

# MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

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1961 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

VOLUME 2

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**Discard Previous Pocket Part Supplement**

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1961

day of May of each year, shall send to the librarian of the state library a report containing a list of all books and documents purchased with the state stipend for the preceding year. The aid from the state, provided by section 33, shall be withheld from any city, town or village corporation until the report herein required to be made shall have been received by the librarian of the state library; and the same shall also be withheld unless said report shall show that the laws and Maine reports furnished by the state are kept constantly in said library for the free use and benefit of all the citizens. (R. S. c. 38, § 29. 1949, c. 153, § 6. 1955, c. 185, § 15.)

**Effect of amendment.**—The 1955 amendment deleted in the first sentence provisions relating to laws, Maine reports and other documents required to be transmitted by the state librarian and kept in the public library. It also deleted in the second sentence the words “and other

documents,” formerly appearing after “Maine reports,” inserted the word “constantly” and substituted at the end of the sentence the words “for the free use and benefit of all the citizens” for the words “as required by this section.”

## Chapter 44.

### Public Utilities Commission.

The public utilities commission is given jurisdiction of all public utilities unless the legislature plainly indicates otherwise. Au-

burn Water District v. Public Utilities Comm., 156 Me. 222, 163 A. (2d) 743.

#### Appointment, General Authority and Duties.

**Sec. 1. Appointment of commissioners; tenure; vacancies; clerks; office and equipment; salary; expenses.**

The chairman shall receive a salary of \$11,000 per year, and the other commissioners a salary of \$10,000 each per year. The salary of the clerk shall be left to the discretion of the commission, subject to the approval of the governor and council. The salary of the other subordinate officials and employees of said commission shall be subject to the provisions of the personnel law. The commissioners and all employees shall receive actual expenses when traveling on official business. (R. S. c. 40, § 1. 1949, c. 15. 1951, c. 412, § 13. 1953, c. 416, § 1. 1957, c. 418, § 16. 1959, c. 361, § 12.)

**Effect of amendments.** — The 1957 amendment, effective July 1, 1957, increased the salary of the chairman from \$9,000 to \$10,125 and of the other members from \$8,500 to \$9,575.

The 1959 amendment increased the salary of the chairman from \$10,125 to \$11,000 and of the other members from \$9,575 to \$10,000, and provided for an ap-

propriation for the fiscal years ending June 30, 1960 and 1961.

As the first paragraph was not changed by the amendments, it is not set out.

**Effective date.** — P. L. 1959, c. 361, amending this section, provided in section 14 thereof as follows: “The provisions of this act shall become effective for the week ending August 22, 1959.”

**Sec. 2. Members and employees not to be connected with any public utility, nor shall commissioner hold other office; removal.**—No member or employee of said commission shall have any official or professional connection or relation with or hold any stock or securities in any public utility, as defined in section 16, operating within this state, nor shall he render any professional service against any such public utility nor shall he be a member of a firm which shall render any such service. No commissioner shall hold any other civil office of profit or trust under the government of the United States or of this state except the office of coordinator of atomic development activities or the office of justice of the peace or notary public, nor shall he serve on or under any committee of any political party. Any willful violation of the provisions of

this chapter by any commissioner shall constitute sufficient cause for his removal by the governor with the advice and consent of the council. (R. S. c. 40, § 2. 1955, c. 105, § 2.)

**Effect of amendment.**—The 1955 amendment inserted in the second sentence the reference to the office of coordinator of atomic development activities.

**Sec. 7. Production of books and papers; failure to obey.**—The commission may require, by order or subpoena to be served on any public utility in the same manner that a summons is served in a civil action in the superior court, the production within this state at such time and place as it may designate of any books, accounts, papers or records kept by said public utility and within its control in any office or place within or outside the state, or verified copies thereof instead if the commission shall so order, so that an examination thereof may be made by the commission or under its direction. Any public utility or any officer, agent or attorney thereof failing or refusing to comply with any such order or subpoena shall, for each day it shall so fail or refuse, forfeit and pay into the state treasury a sum of not less than \$50 nor more than \$500, to be recovered by the state in a civil action, which may be instituted by the commission in the name of the state. (R. S. c. 40, § 7. 1961, c. 317, § 91.)

**Effect of amendment.**—The 1961 amendment substituted "a civil action" for "an action on the case" in the last sentence of this section.

**Sec. 9. Collection of information relating to water resources of state.**—The commission shall collect information relating to the water resources of the state, the flow of rivers and their drainage area, the location, nature and size of the lakes and ponds in the state and their respective value and capacity as storage reservoirs, underground storage reservoirs and such other hydrologic data as they may deem of value in devising the best methods for the improvement of the natural storage basins of the state and the creation of new storage reservoirs, with a view to conserving and utilizing the water resources of the state. (R. S. c. 40, § 9. 1959, c. 97.)

