

## CHAPTER 197

### MUNICIPAL ACQUISITION OF UTILITIES

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**Cross-reference:** See definitions in s. 196.01.

#### **197.01 Municipalities, powers under utility law. (1)**

Any municipality shall have the power, subject to ch. 196 and this chapter, to construct and operate a plant and equipment or any part thereof for the production, transmission, delivery or furnishing of heat, light, water or power, or to acquire, construct and operate a toll bridge.

(2) Any municipality shall have the power, subject to ch. 196 and this chapter, to purchase any public utility or any part thereof; provided, that such purchase and the terms thereof shall be approved by the commission after a hearing as provided in s. 197.05.

(3) Any municipality shall have the power, subject to ch. 196 and this chapter, to acquire the property of any public utility, wheresoever situated, actually used and useful for the convenience of the public; provided, that in acquiring any property outside of Wisconsin, such property must have been used exclusively by such public utility for furnishing heat, light, water and power to such municipality.

(4) (a) Any municipality that owns, or has secured a declaration of convenience and necessity to own, operate, manage or control, any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power, may contract with any public utility lawfully engaged as a public utility for a division of any of the foregoing services in the municipality, for a period not exceeding 10 years. The contract shall contain mutual covenants restricting and obligating operations by each party to service within the respective fields of division so contracted for. The commission shall have the right to regulate the charges for, and quality of, service, notwithstanding anything provided in the contract.

(b) Nothing in this section shall prevent the commission from terminating a contract authorized under par. (a) and granting a certificate of convenience and necessity for a 3rd or other utility, if in the commission's judgment the public interest requires it.

**History:** 1981 c. 390; 1997 a. 254.

**197.02 Action by municipalities to acquire utility.** If a municipality has determined to acquire a plant operated under an indeterminate permit provided in s. 196.54 (2), by a vote of a majority of the electors, the municipality shall bring an action in the circuit court against the public utility for an adjudication as to the necessity of the taking by the municipality. Unless the parties waive a jury, the question as to the necessity of the taking of the property by the municipality shall be submitted to a jury.

**History:** 1983 a. 53 s. 114; 1997 a. 254.

**197.03 Indeterminate permit; notice.** If a municipality has determined to acquire an existing plant in the manner provided in s. 197.02, and the public utility owning the plant has consented to the taking over of the plant by the municipality by acceptance of an indeterminate permit as provided in s. 196.54 (4), or, in case the public utility has not waived or consented to the taking, if a jury acting under s. 197.02 has found that a necessity exists for the taking of the plant, the municipality shall give

speedy notice to the public utility and to the commission of the municipality's determination and of the utility's consent or the jury's finding.

**History:** 1997 a. 254.

**197.04 Discontinuance of condemnation. (1)** (a) Any municipality having determined to acquire an existing plant or any part of the equipment of a public utility may discontinue all proceedings to that end at any time within 90 days after the final determination of compensation by the commission, by a vote of the electors of the municipality as provided in pars. (b) and (c), or by a resolution to that effect by its governing body. Except as provided in par. (c), the resolution shall become effective 90 days after its passage and publication.

(b) If within either of the 90-day periods described in par. (a) a petition conforming to the requirements of s. 8.40 is filed with the clerk of the municipality as provided in s. 8.37 and the petition has been signed by 5 percent of the electors of a 1st class city or by 10 percent of the electors of all other municipalities requesting that the question of discontinuing the proceeding to acquire the plant or equipment of the public utility be submitted to the electors of the municipality, the applicable question under par. (c) shall be submitted to the electors at any general or regular municipal election that is held not less than 70 and not more than 75 days from the date of the filing of the petition. If no general election or regular municipal election is to be held within the stated periods, the governing body of the municipality shall order the holding of a special election, to be held not less than 70 days from the date of filing of the petition, for the purpose of submitting the question to the electors.

(c) 1. If a petition is filed under par. (b) before the adoption of a resolution as described in par. (a), the question submitted to the electors shall be whether the proceedings to acquire an existing plant or any part of the equipment of a public utility shall be discontinued.

