

CHAPTER 196

REGULATION OF PUBLIC UTILITIES

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

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

(2) "Conveyance of telephone messages" or "conveyance of telegraph messages" means the transmission by a telephone or telegraph public utility of voice communication or the transmission by a telephone or telegraph public utility of

information, data or material other than by voice communication.

(3) "Indeterminate permit" means any 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.

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

(5) "Public utility" means every corporation, company, individual, association, their lessees, trustees or receivers appointed by any court, and every sanitary district, town, village or city that may own, operate, manage or control any toll bridge or all or any part of a plant or equipment, within the state, for the conveyance of telephone messages, for the receiving, transmitting or delivery of messages by telegraph, or for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public. "Public utility" does not include a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members only. "Public utility" includes any person engaged in the transmission or delivery of natural gas for compensation within this state by means of pipes or mains and any person, except a governmental unit, who furnishes services by means of a sewerage system either directly or indirectly to or for the public.

(6) "Railroad" has the meaning given under s. 195.02.

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

History: 1977 c. 29, 418; 1981 c. 390; 1983 a. 27, 53, 76, 192, 425, 538.

Commission may determine that holding company, formed by public utility corporation to engage in non-utility business ventures, is itself public utility, where holding company possesses power to control utility plant or equipment or where arrangement is device to evade regulatory jurisdiction. 71 Atty. Gen. 147.

196.02 Commission's powers. (1) The commission has jurisdiction to supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction.

(2) In this subsection, "public utility" does not include a telephone cooperative except as provided under s. 196.205. The commission shall provide for a comprehensive classification of service for each public utility. The classification may take into account the quantity used, the time when used, the purpose for which used, and any other reasonable consideration. Each public utility shall conform its schedules of rates, tolls and charges to such classification.

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

(4) (a) The commission may inquire into the management of the business of all public utilities. The commission shall keep itself informed as to the manner and method in which the same

is conducted. The commission may obtain from any public utility any information necessary 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 requires, the following information respecting the identity of the holders of its voting capital stock in order to enable the commission to determine whether the holders constitute an affiliated interest within the meaning of this chapter:

1. The names of each holder of one percent or more of the voting capital stock of the public utility.

2. The nature of the property right or other legal or equitable interest which the holder has in the stock.

3. Any other similarly relevant information which the commission prescribes and directs.

(c) If any public utility fails 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 the information immediately or to show good cause why the information cannot be obtained. Failure of any public utility to comply with the order of the commission is a violation of this chapter within the meaning of s. 196.66.

(5) The commission or any commissioner or any person employed by the commission for that purpose may, upon demand, inspect the books, accounts, papers, records and memoranda of any public utility, and examine under oath any officer, agent or employe of the public utility in relation to its business and affairs. Any person, other than one of the commissioners, who makes a demand shall produce his or her authority to make the 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 the time and place the commission designates of any books, accounts, papers or records kept by the public utility outside the state, or verified copies in lieu thereof, if the commission orders. If a public utility fails or refuses to comply with the order or subpoena, for each day of the failure or refusal the public utility shall forfeit not less than \$50 nor more than \$500.

(7) **COMMISSION INITIATIVE.** In any matter within its jurisdiction, including, but not limited to, chs. 184, 197 and this chapter, the commission may initiate, investigate and order a hearing at its discretion upon such notice as it deems proper.

(8) **EMPLOY COUNSEL.** The commission may employ counsel in any proceeding, investiga-

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tion, hearing or trial had by it or in which it is a party, and the expenses thereby incurred shall be charged to the commission's appropriation.

(9) **TECHNICALITIES DISREGARDED.** Substantial compliance with the requirements of the statutes shall be sufficient to make effective any rule, regulation, order or action of the commission. No rule, regulation, order or action of the commission is invalid for any omission of a technical nature.

(10) **COMMISSION NOTICES; CERTIFICATIONS.** Any notice of investigation or hearing or certification to a copy of a record of the commission may be issued or certified by any member of the commission or by its secretary or assistant secretary.

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

History: 1977 c. 29 ss. 1329, 1331, 1333, 1352; 1977 c. 418; 1981 c. 148; 1983 a. 27, 53.

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

196.03 Utility charges and service; reasonable and adequate. (1) Each public utility shall 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 2 or more municipalities as a regional unit if the same public utility serves the municipalities and if the commission determines that 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 fluoridating the water in the area served by the public water utility if the governing body of the municipality which owns or is served by the public water utility authorizes the fluoridation of water by the public water utility.

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

public utility may recover its expenditures under this subsection.

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

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

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

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

History: 1981 c. 20, 342; 1983 a. 53.

196.04 Facilities granted other utilities; physical telephone connections; petition; investigation. (1) (a) *Definitions.* In this section:

1. "Transmission equipment and property" means any conduit, subway, pole, tower, transmission wire or other equipment on, over or under any street or highway.

2. "Physical connection" means the number of trunk lines or complete wire circuits and connections required to furnish reasonably adequate telephone service between telephone utilities.

(b) *Transmission equipment and property access.* 1. Any person who owns transmission equipment and property shall permit, for reasonable compensation, the use of the transmission equipment and property by any public utility if public convenience and necessity require such use and if the use will not result in irreparable injury to any owner or user of the transmission equipment and property or in any substantial detriment to the service to be rendered by the owner or user.

2. Every public 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 if:

a. Public convenience and necessity require the connection;

b. The connection will not result in irreparable injury to the owners or other users of the

facilities of the public utilities making the connection; and

c. The connection will not result in any substantial detriment to the service to be rendered by any of the public utilities making the connection.

(2) If there is a failure to agree upon use of transmission equipment and property under sub. (1) or the conditions or compensation for the use, or if there is a failure to agree upon the physical connections or the terms and conditions upon which the physical connections shall be made, any public utility or any other person interested may apply to the commission. If, after investigation, the commission determines that public convenience and necessity require the use or physical connections and that the use or physical connections will not result in irreparable injury to the owner or other users of the transmission equipment and property or of the facilities of the public utilities or in any substantial detriment to the service to be rendered by the owner or the public utilities or other users of the transmission equipment and property or facilities, the commission, by order, shall direct that the use be permitted and that the physical connections be made. The commission shall prescribe reasonable conditions and compensation for the use and shall determine how and within what time the connections shall be made and by whom the expense of making and maintaining the connections shall be paid. An order under this subsection may be revised by the commission.

(4) If the parties cannot agree and the commission finds that public convenience and necessity or the rendition of reasonably adequate service to the public requires that a public utility 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 be extended on, over or under the right-of-way of any public utility, the commission may order the extension by the public utility or railroad on, over or under the right-of-way of the other if it will not materially impair the ability of the railroad or public utility, on, over or under whose right-of-way the extension would be made, to serve the public. The commission shall prescribe lawful conditions and compensation which the commission deems equitable and reasonable in light of all the circumstances.

History: 1983 a 53

196.05 Public utility property; valuation; re-valuation. If the commission deems it proper or necessary for 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: 1983 a 53.

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) The commission may require any public utility engaged directly or indirectly in any business other than that of the production, transmission or furnishing of heat, light, water or power or the conveyance of telephone messages or telegraph messages to keep and render separately to the commission in like manner and form the accounts of all such other business. This chapter applies to the books, accounts, papers and records of such other business if the commission requires the keeping and rendering separately of the accounts under this subsection.

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

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

History: 1977 c 418; 1983 a 53.

196.07 Balance sheet filed annually. (1) Each public utility shall close its accounts annually on December 31 and promptly prepare a balance sheet of that date. On or before the following April 1 every public utility shall file with the commission the balance sheet together with any other information the commission prescribes, verified by an officer of the public utility. The commission, for good cause shown, may extend the time for filing the balance sheet and prescribed information.

(2) If a public utility fails to file a report with the commission containing its balance sheet and other information prescribed by the commission by the date the report is due under sub. (1), the commission may prepare the report from the records of the public utility. All expenses of the commission in preparing the report, plus a penalty equal to 50% of the amount of the expenses, shall be assessed against and collected

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from the public utility under s. 196.85. The amount of the charge to a public utility shall not be limited by s. 196.85 (1) and shall be in addition to any other charges assessable under s. 196.85. The penalty provision of the charge shall be credited to the general fund under s. 20.906.

History: 1983 a. 53.

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

(2) Each public utility with any utility department having operating revenues of \$50,000 or more shall publish as a class 1 notice, under ch. 985, at least once each year, in the territory served by the utility, a true balance sheet and income account of its financial affairs. If the accounts of any public utility are kept by districts, a class 1 notice shall be published separately for each district. The notice, in addition to the balance sheet and income account for the entire company, shall include a condensed income and operating statement for the district. The form and time of making publication shall be prescribed by the commission.

History: 1975 c. 142; 1983 a. 53.

196.09 Depreciation rates and practices; findings by commission; dividends from reserves; retirements. (1) In this section, "public utility" does not include a telephone cooperative except as provided under s. 196.205. Every public utility shall file with the commission, within such time as may be required by the commission, its estimate of the average annual rate of depreciation required for each of its classes of fixed capital used for public utility purposes, and of the composite annual rate of depreciation required for such fixed capital as an aggregate, which shall constitute the public utility's estimates of the amount which should be returned to it out of its rates for service, to meet the depreciation of its property.

(2) After the submission of the estimates under sub. (1), the commission shall review the estimates. If the commission determines that the estimates submitted are reasonable and proper, it shall certify its determination to the public utility. If the commission determines that the estimates submitted are not reasonable and proper, it shall certify to the public utility the percentages which it considers reasonable and proper. If the fixed capital accounts of the public utility are not subdivided 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 certifies to the public utility its findings as to the percentages required for depreciation under sub. (2), the public utility shall have 30 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 from the certification as provided in this chapter.

(4) The commission may provide, in order to meet changing conditions, that a public utility submit from time to time the estimate required under sub. (1). If it requires such resubmission of estimates, the commission shall follow the procedure for certifying its findings under sub. (2). 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, any retirements actually made and any other relevant factor.

(5) If the commission establishes, by certification or order, the reasonable and proper percentages of depreciation, the percentages shall constitute the percentages to be used in any proceeding involving the rates or practices of the public utility, except that if at the time of such proceeding the commission finds 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 the new percentages under this section.