**Effect of amendment.**—The 1959 amendment rewrote this section.

**Sec. 10. Authorized to confer with United States geological survey.**—The commission may confer with the director or the representative of the United States geological survey and accept its cooperation in the prosecution of hydrologic and geological surveys, and the preparation of a contour topographic survey and map of the state. (R. S. c. 40, § 10. 1957, c. 369, § 1.)

**Effect of amendment.**—The 1957 amendment substituted "hydrologic" for "hydrographic".

**Editor's note.**—P. L. 1957, c. 369, which amended this section, provided in section 2 thereof as follows: "There is hereby

appropriated from the general fund the sum of \$6,000 for the fiscal year ending June 30, 1958, and the sum of \$6,000 for the fiscal year ending June 30, 1959, to carry out the purposes of this act."

**Sec. 13. Commission to approve cost of construction of water system, method of financing and engineering standards.**—All municipalities, persons, corporations and water districts, before commencing construction of any new water system or any major addition to or alteration of an existing water system, shall file with the commission, in accordance with rules and regulations to be issued by it, and to the extent required by such rules and regulations, plans and specifications for such construction, additions or alteration for the advice of the commission as to cost, method of financing and adherence to proper engineering standards. (R. S. c. 40, § 13. 1949, c. 267. 1955, c. 298. 1957, c. 295.)

**Effect of amendment.**—The 1955 amendment rewrote the former fourth sentence. However, the 1957 amendment rewrote this section.

**Sec. 15.** Repealed by Public Laws 1957, c. 85, § 1.

### Definitions.

#### Sec. 16. Definitions.

**III. Common carrier.** "Common carrier" includes every railroad company, express company, dispatch, sleeping car, dining car, drawing-room car, freight line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading and every other car corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, operating for compensation within this state; and every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any vessel regularly engaged in the transportation of persons or property for compensation upon the waters of this state or upon the high seas, over regular routes between points within this state.

**IX-A.** "Natural gas pipe line company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning or operating for compensation within this state any pipe line, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of natural gas. (1955, c. 127, § 2)

**XII.** "Public utility" includes every common carrier, gas company, natural gas pipe line company, electrical company, telephone company, telegraph company, water company, public heating company, wharfinger and warehouseman, as those terms are defined in this section, and each thereof is declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission, and to the provisions of this chapter. (1955, c. 127, § 1)

**XVII.** Repealed by Public Laws 1957, c. 85, § 2.

**XXIV.** "Vessel" includes every steamboat or boat powered by Diesel engines which is owned, controlled, operated or managed for public use in the transportation of persons or property for compensation within this state. (1955, c. 43)

(1955, c. 43; c. 127, §§ 1, 2. 1957, c. 85, § 2. 1961, c. 395, § 23.)

**Effect of amendments.**—The first 1955 amendment inserted the words "or boat powered by Diesel engines" in subsection XXIV. The second 1955 amendment added subsection IX-A and inserted the words "natural gas pipe line company" near the beginning of subsection XII.

The 1957 amendment repealed subsec-

tion XVII.

The 1961 amendment, effective upon its approval, June 17, 1961, deleted "street railroad company" near the beginning of subsection III.

As the rest of the section was not affected by the amendments, it is not set out.

### Rates and Accounting.

**Sec. 17. Public utility to furnish safe and reasonable facilities; charges reasonable and just.**—Every public utility is required to furnish safe, reasonable and adequate facilities. The rate, toll or charge, or any joint rate made, exacted, demanded or collected by any public utility for the conveyance or transportation of persons or property between points within this state, or for any heat, light, water or power produced, transmitted, delivered or furnished, or for any telephone or telegraph message conveyed, or for any service rendered or to be rendered in connection with any public utility, shall be just and reasonable. In determining just and reasonable rates, the commission shall provide such revenues to the utility as may be required to perform its public service and to attract necessary capital on just and reasonable terms. Every unjust or unreasonable charge for such service is prohibited and declared unlawful. (R. S. c. 40, § 16. 1953, c. 377, § 1. 1957, c. 400, § 1.)

**Effect of amendment.**—The 1957 amendment inserted the third sentence.

The 1953 amendments to this section and § 18 elaborated as to procedural mat-

ters, but did not change the basic substantive law. *Central Maine Power Co. v. Public Utilities Comm.*, 150 Me. 257, 109 A. (2d) 512.

The commission must accept a city water rate fixed by the legislature. *Auburn Water District v. Public Utilities Comm.*, 156 Me. 222, 163 A. (2d) 743.

