

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) "Alternative telecommunications utility" means any of the following:

- (a) Cable television telecommunications service providers.
- (b) Pay telephone service providers.
- (c) Telecommunications resellers or resellers.
- (d) Radio common carriers.
- (e) Cellular mobile service providers.

(1r) "Cable television telecommunications service provider" means a person who provides one or more telecommunications services but who, during the previous taxable year, received at least 90% of his or her gross income in the particular television franchise area in which telecommunications services are provided from the operation of a cable television system subject in whole or in part to 47 USC 521 to 559

(2) "Cellular mobile service provider" means a cellular mobile radio telecommunications utility subject to s. 196.202 (4) (a) or (b).

(2m) "Commission" means the public service commission.

(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.

(4m) "Pay telephone service provider" means a person who owns or leases a pay telephone located on property owned or leased by that person and who otherwise does not offer any telecommunications service directly or indirectly to the public.

(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 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. "Public utility" includes a telecommunications utility. "Public utility" does not include a holding company, as defined in s. 196.795 (1) (h), unless the holding company furnishes, directly to the public, telecommunications or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas. "Public utility" does not include any company, as defined in s. 196.795 (1) (f), which owns, operates, manages or controls a telecommunications utility unless the company furnishes, directly to the public, telephone, telegraph or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas.

(5m) "Radio common carrier" means a common carrier in the domestic public land mobile radio service licensed by the federal communications commission under 47 CFR 21.0 to 21.909 or 22.900 to 22.921 to receive and transmit signals from transmitters within a specified geographic area.

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

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

(8) "Small telecommunications utility" means any telecommunications utility or a successor in interest of a telecommunications utility that provided landline local and access telecommunications service as of January 1, 1984, and that has less than 9,000 access lines in use in this state.

(9) "Telecommunications reseller" or "reseller" means a telecommunications utility which:

(a) Resells message telecommunications service, wide-area telecommunications services or other telecommunications services which have been approved for reselling by the commission; and

(b) Does not own, operate, manage or control, directly or indirectly, transmission facilities with the technological capability to provide telecommunications service within the state.

(9m) "Telecommunications service" means the offering for sale of the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching and delivery incidental to such communication

and including the regulated sale of customer premises equipment. "Telecommunications service" does not include the one-way transmission to subscribers of video programming provided by, or generally considered comparable to programming provided by, a television broadcast station or other programming services that make information available to all subscribers generally and does not include any subscriber interaction required for the selection of such video programming or other program service.

(10) "Telecommunications utility" means any person, corporation, company, cooperative, partnership, association and lessees, trustees or receivers appointed by any court that owns, operates, manages or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public.

(12) "Transmission facility" means any plant or equipment used to carry telecommunications services by wire, optics, radio signal or other means.

History: 1977 c. 29, 418; 1981 c. 390; 1983 a. 27, 53, 76, 192, 425, 538; 1985 a. 79, 1985 a. 297 ss. 14 to 22, 39; 1987 a. 27; 1989 a. 344

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) JURISDICTION. 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) **DEFINITION; CLASSIFICATION.** In this subsection, "public utility" does not include a telecommunications cooperative or a small telecommunications utility except as provided under s. 196.205 (1) or 196.215 (2). 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) **RULES.** 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) **INFORMATION REQUIRED; STOCK HOLDERS.** (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) **INSPECT BOOKS.** 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) **PRODUCTION OF RECORDS.** 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, investigation, 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) **SUE; BE SUED.** 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; 1985 a. 297; 1987 a. 403; 1989 a. 344

Public service commission ordered rebates for inadequate service 1976 WLR 584

196.03 Utility charges and service; reasonable and adequate. (1) Subject to s. 196.63, a public utility shall furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, water, telecommunications service or power produced, transmitted, delivered or furnished 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) (a) In the case of a public utility furnishing water, the commission shall include, in the determination of water rates, the cost of fluoridating the water in the area served by the public utility furnishing water if the governing body of the city, village or town which owns or is served by the public utility furnishing water authorizes the fluoridation of water by the public utility furnishing water.

(b) In the case of a public utility furnishing water, the retail charges for the production, storage, transmission, sale and delivery or furnishing of water for public fire protection purposes not included in general service charges shall be

included in the water utility bill of each customer of the public utility in a city, village or town unless the governing body of that city, village or town adopts a resolution providing that the city, village or town will pay those charges to the public utility furnishing the water.

(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; 1985 a. 297; 1987 a. 399; 1991 a. 294

196.04 Facilities granted other utilities; physical telecommunications 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 telecommunications service between telecommunications 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 telecommunications utility shall permit physical connections to be made, and telecommunications service to be furnished, between any telecommunications system operated by it and the telecommunications toll line operated by another telecommunications utility, or between its toll line and the telecommunications system of another telecommunications utility, or between its toll line and the toll line of another telecommunications utility, or between its telecommunications system and the telecommunications system of another telecommunications 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

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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; 1985 a. 297 ss. 25, 76

196.05 Public utility property; valuation; revaluation. 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, telecommunications service or power 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; 1985 a. 297

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 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. 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.

History: 1975 c. 142; 1983 a. 53; 1985 a. 297

196.09 Depreciation rates and practices; findings by commission; dividends from reserves; retirements. (1) In this section, "public utility" does not include a telecommunications cooperative except as provided under s. 196.205 (1). In subs. (2) to (7), "public utility" does not include a small telecommunications utility, except as provided under s. 196.215 (2). Subsection (9) only applies to a small telecommunications utility. Every public utility shall file with the commission, within such time as may be required by the commission, its estimate of the 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 commis-

sion'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 ss. 180.0623 and 180.0640.

(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.

(9) (a) 1. The commission shall create by order guidelines establishing classes of fixed capital that small telecommunications utilities use for public utility purposes and a range of annual depreciation rates for each of those classes.

2. The commission shall review biennially the guidelines established under subd. 1, except that if the commission receives, more than 365 days before the deadline for a biennial review, a written request from a small telecommunications utility for a review, the commission shall review the guidelines no later than 365 days after receiving the request.

(b) The commission shall review a small telecommunications utility's estimate of its annual rate of depreciation for a specified class of fixed capital and determine if that rate is just and reasonable if the commission receives a written request for a review from that small telecommunications utility or if that small telecommunications utility becomes subject to subs. (2) to (7) under s. 196.215 (2). The commission shall determine that an annual depreciation rate is just and reasonable if the rate falls within the range established for that class under par. (a) 1 or if the commission previously determined that the rate is just and reasonable.

History: 1981 c. 148; 1983 a. 53; 1985 a. 297; 1989 a. 303, 344

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 employees, 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 telecommunications cooperatives or small telecommunications utilities except as provided under s. 196.205 (1) or 196.215 (2).

History: 1981 c. 148; 1983 a. 53; 1985 a. 297; 1989 a. 344

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.

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

History: 1983 a 53

196.14 Public record exception. The commission may withhold from public inspection any information which would aid a competitor of a public utility in competition with the public utility.

History: 1983 a 53; 1985 a 236, 297

Cross Reference: See 19.36 for other public record exceptions

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 telecommunications utilities are furnishing joint telecommunications 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 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; 1985 a. 297

196.194 Telecommunications utility individual contracts.

Nothing in ss. 196.03, 196.19, 196.20, 196.21, 196.22, 196.37, 196.60, 196.604 and 196.625 prohibits the commission from approving the filing of a tariff which permits a telecommunications utility to enter into an individual contract with an individual customer if the commission determines that substitute telecommunications services are available to customers or potential customers of the telecommunications utility and the absence of such a tariff will cause the telecommunications utility to be disadvantaged in competing for business. A tariff filed under this section shall include the condition that any such contract shall be compensatory. The tariff shall include any other condition and procedure required by the commission in the public interest. Within 20 days after a contract authorized under this section or an amendment to such a contract has been executed, the telecommunications utility shall submit the contract to the commission. The commission shall give notice to any person, upon request, that a contract authorized under this section has been received by the commission. The notice shall identify the telecommunications utility that has entered into the contract. Within 6 months after receiving substantial evidence that a contract may be noncompensatory, or upon its own motion, the commission shall investigate and determine whether the contract is compensatory. If the commission determines that the contract is noncompensatory, the commission may make appropriate adjustments in the rates or tariffs of the telecommunications utility that has entered into the contract, in addition to other remedies under this chapter. The dollar amount of the adjustment may not be less than the amount by which the contract was found to be noncompensatory.

History: 1985 a. 297

Section protects ratepayers not competitors. MCI Telecommunications v. Pub. Serv. Corp., 164 W (2d) 489, 476 NW (2d) 575 (Ct. App. 1991)

196.195 Partial deregulation of competitive telecommunications services. (1) **REGULATION IMPOSED** Except as provided in this section and ss. 196.202, 196.203 and 196.215, a telecommunications utility is subject to every applicable provision of this chapter and ch. 184.

(2) **HEARING ON PARTIAL DEREGULATION.** (a) Except as provided under par. (b), in response to a petition from any interested person or upon its own motion, the commission may hold a hearing to determine whether effective competition exists in a market for a telecommunications service which competition justifies a lesser degree of regulation by

suspending the application of one or more provisions of law under sub. (5) and whether competition under a lesser degree of regulation in that market will serve the public interest. In making this determination, the commission shall consider factors including:

1. The number and size of telecommunications utilities or other persons providing the same, equivalent or substitutable service in the relevant market.

2. The extent to which the same, equivalent or substitutable service is available in the relevant market.

3. The ability of customers in the relevant market to obtain the same, equivalent or substitutable services at comparable rates, terms and conditions.

4. The ability of telecommunications utilities or other persons to make the same, equivalent or substitutable service readily available in the relevant market at comparable rates, terms and conditions.

5. The relevant market power of each telecommunications utility or other person providing the same, equivalent or substitutable service in the relevant market and any apparent trends in how the market power of each telecommunications utility may change in the future.

6. Any affiliation of any telecommunications utility providing the service in the relevant market which may affect competition.

7. The existence of any significant barrier to the entry or exit of a provider of the service in the relevant market.

(b) If the commission suspends the application of any provision of law for any telecommunications utility, the commission, upon its own motion or in response to a petition from any interested person, may waive the hearing required under par. (a), with notice to all known interested parties, for any similarly situated telecommunications utility which is providing the same, equivalent or substitutable service in the same market and which requests a waiver of the same provision of law for the service, if the waiver is in the public interest.

(3) **LEVELS OF REGULATION.** If after the proceeding under sub. (2) the commission has determined that effective competition exists in a market for a telecommunications service that justifies lesser regulation, the commission shall establish the level of regulation for telecommunications utilities providing the service in that market as follows:

(a) The level of regulation imposed upon all telecommunications utilities providing the service in that market shall be equal unless the commission finds that the public interest requires that different regulatory requirements be imposed.

(b) The level of regulation imposed upon all telecommunications utilities providing the service in that market shall be the amount of regulation which does not hinder competition and is consistent with protecting the public interest.

(4) **FINDINGS OF FACT.** (a) Except as provided in par. (b), the commission shall issue written findings of fact on each of the factors specified in sub. (2) (a) 1 to 7 and on any other factors considered by the commission in making the following determinations:

1. Whether effective competition exists in the market for the telecommunications service that justifies lesser regulation.

2. The level of regulation to be imposed upon each telecommunications utility providing the service in that market.

3. The different regulatory requirements, if any, determined for each telecommunications utility providing the service in the market.

4. The provisions of law to be suspended, if any, under sub. (5).

(b) If the commission conducts more than one hearing under sub. (2) on the same telecommunications service or the same market, the commission may, if appropriate and if no new finding of fact is required, rely on a finding of fact made under par. (a) in a prior hearing.

(5) **COMMISSION ACTION.** If after the proceedings under subs. (2), (3) and (4) the commission has determined that effective competition exists in the market for the telecommunications service which justifies a lesser degree of regulation and that lesser regulation in that market will serve the public interest, the commission may, by order, suspend any of the following provisions of law, except as provided under subs. (7) and (8): ch. 184 and s. 196.02 (2); s. 196.07, but only to the extent necessary to allow a telecommunications utility to close its annual accounts on a date other than December 31; s. 196.09; s. 196.10; s. 196.11; s. 196.13 (2); s. 196.20; s. 196.49; s. 196.50; s. 196.52, except that the commission shall retain continuing supervisory control over affiliated interest contracts and arrangements, and amendments to affiliated interest contracts and arrangements, as necessary to protect the public interest; s. 196.525; s. 196.53, as it relates to a telecommunications utility, if the commission has determined to suspend the application of ch. 184 and ss. 196.52, 196.78, 196.79, 196.80 and 196.81 under this subsection; s. 196.58; s. 196.595; s. 196.78 or 196.81, or both, except that the commission shall require adequate prior notice to the commission and to customers affected by a proposed dissolution or abandonment before a dissolution or abandonment may occur; s. 196.79 or 196.80, or both, except that the commission shall require adequate prior notice to the commission of proposed public utility reorganizations, sales, mergers or consolidations; and ss. 196.22, 196.60 and 196.604, except that the commission may suspend the application of ss. 196.22, 196.60 and 196.604 only to the extent that such suspension is required to implement any other suspensions under this section or to the extent necessary to enable a telecommunications utility to make limited promotional offerings to the public.

(6) **INTERIM RELIEF.** (a) If after 10 days' written notice and opportunity for interested persons to comment the commission finds that a telecommunications utility has adequately demonstrated that a telecommunications service which it offers and which is subject to the jurisdiction of the commission is subject to competition that may justify a lesser degree of regulation under sub. (5) and that it may be materially disadvantaged in such competition without commission authorization under this subsection, the commission, prior to a determination under sub. (5), may authorize the telecommunications utility to provide the telecommunications service under a tariff which specifies a range of rates which may be charged for the service or may authorize the telecommunications utility to file a price list for the service which is effective upon at least 10 days' written notice to affected consumers.