(6) (a) If the commission establishes for any public utility, by certification or order, the percentages necessary for depreciation on fixed capital used for public utility purposes, the public utility shall credit to its depreciation reserve in each accounting period the amount required to provide for depreciation at the percentage established. If the public utility is a corporation, the corporation may not 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, except as provided under par. (b).

(b) After application and hearing the commission, upon a finding that it is necessary in the public interest, may 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 reasonably may be employed, the commission shall establish, under sub. (2), 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. If a public utility accounts for depreciation on a sinking fund basis, the public utility shall:

(a) Credit to the reserve the amount charged to operating expenses plus the amount obtained by applying the interest rate to the reserve balance.

(b) Be subject to the same restrictions and regulations in its accounting for the entire amount to be credited to the depreciation reserve as are applicable to other public utilities which account for depreciation by other methods under this section.

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

History: 1981 c 148; 1983 a 53

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

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

196.11 Profit sharing and sliding scales. (1)

A public utility may enter into any reasonable arrangement with its consumers or employes, for the division or distribution of its surplus profits, or providing for a sliding scale of charges, or other financial device if the arrangement is:

(a) Practicable and advantageous to the parties interested; and

(b) Found by the commission to be reasonable and just and consistent with the purposes of this chapter.

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

History: 1981 c 148; 1983 a 53.

196.12 Report by public utilities; items. (1)

Each public utility shall furnish to the commission, in the form and at the time the commission requires, accounts, reports or other information which shows in itemized detail:

(a) Depreciation.

(b) Salaries and wages.

(c) Legal expenses.

(d) Taxes and rentals.

(e) The quantity and value of material used.

(f) Receipts from residuals, by-products, services or other sales.

(g) Total and net cost.

(h) Gross and net profit.

(i) Dividends and interest.

(j) Surplus or reserve.

(k) Prices paid by consumers.

(L) Any other information whether or not similar to the information under pars. (a) to (k).

(2) No public utility operated by a city or village having a population of less than 5,000 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 deems necessary, except that if the commission conducts any investigation of the public utility upon formal complaint, the commission may require the detailed reports required under sub. (1).

History: 1983 a 53

196.13 Commission's report. (1) The commission shall publish biennial reports showing its proceedings together with any financial or other data which concerns and is appropriate for all public utilities and may publish any other report related to public utilities.

(2) The commission shall publish in its reports the value of all the property actually used and useful for the convenience of the public of a public utility if the commission has held a hearing on the public utility's rates, charges,

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service or regulations or if the commission has otherwise determined the value of the public utility's property.

History: 1983 a. 53.

196.14 Records public; exceptions. Any fact or information in the possession of the commission shall be public, and all reports, records, files, books, accounts, papers and memoranda in the possession of the commission shall be open to inspection by the public at all reasonable times, except:

(1) Any information which the commission determines to be in the public interest to withhold from the public. The commission may withhold the information for a period determined by the commission, not exceeding 90 days.

(2) Any information in a report filed under s. 196.72.

History: 1983 a. 53.

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 a public utility. The commission shall prescribe reasonable regulations for measurement, examination and testing of the product or service.

(2) The commission shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurement of public utility service.

(3) This section does not limit any power of a municipal council under s. 196.58.

History: 1983 a. 53.

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

(2) Any consumer may have an appliance tested under this section upon payment of a fee fixed by the commission.

(3) The commission shall establish a reasonable fee to be paid for testing appliances under this section if a consumer requests the test. The fee shall be paid by the consumer at the time of his or her request, but shall be repaid to the consumer if the appliance is found to be defective or incorrect to the disadvantage of the consumer.

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

History: 1983 a. 53.

196.171 Examination of meters, pipes, fittings, wires and works; entering buildings for.

(1) Any officer or agent of any public utility furnishing or transmitting water, gas or electric current to the public or for public purposes may enter, at any reasonable time, any place supplied with gas, electricity or water by the public 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 for the purpose of ascertaining the quantity of gas, electricity or water supplied.

(2) No officer or agent of a public utility may enter any premises under this section unless the officer or agent:

(a) Was duly appointed by the public utility for the purpose of acting under this section.

(b) Exhibits written authority signed by the president, by a vice president and secretary, or by a vice president and assistant secretary of the public utility. The authority of any officer or agent of a municipally owned public utility shall be signed by the commissioner of public works or by any other official in charge of the public utility.

(3) Any person who directly or indirectly prevents or hinders any officer or agent from entering a premises, or from making an inspection, examination, removal or installation under this section shall be fined not more than \$25 for each offense.

History: 1983 a. 53.

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

History: 1979 c. 34; 1983 a. 189 s. 329 (4)

196.18 Entry upon premises. The commission, its agents, experts or examiners may enter any premises occupied by a public utility to make any examination or test under this chapter and may set up and use on the premises any apparatus or appliance and occupy reasonable space for the examination or test.

History: 1983 a. 53.

196.19 Publish schedules; regulations; files; joint rates. (1) Each 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 may not be changed except as provided under this chapter.

(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 as much of the schedules filed under sub. (1) as the commission determines necessary for the use of the public shall be printed in plain type, and kept on file in every public utility station or office where payments are made by consumers in a form and place readily accessible to the public.

(4) If a schedule of joint rates or charges is in force between public utilities, the schedule shall be printed and filed with the commission under sub. (1). The commission shall determine the portion of the schedule necessary for the use of the public. The public utilities shall file the portion of the schedule under sub. (3).

(5) If public utilities engaged in the conveyance of telephone messages are furnishing joint telephone service to the public, or are required to furnish the service, and refuse or neglect to establish joint tolls, the commission, after notice and a public hearing, may establish by order the joint tolls. If the public utilities fail to agree upon the apportionment of the joint tolls within 20 days after service of the order, the commission, upon a like hearing, may issue a supplemental order determining the apportionment of such joint tolls. The supplemental order shall take effect as part of the original order.

(6) The commission may prescribe the form in which any schedule is issued under this section by any public utility.

History: 1983 a 53 ss 28, 35

196.20 Rules on service; changes in rates.

(1) The rate schedules of any public utility shall include all rules applicable to the rendition or discontinuance of the service to which the rates specified in the schedules are applicable. No change may be made by any public utility in its

schedules except by filing the change as proposed with the commission. No change in any public utility rule which purports to curtail the obligation or undertaking of service of the public utility shall be effective without the written approval of the commission after hearing, except that the commission, by emergency order, may make the rule, as filed, effective from the date of the order, pending final approval of the rule after hearing.

(2) (a) Any 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 change with the commission, unless:

1. During the 10-day period the commission, either upon complaint or upon its own motion, by order, suspends the operation of the proposed change; or

2. The commission, upon application of any public utility, directs that a proposed reduction in rates be made effective less than 10 days after filing the proposed reduction.

(b) 1. A suspension under par. (a) 1 shall be effective for a period not exceeding 4 months, during which period the commission shall investigate any matter relative to the reasonableness or lawfulness of any change in schedule as filed. After the investigation the commission, by order, shall approve or disapprove the change, except as provided under subd. 2. The commission shall give the public utility proposing the change an opportunity for hearing prior to issuing any order disapproving a change. If the commission disapproves the change, the change shall be ineffective.

2. If the commission orders a suspension under par. (a) 1, the commission, after notice to the public utility of its objections to the change and after giving the public utility an opportunity to be heard on the objections, may prescribe a schedule which, revised on the basis of the objections, the commission finds to be lawful and reasonable instead of disapproving the schedule under subd. 1.

(2m) Except as provided under sub. (5), no change in schedules which constitutes an increase in rates to consumers may be made except by order of the commission, after an investigation and hearing.

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

(4) (a) In this subsection:

1. "Automatic adjustment clause" means a provision included in the rate schedule of an electric public utility after investigation, notice and hearing which permits the electric public utility to recover in rates, without prior hearing

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and order of the commission, an increase in costs incurred by the electric public utility.

2. "Electric public utility" means a public utility whose purpose is the generation, transmission, delivery or furnishing of electric power but does not include a public utility owned and operated wholly by a municipality or cooperative and does not include any public utility which purchases, under federal or state approved wholesale rates, more than 50% of its electric power requirements from other than an affiliated interest as defined under s. 196.52. "Electric public utility" does not include any Class A utility, as defined under s. 199.03 (4), whose electric generation equipment has a total capacity of less than 30 megawatts.

(b) An electric public utility may not recover in rates any increase in cost, including fuel, by means of the operation of an automatic adjustment clause.

(c) If an increase in fuel costs is of an extraordinary or emergency nature, the commission, after a hearing limited in scope to the question of the increase in fuel costs, may grant a rate increase to an electric public utility.

(d) The commission shall promulgate a rule.

(5) (a) In this subsection:

1. "Applicant" means a small telephone company which files with the commission a proposed change in its rate schedules which constitutes an increase in rates to consumers.

2. "Small telephone company" means any public utility which provided landline local telephone service as of January 1, 1984, and which provides such service to less than 7,500 consumers in this state.

(b) 1. If an applicant files a proposed change in rate schedule with the commission, it shall file with the proposed change, on a form prescribed by the commission by rule, information sufficient for the commission to consider the proposed change.

2. Within 20 days after an applicant files information under subd. 1, the commission may notify the applicant of any additional information necessary for the commission's consideration of the proposed change.

3. Within 5 days after receipt of any information under subd. 2, the commission may notify an applicant of any additional information necessary for the commission's consideration of the applicant's proposed change.

(c) 1. If the commission has received all of the information it has requested under par. (b) or 20 days have elapsed since the applicant filed a proposed change in rates and the commission has not requested any such information or 5 days have elapsed since the commission has requested and received any information under par. (b), whichever is sooner, the commission

shall require the applicant to send a written notice to all of its consumers and to any other person requesting notice. The notice shall designate a period of time during which the commission will receive written comments in favor of or against the applicant's proposed rate increase and during which a request may be submitted under subd. 2.

2. After the applicant sends the notice under subd. 1, any person may submit to the commission a written request to have a hearing under s. 227.07 on the applicant's proposed changes and shall specify his or her interest in the proceeding. If the commission determines that any person who has submitted a request under this subdivision is entitled to have all of the rights of a party under s. 227.07, the commission shall conduct a hearing on the proposed changes.

