CHAPTER 196.

REGULATION OF PUBLIC UTILITIES.

196.01 Definitions.
196.02 Commission's powers.
196.03 Utility charges and service; reasonable and adequate.
196.04 Facilities granted other utilities; physical telephone connections; petition; investigation.
196.05 Utility property; valuation; revaluation.
196.06 Uniform accounting; forms; books; office.
196.07 Balance sheet filed annually.
196.08 Audit and inspection, balance sheet, publication.
196.09 Depreciation rates and practices; findings by commission; dividends from reserves; retirements.
196.10 Construction; accounting.
196.11 Profit sharing and sliding scales.
196.12 Report by utilities; items.
196.13 Commission's reports.
196.14 Records public; exceptions.
196.15 Units of product or service.
196.16 Standard measurements; accurate appliances.
196.17 Tests of meters; fees.
196.171 Examination of meters, pipes, fittings, wires and works; entering buildings for.
196.18 Entry upon premises.
196.19 Publish schedules; regulations; files; joint rates.
196.20 Changes in rates; approval of increases required.
196.21 Publicity of revised schedules.
196.22 Discrimination forbidden.
196.23 Schedule forms prescribed.
196.24 Agents of commission; powers.
196.25 Questionnaires to utilities.
196.26 Complaint by consumers; hearing; notice; order; costs.
196.27 Separate rate hearings; absence of direct damage.
196.28 Summary investigations.
196.29 Procedure after summary investigation.
196.30 Utilities may complain.
196.32 Witness fees and mileage.
196.33 Depositions.
196.34 Stenographic records.
196.36 Transcripts as evidence; free to parties.
196.37 Lawful rates; reasonable service.
196.38 Utilities to conform to orders.
196.39 Change, amendment and rescission of orders; reopening cases.
196.395 Test, conditional, emergency and supplemental orders; waiver of conditions in orders.
196.40 Orders and determinations; time of taking effect.
196.405 Rehearings before commission; condition precedent to judicial review; limitation upon objections in review proceeding; final step in exercise of legislative powers.
196.41 Court review.
196.43 Injunction procedure.
196.48 Incriminating evidence.
196.49 Authorization from commission before transacting business; extensions and improvements to be approved; enforcement of orders; natural gas.
196.495 Avoidance of duplication in electric facilities.
196.50 Competing utilities; indeterminate permits, telephones.
196.51 Prior permits and franchises validated.
196.52 Relations with affiliated interests; definition; contracts with affiliates filed and subject to commission control.
196.525 Loans to officers or directors and loans to and investments in securities of holding companies; penalty.
196.53 Franchise, foreign corporation not to have.
196.54 Grants to be indeterminate; municipal acquisition.
196.55 Franchises, made indeterminate.
196.56 Validation of franchises and permits.
196.57 Grants after July 11, 1907; consent to municipal purchase.
196.58 Municipality to regulate utilities; appeal.
196.59 Merchandising by utilities.
196.60 Discrimination, definition, penalty.
196.605 Telephone co-operatives; federal loans and conditions thereof.
196.61 Facilities in exchange for compensation, prohibited; exceptions.
196.62 Discrimination, definition, penalty.
196.625 Discrimination by telephone companies.
196.63 Rebates, concessions and discriminations unlawful.
196.64 Utilities, liability for treble damages.
196.645 Reduction in rates; retroactive effect.
196.65 Railroads and utilities; information, papers and accounting.
196.66 General penalty; utility responsible for agents.
196.67 Warning signs.
196.675 Unlawful for carriers and utilities to employ municipal attorneys or judicial officers.
196.68 Municipal officers, malfeasance.
196.69 Interference with commission's equipment.
196.70 Temporary alteration or suspension of rates.
196.71 Utility, when not a public utility.
196.72 Deaths; utility report; investigation.
196.74 Electric lines; safety and interference.
196.745 Construction and operation; safety; commission orders.
196.76 Other rights of action; penalties cumulative.
196.77 Rates of April 1, 1907, to govern; proceedings to change.
196.78 Voluntary dissolution.
196.79 Reorganization subject to commission approval.
196.80 Consolidation of utilities; street and interurban railways.
196.81 Abandonment; commission approval required.
196.85 Payment of commission's expenditures by utilities.
196.855 Assessment of costs against municipalities.

