

CHAPTER 184.

SECURITIES OF PUBLIC SERVICE CORPORATIONS.

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184.01 Definitions. 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 which is a railroad as defined in section 195.02, but shall not include a public utility corporation receiving an annual gross revenue of less than \$1,000 for the calendar year next preceding the issuance of any securities by it.

(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, (a) any obligation falling due one year or less after its date and bearing date not later than the day of sale; or (b) any obligation issued to the United States of America in connection with loans for rural telephone facilities made pursuant to the rural electrification act of 1936, as amended, or (c) any securities issued by a corporation organized under chapter 185 for the purpose of furnishing telephone service in rural areas.

History: 1951 c. 389, 712, 726.

184.02 Power of alienation, state control. 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 Issue of securities. (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 corporate 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.

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

184.04 Consideration for securities. 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 75 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 75 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 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 3 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.

History: 1955 c. 661.

184.05 Securities. (1) **APPLICATION TO ISSUE.** 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) **HEARINGS AND INQUIRIES.** 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) **VALUATION OF FRANCHISES.** 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) **CLASSES PROPORTIONATE.** 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. The provisions of this subsection shall not apply to common stock issued by a public service corporation which has issued or proposes to issue its notes, bonds or other evidences of indebtedness to the United States of America in connection with loans for rural telephone facilities made pursuant to the rural electrification act of 1936, as amended.

History: 1951 c. 389; 1955 c. 652.

184.06 Certificate of authority, impounding securities. (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 Securities accounted for. 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 Court review. Any action of the commission under the provisions of this chapter shall be subject to review in the manner provided in chapter 227.

184.09 Penalties. (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 or more than 10 years, or by both fine and imprisonment.

184.10 Fees for authority to issue securities, expenses. (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 or to make an appraisal of the property 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, or to such an appraisal of the property. The procedure set up by section 196.85 for the rendering and collection of bills rendered under section 196.85 shall be in all ways applicable to the rendering and collection of bills under this section. All amounts paid under authority of this subsection shall be credited to the appropriation made in s. 20.660 (41).

184.11 Impaired capital. 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 s. 180.38.

History: 1955 c. 661.

184.12 Judicial sale of corporation, reorganization. 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 Preferred stock, dividends, preferences, voting power, classes, interest, certificate, reissue. (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, except that the form of certificates of stock hereafter issued by any public service corporation which is subject to ch. 180 shall be governed by s. 180.18. 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 sub. (1).

(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.

History: 1953 c. 399.

Revision Committee Note, 1953: The amendment of (2) permits public utilities subject to ch. 180 to utilize the simplified certificate forms permitted under ch. 180. The question whether 184.13 should be superseded generally by the corresponding provisions of ch. 180 should be deferred for further study. It is not practicable to repeal 184.13 at this time, since it is understood to be the authority for issuance of preferred stock by some co-operatives and railroad corporations not clearly subject to ch. 180. Further, public utilities remain subject to some special provisions in 196.80 and elsewhere which differ from the corresponding provisions of ch. 180. (Bill 524-S)

184.14 Validation of securities issued without certificate. Securities issued 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 section 184.05 (1), 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.