3. If the period of time designated in a notice under subd. 1 has expired and the commission does not determine that at least one person is entitled to a hearing under subd. 2, or prior to any hearing to which the commission determines a person is entitled under subd. 2, the commission shall give the applicant, commission staff and full parties an opportunity to propose stipulations of facts, identify any issue between the parties and submit arguments in writing on such issues. On any issue for which no stipulation is reached, the commission shall conduct the hearing requested under subd. 2, or if no hearing was requested under subd. 2, the commission shall give an opportunity for a hearing to the applicant and to the commission staff.

(d) The commission shall issue a final order on the merits of the application under this subsection no later than 120 days after the notice is sent under par. (c) 1, except that if the commission has conducted a hearing on the proposed increase the commission shall issue the order no later than 180 days after the notice is required to be sent.

History: 1981 c. 148; 1983 a. 27, 53, 461, 502

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

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

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

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

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

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

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

(2) The ballot used for the election under sub.

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

History: 1981 c 148

196.21 Publicity of revised schedules. A public utility shall file new schedules under s. 196.19 in every station and office of the public utility where consumers make payments. A public utility shall file new schedules under this section at least 10 days prior to the time the new schedules take effect unless the commission prescribes a shorter time period.

History: 1983 a. 53

196.22 Discrimination forbidden. No public utility may charge, demand, collect or receive more or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in the schedules for the service filed under s. 196.19, including schedules of joint rates, as may at the time be in force, or demand, collect or receive any rate, toll or charge not specified in the schedule.

History: 1983 a. 53

196.24 Agents of commission; powers. (1) For the purpose of making any investigation with regard to any public utility the commission may appoint, by an order in writing, an agent whose duties shall be prescribed in the order.

(2) In the discharge of his or her duties, an agent appointed under sub. (1) shall have any inquisitional power granted to the commission and the power of a court commissioner to take depositions under s. 757.69 (3) (b).

(3) The commission may conduct any number of investigations contemporaneously through different agents, and may delegate to any agent the authority to take testimony bear-

ing upon any investigation or at any hearing. The decision of the commission shall comply with s. 227.09 and shall be based upon its records and upon the evidence before it.

History: 1975 c. 414 s 28; 1983 a. 53.

196.25 Questionnaires to utilities. (1) If a public utility receives from the commission any questionnaire, the public utility shall respond fully, specifically and correctly to each question. If a public utility is unable to answer any question, the public utility shall give a good and sufficient reason for its failure. Every answer by a public utility under this section shall be verified under oath by the president, secretary, superintendent or general manager of the public utility and returned to the commission at its office within the period fixed by the commission.

(2) If required by the commission, a public utility shall deliver to the commission the original or a copy of any map, profile, contract or engineer's report and any other document, book, account, paper or record with a complete inventory of all its property, in such form as the commission directs.

History: 1983 a. 53.

196.26 Complaint by consumers; hearing; notice; order; costs. (1) COMPLAINT. In this section "complaint" means a complaint filed with the commission that any rate, toll, charge or schedule, joint rate, regulation, measurement, act or practice relating to the provision of heat, light, water, power or telephone service is unreasonable, inadequate, unjustly discriminatory or cannot be obtained.

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

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

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

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subpoena any witness at the request of the public utility or complainant.

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

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

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

History: 1981 c. 148; 1983 a. 53

196.28 Summary investigations. (1) If the commission believes that any rate or charge is unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any public utility should for any reason be made, the commission on its own motion summarily may investigate with or without notice.

(2) If, after an investigation under sub. (1), the commission determines that sufficient grounds exist to warrant a hearing on the matters investigated, the commission shall set a time and place for a hearing. A hearing under this section shall be conducted as a hearing under s. 196.26.

(3) Notice of the time and place for a hearing under sub. (2) shall be given to the public utility, and to such other interested persons as the commission deems necessary. After the notice has been given, proceedings shall be had and conducted in reference to the matter investigated as if a complaint had been filed with the commission under s. 196.26 (1) relative to the matter investigated. The same order or orders may be made in reference to the matter as if the investigation had been made on complaint under s. 196.26.

History: 1977 c. 29 s. 1654 (10) (c); 1983 a. 53 ss. 39, 41.

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

196.30 Utilities may complain. Any public utility may file a complaint with the commission

on any matter affecting its own product or service.

History: 1983 a. 53

196.31 Intervenor financing. (1) In any proceeding before the commission, the commission may compensate any participant in the proceeding who is not a public utility, for some or all of the reasonable costs of participation in the proceeding if the commission finds that:

(a) The participation is necessary to provide for the record an adequate presentation of a significant position in which the participant has a substantial interest, and that an adequate presentation would not be possible without a grant of compensation; or

(b) The participation has provided a significant contribution to the record and has caused a significant financial hardship to the participant.

(2) The cost of compensation granted under this section shall be assessed under s. 196.85 (1), except that, if the commission finds that the participation for which compensation is granted relates more to a general issue of utility regulation rather than to an issue arising from a single proceeding, the cost of the compensation may be assessed under s. 196.85 (2).

(3) The commission shall adopt rules to implement this section.

History: 1983 a. 27.

196.32 Witness fees and mileage. (1) Any witness who appears before the commission or its agent, by order, shall receive for the applicable attendance the fees 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 under s. 885.07, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairperson of the commission. Fees paid under this section shall be charged to the appropriation for the commission under s. 20.155 (1) (g).

(2) No witness subpoenaed at the instance of parties other than the commission may be compensated under this section unless the commission certifies that the testimony of the witness was material to the matter investigated.

History: 1983 a. 53.

196.33 Depositions. The commission or any party in any investigation or hearing may 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 a

deposition shall be charged to the appropriation for the commission under s. 20.155 (1) (g).

History: 1983 a. 53

196.34 Stenographic records. The commission shall keep a complete record of its proceedings before the commission or its agent on any formal investigation or hearing held and shall appoint a stenographer to record all testimony presented at such proceedings.

History: 1983 a. 53

196.36 Transcripts as evidence; free to parties. (1) The commission shall receive into evidence a transcribed copy of the evidence and proceedings, or any specific part of the evidence and proceedings, on any investigation or hearing taken by the stenographer appointed by the commission if the stenographer certifies that the copy is a true and correct transcript of all the testimony or of the testimony of a particular witness, or of any other specific part of the investigation or hearing, that the transcript was carefully compared by the stenographer with his or her original notes, and that the copy is a correct statement of the evidence presented and proceedings held in the investigation or hearing. The certified copy shall have the same effect as if the stenographer were present and testified to the correctness of the copy.

(2) A copy of a transcript under this section shall be furnished on demand free of cost to any party to the investigation or hearing from which the transcript is taken.

History: 1983 a. 53

196.37 Lawful rates; reasonable service. (1) If, after an investigation under this chapter and ch. 197, the commission finds 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 order reasonable rates, tolls, charges, schedules or joint rates to be imposed, observed and followed in the future.

(2) If the commission finds that any measurement, regulation, practice, act or service is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or that any service is inadequate, or that any service which reasonably can be demanded cannot be obtained, the commission shall determine and make any just and reasonable order relating to a measurement, regulation, practice, act or service to be furnished, imposed, observed and followed in the future.

(3) Any public utility to which an order under this section applies shall make such changes in

schedules on file under s. 196.19 to make the schedules conform to the order. The public utility may not make any subsequent change in its rates, tolls or charges, or joint rates, without the approval of the commission.

History: 1981 c. 390; 1983 a. 53 ss. 47, 50.

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

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

Commission order establishing rates was not supported by substantial evidence. *Madison Gas & Elec. Co. v. PSC*, 109 W (2d) 127, 325 NW (2d) 339 (1982)

196.372 Railroad telephone service. If the commission receives a complaint that telephonic service with any railroad, as defined under s. 195.02, is inadequate or in any respect unreasonably or unjustly discriminatory or that the service is unavailable, the commission shall investigate the same. If upon investigation the commission finds that any telephonic service is inadequate or unreasonably or unjustly discriminatory or that the service is unavailable, it shall determine and by order fix a reasonable regulation, practice or service to be installed, imposed and observed and followed in the future.

History: 1977 c. 29 s. 1340; 1983 a. 53 s. 83; 1983 a. 192.

196.374 Energy conservation programs. (1) In this section "utility" means a class A gas or electric utility, as defined by the commission. Every utility shall spend annually at least 0.5% of its total annual operating revenues on programs designed to promote and accomplish energy conservation. The commission may require a utility to spend annually for the purpose of promoting and accomplishing energy conservation, an amount which is more or less than 0.5% of its annual operating revenues if, after notice and hearing, the commission finds that the expenditure of such amount is in the public interest.

(2) The commission may prescribe all or part of any program to be funded under sub. (1). The commission may require that a utility establish a program funded under sub. (1) which is applicable only to a group of consumers specified by the commission because the group has special energy conservation needs. Such a group may include, but is not limited to, low-income utility consumers, under guidelines established by the commission.

(3) The commission shall authorize every utility to recover from the utility's ratepayers any prudent energy conservation expenditure authorized by the commission. The commission may prescribe the accounting treatment of

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such an expenditure, including, but not limited to, escrow accounting.

History: 1983 a. 27.

196.375 Adequate service; reasonable rates. Upon complaint by any party affected, setting forth that any grantee of a permit to develop hydraulic power and generate hydroelectric energy for sale or service to the public is not furnishing consumers of this state with adequate service at a reasonable rate as a result of sales of the energy outside of the state, the commission may declare any or all contracts entered into by the grantee for the sales null and void insofar as the contracts interfere with the service or rate. The commission may not make a declaration under this section except after a hearing and investigation and a recorded finding that convenience and necessity require the sale of a specified part or all such energy within this state.

History: 1983 a. 53.

196.39 Change, amendment and rescission of orders; reopening cases. The commission 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, may 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 in the case, for any reason. Any order rescinding, altering, amending or reopening a prior order shall have the same effect as an original order. Within 30 days after service of an order, the commission may correct an error or omission in the order related to transcription, typing or calculation without hearing if the correction does not alter the intended effect of the order.