196.01 Definitions. (1) As used in chapters 196 and 197, unless the context requires otherwise, "public utility" means and embraces 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 or for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for

the public. No co-operative association organized under chapter 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. The term "public utility" as herein defined includes any person, firm, or corporation engaged in the transmission or delivery of natural gas for compensation within this state by means of pipes or mains.

(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 section 195.02.

Pipeline company transporting natural gas into state and selling it for resale is subject to regulation by federal power commission and is not subject to regulation by public service commission as to such transactions. 39 Atty. Gen. 487.

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) The commission shall provide for a comprehensive classification of service for each public utility, and such 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 is required to conform its schedules of rates, tolls and charges to such classification.

(3) The commission shall have power to adopt reasonable rules and regulations relative to all inspections, tests, audits and investigations.

(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 section 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 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.

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.

A running foot charge made by a city water utility as a condition of connecting to a water main which was installed without an assessment is neither a tax nor an assessment. It is a charge for service subject to regulation by the commission. De Pere v. Public Service Comm. 266 W 319, 63 NW (2d) 764.

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 renditon 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.

History: 1951 c. 712.

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.

History: 1951 c. 726.

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 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: 1951 c. 726.

196.07 Balance sheet filed annually. 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.

History: 1951 c. 512.

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 having an annual gross income of ten thousand dollars or more shall publish at least once each year in a newspaper having a general circulation in the territory served by such utility a true balance sheet and income account of its financial affairs. If the accounts of any public utility are kept by districts, publication shall be made separately for each district in a newspaper having a general circulation therein, 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 as required herein shall be prescribed by the commission.

196.09 Depreciation rates and practices; findings by commission; dividends from reserves; retirements. (1) 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: 1955 c. 661.

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 employes, 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) The commission shall order such rates, charges and regulations as may be necessary to give effect to such arrangement, but the power to make such other and further changes in rates, charges and regulations as the commission may determine to be necessary and reasonable and to revoke its approval and amend or rescind all orders relative thereto is vested in the commission.

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 intemized detail: The 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.

History: 1951 c. 726.

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.

History: 1951 c. 726.

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 section 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.

196.18 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 subsection (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 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.

196.21 Publicity of revised schedules. Copies of all new schedules shall be filed as provided in section 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 section 227.12.

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) Upon a complaint made against any public utility by any mercantile, agricultural or manufacturing society or by any body politic or municipal organization or by any twenty-five persons that any of the rates, tolls, charges or schedules or any joint rate or any regulation, measurement, practice or act affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power or any service in connection therewith or the conveyance of any telephone message or any service in connection therewith is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary, but no order shall be entered by the commission without a formal public hearing.

(2) The commission shall, prior to such formal hearing, notify the public utility complained of that a complaint has been made, and ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided.

(3) The commission shall give the public utility and the complainant, ten days' notice of the time and place when and where such hearing will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses.

(4) The notice provided for in subsections (2) and (3) may be combined but if combined the notice shall not be less than 10 days.

History: 1951 c. 712.

196.27 Separate rate hearings; absence of direct damage. The commission may, in its discretion, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

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

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

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 or railroad, and to such other interested persons as the commission shall deem necessary, as provided in section 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.

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 subpœnaed 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 the provisions of chapters 196 and 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.

Public utilities, within the scope of their undertaking, must furnish their service to all who reasonably require the same, and must render adequate and reasonably efficient service. Lodi Telephone Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

See note to 196.58, citing Milwaukee v. Public Service Comm. 268 W 116, 66 NW (2d) 716.

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.

See note to 194.25, citing 29 Atty. Gen. 101.

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.

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 the provisions of sections 227.15 and 227.16.

196.405 Rehearings before commission; condition precedent to judicial review; limitation upon objections in review proceeding; final step in exercise of legislative powers. (1) Within 20 days after the service by the commission of any decision constituting an order or determination, any party to the proceeding and any other person, aggrieved by such decision and directly affected thereby, may apply to the commission for a rehearing in respect to any matters determined in said decision. The commission may grant and hold such rehearing on said matters, or upon such of them as it may specify in the order granting such rehearing, if in its judgment sufficient reason therefor exists.