2. If a petition is filed under par. (b) after the adoption of a resolution as described in par. (a), the question submitted to the electors shall be whether the adoption of the resolution shall be ratified. A resolution adopted prior to the submission of a petition shall not become effective unless a majority of the electors voting on the question shall be in favor of the question.

(2) The governing body of the municipality may provide for notice of, the manner of holding, the method of voting on, the method of making returns of, and the method of canvassing and determining the result of, the election required under sub. (1). Notice of the election to the electors shall be given by a brief notice of that fact once a week for 3 weeks in some newspaper of general circulation published in the municipality. If no newspaper of general circulation is published in the municipality, publication may be made in any newspaper of general circulation in the county seat of the county in which the municipality is located. The notice of holding any special election shall be incorporated as a part of the notice given under this subsection.

(3) Upon discontinuance of the proceedings to acquire an existing plant or any part of the equipment of a public utility by the

municipality no subsequent proceedings shall be instituted within 2 years thereafter.

**History:** 1989 a. 192; 1997 a. 254; 1999 a. 182; 2011 a. 75.

**197.05 Compensation determined by commission; notice; title.** (1) Upon receipt of the notice under s. 197.03, the commission shall set a time and place for a public hearing upon the matters of the just compensation to be paid for the property of the public utility, wherever situated, actually used and useful for the convenience of the public, and of all other terms and conditions of the purchase. The commission shall give the interested municipality and public utility not less than 30 days' notice of the time and place at which the hearing will be held, and the matters to be considered and determined at the hearing. The municipality shall publish in the county in which the public utility is located a class 3 notice, under ch. 985, of the hearing.

(2) The commission shall, by order, fix and determine and certify to the governing body of the municipality, to the public utility and to any bondholder, mortgagee, lienor or any other person having or claiming to have any interest in the public utility appearing at the hearing, just compensation to be paid for the taking of the property of the public utility actually used and useful for the convenience of the public and all other terms and all conditions of purchase that the commission shall ascertain to be reasonable.

(3) (a) The compensation and other terms and the conditions of purchase certified by the commission under sub. (2) shall constitute the compensation and terms and conditions to be paid, followed and observed in the purchase of the plant from the public utility. Upon the filing of the order issued under sub. (2) with the clerk of the municipality the absolute title of the property taken shall vest in the municipality. As to any property to be taken that is located outside of Wisconsin, the circuit court is vested with power to require the public utility company to convey the property to the municipality.

(b) Municipalities in adjoining states that have determined to acquire a public utility, part of which is located in Wisconsin, are authorized to acquire and to hold and operate any part of the public utility located in Wisconsin, provided the adjoining state gives a similar power to Wisconsin municipalities.

**History:** 1997 a. 254.

**197.06 Court review.** The order of the commission may be reviewed by appeal in the manner provided in ch. 227, and any bondholder, mortgagee, lienholder or other creditor may take such appeal as a party aggrieved.

**197.08 Decision for utility.** If the plaintiff shall establish to the full satisfaction of the court and the court shall adjudge that such compensation is unlawful or that some of such terms or conditions are unreasonable, the court shall remand the same to the commission with such findings of fact and conclusions of law as shall set forth in detail the reasons for such judgment and the specific particulars in which such order of the commission is adjudged to be unreasonable or unlawful.

**197.09 Reconsideration of compensation.** (1) If the compensation fixed by the order of the commission be adjudged to be unlawful, the commission shall forthwith proceed to set a rehearing for the redetermination of such compensation as in the first instance.

(2) The commission shall forthwith otherwise alter and amend such order with or without a rehearing as it may deem necessary so that the same shall be reasonable and lawful in every particular.

**197.10 Cities of first class; contracts; utilities.** (1) Any 1st class city, however incorporated, may enter into contract,

upon any terms not repugnant to the constitution of this state, with the owner or owners of any public utility, as defined in s. 196.01, except utilities for the operation of telephone or telegraph lines, operated in whole or in part within the corporate limits of said city, for any or all of the following purposes:

(a) To provide for the leasing, public operation or joint operation of any part or all of the properties of such public utility by said city.

(b) To provide for the control, operation, service or management of such properties by either party or by both parties acting jointly.

