

construed to apply to amateur boxing or sparring matches or exhibitions conducted by or held under the auspices of any university, college, normal school, or high school of the state, *nor to any matches or exhibitions conducted by the American Legion for which no admission fee is charged.*

SECTION 2. This act shall take effect upon passage and publication.

Approved June 3, 1931.

No. 353, S.]

[Published June 6, 1931.

### CHAPTER 183.

AN ACT to repeal sections 184.01 to 184.22, section 196.09, and subsection (3) of section 196.37; to amend subsections (1) and (2) of section 20.51, paragraph (a) of subsection (4) of section 66.06, subsection (3) of section 180.17, subsections (9) and (11) of section 195.01, subsection (4) of section 196.02, subsection (2) of section 196.19, sections 196.20 and 196.39, subsections (2) and (4) of section 196.41, sections 196.42 and 196.45, and paragraph (f) of subsection (3) of section 226.02; and to create subsection (4) of section 20.51, section 180.135, sections 184.01 to 184.14, sections 196.09, 196.395, 196.405, 196.49, 196.52, subsection (5) of section 196.58, sections 196.79, 196.81, 196.85 and 226.025 of the statutes, relating to the regulation of public utilities and railroads, providing penalties and making an appropriation.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Sections 184.01 to 184.22, section 196.09, and subsection (3) of section 196.37 of the statutes are repealed.

SECTION 2. Subsections (1) and (2) of section 20.51 (as revised in chapter 67, laws of 1931), paragraph (a) of subsection (4) of section 66.06, subsection (3) of section 180.17, subsections (9) and (11) of section 195.01, subsection (4) of section 196.02, subsection (2) of section 196.19, sections 196.20 and 196.39, subsections (2) and (4) of section 196.41, and sections 196.42, 196.45, and paragraph (f) of subsection (3) of section 226.02 of the statutes are amended to read: (20.51) (1) \* \* \* *On July 1, 1931, one hundred seventy thousand dollars and annually beginning July 1, 1932, one hundred thousand dollars, for administra-*

tion and the execution of its general functions. Of this, there is allotted to each member of said commission an annual salary of five thousand dollars.

(2) \* \* \* *On July 1, 1931, fifty thousand dollars and annually, beginning July 1, 1932, one hundred twenty thousand dollars* for administration and the execution of its general functions, in addition to the appropriation made in subsection (1), conditional upon approval by the emergency board.

(66.06) (4) (a) Cities and villages may contract for furnishing light or heat to the municipality or to the inhabitants thereof for a period of not more than ten years or for an indeterminate period if the prices shall be subject to adjustment at intervals of not greater than five years. *The commission shall have jurisdiction relative to the rates and service to any city or village where light or heat is furnished to such city or village under any contract or arrangement, to the same extent that it has jurisdiction where such service is furnished directly to the public.*

(180.17) (3) *The commission after a public hearing as provided in section 196.26, and subject to the right of review as provided in chapter 196, may declare any line to have been abandoned or discontinued, if the facts warrant such finding. Whenever \* \* \* such a finding shall have been made the corporation shall \* \* \* remove \* \* \* such line, and on failure for three months after such finding of abandonment or discontinuance \* \* \*, any person owning land over, through or upon which such line shall pass, may remove the same \* \* \*, or the supervisors of any town within which said lines may be situated, may remove the said lines from the limits of its highways, and such person or supervisors shall be entitled to recover from the company owning the lines the expense for labor involved in removing the property.*

(195.01) (9) TITLE, SEAL. The commission shall be known as "*\* \* \* Public Service Commission of Wisconsin,*" and in that name may sue and be sued. The commission shall have a seal with the words "*\* \* \* Public Service Commission of Wisconsin,*" and such other design as it may prescribe engraved thereon, by which it shall authenticate its proceedings and of which the courts shall take judicial notice.

(11) DEFINITION. The words "commission" and "*railroad commission,*" as used in chapters 184, 189, and 190 to 197, \* \* \* mean the \* \* \* *Public Service Commission of Wisconsin, un-*

less a different meaning is manifest. *Wherever reference is made in the statutes to the "commission" or the "railroad commission" such reference, unless a different meaning is manifest, shall be construed to mean the public service commission.*

(196.02) (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.*

(196.19) (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.