(2) The application for a rehearing shall set forth specifically the ground or grounds on which the applicant contends said decision to be unlawful or unreasonable. No cause of action arising out of any decision constituting an order or determination of the commission or any proceeding for the judicial review thereof under chapter 227, shall accrue in any court to any person or corporation unless the plaintiff or petitioner in such action or proceeding within 20 days after the service of said decision, shall have made application to the commission for a rehearing in the proceeding in which such decision was made. No person or corporation shall in any court urge or rely on any ground not so set forth in said application for rehearing.

(3) Applications for rehearing shall be governed by such general rules as the commission may establish. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the commission may otherwise direct. If in the commission's judgment, after such rehearing, it shall appear that the original decision, order or determination is in any respect unlawful or unreasonable, the commission may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination. Only one rehearing shall be granted by the commission; but this shall not be construed to prevent any party from filing a new application or complaint. No order of the commission shall become effective while an application for a rehearing or a rehearing shall be pending and until ten days after such application for a rehearing is either denied, expressly or by implication, or the commission has announced its final determination on rehearing. Provided, however, that nothing in the foregoing provision shall limit the power of the commission to declare an emergency and issue orders as authorized by section 196.70.

(4) Any application for a rehearing not granted within twenty days from the date of filing thereof, may be taken by the party making the application to be denied.

(5) It is hereby declared that the legislative powers of the state, in so far as they are involved in the issuance of orders and decisions by the commission, have not been com-

pletely exercised until the commission has acted upon an application for rehearing, as provided for by this section and by the rules of the commission, or until such application for rehearing has been denied by implication, as above provided for.

The circuit court has no jurisdiction under 227.15 to review a decision of the commission constituting an order in a utility case, where no application for a rehearing in respect to matters determined by such decision was filed with the commission within 20 days; the court's lack of jurisdiction cannot be waived by the general appearance of interested parties. A motion to "reopen" the proceedings before the public service commission for additional evidence does not toll the time for filing an application for a rehearing with the commission; and such a motion cannot be treated as an application for a rehearing, particularly where it does not meet the requirements of 196.405 (2), as to the grounds to be stated in an application for a rehearing. Milwaukee v. Public Service Comm. 259 W 30, 47 NW (2d) 298.

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

See note to 31.06, citing Muench v. Public Service Comm. 261 W 492, 53 NW (2d) 514.

See note to 66.03, citing St. Francis v. Public Service Comm. 270 W 91, 70 NW (2d) 221.

196.43 Injunction procedure. (1) No injunction shall issue in any proceeding for review under chapter 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 section 274.11 (3).

196.48 Incriminating evidence. No person shall be excused from testifying or from producing books, accounts and papers in any proceeding based upon or growing out of any violation of the provisions of chapters 195, 196 and 197, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required by him may tend to incriminate him or subject him 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 he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

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 chapter 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 installation 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.

(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 consolidation, 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 in such newspapers and by posting such notices in such public places or by mailing or personal service, as the commission shall direct by the order provided for in paragraph (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 shall find that any public utility has undertaken or is about to undertake such a project as is herein described in violation or disregard of such 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 such violation or disregard of such order. Where necessary to preserve the status quo 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 supreme court as provided in chapter 274.

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 association 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 a 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.

(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. 370.01 (26).

History: 1955 c. 432.

196.50 Competing utilities; indeterminate permits, telephones. (1) CERTIFICATE OF NECESSITY. No license, permit or franchise shall be granted to own, operate, manage or control any plant or equipment for the conveyance of telephone messages, or for the production, transmission, delivery or furnishing of heat, light, water or power in any municipality, where 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 second 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 sections 196.04 and 196.19 subsections (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 sections 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.

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

History: 1951 c. 389.

The right of a telephone company to serve the territory in which it is authorized to operate is qualified and not absolute. The public service commission can properly protect a public utility against competition only as long as such protection is consistent with public convenience and necessity, and the commission is a primary judge of when such point is reached. Among the factors to be considered are the effect of a loss of subscribers on the revenues of the utility already in the field, with possible adverse effect on the service which that utility can give to its remaining patrons, but such matters are questions of fact to be determined by the commission and not to be ignored or reversed by the court when there is evidence in support of the commission's findings. Lodi Telephone Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

Duplication of lines is not forbidden where 2 telephone companies are operating in a given territory, but in such case the public service commission, under its statutory powers of regulation, may make orders affecting competition and duplication based on the existence of public convenience and necessity, and its finding according to the facts of the matter may require an extension of line and plant which may permit and require the duplication of lines as well as provide against undue extension. Lodi Telephone Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

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 the provisions of subsection (1) of section 196.50.