(c) To determine and fix by the terms of such contract the value of the properties of such utility to be used as a basis for the computation and distribution of earnings, rates and rate of return to the owner or owners of such public utility.

(d) To provide for the stabilization of the rate of return to the owner or owners of such properties.

(e) To provide for the extension and improvement of existing properties by the municipality or otherwise.

(f) To provide for the purchase of all or any part of such properties by the city, to fix the purchase price or the basis or method for computing the same and to provide for the payment thereof and the method of such payment out of funds provided by the city whether derived out of the earnings of such properties or otherwise, or derived in part from such earnings and in part from other sources.

(g) To provide for the purchase by the city of mortgage or revenue bonds issued by such public utility.

(h) To provide for the submission of matters of difference arising between the parties to the public service commission or to a board of arbitrators as the parties may agree.

(i) To provide for such further or additional matters as will enable the parties to accomplish any object agreed upon between them relating to the use, operation, service, management, control, sale, lease, purchase, extension, improvement, rates, value or earnings of such properties.

(2) Such contract when adopted by the common council of said city and accepted by the owner or owners of such public utility shall be submitted to the public service commission for its approval and upon such approval the same shall be filed as provided in s. 8.37 and submitted in such manner as the common council shall determine to a vote of the electors of such city at the next regular municipal election or at a special election called for that purpose, and such contract shall not become binding upon such city until approved by a majority vote of the qualified electors of such city voting thereon. No bonds shall in any case be issued by said city under the contract or contracts mentioned in sub. (1), until the proposition of their issue shall have been submitted to the people of such city and adopted by a majority of the electors voting thereon.

(3) It shall be the duty of the public service commission upon request joined in by both parties to any such contract to advise and cooperate with them in the making of audits, estimates and other determinations of fact which will aid the parties in reaching an agreement or in the operation of the property under such agreement.

(4) Insofar as the use, operation, service, management, control, sale, lease, purchase, extension, improvement, rates, value or earnings of the properties of the public utility or provisions looking toward the ultimate acquisition of the same are made subject to the terms of any contract provided for in sub. (1), and so long as said contract remains in force, the following sections of the statutes shall be inapplicable to the same: ss. 196.02 (1) and (2), 196.05, 196.09, 196.10, 196.11, 196.15, 196.16, 196.19 (6), 196.20, 196.22, 196.26, 196.28, 196.30, 196.37, 196.39, 196.40,

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196.58, 196.70, 197.01 (2) to (4), 197.02, 197.03, 197.04, 197.05, 197.06, 197.08 and 197.09; provided that nothing in any contract made hereunder shall operate to prevent an appeal to the public service commission by any person, other than a party to said contract, upon any complaint alleging that any rate, fare, charge or classification, or any joint rate, or any regulation, act or practice relating to the production, transmission, delivery or furnishing of gas, heat, light or power, or any service in connection therewith, is unjustly discriminatory, or that any such service is inadequate or cannot be obtained. Upon said appeal the commission shall, as provided by law, determine and by order fix a rate, fare, charge, classification, joint rate or regulation, act or practice or service to be imposed, observed or followed in the future in lieu of that found to be unjustly discriminatory or inadequate.

(5) Nothing in this section shall operate to deprive the public

service commission of its jurisdiction over service, rates and other matters, as provided in chs. 196 and 197, outside of the limits of said 1st class city. If any complaint or investigation before the commission as to service, rates or other matters arising outside of any such city necessarily shall involve any contract authorized in sub. (1), or any specifications, rules, regulations or acts in its conduct or administration such city shall be made a party to such proceeding and to the extent that such contract or its administration shall be determined by the commission to be unreasonable or unjustly discriminatory as regards any person or municipality outside of such city, the same shall be changed to conform to the rates, service or regulations provided by the commission outside of such city.

**History:** 1977 c. 29 ss. 1362, 1654 (9) (g); 1981 c. 148 s. 13; 1981 c. 347 ss. 74, 80 (2); 1981 c. 390 ss. 179, 252; 1981 c. 391; 1983 a. 53 s. 114; 1983 a. 207; 1985 a. 187; 1999 a. 182; 2005 a. 179; 2013 a. 125.