If the compensation fixed by the order of the commission be adjudged to be unlawful, the commission shall forthwith proceed to set a rehearing for the redetermination of such compensation as in the first instance.

(2) The commission shall forthwith otherwise alter and amend such order with or without a rehearing as it may deem necessary so that the same shall be reasonable and lawful in every particular.

**197.10 Cities of first class; contracts; utilities.** (1) Any 1st class city, however incorporated, may enter into contract, upon any terms not repugnant to the constitution of this state, with the owner or owners of any public utility, as defined in s. 196.01, except utilities for the operation of telephone or telegraph lines, operated in whole or in part within the corporate limits of said city, for any or all of the following purposes:

(a) To provide for the leasing, public operation or joint operation of any part or all of the properties of such public utility by said city.

(b) To provide for the control, operation, service or management of such properties by either party or by both parties acting jointly.

(c) To determine and fix by the terms of such contract the value of the properties of such utility to be used as a basis for the computation and distribution of earnings, rates and rate of return to the owner or owners of such public utility.

(d) To provide for the stabilization of the rate of return to the owner or owners of such properties.

(e) To provide for the extension and improvement of existing properties by the municipality or otherwise.

(f) To provide for the purchase of all or any part of such properties by the city, to fix the purchase price or the basis or method for computing the same and to provide for the payment thereof and the method of such payment out of funds provided by the city whether derived out of the earnings of such properties or otherwise, or derived in part from such earnings and in part from other sources.

(g) To provide for the purchase by the city of mortgage or revenue bonds issued by such public utility.

(h) To provide for the submission of matters of difference arising between the parties to the public service commission or to a board of arbitrators as the parties may agree.

(i) To provide for such further or additional matters as will enable the parties to accomplish any object agreed upon between them relating to the use, operation, service, management, control, sale, lease, purchase, extension, improvement, rates, value or earnings of such properties.

(2) Such contract when adopted by the common council of said city and accepted by the owner or owners of such public utility shall be submitted to the public service commission for its approval and upon such approval the same shall be submitted in such manner as the common council shall determine to a vote of the electors of such city at the next regular municipal election or at a special election called for that purpose, and such contract shall not become binding upon such city until approved by a majority vote of the qualified electors of such city voting thereon. No bonds shall in any case be issued by said city under the contract or contracts mentioned in sub. (1), until the proposition of their issue shall have been submitted to the people of such city and adopted by a majority of the electors voting thereon.

(3) It shall be the duty of the public service commission upon request joined in by both parties to any such contract to advise and cooperate with them in the making of audits, estimates and other determinations of fact which will aid the parties in reaching an agreement or in the operation of the property under such agreement.

(4) Insofar as the use, operation, service, management, control, sale, lease, purchase, extension, improvement, rates, value or earnings of the properties of the public utility or provisions looking toward the ultimate acquisition of the same are made subject to the terms of any contract provided for in sub. (1), and so long as said contract remains in force, the following sections of the statutes shall be inapplicable to the same: ss. 195.05, 195.10, 196.02 (1) and (2), 196.05, 196.09, 196.10, 196.11, 196.15, 196.16, 196.19 (6), 196.20, 196.21, 196.22, 196.26, 196.28, 196.30, 196.37, 196.39, 196.40, 196.58, 196.70, 197.01 (2) to (4), 197.02, 197.03, 197.04, 197.05, 197.06, 197.08 and 197.09; provided that nothing in any contract made hereunder shall operate to prevent an appeal to the public service commission by any person, other than a party to said contract, upon any complaint alleging that any rate, fare, charge or classification, or any joint rate,

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or any regulation, act or practice relating to the production, transmission, delivery or furnishing of gas, heat, light or power, or any service in connection therewith, is unjustly discriminatory, or that any such service is inadequate or cannot be obtained. Upon said appeal the commission shall, as provided by law, determine and by order fix a rate, fare, charge, classification, joint rate or regulation, act or practice or service to be imposed, observed or followed in the future in lieu of that found to be unjustly discriminatory or inadequate.

(5) Nothing in this section shall operate to deprive the public service commission of its jurisdiction over service, rates and other matters, as provided in chs. 196 and 197, outside of the limits of said 1st class city. If any complaint or

investigation before the commission as to service, rates or other matters arising outside of any such city necessarily shall involve any contract authorized in sub. (1), or any specifications, rules, regulations or acts in its conduct or administration such city shall be made a party to such proceeding and to the extent that such contract or its administration shall be determined by the commission to be unreasonable or unjustly discriminatory as regards any person or municipality outside of such city, the same shall be changed to conform to the rates, service or regulations provided by the commission outside of such city.

History: 1977 c. 29 ss. 1362, 1654 (9) (g); 1981 c. 148 s. 13; 1981 c. 347 ss. 74, 80 (2); 1981 c. 390 ss. 179, 252; 1981 c. 391; 1983 a. 53 s. 114; 1983 a. 207; 1985 a. 187.

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