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 ownershhip of five 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 matter 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 the foregoing subsection 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 shall have 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 affili-

ated 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: 1951 c. 712.

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; municipal acquisition. Every license, permit or franchise granted after July 11, 1907, to any public utility shall have the effect of an indeterminate permit subject to the provisions of chapters 196 and 197.

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 chapters 196 and 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 section 197.02.

196.56 Validation of franchises and permits. No franchise affected by section 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 chapters 196 and 197.

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 chapters 196 and 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 section 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 section 196.49.

The water system of the city of Milwaukee is a public utility subject to regulation the same as is any other public utility. Every public utility has the obligation, within the scope of its undertaking, to furnish its service to all who reasonably require it. The duty to enforce such obligation is imposed on the public service commission, and, in the case of a municipal water utility, such jurisdiction is not limited to the boundaries of the municipality but extends to all areas where the utility has undertaken to serve. Milwaukee v. Public Service Comm. 268 W 116, 66 NW (2d) 716.

196.59 Merchandising by utilities. Every public utility as defined in subsection (1) of section 196.01 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 shall, directly or indirectly, charge, demand, collect or receive 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 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 and 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; and such agent or officer so offending shall be punished by a fine of not less than $50 nor more than $100 for each offense. Nothing in this section or any other provision of law shall be construed to prohibit any public utility engaged in the conveying of telephone messages from furnishing service to its employes and officers, or the receiving of service by such employes and officers, at charges less than those prescribed in its published schedules or tariffs according to such rules as the public service commission may prescribe.

History: 1951 c. 712.

Foreign-exchange service, available to certain rural patrons of the L. telephone company herein petitioning for local service from the C. telephone company from the same exchange from which the latter was already furnishing local service to other rural patrons in the same town, but which foreign-exchange service involved an extra charge to the petitioners, not required of their neighbors already being furnished with such local service, was not the answer to the problem of providing the petitioners with adequate telephone service, especially in view of this section, prohibiting any telephone utility from charging customers more or less than it charges other customers for the same service. Lodi Telephone Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

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 pro rata 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: 1955 c. 284.

This section is constitutional. 44 Atty. Gen. 144.

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.

History: 1955 c. 696 s. 41.

See note to 182.019, citing Christenson & Arndt, Inc. v. Wisconsin Tel. Co. 264 W 238, 58 NW (2d) 682.

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.

196.64 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 chapter 196 or 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.

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 complaint 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 the provisions of sections 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.

196.65 Railroads and utilities; information, papers and accounting. (1) Any officer, agent or employe of any public utility or railroad as defined in sections 195.02 and 196.01, who shall fail or refuse to fill out and return any blanks as required by chapters 195 and 196, 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 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 railroad or public utility which is in his possession or under his control, or who shall fail to properly use and keep his system of accounting or any part thereof as 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 railroad or public utility for each such offense when such officer, agent or employe acted in obedience to the direction, instruction or request of such railroad or public utility or any general officer thereof.

196.66 General penalty; utility responsible for agents. (1) If any public utility shall violate any provision of chapter 196 or 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 chapter 196 or 197, shall constitute a separate and distinct violation.

196.67 Warning signs. (1) Every corporation, company or person constructing, operating or maintaining an electric transmission line with a voltage of six thousand or more between conductors or between conductors and the ground shall place warning signs, not less than four feet nor more than six feet from the ground, upon all poles or other structures supporting such line when within one hundred feet of school grounds; and when within one hundred feet of any place where such line crosses a public highway; and when within any city or village.

(2) Every such sign shall be in red or black letters not less than 2 inches high on a background of white and shall read "Danger—High Voltage".

(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: 1951 c. 712.

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.

History: 1955 c. 696 s. 246A.

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 chapters 196 and 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 said chapters, 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.

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.

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 Deaths; utility report; investigation. (1) Every public utility shall immediately report to the commission every fatal accident occurring upon its premises or directly or indirectly arising from or connected with its maintenance or operation.