196.20 CHANGES IN RATES; APPROVAL OF INCREASES REQUIRED.

(1) No change shall be made in any schedule, except upon ten days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules ten

days prior to the time the same are to take effect; provided, that the commission, upon application of any public utility, may prescribe a less time within which a reduction may be made.

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

196.39 CHANGE, AMENDMENT AND RECISSION OF ORDERS; RE-OPENING 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.*

(196.41) (2) The answer of the commission to the complaint shall be served and filed within twenty days after service of the complaint, whereupon said action shall be at issue and stand ready for trial upon ten days' notice. *The action shall be heard and determined upon the record of the proceedings before the commission as certified to by it and transmitted by it to the clerk of the circuit court, as provided in section 196.35, supplemented by such different or additional evidence as the parties may introduce under the authority of section 196.44.*

(4) All such actions shall have precedence over any civil cause of a different nature, and the circuit court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions, *except as otherwise provided in this chapter.*

196.42 TIME LIMIT ON JUDICIAL REVIEW. Every action in any court to vacate or amend any determination or order of the commission or to enjoin the enforcement thereof or to prevent such order or determination from becoming effective shall be commenced, and every appeal to \* \* \* any \* \* \* court or right of recourse to \* \* \* any court shall be taken or exercised within \* \* \* sixty days after \* \* \* the commission has denied an application for a rehearing of any order or determination of the commission, or within sixty days after the entry or rendition of a final order following the holding of such re-

*hearing.* The right to commence any such action, or to take or exercise any such appeal or right of recourse \* \* \* *in any court,* shall terminate absolutely at the end of such \* \* \* *sixty days.*

196.45 Any party to \* \* \* *an action to set aside an order or determination of the commission,* within sixty days after service of a notice of entry of a copy of the order or judgment of the circuit court, may appeal to the supreme court, and the cause shall be placed on the state calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other causes on the state calendar.

(226.02) (3) (f) Shall constitute and appoint the secretary of state its true and lawful attorney upon whom the summons, notices, pleadings or process in any action or proceeding against it may be served in respect to any liability arising out of any business, contract or transaction in this state, and stipulate that service thereof upon the secretary of state, or his assistant, shall be accepted irrevocably as a valid service upon it, and that such appointment and stipulation shall continue in force irrevocably so long as any liability of such corporation remains outstanding in this state. *In lieu of the appointment of the secretary of state as its attorney any foreign corporation may, at the time of the filing of a certified copy of its articles of association or incorporation, file in the office of the secretary of state a designation of someone residing within the state and the place of business or residence of such person upon whom such notice and process may be served. A copy of such designation, duly certified by the secretary of state, shall be sufficient evidence of such appointment. Such notice or process may be served upon the person so designated, or, in the event that no such person is designated, then upon the secretary of state, and such service shall be a valid service upon such corporation.*

SECTION 3. A new subsection is added respectively to sections 20.51, 196.58 and twenty-five new sections are added to the statutes to be numbered and to read: (20.51) (4) As a revolving appropriation, all moneys collected by the commission under section 196.85 or subsection (2) of section 184.10 to be used for the performance of all duties of the commission for which no special appropriation is made.

(196.58) (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 sec-

tion 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.

180.135 PUBLIC UTILITY CORPORATION DIRECTORS; NOT TO DELEGATE DUTY TO MANAGE; REMOVAL BY COMMISSION. (1) The directors of corporations which are public utilities shall not, directly or indirectly, delegate or in any manner, temporarily or permanently, relinquish or surrender their duty to manage and direct the stock, property, affairs and business of such corporation.

(2) Any director violating the provisions of this section may be removed by the commission, after notice and hearing. When a director of a public utility shall be removed by the commission he shall be ineligible for a period of two years to serve as a director of said public utility.

184.01 In this chapter, unless the context otherwise requires:

(1) "Public service corporation" means and embraces every corporation, except municipalities and other political subdivisions, which is a public utility as defined in section 196.01, and every corporation, except municipalities and other political subdivisions, engaged, directly or indirectly, in transmitting telegraph messages, or in transporting passengers, freight or express otherwise than solely by motor vehicle as defined in section 194.01.