(b) If the commission authorizes a telecommunications utility to provide a service under par. (a), the telecommunications utility may not provide the service at a price which does not recover long-run incremental cost plus any contribution to overhead costs which is required by the commission in the public interest and which is consistent with competitive circumstances.

(c) The commission may investigate the price of any service authorized under par. (a) to assure that the price complies with par. (b) and may suspend any price which does not comply with par. (b).

(d) A request for authorization under par. (a) constitutes a request for a hearing on partial deregulation under sub. (2). An order granting such authorization expires on the first day

of the 9th month following its issuance or upon the date of the commission order granting or denying suspension of any provision of law under sub. (5), whichever is earlier, unless extended by the commission for good cause pending issuance of a final order.

(7) **CONDITIONS ON DEREGULATION.** If the commission suspends the application of any provision of law to a telecommunications utility under sub. (5), it may require the telecommunications utility to comply with any condition reasonably necessary to protect the public interest because of the suspended application.

(8) **RECORDS FOR COMMISSION REVIEW.** The commission may suspend the application of a provision of law relating to an accounting or reporting requirement under sub. (5) only if, with consideration given to any conditions imposed under sub. (7), the commission determines that it will have enough information to determine whether the suspension of the application of any provision of law under sub. (5) is justified at any time after the suspension is ordered.

(9) **SERVICE PRICE.** If under this section the commission authorizes a telecommunications utility to provide a telecommunications service under a tariff that specifies a range of rates which may be charged for the service or authorizes the telecommunications utility to file a price list for the service which is effective after a minimum period of notice to affected customers, the telecommunications utility may not provide the service at a price which does not recover long-run incremental cost plus any contribution to overhead costs which is required by the commission in the public interest and which is consistent with competitive circumstances.

(10) **REVOCATION OF DEREGULATION.** If necessary to protect the public interest, the commission, at any time by order, may revoke its order to suspend the applicability of any provision of law suspended under sub. (5).

(11) **COMMISSION STUDY.** By December 31, 1992, the commission shall prepare a report summarizing the experience of this state in relying upon competition rather than regulation to determine the variety, quality and price of telecommunications service offered in this state and summarizing its recommendations for any changes in the regulation by the state of the telecommunications industry. No later than January 2, 1993, the commission shall file the report with the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (2). The report shall include a recommendation as to whether there exists a need for lifeline rates for telecommunications services in this state, the types of telecommunications services that should be made available at lifeline rates, the characteristics of individuals that should be eligible for lifeline rates and how lifeline rates should be funded. The report shall also include an assessment of how 1985 Wisconsin Act 297, sections 23, 30, 31, 36, 44, 45 and 49 have affected the rates for local exchange telecommunications service charged by small telecommunications utilities that are owned by holding companies and a finding, supported by financial data, on whether such rates are reasonable and just in relation to the costs of providing the service.

History: 1985 a. 297; 1987 a. 403 s. 256

196.196 Equal telecommunications access goal. If equal access to alternative long distance telecommunications services is not available by January 1, 1991, the commission shall prepare a report for the governor and the legislature that identifies why equal access was not achieved, including whether local exchange telecommunications utilities have installed the necessary equipment to provide equal access and the extent to which long distance telecommunications utilities

conducting business in this state have offered to provide their services statewide and any recommendations for achieving equal access. No later than June 1, 1991, the commission shall file the report with the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (2).

History: 1985 a. 297; 1987 a. 403 s. 256

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.

(2r) In setting the rates charged for basic residential local exchange telecommunications service under this section in local exchange areas served by the same telecommunications utility, the commission may investigate those areas where changes in these rates may be warranted because of the number of access lines accessible from the local exchange area.

(3) Except as provided in sub. (5) (a), this section does not apply to telecommunications cooperatives or small telecommunications utilities unless made subject to this section under s. 196.205 (1) or 196.215 (2).

(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 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) This subsection applies to any of the following:

1. A small telecommunications utility subject to this section under s. 196.215 (2) that files with the commission a proposed change in its rate schedules that constitutes an increase in rates, tolls or charges to consumers.

2. A small telecommunications utility subject to this subsection under s. 196.215 (5) to (7).

(b) 1. If a small telecommunications utility 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.

1g. If the commission orders a review of a proposed rate increase under s. 196.215 (5), the commission shall use the information filed under s. 196.213 (2) to consider the proposed rate increase. For purposes of this subsection, the commission shall consider that information as being filed on the day that the commission orders a review of a proposed rate increase.

1r. If the commission orders a review of rates, tolls or charges under s. 196.215 (6) or (7), the small telecommunications utility shall file information sufficient for the commission to consider rates, tolls and charges within 120 days after the small telecommunications utility receives notice from the commission that it is subject to this subsection.

2. Within 30 days after a small telecommunications utility files information under subds. 1 to 1r, the commission shall inform the small telecommunications utility if any additional information is necessary. The commission may dismiss an application for a proposed rate increase if the small telecommunications utility fails to submit information requested by the commission. An application dismissed under this subdivision may be refiled at any time.

(c) 1. No later than 14 days after a small telecommunications utility files information under par. (b) 1 to 1r, unless the commission grants an extension, the small telecommunications utility shall 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 small telecommunications utility's proposed rate increase or the small telecommunications utility's rates, tolls or charges and during which a request for a hearing may be submitted under subd. 2.

2. After a small telecommunications utility sends the notice under subd. 1, any person may submit to the commission a

written objection to the proposed rate increase or to rates, tolls or charges or may request a hearing.

3. The commission shall give the small telecommunications utility, commission staff and all parties an opportunity to propose stipulations of facts, identify any issue between the parties and submit arguments in writing on such issues. Unless the commission and the small telecommunications utility agree to a later date, the commission shall serve any proposed stipulation on all parties and shall give any notice required under subd. 4 within 120 days after the commission receives the application for the proposed rate increase or receives the information under par. (b) 1r.

4. The commission shall give any person submitting a written objection or requesting a hearing under subd. 2 notice of a proposed stipulation by regular mail. Within 10 days after the commission mails the notice, a person may submit to the commission a written request for a hearing, specifying his or her interest in the proceeding. If the commission determines that the person is entitled to have all rights of a party under s. 227.44, the commission shall conduct a hearing under s. 227.44. If the notice is returned undelivered or if a person does not request a hearing under this subdivision within 10 days after the commission mails the notice, the person waives the right to request a hearing.

5. The commission shall conduct a hearing under this subsection if a stipulation is not reached on all issues, if the commission determines that a hearing is required under subd. 4 or if the small telecommunications utility or the commission staff requests a hearing. The small telecommunications utility and the commission staff shall serve proposed testimony on all parties at least 10 days before a hearing.

(d) If the commission does not conduct a hearing under this subsection, the commission shall issue a final order no later than 150 days after the commission receives the application or receives the information under par. (b) 1r. If the commission conducts a hearing, the commission shall issue the order no later than 180 days after the commission receives the application or receives the information under par. (b) 1r. If the commission conducts a hearing, the hearing examiner may extend the time for issuing an order up to 30 additional days. Notwithstanding s. 196.34, the commission may require the small telecommunications utility to bear the expense of a stenographer to record a hearing conducted under this section.

(6) If a telecommunications utility that is not a small telecommunications utility and that has less than 100,000 access lines in use in this state files with the commission an application for a rate change that constitutes an increase in rates, the commission shall issue the order on the application no later than 180 days after the commission receives the application. The hearing examiner may extend the time for issuing an order up to 30 additional days. Notwithstanding s. 196.34, the commission may require the telecommunications utility to bear the expense of a stenographer to record a hearing conducted under this subsection.

History: 1981 c. 148; 1983 a. 27, 53, 461, 502; 1985 a. 182 s. 57; 1985 a. 297; 1989 a. 344.

Utility's expanded adjustment clause violated requirement of public hearings prior to rate increases under (2) Wis. Environmental Decade v. Public Serv. 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.

196.201 Regulation of private shared telecommunications systems. (1) DEFINITION. In this section, "private shared telecommunications system" means plant or equipment used to provide telecommunications service through

privately owned customer premise equipment to a user group located in a discrete premises, such as in a building complex or a large multitenant building, or used to provide telecommunications service where the cost of service is shared among 2 or more persons who are not affiliated interests under s. 196.52, and where the plant or equipment is not used to offer telecommunications service for sale directly or indirectly to the general public.

(2) **REQUEST FOR ACCESS.** At the request of any person who receives telecommunications service from a private shared telecommunications system, or at the request of a telecommunications utility seeking to provide telecommunications service requested by any such person, the owner or manager of the private shared telecommunications system shall make facilities or conduit space available to any telecommunications utility for the purpose of providing telecommunications service.

(3) **COMMISSION MAY ORDER.** If the commission finds that the owner or manager of a private shared telecommunications system has failed to comply with a request under sub. (2), it may order the owner or manager to make facilities or conduit space available to any telecommunications utility making a request under sub. (2) at reasonable prices and on reasonable terms and conditions, under the procedures of s. 196.04.

History: 1985 a. 297.

196.202 Provisional exemption of cellular mobile radio telecommunications. (1) DEFINITION. In this section, "cellular mobile radio telecommunications utility" means a person authorized by the federal communications commission to provide domestic public cellular radio telecommunications service under 47 USC 154 (i).

(2) **SCOPE OF REGULATION.** Except as provided under this section, a cellular mobile radio telecommunications utility is not subject to this chapter.

(3) **AFFILIATED INTERESTS.** Every cellular mobile radio telecommunications utility is subject to s. 196.52.

(4) **REGULATION.** (a) On the first day of the first January following the date on which subscribers to all cellular mobile radio telecommunications utilities in a geographic service area, defined by the federal communications commission under 47 USC 154 (i), constitute 7% or more of the population in that service area, every cellular mobile radio telecommunications utility providing service in that area is subject to s. 196.203.

(b) A cellular mobile radio telecommunications utility is subject to s. 196.203 if it is the only provider of any specific type of telecommunications service within the geographic service area in which it is authorized to operate by the federal communications commission under 47 USC 154 (i).

(5) **BILLING.** (a) A cellular mobile radio telecommunications utility may not charge a customer for an incomplete call.

(b) After June 30, 1995, a cellular mobile radio telecommunications utility may not charge a customer a daily access fee if the customer initiates a cellular telephone call from a location within this state but outside of the customer's home coverage area.

History: 1985 a. 297; 1987 a. 27; 1991 a. 39.

196.203 Exemption of alternative telecommunications utilities. (1) Except as provided in this section, alternative telecommunications utilities are exempt from all provisions of ch. 184 and this chapter.

(1m) Any person claiming to be a cable telecommunications service provider under this section shall annually file with the commission any information required by the com-

mission to determine the gross income of the person which is derived from the operation of a cable television system.

(2) No person may commence providing service as an alternative telecommunications utility unless the person petitions for and the commission issues a determination that the person is an alternative telecommunications utility. The commission shall give notice at least 30 days prior to the issuance of such a determination to any person, upon request, that a petition under this subsection has been received by the commission. The notice shall identify the telecommunications utility that filed the petition.

(3) In response to a petition from any interested person, or upon its own motion, the commission shall determine whether the public interest requires that any provision of ch. 184 or this chapter be imposed on a person providing or proposing to provide service as an alternative telecommunications utility in a relevant market. In making this determination, the commission may consider factors including the quality of service, customer complaints, concerns about the effect on customers of local exchange telecommunications utilities and the extent to which similar services are available from alternative sources.

(4) The commission may impose any provision of ch. 184 or this chapter on one or more, but not necessarily all, alternative telecommunications utilities providing service in a relevant market.

History: 1985 a 297

196.204 Cross-subsidization limited. (1) Except for retained earnings, no telecommunications utility may allocate revenues earned from any part of its business subject to this chapter to subsidize any activity which is not subject to this chapter or is subject to this chapter under s. 196.195, 196.202 or 196.203. No telecommunications utility may allocate any costs or expenses in a manner which would subsidize any activity which is not subject to this chapter or is subject to this chapter under s. 196.195, 196.202 or 196.203. Except as provided in subs. (2) and (4) the commission may not allocate any revenue or expense so that a portion of a telecommunications utility's business which is fully regulated under this chapter is subsidized by any activity which is not regulated under this chapter or is partially deregulated under s. 196.195, 196.202 or 196.203.

(2) The commission shall attribute revenues derived from the sale of directory advertising or directory publishing rights to the regulated activities of a telecommunications utility for rate making and other utility purposes.

(3) The commission shall establish the necessary minimum accounting and reporting requirements, and structural separation requirements if necessary, for telecommunications utilities to enable it to enforce this subsection.

(4) In order to protect the public interest, the commission may allocate the earnings derived from sale of services partially deregulated under s. 196.195, 196.202 or 196.203 to the fully regulated activities of a telecommunications utility for rate-making purposes.

History: 1985 a 297.

196.205 Election of rate regulation of telecommunications cooperatives. (1) A telecommunications cooperative may elect to be subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and 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; 1985 a. 297 s. 76; 1989 a. 344

196.207 Telephone caller identification services. (1) DEFINITIONS. In this section:

(a) "Inbound wide-area telecommunications service" means a telecommunications service that allows a subscriber to the service to receive telephone calls from selected service areas at no charge to the person originating the telephone call.

(b) "Pay-per-call service" means a telecommunications service that permits simultaneous calling by a large number of callers to a single telephone number and for which the customer is assessed, on a per-call or a per-time-interval basis, a charge that is greater than or in addition to the charge for the transmission of the call. "Pay-per-call service" does not include a directory assistance or conference call service that is offered by a telecommunications utility and does not include a telecommunications service for which the customer charge is dependent on the existence of a presubscription relationship.

(c) "Telephone caller identification service" means a telecommunications service offered by a telecommunications utility that identifies a telephone line identification for an access line that is used by a person to originate a telephone call to a subscriber to the service.