History: 1983 a. 53, 144, 538

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

196.395 Test, conditional, emergency and supplemental orders; waiver of conditions in orders. The commission may issue an order calling for a test of actual results under requirements prescribed by the order, during which test period the commission may retain jurisdiction of the subject matter. The commission may issue conditional, temporary, emergency and supplemental orders. If an order is issued upon certain stated conditions, any party acting upon any part of the order shall be deemed to have accepted and waived all objections to any condition contained in the order.

History: 1983 a. 53

Temporary and emergency rates may be appropriately and widely used by public service commission where justified by

circumstances. *Friends of Earth v. Public Service Commission*, 78 W (2d) 388, 254 NW (2d) 299.

196.40 Orders and determinations; time of taking effect. Every order or determination of the commission shall take effect 20 days after the order or determination has been filed and served by personal delivery or mail to all parties to the proceeding in which the order or determination was made or to their attorneys, unless the commission specifies a different date upon which the order or determination shall be effective. After the effective date every order or determination shall be on its face lawful and reasonable unless a court determines otherwise under s. 227.20.

History: 1983 a. 53

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

History: 1983 a. 53.

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

196.43 Injunction procedure. (1) No injunction may be issued in any proceeding for review under ch. 227 of an order of the commission, suspending or staying the order except upon application to the circuit court or presiding judge thereof, notice to the commission and any other party, and hearing. No injunction which delays or prevents an order of the commission from becoming effective may be issued in any other proceeding or action in any court unless the parties to the proceeding before the commission in which the order was made are also parties to the proceeding or action before the court.

(2) No injunction may be issued in any proceeding for review under ch. 227, 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 at least 2 sureties enter into an undertaking on behalf of the petitioner or plaintiff. The court or presiding judge of the court shall direct that the sum of the undertaking be enough to effect payment of any damage 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 the judge or court in its discretion directs. No order or judgment in any proceeding or action may be stayed upon appellate court review unless the petitioner or plaintiff enters into the undertaking under this subsection in addition to any undertaking required under s. 808.07.

History: Sup. Ct. Order, 67 W (2d) 775; 1977 c. 187 s. 135; 1983 a. 53.

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

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

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

History: Sup Ct Order, 67 W (2d) 775; 1977 c. 29 ss. 1337, 1654 (10) (c), 1656 (43); 1977 c. 272; 1981 c. 390 s. 252; 1983 a. 53.

196.48 Incriminating evidence. No person may be excused from testifying or from producing books, accounts and papers in any proceeding based upon or growing out of any violation of chs. 195 to 197, on the ground or for the reason that the testimony or evidence may tend to incriminate or subject the person to penalty or forfeiture. A person who testifies under this section may not be:

(1) Prosecuted or subjected to any penalty or forfeiture for any transaction, matter or thing about which the person has testified or anything which the person has produced.

(2) Exempted from prosecution or punishment for perjury in testifying.

History: 1977 c. 273; 1981 c. 390; 1983 a. 53.

196.49 Authorization from commission before transacting business; extensions and improvements to be approved; enforcement of orders; natural gas. (1) (a) No public utility not legally engaged in performing a utility service on August 1, 1931, in any municipality may 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 the public utility has obtained a certificate from the commission authorizing it to transact public utility business.

(b) This subsection applies only to a public utility which was not legally engaged in performing a public utility service on August 1, 1931, in a municipality and which proposes to commence construction or render service in the municipality. If there is a public utility engaged in similar service in operation under an indeterminate permit in the municipality, ss. 196.495 and 196.50 apply.

(2) No public utility may 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 the public utility has complied with any applicable rule or order of the commission. If a cooperative association has been incorporated under ch. 185 for the production, transmission, delivery or furnishing of light or power and has filed with the commission a map of the territory to be served by the association and a statement showing that a majority of the prospective consumers in the area are included in the project, no public utility may begin any such construction, installation or operation within the territory until after the expiration of 6 months from the date of filing the map and notice. If the cooperative association has entered into a loan agreement with any federal agency for the financing of its proposed system and has given written notice of the agreement to the commission, no public utility may begin any construction, installation or operation within the territory until 12 months after the date of the loan agreement.

(3) (a) In this subsection, "project" means construction of any new plant, equipment, property or facility, or extension, improvement or addition to its existing plant, equipment, property, apparatus or facilities. "Project" does not include 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 were entered into prior to June 7, 1931. The commission may require by rule or special order that a public utility submit, periodically or at such times as the commission specifies and in such detail as the commission requires, plans, specifications and estimated costs of any proposed project which the commission finds will materially affect the public interest.

(b) The commission may require by rule or special order under par. (a) that no project may proceed until the commission has certified that public convenience and necessity require the project. The commission may refuse to certify a project if it appears that the completion of the project will do any of the following:

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1. Substantially impair the efficiency of the service of the public utility.

2. Provide facilities unreasonably in excess of the probable future requirements.

3. When placed in operation, add to the cost of service without proportionately increasing the value or available quantity of service unless the public utility waives consideration by the commission, in the fixation of rates, of such consequent increase of cost of service.

(c) The commission may issue a certificate for the project or for any part of the project which complies with the requirements of this section, or the commission may attach to the issuance of its certificate such terms and conditions as will ensure that the project meets the requirements of this section. The issuance of a certificate under this section shall not be a condition precedent to the exercise of eminent domain under ch. 32.

(5) (a) No public utility furnishing gas to the public in this state may 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 sold previously, or for the purpose of adapting its facilities to use the different kind of gaseous fuel unless the commission certifies that the general public interest and public convenience and necessity require the connection to or use of the different fuel. No public utility may substitute natural gas or a mixture of natural and manufactured gas in lieu of manufactured gas for distribution and sale to the public unless it has obtained from the commission a certificate that the general public interest and public convenience and necessity require the substitution.

(b) Proceedings for a certificate under par. (a) shall be commenced by petition to the commission in a form prescribed by the commission, furnishing such information as the commission by rule or order prescribes. The commission shall prescribe the form of notice, to whom the notice shall be given, and how notice shall be given.

(c) A petition under par. (b) may include one or more municipalities, may be made by one or more public utilities as a joint petition, by any other interested person or by a public utility and any other interested person. The commission may direct the consolidation, separation or consideration of separate petitions as it deems necessary or expedient to a prompt hearing and disposition of the issue.

(d) Upon the filing of a petition under par. (b), notice of hearing on the petition shall be given by the person filing the petition by publication of a class 2 notice, under ch. 985, or by mailing or personal service, as the commission directs by the order under par. (b). Notice under this paragraph shall be given at least 2 weeks prior to hearing on the petition. Proof of notice shall be filed as directed by the commission.

(e) The commission, with or without an order, prior to or during any hearing under this subsection, may frame and prescribe special issues and limit the issues or the nature and extent of proof so as to avoid unnecessary duplication. The commission, with or without an order, may proceed with the hearing as to part of a petition under par. (b) as it may find desirable to a full but speedy hearing upon the petition.

(f) The commission may accept as presumptive evidence in a commission proceeding the facts found in findings and orders of the federal energy regulatory commission or any 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 public utility, and any similar findings or determinations affecting the seller or person furnishing natural gas to any public utility and material to the ultimate determination of the issues in the proceeding. The commission may accept and take judicial notice of its own files and records, including all proceedings and the evidence therein which it finds to be material and relevant. The commission shall give notice of the taking of judicial notice under this paragraph prior to the conclusion of final hearings upon any proceeding so as to give interested parties the right to object to acceptance of the evidence or to contradict the evidence by other competent evidence.

(g) A certificate granted under par. (a) shall be authorized by an order following a hearing. The order shall contain any condition or limitation which the commission deems necessary or practicable, including, but not limited to, exceptions or regulations as to specific communities or public 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 any other regulation, condition and limitation which the commission considers necessary in the public interest.

(h) The commission by order may extend a certificate under par. (a) to more than one public utility or municipality. The commission may prescribe different conditions and regulations for each public utility or municipality if the commission deems the different conditions and regulations necessary to carry out the purposes of this section.

(i) In making a determination under this section, the commission shall consider all appropriate factors affecting the public interest, including, but not limited to, when the substitution of natural or a mixture of natural and manufactured gas is involved, the likelihood of substantial rate reduction from the substitution and the effect of the substitution upon employment, existing business and industries, railroads and other transportation agencies and facilities, upon conveniences, economies and savings to consumers, upon existing gas utilities and their ability to continue to serve the public and upon the state, any of its political subdivisions or any citizen or resident of the state.

(6) If the commission finds that any public utility has taken or is about to take an action which violates or disregards a rule or special order under this section, the commission, in its own name either before or after investigation or public hearing and either before or after issuing any additional orders or directions it deems proper, may bring an action in the circuit court of Dane county to enjoin the action. If necessary to preserve the existing state of affairs, the court may issue a temporary injunction pending a hearing upon the merits. An appeal from an order or judgment of the circuit court may be taken to the court of appeals.

History: Sup Ct Order, 67 W (2d) 775; 1977 c. 187; 1979 c. 110 s. 60 (9); 1983 a. 53.

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

196.491 Advance planning of electric generating facilities and transmission lines. (1) DEFINITIONS. In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Provide any other information required by the commission.

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

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

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

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

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

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

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

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

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

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

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

(f) Because the planning process for facilities siting otherwise incorporates consideration and analysis of environmental impact, s. 1.11 (2) (c) shall not apply to advance plans prepared under par. (a) but the commission shall prepare a single environmental assessment on all plans submitted for approval under par. (a), which shall include a discussion of generic issues related thereto. Such assessment shall be made available to the public at least 30 days prior to the hearing under par. (g). The assessment on the plans is different from an environmental impact statement on a particular facility in that it need not identify the environmental effects of proposed sites for facilities in the plan with the same degree of detail as is required when a particular facility is considered for a certificate of public convenience and necessity under sub. (3). The assessment need not repeat information included in an assessment prepared for a plan submitted under par. (a) on a prior reporting date and with respect to which no material additional data is required or as to which there has been no material change in circumstances. Applicable portions of such assessment may be included by reference in any environmental impact statement prepared by the commission, including a statement prepared in connection

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

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

(i) Except as provided under s. 196.493, a plan shall be approved if, upon the record of the hearing and the written comments submitted under pars. (c) and (e), the commission determines that the plan:

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

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

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

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

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

disapprove the plan or portion thereof, or approve them, subject to such modifications as may be necessary to meet those criteria.