(2) "Commission" means the public service commission of Wisconsin.

(3) "Securities" means capital stock and evidences of indebtedness of a public service corporation, not including, however, any obligation falling due one year or less after its date and bearing date not later than the day of sale.

184.02 The power to create liens or mortgages on corporate property by public service corporations in this state, or to deed such property in trust, or to issue capital stock, is a special privilege, the right of supervision, regulation, restriction and control of which shall be vested in the state, and such power shall be exercised according to the provisions of these statutes.

184.03 (1) No securities shall be issued by any public service corporation until it shall first have obtained from the commission, and recorded upon its books a certificate authorizing such issue; and the commission shall not authorize the issuance of securities for any purposes which are not proper corporate purposes, or in an amount greater than is reasonably necessary for such cor-

porate purposes, having in view the immediate requirements of the corporation and its prospective requirements over a reasonable period in the future, and other relevant considerations. Proper corporate purposes shall include only those reasonably necessary for the conduct of the public service functions of the corporation.

(2) All securities issued in violation of any of the provisions of this chapter shall be void.

184.04 No securities shall be issued by any public service corporation otherwise than for money, property or services actually received by it. The amount of money, and the value of the property or the services to be so received shall be: (a) In case of stock having a par value, not less than the par value thereof; (b) in case of stock having no par value, not less than the amount specified in the commission's certificate of authority as the selling price of such stock; (c) in case of evidences of indebtedness not issued for refunding purposes, such sum as the commission may determine to be a reasonable price, but in any event not less than seventy-five per cent of their face value; (d) in case of evidences of indebtedness issued for refunding purposes, such sum as the commission may determine to be reasonable, but in any event not less than seventy-five per cent of the face value thereof plus such proportion of any discount (but not less than the amount carried on the books of the corporation) paid or incurred after July 8, 1911, upon the obligations to be refunded, as the unexpired term of the obligations to be refunded bears to the whole term thereof. The limitations of this section and of section 182.06 of the statutes shall not apply to the sale of evidences of indebtedness of a public service corporation by way of enforcement of a pledge of such evidences of indebtedness, made by the corporation pursuant to a certificate of authority issued by the commission, as security for lawful indebtedness of the corporation; but in all such cases the instrument of pledge shall contain a provision to the effect that none of the pledged securities shall be sold or become the absolute property of the pledgee, either directly or indirectly, except at public sale, notice whereof shall be published once a week for at least three weeks prior thereto in at least one newspaper of general circulation published in the English language in the place where such sale shall take place, and further to the effect that the sale shall not be made below the price fixed

therefor by the commission in its certificate authorizing the pledging of such securities.

184.05 (1) Any public service corporation desiring to issue securities shall file with the commission an application verified by its president or vice president and its secretary or assistant secretary (or by the signers of its articles of organization if it has not yet elected officers), setting forth: (1) The amount and character of the proposed securities; (2) the purposes for which they are to be issued; (3) the terms on which they are to be issued, including a detailed description and a detailed statement of the value of any property or services that are to be received in full or partial payment therefor, and of any property or services already received by the corporation, the cost of which is to be reimbursed to the corporation by the proceeds of such securities; and (4) a statement of the assets and liabilities of the corporation as of the most recent available date, together with such further financial information as the commission may require.

(2) In order to determine whether the proposed issue complies with the provisions of this chapter, the commission may make such inquiry or investigation, hold such hearings, and examine such witnesses, books, papers, documents or contracts, as it may deem material. It shall determine the value of any property or services for which the securities, in whole or in part, are to be issued. It may also make a valuation, in detail, of all property of the corporation and may determine the full amount of its liabilities if deemed pertinent.

(3) In determining the value of property under this chapter, no franchise to be a corporation and no franchise or privilege granted to a corporation shall be appraised at more than the sum paid therefor to the state or municipality granting the same.