(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. 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 hearing, requiring the construction and operation of such facilities to be safe, and may revise such orders or rules from time to time as may be required to promote public safety. Upon complaint to the commission that the facilities of a public utility are unsafe, it may proceed under section 196.26, or may proceed under section 196.28. After hearing the commission shall order any alteration in construction, maintenance or operation required in the interest of public safety.

History: 1951 c. 712.

196.76 Other rights of action; penalties cumulative. Chapters 196 and 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 said chapters shall be cumulative and a suit for any recovery of one shall not be a bar to the recovery of any other penalty.

196.77 Rates of April 1, 1907, to govern; proceedings to change. (1) Unless the commission shall otherwise order, it shall be unlawful for any public utility within this state to demand, collect or receive a greater compensation for any service than the charge fixed on the lowest schedules of rates for the same service on the first day of April, 1907.

(2) Any public utility desiring to advance or discontinue any such rate may apply to the commission in writing stating the advance or discontinuation desired, giving the reasons therefor.

(3) The commission shall fix a time and place for hearing and give such notice to interested parties as it shall deem reasonable. After such hearing the commission shall enter an order granting the application either in whole or in part or denying the same.

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.

History: 1951 c. 731; 1955 c. 338; 661.

196.79 Reorganization subject to commission approval. Reorganizations of all public utilities and railroads, steam railroads excepted, 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 such commission. No plan of reorganization shall be approved by the commission unless it shall be established by the applicant for such approval that the plan of reorganization is consistent with the public interest.

196.80 Consolidation of utilities; street and interurban railways. (1) With the consent and approval of the commission but not otherwise:

(a) Any two or more public utilities or any two or more public utilities owning or operating street railway or interurban railway lines may consolidate with each other.

(b) Any public utility or any public utility owning or operating a street railway or interurban railway may acquire the stock of any other public utility or any part thereof.

(c) Any public utility or any public utility owning or operating a street railway or interurban railway owning all the stock of any other public utility or any other public utility owning or operating a street railway or interurban railway line may file in the office of the secretary of state a certificate of such ownership, in its name and under its corporate seal, signed by its president or a vice president and its secretary or treasurer, and setting forth a copy of the resolution of its board of directors to merge such other corporation and to assume all of its obligations, and the date of the adoption of such resolution. Thereupon all of the estate, property rights, privileges and franchises of such other corporation shall vest in and be held and enjoyed by such possessor corporation as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by such possessor corporation, but subject to all liabilities and obligations of such other corporation and the rights of all creditors thereof. The possessor corporation shall be deemed to have assumed all the liabilities and obligations of the merged corporation, and shall be liable in the same manner as if it had itself incurred such liabilities and obligations. The possessor corporation may relinquish its corporate name and assume in place thereof the name of the merged corporation by including a provision to that effect in the resolution of merger adopted by the board of directors and set forth in the certificate of ownership and upon the filing of such certificate the change of name shall be complete.

(d) Any public utility or any public utility owning or operating a street railway or interurban railway 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 sections 197.01 to 197.10 or of sections 66.06 to 66.078 of the statutes.

(3) Application for the approval and consent of the commission shall be made by the interested public utility or the interested public utility owning or operating the street railway or interurban railway line, 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, plant equipment or securities of the utility or utility owning or operating a street railway or interurban railway to be acquired or merged.

(4) (a) No consolidation as authorized by subsection (1) of this section shall be effective unless a written plan of consolidation shall be approved by at least a two-thirds vote of each class of stock and each issue, series or kind of preferred stock of each of the constituent companies at meetings of the stockholders of such respective constituent companies called for the purpose of acting upon the proposed plan on not less than 30 days' notice by mail to each stockholder at his last address appearing on the records of the corporation and on not less than 3 weeks' publication of notice of meeting in a general newspaper published in the cities in Wisconsin in which is located the principal office of the respective constituent corporations.

(b) No such consolidation shall be effective unless the public service commission shall find that the plan of consolidation is just and reasonable in its effect on stockholders and creditors of each of the constituent companies and is consistent with public interest. Notice of hearing on application for commission approval of a proposed plan of consolidation shall be given by publication for at least 3 weeks in a newspaper of general circulation in Wisconsin as may be designated by the commission as best adapted to apprise the stockholders of such meeting. The order of approval may precede or follow the vote of the stockholders of one or more of the constituent companies in respect to approval of the plan of consolidation.