(d) "Telephone line identification" means the number of or other information associated with an access line that can be used to identify the access line or the subscriber to the line.

(2) CONDITIONS FOR SERVICE. The commission may not approve a schedule or tariff that permits a telephone caller identification service to be offered in this state unless the schedule or tariff provides all of the following:

(a) For the 60-day period immediately preceding the first day on which a telephone caller identification service is operational in a geographical area, the telecommunications utility offering the service shall conduct an informational campaign to describe the telephone caller identification service to its access line customers within that area. The telecommunications utility informational campaign shall include all of the following information:

1. That the utility is offering telephone caller identification service and the date on which the service becomes operational.

2. That an access line customer may choose not to have the customer's telephone line identification identified to telephone caller identification service subscribers on an individual call basis without charge.

3. Other information on the telephone caller identification service that is specified by the commission.

(b) A calling telephone line identification shall be identified to a telephone caller identification service subscriber unless the calling access line customer chooses to have the customer's telephone line identification withheld from identifica-

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tion on an individual call basis or unless the customer installs customer premises equipment that withholds the customer's telephone line identification for all calls originating from the customer's access line.

(c) The telecommunications utility may not charge an access line customer for withholding the customer's telephone line identification from identification on an individual call basis.

(d) An access line customer subscribing to the telephone caller identification service is not prohibited from using customer premises equipment that prevents the subscriber from receiving a call for which the calling telephone line identification is not identified.

(e) An access line customer who is any of the following may choose to have the customer's telephone line identification withheld from identification without charge for all calls originating from the customer's access line:

1. A victim of domestic violence protected by a court order
2. A domestic violence victim's service program.
3. A battered women's shelter or other organization that provides a safe haven for victims of domestic violence.

(f) If the equipment is available, a telecommunications utility shall offer to access line customers in the geographical area in which telephone caller identification service is offered customer premises equipment produced by an authorized equipment manufacturer that permits a customer to withhold telephone line identification for all calls originating from the customer's access line and customer premises equipment produced by an authorized equipment manufacturer that prevents a telephone caller identification service subscriber from receiving a call for which the calling telephone line identification is not identified.

(2g) BLOCKING BY BUSINESS. The commission may prohibit business or commercial access line customers from withholding customer telephone line identifications from identification under any schedule or tariff that the commission approves.

(2m) PER LINE BLOCKING. Under any schedule or tariff that the commission approves, the commission may require that a telecommunications utility that offers a telephone caller identification service to permit an access line customer to choose to withhold the customer's access line identification from identification for all calls originating from the customer's access line.

(3) EXCEPTIONS. The commission may not approve a schedule or tariff under sub. (2) if the schedule or tariff allows a customer to withhold the identity of a telephone line identification from any of the following:

- (a) A public agency emergency system under s. 146.70.
- (b) An identification service provided in connection with an inbound wide-area telecommunications service or a pay-per-call service, unless the commission determines that the telecommunications utility providing the inbound wide-area telecommunications service or the pay-per-call service has the capability to comply with sub. (2) (b) or (e) with regard to that service.
- (c) A telephone caller identification service used for calls that are completed within a system that includes both the caller's telephone or other customer premises equipment and the call recipient's telephone or other customer premises equipment and are completed without being transmitted through a publicly switched network.

(e) A trap and trace device as authorized under ss. 968.34 to 968.37.

(f) A telecommunications utility, to identify the access line used to originate a call, for purposes of billing for that call.

(4) COSTS. Except for customer premises equipment offered under sub. (2) (f), a telecommunications utility shall charge all costs for caller identification services provided under this section, including all costs related to the options and services provided to access line customers under subs. (2) and (2m), to telephone caller identification service subscribers.

(5) PRIVACY CONSIDERATIONS. The commission shall promulgate a rule that establishes privacy guidelines applicable to telecommunications utilities.

History: 1991 a. 268, 269, 315

196.208 Telecommunications pay-per-call services. (1) DEFINITIONS. In this section:

(a) "Pay-per-call service" means a telecommunications service that permits simultaneous calling by a large number of callers to a single telephone number and for which the customer is assessed, on a per-call or a per-time-interval basis, a charge that is greater than or in addition to the charge for the transmission of the call. "Pay-per-call service" does not include a directory assistance or conference call service that is offered by a telecommunications utility and does not include a telecommunications service for which the customer charge is dependent on the existence of a presubscription relationship.

(b) "Provider" means a person who furnishes, conducts or offers a pay-per-call service or who holds himself or herself out as engaged in the business of furnishing, conducting or offering a pay-per-call service.

(2) PREAMBLE. (a) 1. Except as provided in subd. 2, a provider shall begin a pay-per-call service with a clear and express preamble that states the cost of the call. The preamble shall disclose all per-call charges. If the call is billed on a usage-sensitive basis, the preamble shall state all rates, by minute or other unit of time, any minimum charges and the total cost for a call to that service if the duration of the call may be determined.

2. A provider is not required to begin a pay-per-call service with a preamble if the service is charged at a flat rate that does not exceed \$2.

(b) A preamble shall include the name of the provider and an accurate description of the information, product or service that the caller will receive.

(c) A preamble shall inform the caller that billing will commence only after a specific identified event following the preamble, such as an audible signal tone.

(d) If the pay-per-call service is associated with, aimed at or likely to be of interest to an individual under the age of 18, the preamble shall include a statement that the caller should hang up unless the caller has parental permission.

(e) A provider may offer a caller a means to bypass the preamble on subsequent calls to the pay-per-call service, if the caller is in sole control of that bypass capability. If a provider includes preamble bypass instructions, the instructions shall be given at the end of the preamble or at the end of the pay-per-call service. A provider shall disable preamble bypass capability for 30 days following the date of an increase in any charge for the pay-per-call service.

(f) If a provider complies with federal requirements that specifically apply to a preamble on a pay-per-call service, that compliance shall be considered to be compliance with this subsection.

(3) BILLING COMMENCEMENT. If a preamble is required, a provider shall give a caller a reasonable opportunity to disconnect the call before the specific event identified under sub. (2) (c) that signals the commencement of billing.

(4) SOLICITATION REQUIREMENTS. If a provider includes an offer of goods or services within the pay-per-call service, all of the following apply:

(a) The provider shall disclose all conditions, restrictions and charges associated with the offer of goods and services during the initial communication with the caller.

(b) The provider may not make any assertion, representation or statement of fact that is false, deceptive or misleading.

(5) PROVIDER CHARGE LIMITS. (a) If a delayed billing period is required under sub. (3), a provider may not charge for usage of the pay-per-call service if the caller ends the usage before the specific event identified under sub. (2) (c) and, if the call is billed on a usage-sensitive basis, may not charge for the time that elapses before the specific event identified under sub. (2) (c) occurs.

(b) A provider may not charge for time that a caller is placed on hold.

(6) ADVERTISING AND SALES PRACTICES. A person shall do all of the following:

(a) In any advertisement for a pay-per-call service, clearly and conspicuously disclose the name of the provider and the identity and cost of any goods or services offered for sale.

(b) In any advertisement for a pay-per-call service, clearly and conspicuously disclose all conditions, restrictions and charges associated with the receipt of goods or services that are represented to be a gift, prize or incentive for using a pay-per-call service.

(c) Not make any assertion, representation or statement that is false, deceptive or misleading in an offer or sale of a pay-per-call service.

(d) If a caller to a pay-per-call service may be solicited to purchase additional pay-per-call services, clearly and conspicuously disclose that information in any advertisement for the pay-per-call service.

(7) BILLING INFORMATION. (a) A telecommunications utility shall do all of the following:

1. Include on each billing statement that includes charges for pay-per-call services a clear and conspicuous notice that states: "You may not have your telephone service disconnected for failure to pay for '900' number services. You may dispute charges for '900' number services if you believe the charges are unauthorized, fraudulent or illegal."

2. If a customer's local exchange telecommunications utility is technically able to provide blocking, semiannually include with a billing statement a clear and conspicuous notice stating that the customer may request that the local exchange telecommunications utility block the customer's access to pay-per-call services.

(b) If a telecommunications utility provides billing services to a provider, the telecommunications utility shall do all of the following:

1. In a clear and conspicuous manner, list charges for pay-per-call services separately from charges for telecommunications service or identify charges for pay-per-call services with an identifying symbol.

2. If a customer contacts the telecommunications utility regarding a charge for pay-per-call services, inform the customer that the customer may request the telecommunications utility to remove charges for pay-per-call services from subsequent billing statements.

3. If a customer reasonably disputes a charge for pay-per-call services and requests removal, remove that charge for pay-per-call services from subsequent billing statements.

(c) A local telecommunications utility shall disseminate information that explains that a customer may request blocking, if available, and may request that charges for pay-per-call

services be removed from its billing statements, although nonpayment of charges may result in a civil collection action.

(8) COLLECTION PRACTICES. (a) A telecommunications utility may not do any of the following:

1. Disconnect a customer's basic local exchange and basic interexchange services for failure to pay for pay-per-call services billed by the telecommunications utility.

2. Misrepresent that telecommunication service may be disconnected for nonpayment of pay-per-call service charges.

3. Condition the extension of local exchange service to a customer upon the customer's agreement to block access to pay-per-call services.

4. Regarding a delinquent account, condition the acceptance of deposits or guarantees upon customer payment of outstanding pay-per-call service charges.

5. Regarding a delinquent account, condition the acceptance of a deferred payment plan upon inclusion of outstanding pay-per-call service charges in the plan unless the telecommunications utility discloses the amount of pay-per-call service charges, informs the customer that payment of pay-per-call service charges are not required as part of the plan and sends the customer a written confirmation that outlines the deferred payment plan with and without the inclusion of pay-per-call service charges.

(b) Except as provided in par. (c), a telecommunications utility shall verify that a notice of disconnection does not include charges relating to pay-per-call services before the telecommunications utility sends the notice to a customer.

(c) A telecommunications utility may request the commission to waive the verification requirement of par. (b). The commission may grant a waiver if it determines that the costs that would be incurred by the telecommunications utility to meet the verification requirement are such that meeting the verification requirement is not in the best interest of the utility's customers.

(9) BLOCKING. (a) If technically feasible, a local exchange telecommunications utility shall provide a customer the option of blocking access to pay-per-call services that use "900" exchanges.

(b) A local exchange telecommunications utility may not charge a customer for the cost of blocking the first time a customer requests blocking.

(c) A local exchange telecommunications utility may not reinstate a customer's access to pay-per-call services that use "900" exchanges unless the customer makes the request for reinstatement in writing and the request is confirmed by the utility.

(10) TERRITORIAL APPLICATION. (a) Subsections (2) to (5) apply to any pay-per-call service that a caller may access by a call originating in this state.

(b) Subsection (6) applies to any advertising or sales practice directed to a resident of this state.

(11) REMEDIES AND PENALTIES. (a) 1. If a provider fails to comply with this section, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief, including but not limited to damages, injunctive or declaratory relief, specific performance and rescission.

2. A person or class of persons entitled to relief under subd. 1 is also entitled to recover costs, disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1).

(b) The commission shall inquire into any violation of subs. (7) to (9) by a telecommunications utility or by an officer, employe or agent of a telecommunications utility and shall report all violations to the department of justice.

(c) 1. The department of justice, or any district attorney upon informing the department of justice, may commence an

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action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of subs. (2) to (9). The department of justice or a district attorney may not commence an action to enforce subs. (7) to (9) unless the commission requests an enforcement action. Before entry of final judgment, the court may make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action if proof of these acts or practices is submitted to the satisfaction of the court.

2. The department of justice may conduct hearings, administer oaths, issue subpoenas and take testimony to aid in its investigation of violations of subs. (2) to (6).

(d) Any person who violates subs. (2) to (9) shall be required to forfeit not less than \$25 nor more than \$5,000 for each offense. Forfeitures under this paragraph shall be enforced by action on behalf of the state by the department of justice or, upon informing the department of justice, by the district attorney of the county where the violation occurs.

History: 1991 a 127.

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.

196.213 Notice of rate increase by small telecommunications utility. (1) In this section:

(a) "Consumer" means any of the following:

1. A person billed for one or more local telecommunications service access lines not to exceed one person per access line. A person billed for more than one access line may not be considered a consumer for each access line for which he or she is billed.

2. A telecommunications utility purchasing intrastate access to a local exchange operated by another telecommunications utility.

(b) "Rate increase" means an increase in any rate, toll or charge for any class of consumer on the schedules filed under s. 196.19.

(2) Unless subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (7), 196.11 (2), 196.20 and 196.26, at least 60 days and not more than 100 days before the effective date of a rate increase proposed by a small telecommunications utility, the small telecommunications utility shall notify each of its consumers and the commission of the proposed rate increase. Notice to the commission shall include a list of the small telecommunications utility's published consumers and a summary of the justification for the proposed rate increase. Notice by the small telecommunications utility to all consumers shall be in a form prescribed by the commission, shall be by mail and shall include a schedule of the proposed rates, tolls and charges, the effective date of the rates, tolls and charges and the procedure necessary for consumers to petition the commission to determine rates, tolls or charges in lieu of the proposed rates, tolls or charges, including but not limited to a notice that the deadline for commission receipt of petitions is 60 days after a small telecommunications utility mails notice of a proposed rate increase to consumers. The commission shall develop the form in cooperation with representatives of small telecommunications utilities and other interested persons. Notwithstanding s. 227.01 (13), the form is not a rule. If a small telecommunications utility inserts the procedures to petition the commission in the telephone directory published

by the utility, the directory shall describe the petitioning procedures under s. 196.215 (3) (a), (b) and (cm). A reference to the location of the procedure described in the directory shall be adequate notice of the procedure to consumers billed for local telecommunications service access lines in lieu of the form.

History: 1985 a 297; 1989 a 344; 1991 a 32.