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

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

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

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

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

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

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

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

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

(d) Except as provided under s. 196.493, the application for a certificate of public convenience and necessity shall be approved if the commission determines that:

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

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

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

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

5. The proposed facility complies with the criteria under s. 196.49 (3) (b) if the application is by a public utility as defined in s. 196.01.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401.

196.493 Construction of nuclear power plants limited. (1) DEFINITION. In this section, "nuclear power plant" means a nuclear-fired large electric generating facility as defined under s. 196.491 (1) (g) or a nuclear-fired bulk electric generating facility as defined under s. 196.491 (1) (a).

(2) LIMITS ON CERTIFICATION. The commission may not certify under s. 196.49 (3) (b) or 196.491 (3) any nuclear power plant and may not approve under s. 196.491 (2) any plan which includes a nuclear power plant unless the commission finds that:

(a) A federally licensed facility, or a facility outside of the United States which the commis-

sion determines will satisfy the public welfare requirements of the people of this state, with adequate capacity to dispose of high-level nuclear waste from all nuclear power plants operating in this state will be available, as necessary, for disposal of the waste; and

(b) The proposed nuclear power plant, in comparison with feasible alternatives, is economically advantageous to ratepayers, based upon:

1. The existence of a reliable and adequate nuclear fuel supply;

2. The costs for construction, operation and decommissioning of nuclear power plants and for nuclear waste disposal; and

3. Any other factor having an impact on the economics of nuclear power plants, as determined by the commission.

History: 1983 a. 401.

196.495 Avoidance of duplication in electric facilities. (1) No public utility, and no cooperative association organized under ch. 185 for the purpose of furnishing electric service to its members only, may:

(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 cooperative association.

(b) Make a primary voltage extension to serve the premises of any person not receiving electric service and to which service is available from the facilities of another public utility or another such cooperative association through a secondary voltage extension, unless the other public utility or cooperative association consents to the extension of service in writing or unless the commission, after notice to the interested parties and hearing, determines that the service rendered or to be rendered by the other public utility or cooperative association is inadequate and is not likely to be made adequate, or that the rates charged for service are unreasonable and are not likely to be made reasonable.

(2) If a public utility is rendering electric service under an indeterminate permit to a city or village, no cooperative association may extend any new electric service to the premises of any person inside the corporate limits, existing on January 1, 1961, of the city or village without the written consent of the public utility. Within any area annexed to a city or village after January 1, 1961, in which annexed area a cooperative association or public utility, other than the public utility serving the city or village under an indeterminate permit, is rendering service at the time of the annexation, sub. (1) applies, except that, to make service extensions in the annexed area, a cooperative association:

(a) May not make a new service extension to any premises which are closer to the then existing service facilities of a public utility operating in the city or village under an indeterminate permit than to the then existing service facilities of the cooperative association.

(b) Shall have its distribution service facilities in the annexed area taxed in the same manner as the property of public utilities is taxed under ss. 76.01 to 76.26.

(d) Shall charge the same rates for the same classes of service as those approved or fixed by the commission for the public utility operating under an indeterminate permit in the city or village. The commission by order may approve or fix the rates of the cooperative association in the annexed area.

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

(f) Shall be subject to the authority of the commission to enforce the provisions of this subsection and to issue rules and orders relating to the provisions.

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

(2m) The distribution service facilities of a cooperative association or public utility rendering electric service in an annexed area under sub. (2) shall be subject to acquisition under ch. 197 by a city or village if the city or village operates or proposes to operate its own electric public utility.

(3) Nothing in this section shall preclude any public utility or any cooperative association from extending electric service to its own property or facilities or to another cooperative association for resale.

(4) The commission may enforce orders relating to the extension of electric facilities under this section against a cooperative association serving members only.

(5) In this section, "secondary voltage extension" means an extension normally constructed and operated at a voltage of 600 volts or less. Any other extension shall be deemed a primary extension.

History: 1971 c. 125 s. 521; 1983 a. 53.

Although one utility was serving a farm, when the farm is annexed to a city and a large shopping center is built, the utility having an indeterminate permit to serve the city cannot be barred from serving the area; the PSC should deter-

mine which utility should serve the area. Adams-Marquette E. Coop. v. P.S.C. 51 W (2d) 718, 188 NW (2d) 515

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

196.50 Competing public utilities; indeterminate permits, telephones, telegraphs. (1) CERTIFICATE OF NECESSITY.

No municipality may grant any public utility a license, permit or franchise to own, operate, manage or control any plant or equipment for the conveyance of telephone messages or telegraph messages, or for the production, transmission, delivery or furnishing of heat, light, water or power in the municipality, if there is in operation under an indeterminate permit a public utility engaged in similar service in the municipality under an indeterminate permit, unless the public utility seeking the license, permit or franchise secures from the commission a declaration, after a public hearing of any interested party, that public convenience and necessity require the delivery of service by the 2nd public utility. This subsection shall not prevent or impose any condition upon the extension of any telephone toll line from any municipality into or through any municipality for the purpose of connecting with any telephone exchange in the municipality or connecting with any other telephone line or system.

(2) TELEPHONES, EXTENSION. No public utility furnishing telephone service may install or extend any telephone exchange for furnishing local service in any town if a public utility is engaged in similar service in the town, unless the public utility proposing to install or extend a telephone exchange serves notice in writing upon the commission and upon the other public utility of the installation or extension of the exchange which it proposes to make. A public utility proposing to install or extend a telephone exchange may not make the installation or extension if the commission, within 20 days after service of such notice by the public utility, upon investigation, finds and declares that public convenience and necessity do not require the installation or extensions of the exchange. Any public utility already engaged in furnishing local service to subscribers within any city or village may extend its exchange within the city or village without the authority of the commission. A public utility operating a telephone exchange in any city or village, on demand, shall extend its lines to the limits of the city or village to furnish service, subject to the conditions and requirements prescribed in ss. 196.04 and 196.19 (4) and (5).

(3) SECOND UTILITY. Any permit, license or franchise which contains any term interfering

with the existence of a 2nd public utility is amended to permit any municipality to grant a franchise for the operation of the 2nd public utility.

(4) MUNICIPALITY RESTRAINED. No municipality may construct any public utility if there is in operation under an indeterminate permit in the municipality a public utility engaged in similar service, unless it secures from the commission a declaration, after a public hearing of all parties interested, that public convenience and necessity require the municipal public utility.

(5) INJUNCTION. Pending investigation and finding by the commission as to whether public convenience and necessity require a 2nd public 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 in the issue.

(6) NO DENIAL ON FEDERAL FINANCING. No certificate of convenience and necessity or permit to any public utility under ss. 196.49 and 196.50 shall be denied because of the amount of the public utility's notes, bonds or other evidences of indebtedness issued to the United States in connection with loans for rural telephone facilities made under the rural electrification act of 1936 (7 USC 901, et seq.), as amended, or by reason of the ratio of such indebtedness to the value of the public utility's property or to its other classes of securities.

History: 1977 c 418; 1983 a 53

Cross Reference: For division of service between competing utilities, see 197 01 (4).

196.51 Prior permits and franchises validated. Any 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 in any municipality is valid and shall not be affected by s. 196.50 (1), if the license, permit or franchise was granted prior to April 3, 1911, to any public utility or was under consideration prior to April 3, 1911, in the governing body of any municipality at the time another public utility operating in the municipality obtained an indeterminate permit.

History: 1983 a. 53.

196.52 Relations with affiliated interests; definition; contracts with affiliates filed and subject to commission control. (1) In this section, "person" includes but is not limited to trustees, lessees, holders of beneficial equitable interest, voluntary associations, receivers, partnerships and corporations; and "affiliated interests" means, with respect to a public utility:

(a) Any person owning or holding directly or indirectly 5% or more of the voting securities of the public utility.

(b) Any person in any chain of successive ownership of 5% or more of voting securities of the public utility.

(c) Every corporation 5% or more of whose voting securities is owned by any person owning 5% or more of the voting securities of the public utility or by any person in any chain of successive ownership of 5% or more of voting securities of the public utility.

(d) Any person who is an officer or director of the public utility or of any corporation in any chain of successive ownership of 5% or more of voting securities of the public utility.

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

(f) Any person whom the commission determines as a matter of fact after investigation and hearing to be actually exercising any substantial influence over the policies and actions of the public utility even if such influence is not based upon stockholding, stockholders, directors or officers as specified under pars. (a) to (e).

(g) Any other person whom the commission determines as a matter of fact after investigation and hearing to be actually exercising substantial influence over the policies and actions of the public utility in conjunction with one or more other persons with whom they are related by ownership or blood relationship or by action in concert that together they are affiliated with such public utility for the purpose of this section, even though no one of them alone is so affiliated under pars. (a) to (f).

(3) (a) In this subsection, "contract or arrangement" means a contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial or similar services and any 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 management, supervisory, construction, engineering, accounting, legal, financial or similar services. Except as provided under par. (b), unless and until the commission gives its written approval, any contract or arrangement is not valid or

effective if the contract or arrangement is made between a public utility and an affiliated interest after June 7, 1931. Every public utility shall file with the commission a verified copy of any contract or arrangement, a verified summary of any unwritten contract or arrangement, and any contract or arrangement, written or unwritten, which was in effect on June 7, 1931. The commission shall approve a contract or arrangement made or entered into after June 7, 1931, only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. The commission may not approve any contract or arrangement 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 to each public utility. No proof is satisfactory under this paragraph unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract of the records and accounts or a summary taken from the records and accounts if the commission deems the abstract or summary adequate. The accounts shall be properly identified and duly authenticated. The commission, where reasonable, may approve or disapprove a contract or arrangement without submission of the cost records or accounts.

(b) 1. The requirement for written approval under par. (a) shall not apply to any contract or arrangement if the amount of consideration involved is not in excess of \$10,000 or 5% of the par value of outstanding common stock, whichever is smaller. Regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount may not be broken down into a series of transactions to come within the exemption under this paragraph. Any transaction exempted under this paragraph shall be valid or effective without commission approval under this section.