(c) 1. The written plan of consolidation shall specify the name of the constituent company which is to be adopted by the consolidated company and the directors and officers of the consolidated company who shall first serve until the first annual meeting of the stockholders of the consolidated company or until their respective successors are duly elected and qualified.

2. The plan of consolidation may provide for the procedure set forth in subparagraphs a or b hereunder of this paragraph or such other plan as the commission may approve.

a. The authorized capital stock and the issued capital stock, the authorized number of shares, and the issued number of shares of the consolidated company shall be the same as the authorized aggregate capital stock and the authorized aggregate number of shares, the issued capital stock and the issued number of shares of the constituent companies before consolidation and the preferred stock and each issue, series and kind thereof of each constituent company shall retain its dividend rate and redemption price, if any, and shall be given no other preference over any of the preferred stock of the consolidated company; but nothing in this subsection shall be construed as preventing the consolidated company from extending to all of the preferred stock of the constituent companies so aggregated the most favorable provisions as to voting rights upon default, restrictions on the borrowing power of the issuing corporation and other like restrictions specified in respect to any of the preferred stock of any constituent corporation and other provisions, if any, required by public official authority having jurisdiction in the premises. Preferred stock of each constituent company shall become preferred stock of like par value, dividend rate and redemption price, if any, of the consolidated company, and the common stock of each constituent company shall become common stock of like par value of the consolidated company.

b. All of the outstanding capital stock, both preferred and common, of the constituent companies may be surrendered and cancelled and the consolidated company may issue any class or classes of preferred stock, or common stock, or both, or offer cash in exchange for the capital stock held by the stockholders of the constituent companies.

(d) No such consolidation shall be effective except upon the filing with the secretary of state of:

1. Articles of incorporation of the consolidated company prepared in accordance with this subsection and with authorized capital stock aggregating the authorized capital stock of the constituent companies, and with powers aggregating the corporate powers of the constituent corporations, and specifying the number constituting the board of directors, their term of office and the manner of their election, and otherwise complying with the requirements of s. 180.45, accompanied by the usual fee for filing articles of incorporation or amendments thereof but after crediting the amounts paid by the respective constituent companies in respect of authorized capital stock, which articles of incorporation shall be signed and acknowledged by the president and secretary of each of the constituent companies at the time of consolidation and filed and recorded in the manner specified in s. 180.46, for which purpose copies of articles of incorporation may be verified by the oaths of any 2 of the signers.

2. A copy of the resolution of the stockholders of each constituent company adopting the plan of consolidation duly certified in the manner specified in s. 180.53.

3. A duly certied copy of the order of the commission approving the plan of consolidation.

(e) The secretary of state upon the filing and recording in the manner specified by s. 180.46 of the articles of incorporation of the consolidated company shall issue a certificate of incorporation to the consolidated company and thereupon the corporate existence of the constituent companies shall cease, but the consolidated company so formed shall hold and enjoy all of the powers, privileges, rights, franchises, properties, estates and choses in action which at the time of such union were held and enjoyed by any of the constituent companies as fully and entirely and without change or diminution as the same were before held and enjoyed by the constituent company, and it shall be subject to all contracts, liabilities, and obligations existing against the constituent companies; and all actions at law or pending suits and other proceedings instituted by or against any of the constituent companies shall be continued by or against the consolidated company. All mortgages or other liens upon the property of any of the constituent companies shall continue as a lien against such property and such additions thereto, if any, as may be contemplated by the instrument creating such lien. The consolidated company may execute any supplementary indenture or other like instrument consistent with the provisions of this subsection which may be required to be executed in the event of the consolidation of the mortgagor by the terms of any mortgage or other like instrument executed by a constituent company.

(f) Any preferred stockholder of any constituent company entering into any consolidation pursuant to this subsection who shall have dissented from the proposed consolidation and shall have recorded such dissent at the meeting of the stockholders at which the plan of consolidation was approved, shall have the right upon written notice to the consolidated company within 60 days of the completion of the consolidation to receive at the expiration of one year from the completion of such consolidation and upon the surrender of a certificate or certificates representing such stock duly indorsed in blank, all unpaid dividends accruing since the date of the consolidation and unpaid dividends accruing prior thereto, if such dividends be cumulative, together with the redemption price, if any, specified in respect of such stock, and if no redemption price be specified, then the par value thereof. The preferred stock so acquired need not be cancelled or retired but may be held by the consolidated company as reacquired stock and mortgaged, pledged or otherwise disposed of.