196.215 Election of rate regulation and flexible regulation of small telecommunications utilities. (1) In this section:

(a) "Consumer" has the meaning given under s. 196.213 (1) (a).

(am) "Equity-thin utility" means a small telecommunications utility with less than 25% common stock equity in its utility capital structure.

(b) "Rate increase" has the meaning given under s. 196.213 (1) (b).

(2) A small telecommunications utility may be made subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (7), 196.11 (2), 196.20 and 196.26, in any of the following ways:

(a) By amendment of its articles of incorporation.

(b) By a majority vote of all the voting members of its board of directors.

(c) Except as provided in sub. (2g), by a determination of the commission that:

1. The small telecommunications utility's proposed rate increase for any service except the provision of residential basic local exchange service including nonoptional extended area service exceeds, in any one year, 30% or the small telecommunications utility's proposed rate increase for residential basic local exchange service including nonoptional extended area service exceeds, in any one year, 30% or \$2, whichever is higher.

1m. The small telecommunications utility's proposed rate increases for any service except the provision of residential basic local exchange service including nonoptional extended area service exceed, in any 4 consecutive years, 100% or the small telecommunications utility's proposed rate increases for residential basic local exchange service including nonoptional extended area service exceed, in any 4 consecutive years, 100% or \$10, whichever is higher.

2. The small telecommunications utility has failed to comply substantially with this section or s. 196.213.

3. The small telecommunications utility has violated s. 196.06, 196.52, 196.525 or 196.60.

(d) By action of its consumers under sub. (3) (b).

(2g) (a) In this subsection, "basic local exchange service" means any service providing access to and the transmission of 2-way switched voice communications within a local calling area but does not include installation of or enhancements to basic local exchange service or local per-call coin charges.

(b) A small telecommunications utility may petition the commission for an exemption from sub. (2) (c) 1 and 1m for a proposed rate increase for a telecommunications service other than basic local exchange service. The commission may grant the petition if it is reasonable and in the public interest. If the commission does not enter an order disposing of the petition within 20 days after its receipt, the petition is denied.

(2m) (a) A small telecommunications utility that has made itself subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (7), 196.11 (2), 196.20 and 196.26 under sub. (2) (a) may exempt itself from those sections by amending its articles of incorporation.

(b) A small telecommunications utility that has made itself subject to ss. 196.28 and 196.37 as they apply to any rate, toll

or charge and to ss. 196.02 (2), 196.09 (2) to (7), 196.11 (2), 196.20 and 196.26 under sub. (2) (b) may exempt itself from those sections by majority vote of all the voting members of its board of directors.

(c) A small telecommunications utility that the commission has made subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (7), 196.11 (2), 196.20 and 196.26 under sub. (2) (c) 1 and 1m may exempt itself from those sections by withdrawing the proposed rate increase that exceeds the limits established in sub. (2) (c) 1 or 1m. A small telecommunications utility may refile a proposed rate increase at any time unless the commission has determined rates, tolls or charges under sub. (6) (b).

(d) A small telecommunications utility that the commission has made subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (7), 196.11 (2), 196.20 and 196.26 under sub. (2) (c) 2 may exempt itself from those sections by correcting its failure to comply substantially with s. 196.213 or this section.

(3) (a) If within 60 days after notice of a proposed rate increase is mailed under s. 196.213 the commission has not received petitions from at least the number of eligible consumers specified in par. (am) of the small telecommunications utility requesting that the commission determine rates, tolls or charges on the proposed increase, the commission shall certify that fact to the small telecommunications utility and the small telecommunications utility's proposed rate increase shall take effect as published in the notice under s. 196.213. Rates, tolls and charges established by a small telecommunications utility under this paragraph shall be in effect for at least 365 days. If within 60 days after notice of a proposed rate increase is mailed the commission receives petitions from at least the number of eligible consumers specified in par. (am) of the small telecommunications utility requesting that the commission determine rates, tolls or charges on the proposed increase, the commission shall proceed under sub. (5) (e).

(am) 1. In the case of a proposed rate increase for a class of consumers under s. 196.213 (1) (a) 2 who purchase access to the local exchange operated by the small telecommunications utility that exceeds, in any 12-month period, the percentage increase in the U.S. consumer price index for all urban consumers, U.S. city average, for the previous year and that is not identical to the corresponding increase in charges for interstate access to the local network applicable to this class of consumers, the eligible consumers under par. (a) shall be any combination of telecommunications utilities subject to this proposed rate increase that are billed for 10% or more of the small telecommunications utility's revenues derived from charges for intrastate access to the local network.

2. For a proposed rate increase for any class of consumers under s. 196.213 (1) (a) 1, the number of eligible consumers under par. (a) shall be equal to 9.5% of the small telecommunications utility's access lines in use unless this number is:

a. Less than 50, in which case 50 consumers shall constitute the number of eligible consumers; or

b. Greater than 500, in which case 500 consumers shall constitute the number of eligible consumers.

(ar) If the eligible consumers identified in par. (am) 1 submit a valid petition to the commission under par. (a), the eligible consumers may withdraw the petition at any time prior to the commission establishing the rates subject to the petition. Upon withdrawal, the commission may not establish these rates.

(b) If the commission receives petitions from at least the number of eligible consumers specified in par. (bm) of the small telecommunications utility requesting that the small

telecommunications utility be subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (7), 196.11 (2), 196.20 and 196.26, the commission shall certify that fact to the small telecommunications utility. A signature on a petition may not be counted if the date of the signature is more than 90 days before the filing of the petition. The small telecommunications utility shall mail ballots approved by the commission to all of its consumers along with a written direction to return the ballots to the commission. The small telecommunications utility may enclose the ballot and the written direction with the regular periodic billing for the small telecommunications utility's services. The commission shall keep the ballots sealed until a date agreed upon by the commission. On that date, the commission shall count the ballots. After counting the ballots, the commission shall declare the results of the election. If the majority of the small telecommunications utility's voting consumers vote in favor of the small telecommunications utility being subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (7), 196.11 (2), 196.20 and 196.26, the small telecommunications utility shall be subject to those sections 30 days after the date on which the commission declares the election results. The small telecommunications utility shall pay the mailing cost of consumers returning the ballots to the commission. The consumers of that small telecommunications utility may not file petitions for an election under this paragraph until at least 270 days after the commission declares the results of an election under this paragraph and an election may not be held under this paragraph until at least 365 days after the commission declares those results.

(bm) For a petition under par. (b), for any class of consumers under s. 196.213 (1) (a) 1, the number of eligible consumers shall be equal to 12% of the small telecommunications utility's access lines in use unless this number is:

1. Less than 50, in which case 50 consumers shall constitute the number of eligible consumers; or

2. Greater than 500, in which case 500 consumers shall constitute the number of eligible consumers.

(c) The consumers of a small telecommunications utility that has been made subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (7), 196.11 (2), 196.20 and 196.26 under par. (b) may follow the election and petition procedures under par. (b) to revoke their election that the small telecommunications utility be subject to those sections.

(cm) If the commission receives a petition from at least the number of eligible consumers specified in par. (am) 2 of the small telecommunications utility requesting that the commission investigate and determine if the small telecommunications utility's rates, tolls or charges are just and reasonable, the commission shall notify the small telecommunications utility that the commission will investigate under sub. (6). A signature on a petition may not be counted if the date of that signature is more than 60 days before the filing of the petition.

(d) The commission shall promulgate rules governing the form of petitions under this subsection. The commission may not deem invalid any petition submitted under this subsection which is substantially in compliance with the commission's rules.

(4) A small telecommunications utility shall be subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (7), 196.11 (2), 196.20 and 196.26 under an order of the commission issued under sub. (2) (c) 3 until the first day of the 24th month after affirmation of the order by the circuit court of Dane county or after the expiration of the period during which a petition for review or

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rehearing is authorized under s. 196.52 or 227.16, whichever is sooner.

(5) (a) Interest coverage ratio is calculated by adding net operating income to income earned on temporary cash investments, deducting applicable federal income taxes and applicable taxes imposed under ch. 71, and dividing that figure by interest expense.

(b) 1. Target rate is calculated by adding Moody's average of yields on Baa public utility bonds, expressed in percent, to a percentage set by the commission under subd. 2.

2. The commission shall promulgate a rule establishing percentages used to calculate target rate under subd. 1. Percentages set under this subdivision shall be in effect for at least 7 years. The commission shall adopt a rule to change a percentage set under this subdivision at least 2 years before the effective date of the change. The commission may not change a percentage set under this subdivision by more than 20% of the amount of the percentage.

3. The rate of return range for a small telecommunications utility is a range 2% above to 2% below the small telecommunications utility's target rate.

4. Annually no later than January 31, the commission shall issue an order adjusting the Moody's average of yields on Baa public utility bonds used to determine the target rate by taking the most recent 12-month average of Moody's average of yields on Baa public utility bonds. The order shall take effect on February 1 immediately following the order. The commission may issue the order without a hearing.

(c) An equity-thin utility is building equity if the small telecommunications utility has an average dividend payout of less than 50% of its average net income after taxes or if the commission determines that the small telecommunications utility is increasing the percentage of common stock equity in its utility capital structure through other appropriate means.

(d) 1. The commission shall use the information filed by a small telecommunications utility under s. 196.07 in the 3 most recent years to calculate average interest coverage ratio, average rate of return on common stock equity, average dividend payout and average net income after taxes.

2. The commission may adjust, for making a determination under this section, any salary, affiliated interest charge or depreciation expense that the commission determines to be unreasonable in calculating the rate of return on common stock equity of a small telecommunications utility. The commission may adjust, for making a determination under this section, a depreciation rate used by a small telecommunications utility only if that depreciation rate falls outside the range established under s. 196.09 (9) or has not otherwise been approved by the commission within the previous 24 months. If the commission adjusts for depreciation, it shall use the rate established under s. 196.09 (9) (a) that is closest to the rate used by the small telecommunications utility.

(e) If consumers petition the commission under sub. (3) (a), the small telecommunications utility may implement the proposed rate increase as published in the notice under s. 196.213, subject to refund. The commission shall proceed under s. 196.20 (5).

(6) (a) If consumers request that the commission investigate a small telecommunications utility's rates, tolls or charges under sub. (3) (cm), the commission shall dismiss the petition if any of the following financial conditions exists:

1. The small telecommunications utility has an average interest coverage ratio of less than 2.

2. The small telecommunications utility has an average rate of return on common stock equity within or below the small telecommunications utility's rate of return range.

3. If an equity-thin utility, the small telecommunications utility is building equity.

(b) Annually, if the commission does not dismiss a petition under par. (a), the commission shall proceed under s. 196.20 (5). Rates, tolls or charges established by the commission under this paragraph shall be in effect for at least 365 days.

(c) Subsection (5) (a) to (d), as it relates to financial conditions under that subsection, applies to financial conditions under this subsection.

(7) (a) The commission on its own motion may, under s. 196.20 (5), investigate, determine and order rates, tolls or charges of a small telecommunications utility if at least 3 of the following conditions exist:

1. The small telecommunications utility's basic single-party residential flat rate exceeds the monthly rate under par. (b) or, if the small telecommunications utility does not use a basic single-party residential flat rate, the small telecommunications utility's rate for that service exceeds a rate established by the commission that is equivalent to the monthly rate under par. (b).

2. The small telecommunications utility has an average interest coverage ratio of more than 2.

3. The small telecommunications utility has an average rate of return on common stock equity above the rate of return range.

4. If an equity-thin utility, the small telecommunications utility is not building equity.

(b) 1. The basic single-party residential flat rate shall be \$9 per month, subject to adjustment under subd. 2.

2. Annually, no later than March 31, the commission shall issue an order adjusting the basic single-party residential flat rate by the percentage change, unadjusted for seasonal variation, in the producer price index for local residential telephone service, as determined by the U.S. department of labor, for the previous year. The order shall take effect on April 1 immediately following the order. The commission may issue the order without a hearing.

3. If the U.S. department of labor eliminates the producer price index, the commission shall adopt the most comparable replacement index after comments from interested parties and a hearing, if requested.

(c) If the commission does not make a determination regarding the financial conditions under par. (a) 2 to 4 by October 1 or within 180 days after a small telecommunications utility files the information required under s. 196.07, whichever is later, the commission may not on its own motion order that small telecommunications utility to change its rates, tolls or charges under par. (a).

(d) Rates, tolls or charges established by the commission under this subsection shall be in effect for at least 365 days.

(e) Subsection (5) (a) to (d), as it relates to financial conditions under that subsection, applies to financial conditions under this subsection.

(8) If the amount of a small telecommunications utility's federal or state taxes decreases due to a decrease in tax rates, the decrease shall be reflected in rates, tolls or charges unless the small telecommunications utility files adequate information with the commission regarding why a decrease should not be reflected in rates, tolls or charges. The proposed method of implementing the decrease shall be submitted to the commission before the effective date of the tax rate decrease, or as soon as practicable after that effective date. The commission may deny or modify the proposed method if the commission determines that the method is not fair and reasonable. The commission shall review any information that a small telecommunications utility submits to support its position that rates, tolls or charges should not reflect the

decrease and determine, based on all information available to the commission, whether a decrease in rates, tolls or charges should be implemented and the extent of any decrease. Any decrease under this subsection shall take effect on the effective date of the tax rate decrease. The commission may issue an order, without a hearing, requiring a small telecommunications utility to refund to consumers excess rates, tolls or charges paid by consumers if a decrease under this section is implemented after the effective date of the tax rate decrease.

(9) This section does not limit the commission's authority to regulate the capital structure of a small telecommunications utility.

History: 1985 a 297; 1989 a 344

196.216 Small telecommunications utilities as small businesses. A small telecommunications utility is a small business for the purposes of s. 227.114.