2. In any proceeding involving the rates or practices of the public utility, the commission may exclude from the accounts of the public utility any payment or compensation made pursuant to a transaction exempted under this paragraph unless the public utility establishes the reasonableness of the 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 the public utility any payment or compensation to an affiliated interest for any services rendered or property or service furnished under an existing contract or arrangement with an affiliated interest under

sub. (3) (a) unless the public utility establishes the reasonableness of the payment or compensation. In the proceeding the commission shall disallow the payment or compensation, in whole or in part, in the absence of satisfactory proof that the payment or compensation is reasonable in amount. In the proceeding the commission may not approve or allow any payment or compensation, 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 to each public utility. No proof shall be satisfactory under this paragraph unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract of the records and accounts or a summary taken from the records and accounts if the commission deems the abstract or summary adequate. The accounts shall be properly identified and duly authenticated. The commission, where reasonable, may approve or disapprove a contract or arrangement without submission of the cost records or accounts.

(5) The commission shall have continuing supervisory control over the terms and conditions of contracts and arrangements under this section 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 it has over original contracts or arrangements. Commission approval of a contract or arrangement under this section shall not preclude disallowance or disapproval of a payment under the contract or arrangement if upon actual experience under the contract or arrangement it appears that the payments provided for or made were or are unreasonable. Every order of the commission approving a contract or arrangement shall be expressly conditioned upon the reserved power of the commission to revise and amend the terms and conditions of the contract or arrangement to protect and promote the public interest.

(6) If the commission finds upon investigation that a public utility is giving effect to a contract or arrangement without the commission's approval under 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 contract or arrangement until the contract or arrangement receives the approval of the commission. The circuit court of Dane county may enforce the order to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission.

(7) If the commission finds upon investigation that a public utility is making a payment to an affiliated interest, although the payment has 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 the payment. The circuit court of Dane county may enforce the order to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission.

History: 1981 c. 390; 1983 a. 53, 538.

196.525 Loans to officers or directors and loans to and investments in securities of holding companies; penalty. (1) Except under rules and regulations prescribed by the commission, no public utility may lend funds or credit to any of its officers or directors or to any corporation (except a public utility subject to the regulatory powers of the commission) if the corporation holds, directly or indirectly through any chain of ownership, 5% or more of the voting stock of the public utility or renders any managerial, supervising, engineering, legal, accounting or financial service to the public utility by:

(a) Becoming surety, guarantor or endorser upon any obligations, contingent or otherwise, of the officer, director or corporation.

(b) Loaning funds, securities or other like assets to the officer, director or corporation.

(c) Purchasing in the open market, or otherwise, any obligation upon which the 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. If a contract is made contrary to the provisions of this section, the commission, after notice and hearing, may order the public utility to take steps within 30 days to recover the funds or assets thus illegally loaned or transferred by action at law or other proceedings which will effectively release the public utility from the contract as surety, guarantor or endorser.

(3) Any director, treasurer or other officer or agent of a public utility who makes or votes to authorize a transaction in violation of this section may be fined not more than \$10,000.

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

History: 1983 a. 53.

196.53 Franchise, foreign corporation not to have. No license, permit or franchise to own, operate, manage or control any plant or equip-

ment for the production, transmission, delivery or furnishing of heat, light, water or power shall be granted or transferred to a foreign corporation.

196.54 Indeterminate permits. (1) GRANTS TO BE INDETERMINATE. Every license, permit or franchise granted after July 11, 1907, to any public utility shall have the effect of an indeterminate permit subject to this chapter and ch. 197.

(2) FRANCHISES MADE INDETERMINATE. Every license, permit or franchise granted prior to July 11, 1907, by the state or by a 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 of a public utility is altered and amended to constitute and be an indeterminate permit which is subject to this chapter and ch. 197. The license, permit or franchise 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 under s. 197.02.

(3) VALIDATION OF FRANCHISES AND PERMITS.

(a) No franchise affected by sub. (2) and no indeterminate permit shall be declared invalid if:

1. The franchise or permit was not obtained by fraud, bribery or corrupt practices.

2. When the franchise or permit was granted, no officer of the municipality granting the franchise or permit was directly or indirectly interested in the franchise or permit or in the corporation obtaining the franchise or permit.

(b) Any franchise affected by sub. (2) and any indeterminate permit is valid if:

1. The corporation having the franchise or permit, prior to surrendering of the franchise or at the beginning of its public service under the permit, in good faith has purchased or constructed any public utility, or any part of a public utility authorized by the franchise.

2. The corporation, in obtaining the franchise or permit, has substantially complied with the requirements provided by law for obtaining the franchise or permit.

(4) GRANTS AFTER JULY 11, 1907; CONSENT TO MUNICIPAL PURCHASE. If a public utility accepts or operates under any license, permit or franchise granted after July 11, 1907, the public utility shall be deemed to have consented under its indeterminate permit 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 situated for the compensation and under the terms and conditions determined by the commission. The pub-

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lic utility shall be deemed to have waived the right to require that the necessity of taking be established by the verdict of a jury, and any other remedy or right relative to condemnation, except any remedy or right under this chapter and ch. 197.

(5) **MUNICIPAL PURCHASE INVALIDATES PERMIT.** An indeterminate permit shall be invalid if a municipality exercises its option to purchase the public utility being operated under the permit or if the permit is otherwise terminated according to law.

History: 1981 c. 390; 1983 a. 53 ss. 69 to 73; 1983 a. 192

196.58 Municipality to regulate utilities; appeal. (1) The governing body of every municipality may:

(a) 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, consistent with this chapter and ch. 197, upon which the public utility may be permitted to occupy the streets, highways or other public places within the municipality. The contract, ordinance or resolution shall be in force and on its face reasonable.

(b) Require of any public utility any addition or extension to its physical plant within the municipality as shall be reasonable and necessary in the interest of the public, and designate the location and nature of the addition or extension, the time within which it must be completed, and any condition under which it must be constructed, subject to review by the commission under sub. (4).

(c) Provide a penalty for noncompliance with the provisions of any ordinance or resolution adopted under this subsection.

(4) Upon complaint made by a public utility or by any qualified complainant under s. 196.26, the commission shall set a hearing and if it finds a contract, ordinance or resolution under sub. (1) to be unreasonable, the 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 limit 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 gaseous fuel in a municipality where the fuel has not been sold previously to the public shall change the character or kind of fuel by substituting for manufactured gas any natural gas or

any mixture of natural and manufactured gas for distribution and sale in any municipality, or undertake the sale of natural gas in any municipality where no gaseous fuel was previously sold, unless the governing body of the municipality, by authorization, passage or adoption of appropriate contract, ordinance or resolution, approves and authorizes the change in fuel or commencement of sale. No contract, ordinance or resolution enacted under this subsection may be inconsistent or in conflict with any certificate granted under s. 196.49.

(7) (a) If a municipality operating a waterworks seeks to serve consumers of an area which is part of the municipality and in the same county, but in order to serve such consumers it is necessary or economically prudent for the municipality to install mains, transmission lines, pipes or service connections through, upon or under a public street, highway, road, public thoroughfare or alley located within the boundaries of any adjacent municipality, the municipality seeking the installation may file a petition with the clerk of the legislative body of the adjacent municipality requesting approval for the installation of the mains, transmission lines, pipes or service connections. The governing body of the adjacent municipality shall act on the petition within 15 days after the petition is filed. If the governing body of the adjacent municipality fails to act within the 15-day period, the petition shall be deemed approved and the municipality may proceed with the installations required for service to its consumers. If, however, the governing body of the adjacent municipality rejects the petition, the municipality may make application to the commission for authority to install within the boundaries of the adjacent municipality the installations necessary to provide service to its consumers. The commission shall hold a hearing upon the application of the municipality. If the commission determines that it is necessary or economically prudent that the municipality seeking to serve its consumers make the installations within the boundaries of the adjacent municipality, the commission shall promptly issue an order authorizing the municipality to proceed to make the installation. In the order, the commission may establish the manner of making the installation.

(b) A municipality making an installation under this section shall restore the land on or in which such installation has been made to the same condition as it existed prior to the installation. Failure to make the restoration shall subject the municipality to an action for damages by the adjacent municipality. The adjacent municipality may require a performance bond from the municipality seeking to make the

installation. If no agreement can be effected between the municipalities as to the amount of the performance bond, the commission shall determine the amount of the bond. If the commission issues an order authorizing an installation under this subsection, the commission shall determine the amount of the performance bond which shall be required of the applicant municipality.

History: 1981 c. 390; 1983 a. 53

196.59 Merchandising by utilities. Each public utility 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 any profit or loss resulting from the sale of appliances or other merchandise. The commission may not take the profit or loss into consideration in arriving at any rate to be charged for service by the public utility.

History: 1983 a. 53.

196.595 Utility advertising practices. (1) In this section:

(a) "Advertising" means:

1. Printed and published material and descriptive literature of a utility used in newspapers, magazines, radio and TV scripts, billboards and similar displays.

1m. Any material which provides information favorable to a public utility on any issue about which the utility is attempting to influence legislative or administrative action by direct oral or written communication with any elective state official, agency official or legislative official if the practice is regulated under subch. III of ch. 13.

2. Descriptive literature and sales aids of all kinds issued by a utility for presentation to utility consumers and other members of the public, including but not limited to any material enclosed with or added to a utility billing statement, circulars, leaflets, booklets, depictions, illustrations and form letters.

3. Prepared sales talks to the public and public informational facilities.

4. Other materials and procedures enumerated by rule of the commission which promote or provide information to the public about a public utility.

(b) "Expenditure" means any cost of advertising directly incurred by a utility and any cost of advertising incurred by contribution to parent or affiliated companies or to trade associations.

(c) "Public utility" in this section means any public utility, as defined in s. 196.01, engaged in the transmission, delivery or furnishing of natural gas by means of pipes or mains, telephone

messages, heat, light or power. "Public utility" does not include any cooperative association organized under ch. 185.

(2) A public utility may not charge its ratepayers for any expenditure for advertising unless the advertising:

(b) Produces a demonstrated, direct and substantial benefit for ratepayers. Advertising which produces a direct and substantial benefit for ratepayers is limited to advertising which:

1. Demonstrates energy conservation methods;

2. Conveys safety information on the use of energy;

3. Demonstrates methods of reducing ratepayer costs;

4. Otherwise directly and substantially benefits ratepayers; or

5. Is required by law.

(3) The commission shall make rules to carry out the purposes of and to enforce this section.