And must direct its attention to the approval or disapproval of rates established by the trustees of a water district in light of the needs of the district. *Auburn Water District v. Public Utilities Comm.*, 156 Me. 222, 163 A. (2d) 743.

**Failure of commission to consider tax exempt property.**—The Commission was not in error in failing to take tax exempt property into consideration in determining the allocation of water rates between fire protection and general service. *Bangor v. Public Utilities Comm.*, 156 Me. 455, 167 A. (2d) 6.

The general rule is that evidence of rates

in other communities is not admissible in the absence of evidence that all, or substantially all, of the physical and economic factors affecting the reasonableness of the rates are similar in both communities. *Bangor v. Public Utilities Comm.*, 156 Me. 455, 167 A. (2d) 6.

The commission has the duty to disclose the method employed to reach the prescribed rates so that the validity of its conclusions may be tested on review. *Bangor v. Public Utilities Comm.*, 156 Me. 455, 167 A. (2d) 6.

Applied in *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

Stated in *Central Maine Power Co. v. Public Utilities Comm.*, 153 Me. 228, 136 A. (2d) 726.

**Sec. 18. Valuation of property made for fixing rates.**—In determining reasonable and just rates, tolls and charges, the commission shall fix a reasonable value upon all the property of any public utility used or required to be used in its service to the public within the state and a fair return thereon. In fixing such reasonable value, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use, prudent acquisition cost to the utility, less depreciation on each, and any other factors or evidence material and relevant thereto but such other factors shall not include current value. In making such valuation, the commission may avail itself of any reports, records or other information available to it in the office of any state officer or board. (R. S. c. 40, § 17. 1953, c. 377, § 2. 1957, c. 400, § 2.)

**Effect of amendment.** — The 1957 amendment deleted "current value thereof" which formerly preceded the words "less depreciation" in the second sentence and inserted "but such other factors shall not include current value" at the end of such sentence.

The 1953 amendment did not change substantive law.—P. L., 1953, Chap. 337, amending this section and enumerating certain factors to be taken into consideration for rate making purposes, does not change the substantive law; it merely clarifies and amplifies the procedural requirements to effectuate what has long been the accepted law of this state. *Central Maine Power Co. v. Public Utilities Comm.*, 150 Me. 257, 109 A. (2d) 512.

**Commission is judge of weight to be given to evidence.** — The requirement that the commission give "due consideration" to evidence tending to establish any factor of fair value does not mean that the commission is not the judge of the weight to be given to the proffered evidence. Nor does it mean that equal weight must be given to each factor proven. *Central Maine Power Co. v. Public Utilities Comm.*, 150 Me. 257, 109 A. (2d) 512.

**And must exercise sound discretion.**—Satisfaction of this section in all cases necessitates "due consideration to evidence of the cost", and that is no less than the exercise of a sound discretion by the commission. *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

**It may not proceed with a closed mind.**—The commission may not proceed with a closed mind and no disposition to be convinced by unimpeachable evidence. "Due consideration" requires at least reasonable and fair consideration, and once a factor is well proven, not only must the commission give consideration to it, but such factor must find reflection in the finding of value. *Central Maine Power Co. v. Public Utilities Comm.*, 150 Me. 257, 109 A. (2d) 512.

**And arbitrary and capricious disregard of evidence may be reversible error.**—Arbitrary and capricious disregard by the commission of a factor established by legislative mandate, or of evidence tending to prove such a factor, is reversible error. *Central Maine Power Co. v. Public Utilities Comm.*, 150 Me. 257, 109 A. (2d) 512.

**Consideration of "current value."**—For

case decided prior to 1957 amendment, see *Central Maine Power Co. v. Public Utilities Comm.*, 150 Me. 257, 190 A. (2d) 512.

The "prudent acquisition cost less depreciation" factor is intended to reflect the difference between original cost and the amount invested upon acquisition. The company has the burden of proving its prudence in acquiring property. *Central Maine Power Co. v. Public Utilities Comm.*, 150 Me. 257, 109 A. (2d) 512.

The "cost" referred to in the "original cost less depreciation factor" is taken as of the time when the property was first devoted to public use. *Central Maine Power Co. v. Public Utilities Comm.*, 150 Me. 257, 109 A. (2d) 512.