(g) Any holder of common stock of any constituent company entering into any consolidation pursuant to this subsection who shall have dissented from the proposed consolidation and have recorded such dissent at the meeting of the stockholders at which the plan of consolidation was approved, shall have the right upon written notice to the consolidated company within 60 days of the completion of the consolidation to receive at the expiration of one year from such completion of the consolidation and upon the surrender of a certificate or certificates representing such stock duly indorsed in blank, the fair value of such stock as fixed by the commission after hearing upon the application of a holder of common stock or upon application by the consolidated company. Upon any such application, notice shall be given to all dissenting stockholders of common stock by publication for at least 3 weeks in advance of such hearing in a newspaper of general circulation in Wisconsin as may be designated by the commission as best adapted to apprise the dissenting stockholders of such hearing. Any such determination of the commission shall be subject to judicial review as provided by this chapter in respect to other orders of the commission. The commission or court in fixing such value may adjust the same for reasonably probable interim earnings which may remain undistributed between the date of the determination and the expiration of said period of one year. Common stock so acquired need not be cancelled or retired but may be held by the consolidated company as reacquired stock and thereafter sold or otherwise disposed of.

(h) The certificates representing the preferred or common stock of any constituent company, except stock held by dissenting stockholders who are provided for in paragraphs (f) and (g) of this subsection, may be exchanged at the option of the consolidated company for certificates of stock issued by it. After consolidation shall have been consummated and until such exchange, the certificates of stock of the constituent company shall represent stock of the consolidated company in the amount and of the character and kind described in such respective certificate or certificates.

(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: 1953 c. 61; 1955 c. 661.

196.81 Abandonment; commission approval required. No public utility or railroad as defined in chapters 195 and 196 shall abandon or discontinue any line, branch line or extension or service thereon without first securing the approval of the commission. No railroad shall discontinue any regularly scheduled passenger train without notifying the commission in writing not less than 20 days before such discontinuance and the commission, if it deems that the public interest so requires, may within said period give notice of a hearing thereon, whereupon the railroad shall continue the operation of said train until and unless otherwise authorized by the commission after hearing, provided that this amendment (1951) shall not apply to street or interurban electric railway operations. In granting its approval, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. Any public utility or railroad 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. Nothing herein contained, however, shall be construed to eliminate the necessity of obtaining the consent of the proper municipal authorities as required by section 193.11. The provisions of this section shall apply only so far as the constitution and laws of the United States permit.

History: 1951 c. 565.

196.85 Payment of commission's expenditures by utilities. (1) Whenever the commission in a proceeding upon its own motion, on complaint, or upon an application to it shall deem 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 railroad or to render any engineering or accounting services to any public utility, power district or railroad, such public utility, power district or railroad shall pay the expenses reasonably attributable to such investigation, appraisal or service. The commission shall ascertain such expenses, and shall render a bill therefor, by registered mail, to the public utility, power district or railroad, either at the conclusion of the investigation, appraisal or services, or from time to time during its progress, which bill shall constitute notice of said assessment and demand of payment thereof. Upon bill so rendered such public utility, power district or railroad shall, within 30 days after the mailing thereof pay to the commission the amount of the special expense for which it is billed, and such payment when made shall be credited to the appropriation to the commission in s. 20.660 (41). The total amount, in any one calendar year, for which any public utility, power district or railroad shall become liable, by reason of costs incurred by the commission within such calendar year including charges under s. 184.10 (2), shall not exceed four-fifths of one per cent of its gross operating revenues derived from intrastate operations in the last preceding calendar year. Where, pursuant to this subsection, costs are incurred within any calendar year, which are in excess of four-fifths of one per cent of such gross operating revenues, the excess costs shall not be chargeable as part of the remainder under sub. (2) of this section but shall be paid out of the general appropriation to the public service commission. Nothing herein contained shall prevent the commission from rendering bills in one calendar year for costs incurred within a previous year.