History: 1983 a. 27, 235.

196.60 Discrimination prohibited; penalty.

(1) (a) Except as provided under sub. (2), no public utility and no agent or officer of a public utility, directly or indirectly, may charge, demand, collect or receive from any person more or less compensation for any service rendered or to be rendered by it in or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power, or the conveyance of telephone messages or telegraph messages, or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force, or established under this chapter, or than it charges, demands, collects or receives from any other person for a like contemporaneous service.

(b) A public utility which violates par. (a) shall be deemed guilty of unjust discrimination and shall forfeit not less than \$100 nor more than \$1,000 for each offense. An agent or officer who violates par. (a) shall be fined not less than \$50 nor more than \$100 for each offense.

(2) Nothing in this section and s. 196.604 or any other provision of law may be construed to prohibit a public utility engaged in the conveying of telephone messages or telegraph messages from furnishing service to its employees, pensioners and officers, and its employees, pensioners and officers may receive such service, at no charge or at charges less than those prescribed in its published schedules or tariffs. The commission may prescribe rules under this subsection. The rules may not prohibit or restrict the furnishing of service to employees, pensioners and officers or the receiving of service by employees, pensioners and

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officers at no charge or charges less than those prescribed in the public utility's published schedules or tariffs. No revenue may accrue or be credited in the accounts of the public utility for service furnished and not charged under this subsection.

(3) If a public utility gives an unreasonable preference or advantage to any person or subjects any person to any unreasonable prejudice or disadvantage, the public utility shall be deemed guilty of unjust discrimination. A public utility violating this subsection shall forfeit not less than \$50 nor more than \$1,000 for each offense.

History: 1977 c. 418; 1983 a. 53 ss 77, 78, 82.

196.604 Rebates, concessions and discriminations unlawful. No person may knowingly solicit, accept or receive any rebate, concession or discrimination from a public utility for 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 connected service whereby the service is rendered or is to be rendered free or at a rate less than the rate named in the schedules and tariffs in force, or whereby any other service or advantage is received. Any person violating this section shall be fined not less than \$50 nor more than \$1,000 for each offense.

History: 1983 a. 53 s. 84.

196.605 Telephone cooperatives with federal loans. (1) A public utility which is a cooperative 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 from the United States under the rural electrification act of 1936 (7 USC 901 to 950b), as amended, may require each of its local service telephone patrons to deposit with the association the amount of the membership fee or other form of capital representing the proportional share of the total equity capital of the association required as a condition of federal financing. The 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. The 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 under sub. (1) may be based upon reasonable classifications of service and appropriate factors relating to the cost of

rendition of the service. The amounts, classifications and manner of collecting the amounts shall be subject to the approval of the commission. The commission may promulgate rules under this subsection.

History: 1979 c. 110 s. 60 (11); 1983 a. 53.

196.61 Facilities in exchange for compensation, prohibited; exceptions. No public utility may demand, charge, collect or receive from any person, firm or corporation less compensation for any service rendered or to be rendered by the public utility in return for the furnishing by that person, firm or corporation of any part of the facilities incident to the service. This section may not be construed to prohibit any public utility from renting any facility relating to the production, transmission, delivery or furnishing of heat, light, water or power or the conveyance of telephone messages and from paying a reasonable rental for the facility. This section may not be construed to require any public utility to furnish any part of any appliance which is situated in and upon the premises of any consumer, except telephone station equipment, and except meters and appliances for measurements of any product or service unless the commission orders otherwise.

History: 1983 a. 53.

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 char-

acter of the messages to be transmitted, provided they are not obscene or profane; and every person or corporation neglecting or refusing to comply with any of the provisions of this section shall forfeit not less than \$25 nor more than \$100 for each and every day such neglect or refusal shall continue, one-half of which shall go to the use of the person or corporation prosecuting therefor.

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

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

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

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

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

196.64 Public utilities, liability for treble damages. If a public utility does, causes or permits to be done any matter, act or thing prohibited or declared to be unlawful under this chapter or ch. 197, or fails to do any act, matter or thing required to be done by it, the public utility shall be liable to the person injured thereby in treble the amount of damages sustained in consequence of the violation.

History: 1981 c 390; 1983 a 53

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

196.645 Rate changes. (1) The commission, upon complaint or upon its own motion, may proceed to investigate and determine whether a public utility's rates should be changed by reason of a change in the cost of an energy, commodity or service resulting from a change in charges for the energy, commodity or service if:

(a) The rates of the public utility are based on the cost of the energy, commodity or service furnished to the public utility which the public utility furnishes or distributes to its consumers; and

(b) The charges for the energy, commodity and service are regulated by an authority of the federal government and the federal authority has prescribed the change in charges.

(2) The commission may make a change in rates under sub. (1) effective as of the effective date of the order of the federal authority prescribing the change in charges.

(3) Notwithstanding ss. 196.60 (3) and 196.604, the commission may determine and require payment by the public utility to its consumers of any sums which the public utility received from the consumers subsequent to the effective date of its order under this section and which are in excess of the rates prescribed by the commission under this section.

History: 1983 a 53.

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

196.65 Public utilities; information, papers and accounting. (1) Any officer, agent or employe of any public utility shall be fined not less than \$100 nor more than \$1,000 for each offense if he or she does any of the following:

(a) Fails or refuses to fill out and return any questionnaire required under this chapter.

(b) Fails or refuses to answer any question in any questionnaire required under this chapter.

(c) Knowingly gives a false answer to any question in any questionnaire required under this chapter.

(d) Evades the answer to any question in any questionnaire required under this chapter, if the answer is within his or her knowledge.

(e) Upon proper demand, fails or refuses to exhibit to the commission or any commissioner or any person authorized to examine it any record of the public utility which is in the possession or under the control of the officer, agent or employe.

(f) Fails to properly use and keep the system of accounting prescribed by the commission.

(g) Refuses to do any act in connection with the system of accounting prescribed by the commission when so directed by the commission or its authorized representative.

(2) A penalty of not less than \$500 nor more than \$1,000 shall be recovered from the public utility for each offense under sub. (1) if the officer, agent or employe of the public utility acted in obedience to the direction, instruction or request of the public utility or any general officer of the public utility.

History: 1977 c. 29 s. 1654 (10) (c); 1977 c. 273; 1981 c 390; 1983 a 53

196.66 General penalty; public utility responsible for agents. (1) If any public utility violates this chapter or ch. 197 or fails or refuses to perform any duty enjoined upon it for which a penalty has not been provided, or fails, ne-

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glects or refuses to obey any lawful requirement or order of the commission or the governing body of a municipality or a sanitary commission or any judgment or decree of any court upon its application, for every violation, failure or refusal the public utility shall forfeit not less than \$25 nor more than \$1,000.

(2) Every day during which any public utility or any officer, agent or employe of a public utility fails to comply with any order or direction of the commission or to perform any duty enjoined by this chapter or ch. 197 shall constitute a separate and distinct violation under sub. (1).

History: 1981 c. 390; 1983 a. 53.

196.665 Unlawful combinations, trusts. (1)

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

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

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

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

(2) In proceedings under this section, the members of the commission shall be appointed to act as receivers during a period of time to be determined by the court.

History: 1983 a. 53.

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

(a) Within 100 feet of school grounds;

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

(c) Within any city or village.

(1m) If it determines that it is necessary for public safety, the commission, by order or rule, may apply sub. (1) to any person constructing, operating or maintaining an overhead electrical supply line with a voltage of 2,000 or more.

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

(3) Any person violating this section shall be fined not less than \$50 nor more than \$300 for each offense.

History: 1979 c. 171; 1983 a. 53, 238

196.675 Unlawful for carriers and public utilities to employ municipal attorneys or judicial officers. (1) No common carrier operating within this state and no public utility, except a municipal public utility, may retain or employ a district attorney or assistant district attorney, city attorney or assistant city attorney or any person holding a judicial office.

(2) If any district attorney or assistant district attorney, city attorney or assistant city attorney or any person holding a judicial office violates this section, the attorney's or judge's office shall be deemed vacant.

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

History: 1977 c. 236; 1983 a. 53

196.68 Municipal officers, malfeasance. If any officer of a municipality which owns or operates a public utility does, causes or permits to be done any matter, act or thing prohibited or declared to be unlawful under this chapter or ch. 197 or omits, fails, neglects or refuses to perform any duty which is enjoined upon him or her and which relates directly or indirectly to the enforcement of this chapter and ch. 197, or if the officer omits, fails, neglects or refuses to obey any lawful requirement or order of the commission or any judgment or decree of a court upon its application, for every such violation, failure or refusal the officer shall forfeit not less than \$50 nor more than \$500.

History: 1981 c. 390; 1983 a. 53

196.69 Interference with commission's equipment. (1) If any person destroys, injures or interferes with any apparatus or appliance owned, in the charge of or operated by the commission or its agent, the person shall be fined not more than \$100 or imprisoned not more than 30 days or both.

(2) Any public utility permitting a violation of this section shall forfeit not more than \$1,000 for each offense.

History: 1983 a. 53.

196.70 Temporary alteration or suspension of rates. (1) The commission, when it deems 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, may by order 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) The commission may direct an order under sub. (1) to part of a public utility or to one or more public utilities and may prescribe when the order takes effect and for how long the order shall be in effect.

History: 1983 a. 53.

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

196.71 Municipal public utility contracts. If a municipality owns a public utility and if there is no other public utility furnishing the same service, the commission, after a public hearing and determination that the municipally owned public utility cannot be operated profitably, may authorize a contract between the municipality and any person not a public utility to furnish light, power or electric current to the municipality upon terms and conditions approved by the commission. The person contracting with the municipality is not a public utility solely due to the contract with the municipality.

History: 1983 a. 53.

196.72 Accidents; public utility report; investigation. (1) (a) The commission may issue orders or rules, after hearing, requiring public utilities to record or report accidents which occur upon the public utilities' premises or which arise directly or indirectly from, or are connected with, the public utilities' maintenance or operation.