History: 1985 a. 297; 1987 a. 403 s. 256

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 bearing upon any investigation or at any hearing. The decision of the commission shall comply with s. 227.46 and shall be based upon its records and upon the evidence before it.

History: 1975 c. 414 s. 28; 1983 a 53; 1985 a 182 s. 57

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 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) **EXCEPTIONS.** (a) This section does not apply to any rate, toll, charge or schedule of any telecommunications cooperative except as provided under s. 196.205 (1) or unless at least 5% of the customers of the telecommunications cooperative file a complaint with the commission that the rate, toll, charge or schedule is in any respect unreasonable, insufficient or unjustly discriminatory.

(b) This section does not apply to any rate, toll, charge or schedule of any small telecommunications utility except as provided under s. 196.215 (2).

History: 1981 c. 148; 1983 a 53; 1985 a 297; 1989 a 344

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.

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91-92 Wis. Stats. 3216

(4) This section does not apply to rates, tolls or charges of a telecommunications cooperative or small telecommunications utility except as provided in s. 196.205 (1) or 196.215 (2).

History: 1977 c. 29 s. 1654 (10) (c); 1983 a. 53 ss. 39, 41; 1989 a. 344.
See note to 227.52, 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) Compensation granted under this section shall be paid from the appropriation under s. 20.155 (1) (j) and 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). Any payment by a public utility for compensation under this section assessed under s. 196.85 (1) or (2) shall be credited to the appropriation under s. 20.155 (1) (j).

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

History: 1983 a. 27; 1985 a. 297; 1989 a. 56 s. 259.

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 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 rates, tolls or charges without the approval of the commission, except as provided in s. 196.205 (1) or 196.215 (2).

(4) This section does not apply to rates, tolls or charges of a telecommunications cooperative or small telecommunications utility except as provided in s. 196.205 (1) or 196.215 (2).

History: 1981 c. 390; 1983 a. 53 ss. 47, 50; 1989 a. 344.

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).

Utility's failure to pay taxes under protest may constitute "imprudence" and may reasonably affect rate-setting decision. *Public Serv. Corp. v. Public Serv. Comm.*, 156 W (2d) 611, 457 NW (2d) 502 (Ct. App. 1990).

196.372 Railroad telecommunications service. If the commission receives a complaint that telecommunications 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 telecommunications 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; Stats 1977 s. 196.627; 1983 a. 53 s. 83; Stats 1983 s. 196.374; 1983 a. 192; Stats 1983 s. 196.372; 1985 a. 297 s. 76

196.373 Water heater thermostat settings. (1) In this section:

(a) "Periodic customer billing" means a demand for payment of utility services by a public utility to a residential utility consumer on a monthly or other regular basis.

(b) "Residential utility consumer" means any individual who lives in a dwelling which is located in this state and which is furnished with a utility service by a public utility. "Residential utility consumer" includes, but is not limited to, an individual engaged in farming as defined under s. 102.04 (3).

(2) At least annually every public utility furnishing gas or electricity shall include in its periodic customer billing a statement recommending that water heater thermostats be set no higher than 125 degrees Fahrenheit in order to prevent severe burns and unnecessary energy consumption.

History: 1987 a. 102

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 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 commis-

sion, 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. 227.57.

History: 1983 a. 53; 1985 a. 182 s. 57

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

History: 1983 a. 53

See note to 227.52, 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

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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; Stats. 1977 s. 196.44; 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) (a) Prosecuted or subjected to any penalty or forfeiture for testifying or producing evidence.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

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

History: 1977 c. 273; 1981 c. 390; 1983 a. 53; 1989 a. 122.

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 and with s. 144.026, if applicable. 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:

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; 1985 a 60

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.

Term "public" in (3) (b) includes all electric consumers in state, not simply ratepayers of utility seeking authorization. *Wis. Power & Light v. Pub. Ser. Comm.* 148 W (2d) 881, 437 NW (2d) 888 (Ct. App. 1989).

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) Except as provided in subs. (2) (b) 8 and (3) (d) 3m, "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, and does not include transmission line relocations that 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 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.

8. The lower Wisconsin state riverway board if the plan includes the construction, modification or relocation of a high-voltage transmission line, as defined in s. 30.40 (3r), that is located in the lower Wisconsin riverway as defined in s. 30.40 (15).

(c) Those agencies receiving copies under par. (b) shall review the plans and submit their comments to the commis-

sion 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. 227.44. 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.

3m. For a high-voltage transmission line, as defined in s. 30.40 (3r), that is to be located in the lower Wisconsin state riverway, as defined in s. 30.40 (15), the high-voltage transmission line will not impair, to the extent practicable, the scenic beauty or the natural value of the riverway. The commission may not require that a high-voltage transmission line, as defined in s. 30.40 (3r), be placed underground in order for it to approve an application.

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; 1985 a. 182 s. 57; 1989 a. 31

196.492 Advance plan for the lower Wisconsin state riverway for high-voltage transmission lines. (1) A public utility or a cooperative association organized under ch. 185 shall file a plan with the lower Wisconsin state riverway board 60 days before constructing, modifying or relocating a high-voltage transmission line, as defined in s. 30.40 (3r), in the lower Wisconsin state riverway, as defined in s. 30.40 (15), if the public utility or cooperative association is not required to file a plan with the commission under s. 196.491 for that facility.

(2) The plan may be an appropriate portion of a single regional plan and may be prepared jointly by 2 or more public utilities, 2 or more cooperative associations, or any combination of public utilities and cooperative associations.

(3) The plan shall include the information specified in s. 196.491 (2) (a) 1 to 8.

(4) The lower Wisconsin state riverway board shall approve the plan, if it determines that the high-voltage transmission line, as defined in s. 30.40 (3r), will not impair, to the extent practicable, the scenic beauty or the natural value of the lower Wisconsin state riverway.

(5) The lower Wisconsin state riverway board may not require that a high-voltage transmission line, as defined in s. 30.40 (3r), be placed underground in order for it to approve a plan under sub. (4).

(6) If the plan does not meet the criteria under sub. (4), the lower Wisconsin state riverway board shall reject the plan or approve the plan with any modifications that are necessary for an affirmative determination under sub. (4).

History: 1989 a. 31

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 commission 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)

(a) In this section:

1. "Primary voltage extension" means an extension of 500 feet or more.

2. "Secondary voltage extension" means an extension that is less than 500 feet.

(b) The length of an extension shall be measured as the air line distance between an existing local service distribution line that normally operates at less than 35 kilovolts and the nearest point on the principal building or facility to be served by a primary voltage extension or a secondary voltage extension.

(1m) 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 primary voltage extension 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, has electric distribution facilities at the time of the annexation, the cooperative association or other public utility may make a primary voltage extension or a secondary voltage extension in the annexed area, subject to sub. (1m).

(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) To avoid duplication of facilities, a public utility and a cooperative association may enter into a written agreement governing the extension of electric distribution lines and the right to serve customers. The commission shall enforce an agreement if the agreement has been filed with the commission and approved by the commission as being in the public interest.

(5) If an interested party files a complaint with the commission that an electric public utility or a cooperative association has made a primary voltage extension that requires approval or consent under this section without obtaining approval or consent, the commission shall hear the complaint upon notice to the interested parties. If the commission determines that the primary voltage extension was made in violation of this section, it shall order the prompt removal of the primary voltage extension.

(6) A cooperative association shall be subject to the authority of the commission to enforce the provisions of this section and to issue rules and orders relating to the provisions.

(7) A cooperative association shall be subject to the authority of the commission to allocate, assess and collect expenditures of the commission against a cooperative association involved in a proceeding under this section in the same manner as provided for public utilities under s. 196.85.

History: 1971 c. 125 s. 521; 1983 a. 53; 1991 a. 94.

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 determine 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, telecommunications. (1) CERTIFICATE OF NECESSITY.

The commission may not grant any public utility a license, permit or franchise to own, operate, manage or control any plant or equipment for the furnishing of telecommunication services, 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 telecommunications toll line from any municipality into or through any municipality for the purpose of connecting with any telecommunications exchange in the municipality or connecting with any other telecommunications line or system.

(2) TELECOMMUNICATIONS, EXTENSION. No telecommunications utility may install or extend any telecommunications exchange for furnishing local service in any town if a telecommunications utility is engaged in similar service in the town, unless the telecommunications utility proposing to install or extend an exchange serves notice in writing upon the commission and upon the other telecommunications utility of the installation or extension of the exchange which it proposes to make. A telecommunications utility proposing to install or extend an exchange may not make the installation or extension if the commission, within 20 days after service of such notice by the telecommunications utility, upon investigation, finds and declares that public convenience and necessity do not require the installation or extensions of the exchange. Any telecommunications utility already engaged in furnish-

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ing 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 telecommunications utility operating an 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 telecommunications 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; 1985 a 297 ss 52 to 54, 76

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

196.505 Construction. (1) Except as provided in s. 196.53, nothing in this chapter may be construed to deny a foreign corporation the privilege of offering telecommunications services in this state if it has received a certificate of authority under ch. 180 and any other authorization from the commission required under this chapter.

(2) Nothing in this chapter may be construed to permit chapter 184 or this chapter to apply differently to a foreign corporation which offers telecommunications services in this state than to a similarly situated domestic corporation which offers telecommunications services in this state.

History: 1985 a 297

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 corpora-

tions; 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).

(h) Any subsidiary of the public utility. In this paragraph, "subsidiary" means any person 5% or more of the securities of which are directly or indirectly owned by a public utility.

(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 or of the cost to the

public utility of rendering the services or of furnishing the property or service to each affiliated interest. 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 \$25,000 or 5% of the equity of the public utility, whichever is smaller. For a telecommunications utility with intrastate gross operating revenues of \$100,000,000 or more during the prior year, the requirement for written approval under par. (a) does not apply to any contract or arrangement if the amount of consideration involved in the contract or arrangement is not more than \$100,000. 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.

(c) If the value of a contract or arrangement between an affiliated interest and a public utility exceeds \$1,000,000, the commission:

1. May not waive the requirement of the submission of cost records or accounts under par. (a);
2. Shall review the accounts of the affiliated interest as they relate to the contract or arrangement prior to the commission approving or disapproving the contract or arrangement under par. (a); and
3. May determine the extent of cost records and accounts which it deems adequate to meet the requirements for submission and review under subs. 1 and 2.

(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 or from 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 or of the cost to the public utility of rendering the service or furnishing the property or service to each affiliated interest. 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 ab-

stract 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, receiving compensation, providing any service 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, providing a service to or receiving compensation from an affiliated interest, although the payment, service or compensation 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, providing the service or receiving the compensation. 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.

(8) Nothing in this section prevents a public utility from investing equity capital which is in excess of the level of equity that the commission has determined to be appropriate for the utility's capital structure in a subsidiary without commission approval.

History: 1981 c. 390; 1983 a. 53, 538; 1985 a. 297

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.

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(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 equipment for the production, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of local exchange telecommunications services may be granted or transferred to a foreign corporation.

History: 1985 a. 297

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 public 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 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 employe 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, telecommunications service, 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; 1985 a. 297; 1989 a. 338.

196.60 Discrimination prohibited; penalty. (1) (a) Except as provided under sub. (2), no public utility and no agent, as defined in s. 196.66 (3) (a), 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, telecommunications service or power 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 or an agent that violates par. (a) shall be deemed guilty of unjust discrimination and shall forfeit not less than \$100 nor more than \$5,000 for each offense. An officer who violates par. (a) shall be fined not less than \$50 nor more than \$2,500 for each offense.

(2) Nothing in this section and s. 196.604 or any other provision of law may be construed to prohibit a telecommunications utility from furnishing service to its employes, pensioners and officers, and its employes, 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 employes, pensioners and officers or the receiving of service by employes, pensioners and officers at no charge or charges less than those prescribed in the telecommunications utility's published schedules or tariffs. No revenue may accrue or be credited in the accounts of the telecommunications 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

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shall be deemed guilty of unjust discrimination. A public utility violating this subsection shall forfeit not less than \$50 nor more than \$5,000 for each offense.

History: 1977 c. 418; 1983 a. 53 ss. 77, 78, 82; 1985 a. 297; 1989 a. 49

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 \$5,000 for each offense.

History: 1983 a. 53 s. 84; 1989 a. 49.

196.605 Telecommunications cooperatives with federal loans. (1) A public utility which is a cooperative association incorporated under ch. 185 to furnish telecommunications service in rural areas on a nonprofit basis with a telecommunications 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 telecommunications 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 telecommunications 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; 1985 a. 297 s. 76.

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, telecommunications service or power 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 telecommunications station equipment, and except meters and appliances for measurements of any product or service unless the commission orders otherwise.

History: 1983 a. 53; 1985 a. 297.

196.625 Discrimination by telecommunications utilities. Except as provided in s. 196.63, a telecommunications utility shall receive and transmit without discrimination messages

from and for any person upon tender or payment of the usual or customary charges therefor, whenever requested to do so, without regard to the character of the messages to be transmitted unless a court of competent jurisdiction finds the messages to be in violation of s. 944.21 (3). Any telecommunications utility or agent, as defined in s. 196.66 (3) (a), neglecting or refusing to comply with any of the provisions of this section shall forfeit not less than \$25 nor more than \$5,000 for each day of such neglect or refusal. Any director or officer of a telecommunications utility neglecting or refusing to comply with any of the provisions of this section shall forfeit not less than \$25 nor more than \$2,500. Any employee of a telecommunications utility neglecting or refusing to comply with any of the provisions of this section shall forfeit not less than \$25 nor more than \$1,000. One-half of the forfeitures recovered under this section shall be paid to the person prosecuting under this section.

History: 1985 a. 297; 1987 a. 416; 1989 a. 49; 1991 a. 294.