**Effect of comparing original and acquisition cost.**—Given both an original and acquisition cost, their comparison is often revealing in the settlement of reasonable value. *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

#### **Sec. 19. Uniform system of accounts.**

Cited in *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

#### **Sec. 35. Public hearing to investigate proposed change of rates by public utility; rate pending hearing suspended.**

Applied in *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

#### **Sec. 36. Proposed change in freight rates; joint hearing with interstate commerce commission.**

At any such hearing involving any change or changes as above specified, the burden of proof to show that such change is reasonable shall be upon the common carrier. After such hearing and investigation, the commission may make such order, within a period of 8 months after the effective date of the schedule, setting forth such change or changes with reference to any proposed new rate, joint rate, fare, rental, toll, classification, charge, rule, regulation or form of contract or agreement proposed as would be proper under existing law in a proceeding initiated upon complaint or upon motion of the commission in any rate investigation. In cases involving an increase in an existing rate, joint rate, toll, fare, rental or charge affecting the transportation of freight, if the commission shall find that such increase is unreasonable it may, by proper order, determine and fix the maximum rate, joint rate, toll, fare, rental or charge which may thereafter be collected for the service rendered, and no rate, joint rate, toll, fare, rental or charge affecting the transportation of freight in excess thereof shall be filed within a period of 1 year after the making of such order. The commission, by proper order, may require the common carrier which has filed any such increased rate, joint rate, toll, fare, rental or charge affecting the transportation of freight to refund, in such manner and under such conditions as may be prescribed by the commission, to all persons from whom charges have been collected by virtue of the schedules under investigation, any and all sums collected in excess of the rate, joint rate, toll, fare, rental or charge affecting the transportation of freight so determined and fixed by the commission as being the maximum

**Capital cost is equivalent of fair rate of return.**—Capital cost when competently computed is essentially and practically the equivalent of fair rate of return. *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

**Duty of commission to study materials and supplies on hand.**—For rate-making purposes, the commission has the duty and the correlative right to study the amount of materials and supplies on hand for insuring maintenance of a utility's service to the public in order to judge if it is "used or required to be used" in the public service, and to determine if the amount approximates the average needs of the company. *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

Cited in *Central Maine Power Co. v. Public Utilities Comm.*, 153 Me. 228, 136 A. (2d) 726.

rate, joint rate, toll, fare, rental or charge to be collected, and may require due report of the refund so made. Whenever any carrier shall file with the commission, and also with the interstate commerce commission, a tariff containing both intrastate rates and interstate rates on the same commodity, and prior to the effective date thereof the interstate rates are suspended by the interstate commerce commission, then the commission shall have power to suspend, at any time within 10 days after the date of the suspension order issued by the interstate commerce commission, the proposed intrastate rates, and such suspension may be kept in full force and effect so long as the interstate rates shall continue under suspension with a reasonable time thereafter for preparation of and issue of decision. The commission may, with the consent of the governor and council, hold joint hearings with the interstate commerce commission with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of the commission and the interstate commerce commission, in accord with the provisions of the act to regulate commerce and applicable amendments. (R. S. c. 40, § 35. 1945, c. 378, § 50. 1959, c. 174.)

**Effect of amendment.**—The 1959 amendment substituted “s” for the words “not less than 6” in the second sentence of the second paragraph of this section. Since the

first paragraph was not affected by the amendment, it is not set out.

**Cited in** Public Utilities Comm. v. Cole’s Express, 153 Me. 487, 138 A. (2d) 466.

### Regulation and Control.

#### Sec. 39. Unjust discrimination defined.

**Quoted in** Bangor v. Public Utilities Comm., 156 Me. 455, 167 A. (2d) 6.

### Approval of Stocks, Bonds and Notes.

#### Sec. 43. Issue of stocks, bonds and notes by public utilities.

No railroad corporation subject to the interstate commerce act shall be required to make application to the commission, or to procure its authority, consent, approval or order, in respect of any of the matters set forth in this section or in sections 44 and 46, while and so long as such corporation is required by federal law to make application to and procure authority from the interstate commerce commission as a condition precedent to the issue of securities. Such corporation, however, shall file with the secretary of state due notice of any increase or other change in its capital stock authorized or issued, and shall pay such fees in respect thereof as may be required by statute. Such notice shall be filed and all fees required shall be paid within 30 days after due authority has been given by the interstate commerce commission relative to the increase or other change. No other notice shall be required to be given to the secretary of state by the corporation, and all increases or other changes in the authorized or issued capital stock of any corporation heretofore approved or authorized by the interstate commerce commission, and as to which a copy of the report and order of said commission has been filed with the secretary of state and the fees required by statute have been paid, shall be deemed to have been lawfully authorized, issued and made regardless of any other statutory provisions relative to notice to the secretary of state of increases or other changes in capital stock of corporations. (R. S. c. 40, § 42. 1957, c. 84.)

**Effect of amendment.**—Prior to the 1957 amendment the condition precedent was to the proposed action rather than the issue of securities.

As only the last paragraph of the sec-

tion was affected by the amendment, the rest of the section is not set out.