(b) Notwithstanding any statute to the contrary, including but not limited to s. 196.14, any report filed with the commission under par. (a) shall be without prejudice to the person making the report and shall be for the sole information and use of the commission and its staff. Neither the report nor its content may be made available to any other person. The report may not be used as evidence in any trial, civil or criminal, arising out of the event concerning which the report is submitted.

(2) The commission shall investigate any accident under sub. (1) if the commission deems that the public interest requires it. The commission shall hold the investigation in the locality of the accident, unless it is more convenient to hold it at some other place. The commission may adjourn the investigation from place to place. The commission shall give the public utility reasonable notice of the time and place of the investigation.

History: 1983 a. 53.

196.74 Electric lines; safety and interference. Each public utility and 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 the wires and any related equipment in a manner which is reasonably adequate and safe and which does not unreasonably interfere with the service furnished by any other public utility or railroad. The commission may issue orders or rules, after hearing, requiring electric construction and operating of such wires and equipment to be safe. The commission may revise the orders or rules as may be required to promote public safety. If any interested party files a complaint with the commission indicating 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 the complaint. The commission shall proceed to investigate the complaint and shall order a hearing on it. After the hearing the commission shall order any change in construction or location or change of methods of operation required for public safety or to avoid service interference. The commission shall indicate in the order by whom the change shall be made. The commission shall fix the proportion of the cost and expense of the change, which shall be paid by the parties in interest. The commission shall fix reasonable terms and conditions related to the payment of the cost and expense.

History: 1983 a. 53.

196.745 Construction and operation; safety; commission orders. (1) Each public utility which owns, operates, manages or controls any facility for the production, transmission or distribution of gas shall construct, operate and maintain the facility in a reasonably adequate and safe manner. The commission may issue orders or rules, after holding a hearing, requiring the construction and operation of the facility to be safe, and may revise the orders or rules as required to promote public safety. Upon complaint to the commission that a facility of a public utility is unsafe, the commission may proceed under s. 196.26 or 196.28 (1). After holding a hearing the commission shall order any alteration in construction, maintenance or operation required in the interest of public safety.

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

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

(c) The commission shall consider the following in determining the amount of a forfeiture or whether a compromise is appropriate under this section:

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

2. The gravity of the violation.

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

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

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

History: 1977 c. 29 s. 1656 (43); 1977 c. 273; 1979 c. 32; 1983 a. 53.

See note to 227.02, citing 63 Atty. Gen. 152.

196.76 Other rights of action; penalties cumulative. This chapter and ch. 197 shall not have the effect of releasing or waiving any right of action by the state or by any person for any right, penalty or forfeiture which arises under any law of this state. All penalties and forfeitures accruing under this chapter and ch. 197 shall be cumulative. A suit for recovery of one penalty or forfeiture may not bar the recovery of any other penalty.

History: 1981 c. 390; 1983 a. 53

196.78 Voluntary dissolution. No corporation owning or operating a public utility may be dissolved unless the commission consents. The commission may consent only after hearing. The commission shall give at least 30 days' notice to each municipality in which the public utility is operated and an opportunity to be heard to each municipality and to the stockholders in the corporation.

History: 1983 a. 53.

196.79 Reorganization subject to commission approval. The reorganization of any pub-

lic utility shall be subject to the supervision and control of the commission. No reorganization may take effect without the written approval of the commission. The commission may not approve any plan of reorganization unless the applicant for approval establishes that the plan of reorganization is consistent with the public interest.

History: 1977 c. 29; 1983 a. 53.

196.80 Consolidation or merger of utilities.

(1) With the consent and approval of the commission but not otherwise a public utility may:

(a) Merge or consolidate with one or more other public utilities.

(b) Acquire the stock of any other public utility or any part thereof.

(d) Consolidate or merge with any Wisconsin corporation if substantially all of the assets of the corporation consist of the entire stock of the public utility. The total of the resulting securities outstanding of the possessor corporation which have not been authorized previously under ch. 184 shall require authorization under ch. 184 as a condition precedent to the merger or consolidation.

(e) 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 to affect or limit the operation of ss. 197.01 to 197.10 or of ss. 66.06 to 66.078.

(3) The interested public utility shall make an application for the approval and consent of the commission under this section. The application shall contain a concise statement of the proposed action, the reasons for the action and any other information required by the commission. If an application is filed, the commission shall investigate the application. The investigation may be with or without public hearing. If the commission conducts a public hearing, the hearing shall be upon such notice as the commission may require. If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval in writing. In reaching its determination the commission shall take into consideration the reasonable value of the property and assets of the corporation to be acquired or merged.

(5) Any transaction required under this section to be submitted to the commission for its consent and approval shall be void unless the commission gives its consent and approval to the transaction in writing.

(6) Nothing in this section may be construed to limit any authority conferred by statute upon the commission before June 27, 1935.

History: 1977 c. 29; 1983 a. 53

196.81 Abandonment; commission approval required. (1) No public utility may abandon or discontinue any line or extension or service thereon without first securing the approval of the commission. In granting its approval, the commission may impose any term, condition or requirement it deems necessary to protect the public interest. If a public utility abandons or discontinues a line or extension or service thereon upon receiving commission approval, the public utility shall be deemed to have waived any objection to any term, condition or requirement imposed by the commission in granting the approval.

(2) The commission may not approve a request by an electric, telephone, or telegraph utility to abandon a right-of-way, unless the commission requires the public utility to remove any pole at ground level from the right-of-way and any other structure which extends more than 3 feet above ground level and which belongs to the utility at the time of abandonment. If the commission approves a request under this section it shall require any part of the abandoned right-of-way which is in a rural area and which was obtained by the utility by condemnation to be disposed of by the utility within 3 years from the date of approval. The commission may rescind the disposal requirement if the utility applies for rescission within 6 months prior to the end of the 3-year period and if the commission finds that the requirement would subject the utility to undue hardship.

History: 1973 c. 157; 1977 c. 29, 203, 418; 1983 a. 53.

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

sion in s. 20.155 (1) (g). The total amount in any one calendar year for which any public utility, power district or sewerage system is liable, by reason of costs incurred by the commission within the calendar year including charges under s. 184.10 (3), may not exceed four-fifths of one percent of its gross operating revenues derived from intrastate operations in the last preceding calendar year. Nothing in this subsection shall prevent the commission from rendering bills in one calendar year for costs incurred within a previous year.

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

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

(3) If any public utility, sewerage system or power district is billed under sub. (1) or (2) and fails to pay the bill within 30 days or fails to file objections to the bill with the commission, as provided in this subsection, the commission shall transmit to the state treasurer a certified copy of the bill, together with notice of failure

to pay the bill, and on the same day the commission shall mail by registered mail to the public utility, sewerage system or power district a copy of the notice which it has transmitted to the state treasurer. Within 10 days after the receipt of notice and certified copy of the bill the state treasurer shall levy the amount stated on the bill to be due, with interest, by distress and sale of any property, including stocks, securities, bank accounts, evidences of debt, and accounts receivable belonging to the delinquent public utility, sewerage system or power district. The levy by distress and sale shall be governed by s. 74.10 except that it shall be made by the state treasurer and that goods and chattels anywhere within the state may be levied upon.

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

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

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

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

The state treasurer shall then proceed to collect the amount of said bill as provided in the case of an original bill.

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

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

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

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

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

196.855 Assessment of costs against municipalities. Any expense incurred by the commission in making any appraisal or investigation of public utility property under ch. 197 shall be charged directly to the municipality making the application. The commission shall ascertain the expense, and shall render and review any bill under s. 196.85 insofar as applicable. If a bill under this section is not paid within the time required by s. 196.85, the bill shall bear interest

at the rate of 6% per year and the amount of the bill and the interest shall be certified to the department of administration and shall be levied and collected as a special charge in the same manner as a state tax.

History: 1979 c 110 s. 60 (13); 1983 a. 53

196.91 Acquisition of existing dams. (1) Except as provided under s. 196.92 (3) (c), every domestic corporation lawfully engaged in the business of producing, transmitting, delivering or furnishing heat, light, water, power, or street or interurban electric railway service to or for the public may acquire, for the purpose of developing power and generating energy for public use in the business:

(a) Any dam in or across any navigable waters of this state.

(b) All flowage and other rights and property necessary to the maintenance of any dam under par. (a).

(c) Any undeveloped water power or dam site upon any navigable waters within this state, except as provided under sub. (2).

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

History: 1983 a. 53

196.92 Procedure for acquiring dams. (1) If a corporation under s. 196.91 (1) desires to purchase or acquire any property under s. 196.91, the corporation shall apply to the commission for a certificate of public convenience and necessity. The application shall state:

(a) The name of any owner of the property sought to be acquired.

(b) The business in connection with which it is desired to utilize the property.

(c) The specific public purpose for which it is proposed to use the property.

(d) The compensation or price to be paid for the property.

(e) A statement to the effect that the corporation agrees to cancel all contracts for the sale of hydroelectric power outside this state, if the commission finds that the contract interferes with adequate service and reasonable rates to the people of this state.

(f) Any other information the commission requires.

(2) If the commission receives an application under sub. (1), the commission shall fix a convenient time and place for a public hearing on the

application. The time may not be more than 8 weeks from the date of filing the application. The commission shall give notice of the time and place to the applicant. Prior to the hearing the applicant shall publish the time and place as a class 3 notice, under ch. 985. Not less than 20 days prior to that date, the applicant shall serve notice of the hearing upon any owner of the property personally, or by registered mail, if the post-office address of the owner, by due diligence, can be ascertained. Proof of the publication and service of the notice shall be filed with the commission.

(3) (a) At a hearing under this section or any adjournment of the hearing, the commission shall consider the application and shall receive the evidence offered by the applicant and any other person for or against the application.

(b) The commission may issue a certificate that public convenience and necessity require the utilization of the property as proposed by the applicant if the commission finds that:

1. The acquisition and use of the property in connection with the business of the applicant for the purpose or purposes and at the price or compensation set forth in the application would be a public convenience;

2. The applicant possesses the financial ability to utilize the property for its proposed purpose; and

3. Public necessity requires the proposed acquisition and use.

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

History: 1983 a. 53 ss 109 to 111, 113

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

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

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

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

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

History: 1977 c. 369; 1979 c. 154