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)

196.63 Telecommunications interruption in crisis situation. (1) INTERRUPTION AUTHORITY. If a sheriff, a police chief or a law enforcement officer designated by a sheriff or police chief to respond in a crisis situation has probable cause to believe that a person is holding a hostage or is resisting apprehension through the use or threatened use of force, the sheriff, police chief or law enforcement officer may order a telecommunications utility to interrupt or reroute telecommunications service to or from the suspected person for the duration of the crisis situation to prevent the person from communicating with anyone other than a person authorized by the sheriff, police chief or law enforcement officer.

(2) UTILITY IMMUNITY. A telecommunications utility may not be held liable for any action it takes under sub. (1).

History: 1991 a. 294.

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.

(3) The customer obtained the service by negligent interference by the customer or the customer's agent with equipment necessary to measure service and the interference causes service to go unmeasured.

History: 1977 c. 62; 1981 c. 179, 391; 1989 a. 40.

196.64 Public utilities, liability for treble damages. (1) If a director, officer, employe or agent of a public utility, in the course of the discharge of his or her duties, wilfully, wantonly or recklessly 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 wilfully, wantonly or recklessly fails to do any act, matter or thing required to be done under this chapter, the public utility shall be liable to the person injured thereby in treble the amount of damages sustained in consequence of the violation. No recovery as in this section provided shall affect a recovery by the state of the penalty prescribed for such violation.

(2) The burden of proof in an action under sub. (1) rests with the person injured to prove the case by clear and convincing evidence.

History: 1981 c. 390; 1983 a. 53; 1991 a. 39

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

Award of treble damages does not require proof of wilful, wanton or reckless behavior; provision is constitutional. *Peissig v. Wisconsin Gas Co.*, 155 W (2d) 686, 456 NW (2d) 348 (1990).

196.642 Customer liability for treble damages. (1) In an action to collect the outstanding balance on a customer's account, a court may award a public utility furnishing gas or electricity 3 times the amount of that portion of the outstanding balance incurred after October 31 and before April 16 if all of the following conditions are met:

(a) The customer's payment on any portion of the outstanding balance incurred after October 31 and before April 16 is 80 or more days past due.

(b) The customer's quarterly household income exceeds 250% of the income poverty guidelines for the nonfarm population of the United States as prescribed by the federal office of management and budget under 42 USC 9902 (2) during a calendar year quarter in which any portion of the outstanding balance incurred after October 31 and before April 16 is billed.

(c) The customer exhibited an ability to pay the portion of the outstanding balance incurred after October 31 and before April 16 when billed.

(d) The public utility includes with the first billing statement for any portion of an outstanding balance incurred after October 31 and before April 16 a written notice informing the customer that a court may award the public utility 3 times the amount of that portion of the outstanding balance incurred after October 31 and before April 16 if the customer's payment on any portion of that amount is 80 or more days past due, the customer exhibited an ability to pay that amount and the customer's household income exceeds a threshold level.

(2) The finder of fact shall consider all of the following factors to determine if a customer exhibited an ability to pay:

- (a) Size of the outstanding balance.
- (b) Customer's payment history.
- (c) Period of time the balance is past due.
- (d) Customer's reasons for the outstanding balance.
- (e) Customer's household size, income and expenses.

(3) The finder of fact may consider other relevant factors concerning a customer's circumstances to determine if a customer exhibited an ability to pay.

(4) Nothing in this section prevents a public utility in an action to collect the outstanding balance on a customer's account from seeking damages other than damages that meet the conditions under sub. (1), but the treble damages provision applies only to damages that meet the conditions under sub. (1).

History: 1989 a. 40.

196.643 Owner responsibility for service to rental dwelling unit. (1) **RESPONSIBLE PARTY.** When a customer terminates service to the customer's rental dwelling unit, a public utility shall make reasonable attempt to identify the party responsible for service to the rental dwelling unit after the customer's termination. If a responsible party cannot be identified, the public utility may give the owner written notice by regular or other mail of the public utility's intent to hold the owner responsible for service to the rental dwelling unit. The owner shall not be responsible for service if the public utility does not give the notice under this subsection or if, within 15 days after the date the notice is mailed, the owner notifies the public utility of the name of the party responsible for service

to the rental dwelling unit or notifies the public utility that service to the rental dwelling unit should be terminated and affirms that service termination will not endanger human health or life or cause damage to property.

(2) **JOINT METERING.** If gas, electric or water service is measured jointly for 2 or more rental dwelling units, the owner shall maintain the account for gas, electric or water service in the name of the owner or in the name of the agent responsible for the collection of rent and the management of the rental dwelling units.

History: 1989 a. 40.

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 account-

ing. (1) An officer of a public utility shall be fined not less than \$100 nor more than \$2,500, or an agent, as defined in s. 196.66 (3) (a), shall be fined not less than \$100 nor more than \$5,000 or an employe of a public utility shall be fined not less than \$100 nor more than \$1,000 for each offense if the officer, agent or employe 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 \$5,000 shall be recovered from the public utility for each offense under sub. (1) if the officer, agent or employe of the public

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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; 1989 a. 49.

196.66 General forfeiture provisions. (1) GENERAL FORFEITURE: FAILURE TO OBEY. 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, neglects 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 \$5,000.

(2) EACH DAY SEPARATE OFFENSE. Every day during which any public utility or any officer, agent, as defined in sub. (3) (a), 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). If the order is suspended, stayed or enjoined, this penalty shall not accrue.

(3) CONSIDERATIONS IN SETTING FORFEITURES. (a) In this subsection, "agent" means an authorized person who acts on behalf of or at the direction of a public utility. "Agent" does not include a director, officer or employe of a public utility.

(b) A court imposing a forfeiture on a public utility or an agent, director, officer or employe of a public utility under this chapter shall consider all of the following in determining the amount of the forfeiture:

1. The appropriateness of the forfeiture to the volume of business of the public utility.
2. The gravity of the violation.
3. Any good faith attempt to achieve compliance after the public utility, agent, director, officer or employe receives notice of the violation.

(4) TREBLE MAXIMUM FORFEITURES. (a) If an act or omission causes death or a life-threatening or seriously debilitating injury, and is subject to a forfeiture proceeding under this chapter, the maximum forfeiture that may be imposed shall be trebled.

(b) If a public utility fails to comply with any rule, order or direction of the commission after actual receipt by the public utility of written notice from the commission specifying the failure, the maximum forfeiture under sub. (1) shall be \$15,000.

History: 1981 c. 390; 1983 a. 53; 1989 a. 49.

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, trustee, 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) A public utility or an agent, as defined in s. 196.66 (3) (a), violating this section shall be fined not less than \$50 nor more than \$5,000 for each offense. A director or officer of a public utility violating this section shall be fined not less than \$50 nor more than \$2,500 for each offense. An employe of a public utility violating this section shall be fined not less than \$50 nor more than \$1,000 for each offense.

History: 1979 c. 171; 1983 a. 53, 238; 1989 a. 49.

196.675 Unlawful for carriers and public utilities to employ assistant district 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 an assistant district attorney or any person holding a judicial office.

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

(3) This section does not apply to court commissioners.

History: 1977 c. 236; 1983 a. 53; 1987 a. 104; 1989 a. 31; 1991 a. 39.

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 \$2,500.

History: 1981 c. 390; 1983 a. 53; 1989 a. 49.

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 \$5,000 or imprisoned for not more than 30 days or both if the person is a public utility or an agent, as defined in s. 196.66 (3) (a), fined not more than \$2,500 or imprisoned for not more than 30 days or both if the person is a director or officer of a public utility, or fined not more than \$1,000 or imprisoned for not more than 30 days or both if the person is an employe of a public utility.

(2) Any public utility permitting a violation of this section shall forfeit not more than \$5,000 for each offense.

History: 1983 a. 53; 1989 a. 49.

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, 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; 1985 a. 297

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) A public utility or an agent, as defined in s. 196.66 (3) (a), violating sub. (1), or any order or rule issued under sub. (1), shall forfeit an amount not exceeding \$5,000. A director or officer violating sub. (1), or any order or rule issued under sub. (1), shall forfeit an amount not exceeding \$2,500. An employe 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 \$500,000 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; 1989 a. 49.

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

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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

196.77 Promotional rates. Nothing in ss. 196.03, 196.19, 196.20, 196.21, 196.22, 196.37, 196.60, 196.604 and 196.625 prohibits a telecommunications utility from making a limited offering of promotional rates for services provided under a tariff containing such a promotional rate approved by the commission. A promotional rate under this section shall take effect at the time specified in the tariff but not earlier than 10 days after the date the tariff is filed with the commission. The commission shall give notice to any person, upon request, that a proposed tariff containing a promotional rate authorized under this section has been received by the commission.

History: 1985 a. 297; 1987 a. 403

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 public 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

196.795 Public utility holding companies. (1) DEFINITIONS. In this section:

(a) "Affiliated interest" has the meaning given under s. 196.52 (1).

(b) "Appliance" means any equipment used directly for cooking, drying, water tempering, space heating, space cooling or space ventilation. "Appliance" does not include equipment or devices which monitor or control the primary energy supply or source for any equipment used directly for cooking, drying, water tempering, space heating, space cooling or space ventilation.

(c) "Beneficial owner" means, with respect to a security, any person who in any way has the unconditional power to vote or receive the economic gains or losses of the security. "Beneficial owner" does not mean, with respect to a security, any person, including but not limited to any of the following, holding the security for another person:

1. The trustee of a qualified employe plan.
2. The trustee of a stock purchase plan or a dividend reinvestment plan.
3. A pledgee.
4. A nominee.
5. A broker or an agent.
6. An underwriter for the first 40 days following acquisition of securities from an issuer if the securities are held in the underwriter's own account.

(e) "Commercial building" means any building which is used primarily for carrying out any business, including but not limited to a nonprofit business, and any building which is used primarily for the manufacture or production of products, raw materials or agricultural commodities.

(f) "Company" means any partnership, corporation, joint-stock company, business trust or organized group of persons, whether incorporated or not, and any receiver, trustee or other liquidator of a partnership, association, joint-stock company, business trust or organized group of persons. "Company" does not include a municipality or other political subdivision.

(g) "Form a holding company" means any of the following:

1. As a beneficial owner, to take, hold or acquire 5% or more of the outstanding voting securities of a public utility with the unconditional power to vote those securities.

2. To exchange or convert 50% or more of the outstanding voting securities of a public utility, other than a municipality or other political subdivision, for or into the voting securities of a company organized, created, appointed or formed by or at the direction of the public utility or of a subsidiary of such company.

(h) 1. "Holding company" means any of the following:

a. Any company which, in any chain of successive ownership, directly or indirectly as a beneficial owner, owns, controls or holds 5% or more of the outstanding voting securities of a public utility, with the unconditional power to vote such securities.

b. Any person which the commission determines, after investigation and hearing, directly or indirectly, exercises, alone or under an arrangement or understanding with one or more persons, such a controlling interest over the management or policies of a public utility as to make it necessary or appropriate in the public interest or for the protection of the utility's consumers or investors that such person be subject to this section.

2. "Holding company", except for purposes of s. 196.795 (11) (b), does not mean any company which owns, operates, manages or controls a telecommunications utility, unless such company also owns, operates, manages or controls a public utility which is not a telecommunications utility.

(i) "Holding company system" means a holding company and any public utility with which the holding company is an affiliated interest and any company which is an affiliated interest with such public utility and any other company more than 5% of whose ownership interest is owned directly or indirectly in any chain of successive ownership by such public utility or by such company which is an affiliated interest with such public utility.

(j) "Nonutility affiliate" means a company in a holding company system which is not a public utility.

(k) "Person" means an individual or company.

(L) "Public utility affiliate" means a company which is in a holding company system and which is a public utility.

(Lm) "Public utility affiliate employe" means any individual who is in the regular employ of a public utility affiliate, except any officer or director and any officer's or director's incidental supporting staff and except such personnel as is required by the public utility affiliate's organizational structure to perform such functions as accounting consolidation.

(m) "Sell at retail" means to sell an appliance to a person who is the consumer or user of the appliance.

(o) "Subsidiary" has the meaning given under s. 180.1130 (12).

(2) HOLDING COMPANY FORMATION. (a) No person may form a holding company unless the person has received a certificate of approval from the commission under this subsection.

(b) An application for a certificate of approval to form a holding company is complete if it contains all of the following information:

1. The names and corporate relationships of all companies which will be in the holding company system with the applicant when the applicant forms the holding company and the name of the applicant and any parent or subsidiary corporation of the applicant.

2. A description of how the applicant plans to form the holding company including, if available at the time of application:

a. Copies of the organizational documents associated with the holding company formation, including articles of incorporation or amendments to the articles of incorporation of all companies which will be in the holding company system with the applicant when the applicant forms the holding company.

b. Copies of any filings, including securities filings, related to the formation of the holding company made with any agency of this state or the federal government.

3. The costs and fees attributable to the formation of the holding company.

4. The method by which management, personnel, property, income, losses, costs and expenses will be allocated within the holding company system between public utility affiliates and nonutility affiliates.

5. A copy of any proposed agreement between a public utility affiliate and any person with which it will be an affiliated interest at the time the holding company is formed.

6. An identification of all public utility assets or information in existence at the time of formation of the holding company, such as customer lists, which the applicant plans to transfer to or permit a nonutility affiliate, with which it is in the holding company system, to use. The identification shall include a description of the proposed terms and conditions under which the assets or information will be transferred or used.

7. A copy of a financial forecast showing the capital requirements of every public utility affiliate which at the time of the formation of the holding company will be within the holding company system. The financial forecast shall include for each public utility affiliate on an annual basis for 10 years following the year of application:

a. Projected capital requirements.

b. Sources of capital.

c. An itemization of major capital expenditures.

d. Projected capital structure.

e. An estimated amount of retained earnings available for nonutility purposes.

f. The assumptions underlying the information included in the financial forecast under subd. 7. a. to e.