**Quoted in** Central Maine Power Co. v. Public Utilities Comm., 156 Me. 295, 163 A. (2d) 762.

### Authorization of Leases, Consolidation and Mortgages.

**Sec. 47. Public utilities not to sell, lease or mortgage, nor acquire stock of other public utilities, without authority.**

Cited in *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

**Sec. 48. Abandonment of property or service by public utilities.**

**Public interest and necessity control discontinuance of service.**—It is the interest and the necessities of the whole public which must control the ultimate decision as to discontinuance of service by a public utility. *Maine Central R. Co. v. Public Utilities Comm.*, 156 Me. 284, 163 A. (2d) 633.

### Procedure.

**Sec. 55. Complaints against Public Utilities.**

Cited in *In re Central Maine Power Co.*, 152 Me. 32, 122 A. (2d) 541.

**Sec. 58. Decision; extension of service of public utility organized by special act.**

The commission may authorize any public utility organized by special act of the legislature, to furnish or extend its service in, to or through any city or town notwithstanding any territorial limitations, express or implied, in the special act of the legislature by which it was organized, or in any special act of the legislature under which it is enfranchised, and the powers and limitations of the commission, hereby made applicable hereunder, shall be those applicable by law in like cases concerning public utilities organized under the provisions of sections 8 to 15, inclusive, of chapter 53. Any public utility organized by special act of the legislature which is authorized hereunder in respect of service in, to or through any city or town not named in a special act of the legislature as among the cities or towns to be served by it, shall, within 20 days after final authorization of the commission as aforesaid, file with the secretary of state a certificate exhibiting such authorization of the commission, and thereupon the power to serve as therein provided shall take and be of effect. On filing such certificate there shall be paid to the secretary of state for the use of the state the sum of \$20. Nothing in this section shall be construed to apply to common carriers by railroad which are subject to the jurisdiction of the interstate commerce commission. (R. S. c. 40, § 57. 1955, c. 186.)

**Effect of amendment.**—The 1955 amendment added the above paragraph at the end of this section. As the rest of the section was not changed, it is not set out.

**Sec. 59. Public utility to conform to decision; copies furnished by clerk.**—Every public utility to which such order applies shall make such changes in its schedules on file as may be necessary to make the same conform to said order; and no change thereafter shall be made by any public utility in any such rates, tolls or charges or in any joint rate or rates within 1 year after the date of said order without the approval of the commission. At the expiration of 1 year from the date of said order, and thereafter, no change shall be made by any public utility in any such rates, tolls or charges or in any joint rate or rates except in accordance with the provisions of section 30. Copies of all orders of the commission, certified by the clerk, shall be delivered to the public utility affected thereby and the same shall take effect within such time thereafter as the commission shall prescribe. The superior court shall have full jurisdiction upon application of the commission or of the attorney general, to enforce all orders of the commission and the performance by public utilities of all duties imposed by law upon them, including the appointment of receivers, agents and special masters to carry the orders of said courts and of said commission into effect and

clothing them with adequate authority therefor. (R. S. c. 40, § 58. 1959, c. 317, § 16.)

**Effect of amendment.**—The 1959 amendment struck out the words “at law, and the supreme judicial court and the superior court in equity”, formerly appearing after the word “jurisdiction” and before the word “upon” near the beginning of the last sentence in this section.

**Effective date and applicability of Public Laws 1959, c. 317.** — Section 420, chapter 317, Public Laws 1959, provides as follows: “This act shall become effective December

1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

### **Sec. 60. Investigation; notice to public utility.**

Cited in *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

### **Sec. 61. Notice of public hearing.**

Whenever any public utility, except a common carrier or carrier of persons or property for hire, has been notified by the commission that a public hearing will be held as provided in section 35 or section 57 and it appears to the commission that reasonable publicity has not or will not be given, by newspaper publication or otherwise, of the time and place of said hearing and the general nature thereof, the commission, in its discretion, may, by written notice to such public utility, require it to give such reasonable notice as the commission shall specify of the time and place of such public hearing to each of the subscribers affected or to be affected by such rates or service and to file at the same time in the office of the clerk of the municipalities wherein such subscribers reside such pertinent information as the commission may prescribe as to rates and services involved, including schedules of any proposed rates. Such notice by said public utility shall be given by first class mail and shall include a statement that such pertinent information as to such rates or service is on file in the office of the clerk of the municipality wherein such subscriber resides. Nothing in this section shall relieve such utility from the provisions of section 31. (R. S. c. 40, § 60. 1955, c. 202.)

**Effect of amendment.**—The 1955 amendment added the above paragraph at the

end of this section. As the rest of the section was not changed, it is not set out.

### **Sec. 62. Complaints; reparation or adjustment of excessive rate.**

Utility rates established by contract may be set aside by the commission when the rates are no longer fair. Such rates are presumed to be reasonable and just until otherwise determined. The burden

is upon the petitioner to establish before the commission the need for revision of the rates. In *re Central Maine Power Co.*, 152 Me. 32, 122 A. (2d) 541.