(2) (a) The commission shall annually, within 90 days after the close of each fiscal year, ascertain the total of its expenditures during such year which are reasonably attributable to the performance of its duties relating to public utilities and power districts under chs. 184, 196 and 198, and shall deduct therefrom all amounts chargeable to public utilities and power districts under sub. (1) of this section and s. 184.10 (2). The remainder shall be assessed by the commission to the several public utilities and power districts in proportion to their respective gross operating revenues during the last calendar year, derived from intrastate operations. Such assessment shall be paid within 30 days after the bill has been mailed, by registered mail, to the several public utilities and power districts, which shall constitute notice of said assessment and demand of payment thereof. When paid said assessment shall be credited to the appropriation made in s. 20.660 (41). The total amount which may be assessed to the public utilities and power districts, under authority of this subsection, shall not exceed one-fifth of one per cent of the total gross operating revenues of such public utilities and power districts, during such calendar year, derived from intrastate operations.

(b) The commission shall annually, within 90 days after the close of each fiscal year, ascertain the total of its expenditures during such year which are reasonably attributable to the performance of its duties relating to railroads, as defined in s. 195.02, under ch. 184, 190, 191, 192, 193, 195 and 196, and shall deduct therefrom all amounts chargeable to railroads under s. 196.85 (1) and s. 184.10 (2). The remainder shall be assessed by the

commission to the several railroads in proportion to their respective gross operating revenues during the last calendar year, derived from intrastate operations. Such assessment shall be paid within 30 days after bill has been mailed, by registered mail, to the several railroads, which bill shall constitute notice of said assessment and demand of payment thereof. When paid said assessment shall be credited to the appropriation made in s. 20.660 (41). The total amount which may be assessed to the railroads under authority of this subsection shall not exceed two-fifths of one per cent of the total gross operating revenues of such railroads, during such calendar year, derived from intrastate operations.

(3) If any public utility, power district or railroad against which a bill has been rendered either under subsection (1) or subsection (2) of this section, within 30 days after the rendering of such bill shall (a) neglect or refuse to pay the same, or (b) shall fail to file objections to said bill with said commission, as provided hereinafter, it shall be the duty of the public service commission forthwith to transmit to the state treasurer a certified copy of said bill, together with notice of neglect or refusal to pay said bill, and on the same day said commission shall mail by registered mail to the public utility, railroad or power district against which said bill has been rendered a copy of said notice which it has transmitted to the state treasurer. Within 10 days after the receipt of such notice and certified copy of such bill the state treasurer shall proceed forthwith to levy the amount stated on such bill to be due, with interest, by distress and sale of any goods and chattels, including stocks, securities, bank accounts, evidences of debt, and accounts receivable belonging to such delinquent public utility, power district or railroad. Such levy by distress and sale shall be governed by the provisions of section 74.10 except that it shall be made by the state treasurer and that said 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 as provided by subsections (1) and (2) the public utility, power district or railroad against which such bill has been rendered may file with the public service commission objections setting out in detail the grounds upon which said objector regards said bill to be excessive, erroneous, unlawful or invalid. The commission, after notice to the objector, shall proceed forthwith to hold a hearing upon such objections, not less than 5 nor more than 10 days after such notice. If after such hearing the commission finds any part of said 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 such findings. Such amended bill shall have in all ways the same force and effect under this section as an original bill rendered under subsections (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 subsection (3). The state treasurer shall then proceed to collect the amount of said bill as provided in subsection (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 shall be maintained in any court for the purpose of restraining or in any wise delaying the collection or payment of any bill rendered under subsections (1) and (2) of this section. Every public utility, power district, or railroad against which a bill is rendered shall pay the amount thereof, and after such payment may in the manner herein provided, at any time within two years from the date the payment was made, sue the state in an action at law to recover the amount paid with legal interest thereon from the date of payment, upon the ground that said assessment was excessive, erroneous, unlawful or invalid in whole or in part. If it is finally determined in such action 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, which shall be charged to the appropriations to the public service 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 pro-

vided. 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: 1951 c. 261 s. 10; 1951 c. 712.

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 chapter 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 section 196.85 in so far as applicable. If any such bill is not paid within the time required by section 196.85, the same shall bear interest at the rate of 6 per cent per annum and the amount thereof shall be certified to the director of budget and accounts and shall be levied and collected as a special charge in the same manner as a state tax.