(c) No later than 30 days after the commission receives an application for a certificate of approval to form a holding company under this subsection, the commission shall determine whether such application is complete as specified under par. (b). If the commission determines that the application is complete, the commission shall docket the application for a determination under this paragraph. If the commission determines the application to be incomplete, the commission shall notify the applicant in writing of its determination, identify any part of the application which the commission has determined to be incomplete and state the reasons for such determination. An applicant may supplement and refile an application which the commission has determined to be incomplete under this paragraph. There is no limit on the number of times an applicant may refile an application under this paragraph prior to a determination under par. (e). If the commission fails to make a determination regarding the completeness of an application within 30 days after the application has been filed, the application shall be deemed to be complete.

(d) The commission shall hold a hearing concerning an application for a certificate of approval to form a holding company under this subsection. The hearing may not be a hearing under s. 227.42 or 227.44.

(e) No later than 120 days after an application has been docketed under par. (c), the commission shall issue its findings of fact, conclusions of law and special order approving or rejecting the application. The commission shall issue a certificate of approval to form a holding company unless it finds that the formation of the holding company would materially harm the interests of utility consumers or investors. The commission, in issuing a certificate of approval under this subsection, may only impose terms, limitations or conditions on such approval which are consistent with and necessary to satisfy the requirements of sub. (5) (b) to (s).

(f) At any time subsequent to the time the commission approves the formation of a holding company under par. (e), the commission may, after notice and opportunity for hearing, modify any term, limitation or condition imposed under par. (e) or add any limitation, term or condition under par. (e). Any term, limitation or condition modified or added under this paragraph shall be consistent with and necessary to satisfy the requirements of sub. (5) (b) to (s).

(3) TAKEOVERS. No person may take, hold or acquire, directly or indirectly, more than 10% of the outstanding voting securities of a holding company, with the unconditional power to vote those securities, unless the commission has determined, after investigation and an opportunity for hearing, that the taking, holding or acquiring is in the best interests of utility consumers, investors and the public. This subsection does not apply to the taking, holding or acquiring of the voting securities of any holding company existing before November 28, 1985, if such holding company is a company which provides public utility service.

(4) CAPITAL IMPAIRMENT. If the commission finds that the capital of any public utility affiliate will be impaired by the payment of a dividend, the commission may, after an investigation and opportunity for hearing, order the public utility affiliate to limit or cease the payment of dividends to the holding company until the potential for impairment is eliminated.

(5) REGULATION OF HOLDING COMPANY SYSTEMS. (a) No holding company which is not a public utility and no nonutility affiliate is subject to any regulatory power of the commission except under this section, ss. 196.52, 196.525 and 196.84 and except under ch. 184 if the commission has made a determination under sub. (7) (a) which makes such holding company a public service corporation, as defined under s. 184.01 (2).

(b) The commission has full access to any book, record, document or other information relating to a holding company system to the extent that such information is relevant to the performance of the commission's duties under ch. 184, this chapter or any other statute applicable to the public utility affiliate. The commission may require a holding company to keep any record or document which is necessary for the commission to perform its duties under this section and which is consistent with generally accepted accounting and record keeping practices of the particular type of business involved. Any information obtained under this paragraph is subject to sub. (9), when applicable.

(c) No public utility affiliate may lend money to any holding company which is not a public utility or to any nonutility affiliate with which it is in the holding company system.

(d) No public utility affiliate may guarantee the obligations of any nonutility affiliate with which it is in a holding company system.

(dm) No public utility affiliate may provide utility service to any consumer of such public utility service or to any nonutility affiliate with which the public utility affiliate is in a holding company system except on the same terms or conditions that it provides such utility service to consumers in the same class.

(dr) No public utility affiliate may provide any nonutility product or service in a manner or at a price that unfairly discriminates against any competing provider of the product or service.

(f) No nonutility activity of any holding company or nonutility affiliate may be subsidized materially by the consumers of any public utility affiliate with which the holding company or nonutility affiliate is in the holding company system. No public utility activity of any holding company or public utility affiliate may be subsidized materially by the nonutility activities of the holding company or any of its nonutility affiliates.

(g) No holding company system may be operated in any way which materially impairs the credit, ability to acquire capital on reasonable terms or ability to provide safe, reasonable, reliable and adequate utility service of any public utility affiliate in the holding company system.

(h) No public utility affiliate may transfer to any company with which it is in a holding company any confidential public utility information, including but not limited to customer lists, which will be transferred or used for any nonutility purpose by any holding company or nonutility affiliate unless the public utility affiliate has applied for and received the written approval of the commission for the transfer. The commission shall condition approval of such a transfer upon the applicant's providing adequate notice of the availability of such information to the public and making the information available to any person at a cost not to exceed the cost of reproduction. The commission may not approve any transfer which would foster unfair or discriminatory business practices, or which would destroy or hamper competition through conduct which violates ch. 133 or any other applicable state or federal antitrust law.

(i) In its determination of any rate change proposed by a public utility affiliate under s. 196.20, the commission:

1. Shall consider the public utility affiliate as a wholly independent corporation;

2. May not attribute to that public utility affiliate any tax benefit or other benefit or tax liability or other liability resulting from the operations of the holding company or of any subsidiary of the holding company; and

3. May not attribute to the holding company or to any subsidiary of the holding company any tax benefit or other benefit or tax liability or other liability resulting from the operations of that public utility affiliate.

(j) Every public utility affiliate is subject to every law, regulation and precedent applicable to the regulation of public utilities.

(k) 1. Except as provided under subd. 2, no public utility affiliate may transfer, sell or lease to any nonutility affiliate with which it is in a holding company system any real property which, on or after November 28, 1985, is held or used for provision of utility service except by public sale or offering to the highest qualified bidder.

2. A public utility affiliate may lease or rent office space to a holding company or any nonutility affiliate with which it is in a holding company system at not less than fair market value. A public utility affiliate may transfer real property

which is contiguous to and used by the public utility affiliate for providing public access to a federally licensed hydro-electric project to a nonutility affiliate.

(L) Any holding company which is incorporated shall be incorporated under ch. 180.

(m) 1. No holding company system may take any action to terminate its interest in a public utility affiliate without notice to and approval of the commission. If the commission grants approval, it may impose conditions with respect to the division and allocation of plant, equipment, resources and any other asset necessary to protect the interests of utility consumers and investors and the public.

2. If a holding company system terminates its interest under subd. 1 in all public utility affiliates with which it is in a holding company system, no company remaining in the holding company system is subject to any regulatory power of the commission.

(n) A public utility affiliate may not engage in any combined advertising, directly or indirectly, with any nonutility affiliate with which it is in a holding company system within this state except for purposes of corporate identification and noncompetitive purposes.

(o) The assets of every company in a holding company system shall be as recorded on the books of accounting record of the company, net of any applicable valuation accounts, including but not limited to accumulated depreciation and allowance for uncollectible accounts, as of the end of the prior year.

(p) 1. The sum of the assets of all nonutility affiliates in a holding company system of any holding company formed on or after November 28, 1985, may not exceed the sum of the following:

a. Twenty-five percent of the assets of all public utility affiliates in the holding company system engaged in the generation, transmission or distribution of electric power.

b. A percentage of the assets, as determined by the commission, which may be more, but may not be less, than 25% of all public utility affiliates in the holding company system engaged in providing utility service other than the generation, transmission or distribution of electric power.

c. For any public utility affiliate which is in the holding company system and which engages in the provision of more than one type of utility service, a percentage of assets equal to the amount of the public utility affiliate's assets devoted to public utility service, other than the generation, transmission and distribution of electric power, multiplied by a percentage, as determined by the commission, which may be more, but may not be less, than 25%, plus 25% of all remaining assets of such public utility affiliate.

2. For purposes of subd. 1, the assets of each nonutility affiliate shall be determined by doing all of the following:

a. Subtracting from the nonutility affiliate's total assets the amount of the nonutility affiliate's investment in other utility and nonutility affiliates with which the nonutility affiliate is in a holding company system.

b. Multiplying the amount derived under subd. 2 a. by the quotient of the amount of the direct ownership interest in such nonutility affiliate owned by persons who are not with the nonutility affiliate in the holding company system, if such ownership by such persons is greater than one-half of the total ownership interest in such nonutility affiliate, divided by the total ownership interest in such nonutility affiliate.

c. Subtracting the amount derived under subd. 2 b. from the amount derived under subd. 2 a.

3. Within 36 months after it is formed, a holding company formed on or after November 28, 1985, may not have

nonutility affiliate assets exceeding 40% of the maximum amount allowed under subd. 1.

4. If the commission establishes a percentage of assets under subd. 1. b. or c. which is greater than 25%, any subsequent reduction of such percentage by the commission may not take effect until the last day of the 12th month following issuance of the order establishing the reduction or until a later date which the commission sets and which the commission determines to be reasonable after considering the size of the reduction and which is no later than 36 months following issuance of the order establishing the reduction.

(q) 1. No nonutility affiliate or joint venture or partnership with a nonutility affiliate as a member or partner may, in the service territory of a public utility affiliate with which it is in a holding company system, sell at retail, lease, install, maintain or service any appliance that uses as its primary energy source energy supplied by that public utility affiliate under rates and tariffs approved by the commission, if the appliance is, or is intended to be, located in any building used primarily for residential occupancy or in any commercial building unless the building is owned or operated by the holding company or by its nonutility affiliates or unless the commission determines, after notice and hearing, that the selling at retail, leasing, installing, maintaining or servicing of the appliance will not do any of the following:

a. So as to violate ch. 133 or any other applicable state or federal antitrust law, lessen competition or tend to create a monopoly, restrain trade or constitute an unfair business practice.

b. Make use of any customer list, other confidential information, logo or trademark obtained from a public utility affiliate in a manner unfair to competitors.

2. Except as provided under subd. 3, no public utility affiliate or its subsidiary or joint venture or partnership having a utility affiliate or its subsidiary as a member or partner may, in the service territory of the public utility affiliate, sell at retail, lease, install, maintain or service any appliance that uses as its primary energy source energy supplied by that public utility affiliate under rates and tariffs approved by the commission, unless the appliance is located in facilities owned or operated by that public utility affiliate or its subsidiary or unless the appliance is sold, leased, installed, maintained or serviced:

a. In response to circumstances which reasonably appear to the public utility affiliate or its subsidiary to endanger human health or life or property;

b. Under any appliance sale or service plan or program in effect on March 1, 1985; or

c. Under any energy conservation or other program which a state law, state agency, federal law or federal agency requires the public utility or public utility affiliate to perform.

3. Notwithstanding subd. 2, a public utility affiliate or its subsidiary may sell, lease, install, maintain or service an appliance which is in its public utility service territory and which uses as its primary energy source energy supplied by the public utility affiliate under rates and tariffs approved by the commission if:

a. The installation, maintenance or service of the appliance is performed by an independent contractor which is not in the holding company system of the public utility affiliate and which is regularly engaged in, qualified and, if required by any state or local governmental unit, licensed to perform heating, ventilation, air conditioning, electrical or plumbing work; or

b. The commission determines, after notice and hearing, that the sale, lease, installation, maintenance or service of the appliance, if conducted by the public utility affiliate's em-

ployes or by the employes of the public utility affiliate's subsidiary, will not, so as to violate ch. 133 or any other applicable state or federal antitrust law, lessen competition, tend to create a monopoly, restrain trade or constitute an unfair business practice.

4. No nonutility affiliate may sell at wholesale to any person any appliance, except a swimming pool or spa heater, for delivery in this state unless the nonutility affiliate is engaged in the production, manufacture, fabrication or assembly of any component part of the appliance.

(r) No public utility affiliate may permit the use of any public utility affiliate employee's services by any nonutility affiliate with which it is in a holding company system except by contract or arrangement. Any such contract or arrangement made or entered into on or after November 28, 1985, for the use of any public utility affiliate employee's services by a nonutility affiliate shall have prior written approval of the commission before it is effective. The commission shall approve such contract or arrangement if it is established upon investigation that the nonutility affiliate will compensate the public utility affiliate for the use of the employee's services at the fair market value of the employee's service and that the nonutility affiliate's use of the employee's services will not result in unjust discrimination against, or have an anticompetitive impact on, any competitor of the nonutility affiliate. The commission may not approve any such contract or arrangement if it determines that the potential burden of administering such contract or arrangement is greater than the potential benefits to the public utility affiliate's customers or if it determines that the public utility affiliate has not minimized the use of such employes by nonutility affiliates in the holding company system. Any contract or arrangement in effect on November 28, 1985, for the continued or future use of any public utility affiliate employee's services by a nonutility affiliate approved under s. 196.52 shall be resubmitted for approval by the commission under this paragraph within 90 days after November 28, 1985. Such contract or arrangement, if approved by the commission, shall take effect within 60 days after the date of approval.

(s) In this paragraph, "property" means any equipment, facilities, property or other nonmonetary item of value except real property and utility service which is provided by the public utility affiliate on the same terms or conditions to all consumers in the same class. No public utility affiliate may sell, lease, transfer to or exchange with any nonutility affiliate with which it is in a holding company system any property except by contract or arrangement. Any such contract or arrangement made or entered into on or after November 28, 1985, for the sale, use, transfer or exchange of any public utility affiliate's property by a nonutility affiliate shall have the prior written approval of the commission before it is effective. The commission shall approve such contract or arrangement if it is established upon investigation that the nonutility affiliate will compensate the public utility affiliate for selling, leasing, transferring to or exchanging with the nonutility affiliate any property at the fair market value of the property and that the nonutility affiliate's acquisition or lease of the property will not result in unjust discrimination against, or have an anticompetitive impact on, any competitor of the nonutility affiliate. The commission may not approve any such contract or arrangement if it determines that the potential burden of administering such contract or arrangement is greater than the potential benefits to the public utility affiliate's customers or if it determines that the public utility affiliate has not minimized selling, leasing, transferring to or exchanging with nonutility affiliates in the holding company system such property. Any contract or

arrangement which is in effect on November 28, 1985, for a public utility affiliate to sell, lease, transfer to or exchange with a nonutility affiliate, on a continuing basis or in the future, the public utility affiliate's property and which is approved under s. 196.52 shall be resubmitted for approval by the commission under this paragraph within 90 days after November 28, 1985. Such contract or arrangement, if approved by the commission, shall take effect within 60 days after approval.