**Sec. 63. Hearings; oaths; orders and processes; examiners.**—Each of the commissioners, for the purposes mentioned in this chapter, may hold hearings and conduct investigations, administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents and testimony, punish by fine and imprisonment for contempt and issue all processes necessary to the performance of the duties of the commission. Said commission shall have power to appoint, to serve during its pleasure, examiners, who, being first duly sworn, shall have authority to administer oaths, examine witnesses, issue subpoenas, require the production of books, accounts, papers, documents and testimony, and receive evidence in any matter under the jurisdiction of the commission, and shall perform such other duties as may be assigned to them. Evidence so taken and received shall have the same force and

effect as though taken and received by said commission and shall authorize action by said commission as though by it taken and received. When objection is made to admissibility of evidence, examiners authorized to practice before the supreme judicial court shall rule on the admissibility of evidence in accordance with the practice and rules of evidence in civil actions in the superior court. The commission shall fix the salary of said examiners. (R. S. c. 40, § 62. 1961, c. 272.)

**Effect of amendment.**—The 1961 amendment substituted the present last two sentences of this section for the former last three sentences thereof.

**Rules of evidence.**—On hearings before the public utilities commission the ordi-

nary rules of evidence apply, yet the mere erroneous admission or exclusion of evidence will not invalidate an order of the commission. Substantial prejudice must be affirmatively shown. Application of Ballard, 152 Me. 158, 125 A. (2d) 861.

**Sec. 66. Record of proceedings.**—A full and complete record shall be kept of all proceedings had before the commission and of any investigation or formal public hearing and all testimony shall be taken by a hearings reporter to be appointed by the commission subject to the provisions of the personnel law. (R. S. c. 40, § 65. 1955, c. 50.)

**Effect of amendment.**—The 1955 amendment substituted the words "hearings reporter" for the word "stenographer."

**Sec. 67. Questions of law raised on appeal to law court; decision certified to clerk of commission.**—An appeal from a final decision of the commission may be taken to the law court on questions of law in the same manner as an appeal from a judgment of the superior court in a civil action. Wherever a statute or rule regulating the taking of an appeal from the superior court in a civil action uses the term "the court," the "clerk," the "clerk of courts," or a similar term, they shall for purposes of an appeal from the commission be read, respectively, as "the commission," "the clerk of the commission," or other appropriate term. The results shall be certified by the clerk of the law court to the clerk of the commission and to the clerk of the superior court for Kennebec county, the prevailing party to recover costs to be taxed by said superior court in accordance with the law for the taxation of costs on appeal in civil actions. Execution for such costs shall be issued from the superior court of Kennebec county in the same manner as in actions originating therein. (R. S. c. 40, § 66. 1961, c. 317, § 92.)

**Effect of amendment.**—The 1961 amendment substituted the present first and second sentences for the former first sentence of this section. It also divided the former second sentence into two sentences, deleted "provisions of" formerly preceding "law" substituted "on appeal in civil actions" for "in appealed cases" and "actions" for "cases" therein.

**And specifically shown wherein exceptant is aggrieved.**

In accord with 3rd paragraph in original. See Application of Ballard, 152 Me. 158, 125 A. (2d) 861.

**Judgment of commission as to public policy, etc.**

In accord with original. See Application of Ballard, 152 Me. 158, 125 A. (2d) 861.

**Decisions of commission on questions of fact will not be disturbed.**

In accord with 1st paragraph in origi-

nal. See In re Chapman, 151 Me. 68, 116 A. (2d) 130; Application of Ballard, 152 Me. 158, 125 A. (2d) 861.

In accord with 2nd paragraph in original. See In re Central Maine Power Co., 152 Me. 32, 122 A. (2d) 541.

**But they must be supported by substantial evidence.**

In accord with original. See In re Chapman, 151 Me. 68, 116 A. (2d) 130.

When the commission decides a case before it without evidence, or on inadmissible evidence, or improperly interprets the evidence before it, then the question becomes one of law. In re Chapman, 151 Me. 68, 116 A. (2d) 130.

**And the record of testimony must contain such evidence.**

Whether, on the record, any factual finding, underlying order and requirement, is warranted by law, is a question of law, reviewable on exceptions. Hamil-

ton v. Caribou, etc., Co., 121 Me. 422, 117 A. 582; Application of Ballard, 152 Me. 158, 125 A. (2d) 861.

**Commission has duty to set forth facts on which its order is based.**—It is clearly the duty of the commission under this section at least, if requested by any of the interested parties, to set forth in its orders and decrees the facts on which its order is based, otherwise the remedy provided by the statute for any erroneous rulings of law may be rendered futile. In re Central Maine Power Co., 152 Me. 32, 122 A. (2d) 541.