(4) The amount of securities of each class which any public service corporation may issue shall bear a reasonable proportion to each other and to the value of the property, due consideration being given to the nature of the business of the corporation, its credit and prospects, the possibility that the value of the property may change from time to time, the effect which such issue will have upon the management and operation of the corporation by reason of the relative amount of financial interest which the various classes of stockholders will have in the corporation, and other considerations deemed relevant by the commission.

184.06 (1) Upon the conclusion of its investigation, if the commission shall find that the proposed issue complies with the provisions of this chapter and that the financial condition, plan of operation and proposed undertakings of the corporation are such as to afford reasonable protection to purchasers of the securities to be issued, it shall issue to the corporation a certificate of authority stating: (1) The amount of securities reasonably necessary and the character of the same, (2) the purposes for which they are to be issued in such detail as the commission may deem necessary; and (3) the terms on which they are to be sold or otherwise disposed of, including a description and a determination of the value of any property or services to be received in partial or full payment therefor; and the corporation shall not issue the securities on any other terms or for any other purposes than that stated in such certificate. If any portion of the securities authorized by the certificate are evidences of indebtedness which are to be pledged to secure lawful obligations of the applicant, the commission in its certificate shall state the minimum price at which such securities may be sold in the event of any enforcement of the pledge. If the purpose of the issue is, in whole or in part, to provide funds for properties to be constructed or acquired, the commission may, if it finds that the public interest so requires, require the applicant to impound the proceeds of such securities, or furnish suitable bonds to guarantee the completion of such project, under such conditions as the commission shall find to be reasonable and shall specify in the certificate.

(2) The commission may attach to the issuance of any certificate under this chapter such terms, conditions or requirements as in its judgment are reasonably necessary to protect the public interest. Any public service corporation dissatisfied with any of the terms or conditions so imposed by the commission in such certificate of authority shall be limited in its remedy to an action to modify or set aside the commission order authorizing a certificate of authority, as provided by section 184.08. Any public service corporation issuing securities pursuant to any certificate of authority, not having brought any such action to set aside such order shall be deemed thereby to have waived any and all objections to the terms, conditions and requirements contained in such certificate of authority.

184.07 The commission may by provision inserted in its certificate of authority require issuers to account for the disposition of all securities requiring its approval. If the securities are issued for money, it may require the issuer to report the price at which the securities were issued, the amount of securities so issued, and the amount of cash which has been received; if they are issued for the refunding or discharge of securities or other indebtedness it may require the issuer to report the amount of securities issued for such purpose, the price at which issued, and the amount and nature of securities or other indebtedness refunded or discharged by such issuance; if they are issued for the acquisition of property or services it may require the issuer to report the amount of securities issued for such purpose, the price at which issued, and information regarding the property or services for which such securities were issued.

184.08 Any public service corporation which is dissatisfied with any order, determination or denial made by the commission under the provisions of this chapter, may commence and prosecute an action in the circuit court for Dane county against the commission, in the manner provided in chapter 196, to vacate and set aside said order, determination or denial, on the ground that the same is unreasonable or unlawful.

184.09 (1) Any public service corporation, or any agent, director or officer thereof, who shall directly or indirectly, issue or cause to be issued, any securities for whose issuance a certificate is required contrary to the provisions of this chapter, or who shall apply the proceeds from the sale thereof to any purpose other than that specified in the certificate of the commission, shall forfeit to the state not less than five hundred dollars nor more than ten thousand dollars for each offense.

(2) Every director, president, secretary or other official or agent of any public service corporation, who shall practice fraud or knowingly make any false statement to secure a certificate of authority to issue any security, or issue under a certificate so obtained and with knowledge of such fraud, or false statement, or negotiate, or cause to be negotiated, any security, in violation of this chapter, shall be punished by a fine of not less than five hundred dollars, or by imprisonment in the state prison not less than one nor more than ten years, or by both fine and imprisonment.

184.10 (1) Each public service corporation on filing an application for authority to issue any securities to which this chapter is applicable shall pay with such application, prior to the issuance of a certificate, a fee of one dollar per thousand for each thousand dollars par value of each authorized issue of securities, but in no case less than ten dollars for any issue. If any such securities shall have no par value, the price at which such securities are issued or sold shall be deemed the par value for the purposes of computing the fee payable under this section.