(6) REPORTING REQUIREMENTS. No more than 10 business days after a holding company forms, organizes or acquires a nonutility affiliate, the holding company shall notify the commission of the formation, organization or acquisition and shall provide the commission with the following information:

(a) The name, identification of officers and corporate relationship of the nonutility affiliate to the holding company and utility affiliate.

(b) A copy of any proposed agreement or arrangement between the nonutility affiliate and the public utility affiliate.

(c) A brief description of the nature of the business of the nonutility affiliate, including its most recent public annual financial statement.

(d) As of the last day of the calendar year immediately preceding the date of the notification under this subsection, the total amount of assets held by the nonutility affiliate, the amount of such assets located within this state, the total number of employees and the total number of employees located in this state. The holding company shall report the information required under this paragraph to the commission annually no later than March 31. The information shall be available to the public upon filing.

(7) COMMISSION INVESTIGATIONS. (a) No sooner than the first day of the 36th month after the formation of a holding company and at least once every 3 years thereafter, the commission shall investigate the impact of the operation of every holding company system formed on or after November 28, 1985, on every public utility affiliate in the holding company system and shall determine whether each nonutility affiliate does, or can reasonably be expected to do, at least one of the following:

1. Substantially retain, substantially attract or substantially promote business activity or employment or provide capital to businesses being formed or operating within the wholesale or retail service territory, within or outside this state, of:

a. Any public utility affiliate.

b. Any public utility or member of a cooperative association organized under ch. 185 which files or has filed a plan under s. 196.491 (2).

2. Increase or promote energy conservation or develop, produce or sell renewable energy products or equipment.

3. Conduct a business that is functionally related to the provision of utility service or to the development or acquisition of energy resources.

4. Develop or operate commercial or industrial parks in the wholesale or retail service territory of any public utility affiliate.

(am) Funds utilized by a nonutility affiliate for any of the following may not be considered by the commission in making any determination under par. (a):

1. The purchase or sale of securities or other appropriate cash management practices.

2. The establishment and maintenance of cash accounts in banks or other financial institutions.

(ar) Three years after the formation of a holding company under this section, the commission shall report its findings

under par. (a) to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2). Thereafter the commission shall, based on its existing investigative findings, rate reviews and other relevant information, submit to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the impact of the holding company, including the benefits and adverse effects on every public utility affiliate in the holding company system and on the investors and consumers of such public utility affiliates, at least once every 2 years. The report shall include any recommendations for legislation relating to the regulation of any part of a holding company system.

(b) The commission, on its own motion, or, at its discretion, upon the complaint of any person, may, after reasonable notice and an opportunity for hearing, conduct an investigation to determine if any practice of a holding company system violates any provision of sub. (5) (b) to (s) or any limitation, term or condition imposed under sub. (2) (e) or (f). If the commission finds after investigation, notice and opportunity for hearing that any practice of any company in a holding company system violates any provision of sub. (5) (b) to (s) or any term, limitation or condition imposed under sub. (2) (e) or (f), the commission, by order or otherwise, shall direct the company to modify or cease the practice. Such order is reviewable under ch. 227. The circuit court of Dane county, by appropriate process including the issuance of a preliminary injunction by suit of the commission, may enforce an order to cease or modify a practice under this paragraph.

(c) The commission, after investigation and a hearing, may order a holding company to terminate its interest in a public utility affiliate on terms adequate to protect the interests of utility investors and consumers and the public, if the commission finds that, based upon clear and convincing evidence, termination of the interest is necessary to protect the interests of utility investors in a financially healthy utility and consumers in reasonably adequate utility service at a just and reasonable price. The circuit court of Dane county may enforce by appropriate process an order establishing a plan of reorganization to terminate a holding company system's interest in a public utility affiliate. Any such order of the commission issued under this paragraph may be reviewed under ch. 227.

(8) EXEMPTIONS. (a) This section does not apply to any holding company which was organized or created before November 28, 1985, and which was not organized or created by or at the direction of a public utility.

(b) This section does not apply to any telecommunications utility.

(9) PROTECTION OF BUSINESS INFORMATION. If the commission obtains business information from a holding company system which, if disclosed to the public, would put any nonutility affiliate in the holding company system at a material competitive disadvantage, the information is not subject to s. 19.35 and the commission shall protect such information from public disclosure as if it were a trade secret as defined in s. 134.90 (1) (c).

(9m) PRIVATE CAUSE OF ACTION. Any company in a holding company system which does, causes or permits to be done any prohibited action under sub. (5) (c) to (dr), (f), (h), (k), (n), (q), (r) or (s), or fails to comply with any term, limitation or condition imposed under sub. (2) (e) or (f) consistent with sub. (5) (c) to (dr), (f), (h), (k), (n), (q), (r) or (s), is liable to any person injured thereby in treble the amount of damages sustained in consequence of the prohibited action or failure to act.

(10) **COMMISSION INTERVENOR AUTHORITY.** The commission may intervene on behalf of this state in any proceeding before any state or federal agency or court before which an application or issue related to this section is pending. The commission may enter into any binding settlement related to any proceeding in which the commission has intervened and may exercise any power or right necessary to accomplish the intervention.

(10m) **SMALL BUSINESS PROTECTION.** In this subsection, "small business" means a business which has had less than \$5,000,000 in gross annual sales in the most recent calendar year or fiscal year and which has less than 150 employees. The commission shall provide assistance, monitoring and advocacy in protecting small business interests under s. 196.795 in any action or proceedings before the commission.

(11) **CONSTRUCTION.** (a) This section may not be deemed to diminish the commission's control and regulation over the operations and assets of any public utility.

(b) This section shall be deemed to legalize and confirm the formation, prior to November 28, 1985, of any holding company, which is not itself a public utility, and shall be deemed to legalize and confirm the operations and issuances of securities of the holding company, except that nothing in this section shall be deemed to prevent the commission from imposing reasonable terms, limitations or conditions on any holding company which are consistent with and necessary to satisfy the requirements of sub. (5) (b) to (o) and (q) to (s) or which relate to future investments by the holding company unless the holding company owns, operates, manages or controls a telecommunications utility and does not also own, operate, manage or control a public utility which is not a telecommunications utility.

History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269

NOTE: This section was created by 1985 Act 79, Section 1 of that Act is entitled "Findings and purpose."

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 or telecommunications 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; 1985 a. 297

196.84 Commission's holding company and nonutility affiliate regulation costs. Under rules promulgated by the commission, a holding company, as defined in s. 196.795 (1) (h) or a nonutility affiliate, as defined under s. 196.795 (1) (j), shall compensate the commission for the cost of any increase in regulation of any public utility affiliate, as defined under s. 196.795 (1) (L), which is with the holding company or nonutility affiliate in a holding company system as defined in s. 196.795 (1) (i), if the commission determines that the increase is reasonably required in order for the commission to implement and enforce s. 196.795. Such compensation may not be recovered directly or indirectly from any public utility affiliate. The commission shall assess such compensation using the procedure prescribed in s. 196.85, except that no advance payment of a remainder assessment under s. 196.85 (2) may be required for the first 2 fiscal years after November 28, 1985. No assessment may be made under this section against any holding company or nonutility affiliate for any time worked by any person under s. 196.795 (10m) if the time is properly assessable for utility regulation under s. 196.85. For the purpose of calculating cost increases under this section, 90% of the cost increases determined shall be costs of the commission and 10% of the cost increases determined shall be costs of state government operations.

History: 1985 a. 79; 1991 a. 269

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. Ninety percent of the payment shall be credited to the appropriation account under 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. For the purpose of calculating the costs of investigations, appraisals and other services under this subsection, 90% of the costs determined shall be costs of the commission and 10% of the costs determined shall be costs of state government operations.

(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, calculate 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 and expenditures of the state for state government operations to support the performance of such duties. For purposes of such calculation, 90% of the expenditures so determined shall be expenditures of the commission and 10% of the expenditures so determined shall be expenditures for state government operations. 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. Ninety percent of the payment shall be credited to the appropriation account under 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, 1985 stats., 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; 1987 a. 378; 1991 a. 269.

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. For the purpose of calculating the expense, 90% of the costs determined shall be costs of the commission and 10% of the costs determined shall be costs of state government operations. 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; 1991 a. 269.

196.856 Assessment for acid deposition activities. (1) The commission shall annually assess against the major utilities, as defined under s. 144.386 (1) (f), the total, not to exceed \$400,000, of the amounts appropriated under ss. 20.370 (2) (c) and 20.505 (1) (jm) for acid deposition studies, including the nitrogen oxide study under s. 144.389 (3), and evaluation and monitoring activities conducted by the department of natural resources and the department of administration.

(2) The commission shall, with the cooperation of the department of natural resources and the department of administration, promulgate rules establishing a method for assessing each major utility an amount that is proportionate to its fraction of the total amount of sulfur dioxide emissions from major utilities in this state.

(3) This section does not apply after June 30, 1996.

History: 1985 a. 296; 1987 a. 27.

196.857 Assessment for stray voltage program. (1) The commission shall establish and administer a program to provide to farmers on-site technical assistance related to stray voltage. In cooperation with the department of agriculture, trade and consumer protection, the commission shall investigate the causes of stray voltage on individual farms, recommend to farmers solutions to stray voltage problems and evaluate the effectiveness of on-site technical assistance. The commission shall assess annually all of the following amounts to public utilities which produce electricity and which have

annual gross operating revenues related to electricity in excess of \$100,000,000 in proportion to their respective electric gross operating revenues during the last calendar year, derived from intrastate operations:

(a) The amount appropriated under s. 20.155 (1) (L), less any amount received under s. 20.155 (1) (Lb). The amounts received under this paragraph shall be credited to the appropriation made in s. 20.155 (1) (L).

(b) The amount appropriated under s. 20.115 (8) (j), less any fees received from farmers under s. 93.41. The amounts received under this paragraph shall be credited to the appropriation made in s. 20.115 (8) (j).

(2) A public utility shall pay the total amount that it is assessed under sub. (1) within 30 days after it receives a bill for that amount from the commission. The bill constitutes notice of the assessment and demand of payment.

(2m) If the commission, at the request of an electric cooperative organized under ch. 185 or any public utility which is not assessed under sub. (1), conducts an investigation of the causes of stray voltage on any farm receiving electrical service from that electric cooperative or public utility, that electric cooperative or public utility shall pay a reasonable fee, not exceeding \$500 per investigation, which the commission shall establish separately for each request. The amounts received under this subsection shall be credited to the appropriation made in s. 20.155 (1) (L).

(3) This section does not apply after August 31, 1993.

History: 1987 a. 27, 399; 1991 a. 39.

196.858 Assessment for telephone relay service. (1) The commission shall annually assess against local exchange and interexchange telecommunications utilities the total, not to exceed \$5,000,000, of the amounts appropriated under s. 20.505 (4) (is).

(2) The commission shall assess a sum equal to the annual total to local exchange and interexchange telecommunications utilities in proportion to their gross operating revenues during the last calendar year. If total expenditures for telephone relay service exceeded the payment made under this section in the prior year, the commission shall charge the remainder to assessed telecommunications utilities in proportion to their gross operating revenues during the last calendar year. A telecommunications utility shall pay the assessment within 30 days after the bill has been mailed to the assessed telecommunication utility. The bill constitutes notice of the assessment and demand of payment. Payments shall be credited to the appropriation under s. 20.505 (4) (is).

(3) Section 196.85 (3) to (8), as it applies to assessments under s. 196.85 (1) or (2), applies to assessments under this section.

(5) A telecommunications utility may not recover the assessment under this section by billing a customer for the assessment on a separate line in a billing statement.

History: 1989 a. 336; 1991 a. 39.

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 or power 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).

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(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; 1985 a. 187.

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.

(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.

196.975 Local access and transport area boundaries. (1)

One hundred fifty or more consumers, as defined in s. 196.213 (1)(a) 1, who are residents of the same local exchange area for telecommunications service may file with the commission a petition requesting that commission staff, in cooperation with the affected telecommunications utilities, petition the appropriate federal district court to include their local exchange area in a different local access and transport area. The petitioners shall include with the petition information explaining why the current boundaries of the local access and transport area which includes their local exchange area does not adequately reflect areas of common social, economic and other concerns.

(2) After receiving a petition under sub. (1), the commission shall schedule a public hearing, to be held in the local exchange area of the petitioners, serving to receive testimony on the contents of the petition and any other matters deemed relevant by the commission. The commission shall publish a class 1 notice under ch. 985 in a newspaper serving the local exchange area at least 20 days prior to the hearing.

(3) If, after the hearing under sub. (2), the commission determines that there is sufficient evidence that current boundaries of the local access and transport area does not adequately reflect areas of common social, economic and other concerns and that there is substantial public support within the local exchange area to include the area in a different local access and transport area, the commission shall direct its staff, in cooperation with the affected telecommunications utilities to petition the appropriate federal district court to so revise the local access and transport area boundaries. All of the commission's expenses of petitioning the federal court shall be paid by the commission from its appropriation under s. 20.155 (1) (g).

History: 1985 a. 297.

196.98 Water reporting required. The commission shall ensure that each public utility to which s. 144.026 applies shall comply with the requirements of that section and shall report its volume and rate of withdrawal, as defined under s. 144.026 (1) (m), and its volume and rate of water loss, as defined under s. 144.026 (1) (L), if any, to the commission in the form and at the times specified by the department of natural resources. The commission shall provide the information reported under this section to the department of natural resources.

History: 1985 a. 60.