Under this section, questions of law, and only questions of law, are presented by exceptions. Central Maine Power Co. v. Public Utilities Comm., 153 Me. 228, 136 A. (2d) 726.

**Exceptions filed under this section are a proper remedy for raising questions of law relative to decrees** of the P. U. C. even

though section 70 provides for petition for review and section 69 provides for a petition in equity. Public Utilities Comm. v. Cole's Express, 153 Me. 487, 138 A. (2d) 466.

Prior to the enactment of § 69, the statutory method providing for exceptions in § 67, was the exclusive remedy for raising questions of law relative to decrees of the public utilities commission. Public Utilities Comm. v. Cole's Express, 153 Me. 487, 138 A. (2d) 466.

**Section unchanged since originally enacted.**—This section has been unchanged in the pertinent language since first enacted in Laws of 1913, Chap. 129, Sec. 53. Central Maine Power Co. v. Public Utilities Comm., 153 Me. 228, 136 A. (2d) 726.

**Applied** in Application of Richer, 156 Me. 178, 163 A. (2d) 350; Central Maine Power Co. v. Public Utilities Comm., 156 Me. 295, 163 A. (2d) 762.

**Sec. 68. Appeal does not stay order of the commission.**—While an appeal, as provided in section 67 is pending, no injunction shall issue suspending or staying any order of the commission and said appeal shall not excuse any person or corporation from complying with and obeying any order or decision or any requirement of any order or decision of the commission or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission may order and direct. (R. S. c. 40, § 67, 1961, c. 317, § 93.)

**Effect of amendment.**—The 1961 amendment substituted "an appeal" for "questions of law are pending on exceptions to a ruling of the commission" near the be-

ginning of this section, substituted "section 67 is pending" for "the preceding section", and substituted "appeal" for "exceptions" near the middle of the section.

**Sec. 69. Additional court review; taking of additional evidence in certain cases.**—Notwithstanding sections 67 and 68, in all cases in which the justness or reasonableness of a rate, toll or charge by any public utility or the constitutionality of any ruling or order of the commission is in issue, the law court shall have jurisdiction upon a complaint to review, modify, amend or annul any ruling or order of the commission, but only to the extent of the unlawfulness of such ruling or order. If in such complaint it is alleged that confiscation of property or other violation of constitutional right results from such ruling or order, the law court shall exercise its own independent judgment as to both law and facts. The procedure before said court shall be that prescribed by it in the particular proceeding or by its rules, if any, applicable thereto and pending final determination by the court, the chief justice thereof, or in his absence any other justice, may enjoin or stay the effect of such ruling or order upon such terms and conditions as he may deem proper. Such complaint shall be filed with the clerk of the law court and a copy thereof with the clerk of the commission, both within 30 days after the date of the said ruling or order or within such further time as the court may allow, together with a certificate that the attorney for the plaintiff is of the opinion that there is such probable ground for the appeal as to make it a fit subject for judicial inquiry and that it is not intended for delay. Double costs shall be assessed by the court upon any such party whose complaint shall appear to the court not to be a fit subject for judicial inquiry or shall appear to be intended for delay.

No evidence beyond that contained in the record of the proceedings had be-

fore the commission shall be introduced before the court, except that in cases where issues of confiscation or of constitutional right are involved the court may order such additional evidence as it deems necessary for the determination of such issues to be taken before the commission upon such terms and conditions as to the court may seem proper. Whenever the court shall order additional evidence to be taken, the commission shall promptly hear and report such evidence to the court, so that the proof may be brought as nearly as reasonably possible down to the date of its report thereof to the court. The commission may, after hearing such evidence, modify its findings as to facts and its original decision or orders by reason of the additional evidence so taken, and it shall file with the court such amended decision or orders and such modified or new findings. If the commission shall modify or amend its original decision or orders, the appealing party or any other party aggrieved by such modified or amended decision or order may file with the court, within such time as the court may allow, a specification of errors claimed to have been made by the commission in such modified decision or orders, which specification of errors shall thereupon be considered by the court in addition to the errors asserted in the original complaint on appeal. (1953, c. 377, § 3. 1961, c. 300; c. 317, § 94.)

**Effect of amendment.**—Chapter 300, P. L. 1961, added the second paragraph of this section. Chapter 317, P. L. 1961, re-wrote the former first paragraph of this section.