(2) Whenever the commission deems it necessary to make an investigation of the books, accounts and practices of any public service corporation which has filed an application for authority to issue any securities to which this chapter is applicable, such public service corporation shall pay all expenses reasonably attributable to such special investigation. The commission shall render bills for such expenses either at the conclusion of its investigation or from time to time during its progress, and such public service corporation shall pay the amount thereof within thirty days after such bill is sent by registered mail. Upon failure of the public service corporation to pay such bill within thirty days, it shall draw interest at the rate of fifteen per cent and the attorney-general shall proceed by action in the name of the state against such corporation to collect the same with interest and the costs of the suit. All amounts paid under authority of this section shall be credited to the appropriation made in subsection (4) of section 20.51.

184.11 Whenever the commission shall find that the capital of any public service corporation is impaired it may, after investigation and hearing, issue an order directing such public utility to cease paying dividends on its common stock until such impairment has been made good. Nothing in this section shall be construed to modify the requirements of section 182.19.

184.12 Whenever the rights, powers, privileges and franchises of any domestic public service corporation shall be sold at judicial sale or pursuant to the foreclosure of a mortgage, the purchaser shall, within sixty days after such sale, organize a new corporation pursuant to the laws respecting corporations for similar purposes, and shall convey to such corporation the rights, privileges and franchises which the former corporation had, or was entitled to have, at the time of such sale, and such as are provided by the statutes applicable thereto. The amount of securities which may be

issued by the new corporation for the purpose of acquiring the property of the former corporation shall be determined in accordance with sections 184.04, 184.05, and 184.06.

184.13 (1) Any public service corporation may provide for preferred stock in its original articles of organization, or by amendment or amendments thereto adopted by the affirmative vote of the holders of not less than two-thirds of the outstanding stock, and may in such articles, or by such amendment or amendments thereto, adopted by the affirmative vote of the holders of two-thirds of the outstanding stock, provide from time to time for the increase of the amount of preferred stock, theretofore authorized, and may provide, with respect to such preferred stock, or any increase thereof, for the payment of dividends on any such preferred stock, whenever so authorized, out of the profits at a specified rate or rates not to exceed eight per centum per annum, before dividends are paid upon the common stock; for the accumulation of such dividends on any such preferred stock; for a preference of any such preferred stock, not, however, exceeding the par value thereof over the common stock in the distribution of the corporate assets other than profits; for the redemption of any such preferred stock at not less than par, plus any accumulated and unpaid dividends, if said stock provides for the accumulation of dividends; and for denying or restricting the voting power of any such preferred stock; or for any one or more of said provisions. Such preferred stock may be issued in one or more classes, in such amounts for each class, and, with respect to any one or more classes, with such designation, rights, privileges, limitations, preferences and voting powers or prohibitions, restrictions or qualifications and upon such terms as to redemption and as to rate of dividend, not inconsistent with the provisions above set forth, as may be expressed in the original articles of incorporation or in any such amendment thereof, and the power to increase the preferred stock as above provided shall apply to any or all of the classes of preferred stock. Whenever so expressed in the original articles of incorporation or in any such amendment thereof, the board of directors of the corporation shall be authorized to provide for the issue of any such class or classes of preferred stock in series and, within such limits as may be imposed in such original articles of incorporation or amendments, not inconsistent with the provisions above set forth, to determine and fix the terms as to redemption and as to rate of dividend applicable to any

such series. In providing for the issue of any such preferred stock, the corporation may further provide that any such preferred stock shall, in addition to the first dividends hereinabove provided, also participate with the common stock in further dividends on such terms and in such manner as may be stated in the original articles of incorporation or in any such amendment thereof.

(2) Neither preferred nor common stock shall bear interest. Certificates of preferred stock and common stock shall state on the face thereof, or on the reverse side of such certificates with an appropriate reference thereto on the face thereof, all privileges accorded to and all restrictions imposed on preferred stock. No change or amendment in relation to any such preferred stock theretofore issued shall be made, except by way of amendment to the articles of organization, adopted by the affirmative vote of the holders of two-thirds of all outstanding stock, both preferred and common, at a special meeting called therefor in accordance with the provisions of the articles of incorporation and the by-laws of such corporation. But if authorized by the articles to provide for the issue of preferred stock of any class or classes in series and subject to any restrictions in the articles contained, the board of directors may, without action by the stockholders, change preferred stock of any series owned by the corporation and held in its treasury, to preferred stock of one or more other series of the same class and then or theretofore provided for by the board of directors, as provided in subsection (1) of this section.

(3) Any public service corporation having redeemed or acquired and canceled any preferred stock may by resolution of its board of directors give such stock the status of authorized and unissued shares (within the total authorized amount of the capital stock of such corporation) provided that a copy of such resolution duly certified be filed in the office of the secretary of state within six months after its adoption and prior to the reissue of any such stock.

184.14 Securities issued prior to January 1, 1919, by any such corporation, for the issuance of which a certificate should have been, but through excusable neglect or mistake was not, applied for, may be validated by the commission upon application of such corporation, signed and verified by the president and secretary, and setting forth the information required by subsection (1) of section 184.05, and in addition thereto a concise statement of the reasons why such application was not made at the time such securities were

issued. If the commission shall find and determine that such failure to make application was due to excusable neglect or mistake, and was not occasioned by any design to evade compliance with the law, and that such issue was otherwise in accordance with law, the commission shall issue to the corporation a validating certificate.

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 reason-

able 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 section 182.19.

(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.

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.

196.405 REHEARINGS BEFORE COMMISSION; CONDITION PRECEDENT TO JUDICIAL REVIEW; LIMITATION UPON OBJECTIONS IN REVIEW PROCEEDING; FINAL STEP IN EXERCISE OF LEGISLATIVE POWERS. (1) Within twenty days after any order or determination has been made and filed by the commission, any party to the proceeding may apply to the commission for a rehearing in respect to any matters determined in said proceeding. The commission may grant and hold such rehearing on said matters, if in its judgment sufficient reason therefor be made to appear.

(2) The application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers said order or determination to be unlawful or unreasonable. No cause of action arising out of any order, decision or determination of the commission shall accrue in any court to any person or corporation unless such person or corporation shall have made, before the effective date of such order or decision, application to the commission for a rehearing. No person or corporation shall in any court urge or rely on any ground not so set forth in said application.

(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 completely 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.

**196.49 AUTHORIZATION FROM COMMISSION BEFORE TRANSACTING BUSINESS; EXTENSIONS AND IMPROVEMENTS TO BE APPROVED; ENFORCEMENT OF ORDERS.** (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 transact any business of any kind 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.

(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 the taking effect of this section 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 and that the public utility refuses to waive increases in its rates so as to meet the increased cost of service so occasioned. 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) 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 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.

196.52 RELATIONS WITH AFFILIATED INTERESTS; DEFINITION; CONTRACTS WITH AFFILIATES FILED AND SUBJECT TO COMMISSION CONTROL. (1) "Affiliated interests" means and includes the following:

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

(b) Every corporation and person in any chain of successive ownership of 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 which has one or more officers or one or more directors in common with such public utility.

(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) 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, hereafter made or entered into 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 the effective date of this section and in force and effect at that time. The commission shall approve such contract or arrangement hereafter made or entered into 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.

(4) In any proceeding, whether upon the commission's own motion or upon complaint, involving the rates or practices of any

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

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

(6) Whenever the commission shall find upon investigation that any public utility is giving effect to any such contract or arrange-

ment 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.

**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.

**196.81 ABANDONMENT; COMMISSION APPROVAL REQUIRED.** No public utility or railroad as defined in chapters 195 and 196 shall abandon or discontinue service on any line, branch line or extension without first securing the approval of the commission. 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 service 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 con-

sent 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.

196.85 ASSESSMENT OF 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 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 or service; provided, however, that the commission may exempt and relieve such public utility, power district, or railroad from the duty of paying such expenses, or a portion thereof, but only upon a finding that the public interest requires that such public utility, power district, or railroad be thus exempted and relieved, in which event such expenses shall not be chargeable as a part of the remainder described in subsection (2) of this section. The commission shall ascertain such expenses and render a bill therefor, by registered mail, to the public utility, power district or railroad, either at the conclusion of the investigation or services, or from time to time during its progress. Upon bill so rendered such public utility, power district or railroad shall, within thirty days, 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 subsection (4) of section 20.51.