**Legislative intent.** — Unmistakably the legislature understood and intended that the court may exercise the prescribed “independent judgment” as to the facts, and yet in that very process be “informed and aided” by findings of the public utilities commission. *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

**Statutory method prior to enactment of section.**—Prior to the enactment of § 69, the statutory method providing for exceptions in § 67, was the exclusive remedy for raising questions of law relative to decrees of the public utilities commission. *Public Utilities Comm. v. Cole's Express*, 153 Me. 487, 138 A. (2d) 466.

**Alternative procedure.**—This section is an alternative procedure. *Public Utilities Comm. v. Cole's Express*, 153 Me. 487, 138 A. (2d) 466.

**Satisfaction of fourteenth amendment meets demands of state constitution.** — Satisfaction of the exacting demands of

the fourteenth amendment to the federal constitution in an equity petition (now complaint) under this section is necessarily and coextensively adequate to meet the imperatives of Me. Const., Art. I, §§ 1, 6, 19 and 21. *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

**Burden on complaining party.**—For the guidance of the supreme judicial court there is, in the exercise of its judgment on the entire case, the established principle that the complaining party carries the burden of making a convincing showing. *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

**And confiscation must be clearly established.**—The court will not interfere with the exercise of the rate-making power unless confiscation is clearly established. *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

**Applied** in *Auburn Water District v. Public Utilities Comm.*, 156 Me. 222, 163 A. (2d) 743.

**Cited** in *Central Maine Power Co. v. Public Utilities Comm.*, 153 Me. 228, 136 A. (2d) 726.

## Sec. 70. Orders altered or amended.

This section does not give the respondent authority to file a petition for amendment, but the authority is given to the commission to rescind, alter or amend its decrees. *Public Utilities Comm. v. Cole's Express*,

153 Me 487, 138 A. (2d) 466.

**Stated** in *Public Utilities Comm. v. Cole's Express*, 153 Me. 487, 138 A. (2d) 466.

## Sec. 71. Burden of proof.

The appealing party bears the burden of proof in a rate-making controversy. *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

And there is a strong presumption in favor of the conclusion reached by the public utilities commission, an experienced administrative body, after a full hearing.

Central Maine Power Co. v. Public Utilities Comm., 156 Me. 295, 163 A. (2d) 762.

**Applied in Central Maine Power Co. v. Public Utilities Comm., 150 Me. 257, 109**

A. (2d) 512; Cole's Express v. O'Donnell's Express, 156 Me. 211, 163 A. (2d) 360; Bangor v. Public Utilities Comm., 156 Me. 455, 167 A. (2d) 6.

### **Sec 72. Practice and rules of evidence; service of process.**

**Section safeguards constitutional rights of utility.**—A primary and not just a cumulative factor in the safeguarding withal of the constitutional rights of a utility in

this jurisdiction, derives from this section. Central Maine Power Co. v. Public Utilities Comm., 156 Me. 295, 163 A. (2d) 762.

### **General Penalties.**

**Sec. 84. Punishment when no penalty provided.**—If any public utility shall willfully violate any provision of this chapter or shall do any act herein prohibited or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided or shall fail or refuse to obey any lawful requirement or order made by the commission, for any such violation, failure or refusal such public utility shall forfeit and pay into the state treasury not more than \$1,000 for each offense, to be recovered in a civil action in the name of the state. In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent or other person acting for or employed by any public utility acting within the scope of his employment shall in every case be deemed to be the act, omission or failure of such public utility. (R. S. c. 40, § 82. 1961, c. 317, § 95.)

**Effect of amendment.**—The 1961 amendment substituted "a civil action" for "an

action on the case" in the first sentence of this section.

## **Chapter 45.**

### **Steam Railroads—Organization and Construction.**

Section 80. Minimum Distance for Clearance.

#### **Organizations.**

**Sec. 3. Approval of articles of association; issue of certificates; certificate conclusive as to organization.**

Cited in McGary v. Barrows, 156 Me. 250, 163 A. (2d) 747.

#### **Damages.**

**Sec. 32. Estimation of damages by county commissioners; guardian may release damages; damages and costs.**—For real estate so taken, the owners are entitled to damages, to be paid by the corporation, and estimated by the county commissioners, on written application of either party, made within 3 years after the location is filed, or if proceedings thus commenced fail for causes not affecting the merits, new ones may be commenced within one year thereafter. When no estimate is made within such time, the owner may maintain a civil action or have any remedy provided. The guardian of a person incapable of giving a valid conveyance, whose land is taken, may settle and give a valid release for damages; and persons having any interest in such land have the rights and remedies of owners to the extent of their interest. When requested by the owner, said commissioners shall require the corporation to give security for the payment of damages and costs by depositing it, at its risk, with the clerk, specie, notes or obligations of a state or public corporation, or other security satisfactory to the party requiring it. When entitled to it, so much of any specie so deposited shall be paid to him as will satisfy his judgment. Notes or obligations