(2) The commission shall annually, within ninety 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 under chapters 184, 196 and 198, and of its duties in relation to street and interurban railways under chapter 195, and shall deduct therefrom all amounts collected under subsection (1) of this section and of subsection (2) of section 184.10. The remainder shall be assessed to the several public utilities and street and interurban railways in proportion to their respective gross operating earnings during the last calendar year. Such assessment shall be paid within thirty days after bill rendered, by registered mail, to the several public utilities, power districts, or

street and interurban railways, and when paid shall be credited to the appropriation made in subsection (4) of section 20.51. The total amount which may be assessed to the public utilities, power districts, and street and interurban railroads, under authority of this subsection, shall not exceed one-fifth of one per cent of the total gross operating revenues of such public utilities, power districts, and railroads during such calendar year.

(3) Amounts assessed against any public utility, power district, or railroad either under subsection (1) or subsection (2) of this section, not paid after thirty days after the mailing of a registered letter notifying the public utility, power district, or railroad of the amount assessed against it, shall draw interest at the rate of fifteen per cent per annum, and upon failure to pay the same the attorney-general shall proceed by action in the name of the state against such public utility, power district, or railroad to collect the amount due, together with interest and the cost of the suit. All assessments hereunder shall be a first lien upon all property of the public utility, power district, or railroad against which the assessment is made, prior to all other liens, debts, claims or demands whatsoever. Such lien may be enforced in an action brought in the circuit court for Dane county or in any court of competent jurisdiction in the county in which the property is located, and the place of trial of said action shall not be changed from the county in which it is commenced, except upon consent of the parties.

226.025 QUALIFICATION OF FOREIGN PUBLIC UTILITY HOLDING COMPANIES; EXCEPTIONS. (1) Within the meaning of this chapter, every foreign corporation shall be deemed to be doing business within the state if, directly or indirectly, through agents, trustees or any other means, it furnishes to any affiliated public utility for use in intrastate operations in this state, any or all of the following: (a) Any managerial, supervisory, engineering, legal, accounting or financial service; (b) any equipment, facilities or commodities, by sale, lease, exchange, conveyance, license or similar arrangement.

(2) Within the meaning of this section the term "affiliated" shall have the same meaning as the term "affiliated interests" as defined in chapter 196. Provided, however, that the mere ownership of stock and receipt of dividends thereon shall not constitute doing business. This section shall not have the effect of impos-

ing upon the corporation described in said section a duty to pay fees. The provisions of this section shall apply to interstate commerce only so far as the constitution and laws of the United States permit.

(3) The appointment of the secretary of state or the designation of a resident agent as attorney for the service of summons, notice, pleadings or process under paragraph (f) of subsection (3) of section 226.02 shall be applicable only to actions or proceedings against the foreign corporations described in this section where the cause of action or proceeding arises out of transactions between such foreign corporations and public utilities operating in this state with which such foreign corporations are affiliated; and to actions or proceedings by or before the commission involving the transactions described in subsection (1) herein, or involving the relation between such foreign corporations and public utilities operating in this state with which they are affiliated.

SECTION 4. The change in the name of the present "Railroad Commission of Wisconsin" to "Public Service Commission of Wisconsin", which is made in the amendment to section 195.01 included in this act, shall not affect the terms of office of any of the present commissioners nor shall it affect the validity of any standards, orders, rules or regulations issued by the Railroad Commission of Wisconsin, nor any proceedings pending before the Railroad Commission of Wisconsin at the time of the taking effect of this act.

SECTION 5. This act shall take effect upon passage and publication.

Approved June 5, 1931.

No. 310, S.]

[Published June 8, 1931.

## CHAPTER 184.

AN ACT to amend subsection (1) of section 144.52 of the statutes, relating to the membership of the committee on water pollution. *The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Subsection (1) of section 144.52 of the statutes is amended to read: (144.52) (1) The committee on water pollution shall consist of the state chief engineer, a member or *other representative* of the railroad commission designated by the commis-