

MAINE STATE LEGISLATURE

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CHAPTER 15

PROCEDURE

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§ 291. Complaints

Upon written complaint made against any public utility by 10 persons, firms, corporations or associations aggrieved, that any of the rates, tolls, charges or schedules or any joint rate or rates of any public utility are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act of said public utility is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission, being satisfied that the petitioners are responsible and that a hearing is expedient, shall proceed with or without notice to make an investigation thereof. No order affecting said rates, tolls, charges, schedules, regulations, measurements, practices or acts complained of shall be entered by the commission without a formal public hearing.

R.S.1954, c. 44, § 55.

§ 292. Notice of complaint

The commission immediately upon the filing of such complaint shall notify in writing the public utility complained of that a complaint has been made, and of the nature thereof. If at the expiration of 7 days therefrom such public utility shall not have removed the cause of complaint to the satisfaction of the commission, said commission shall proceed to set a time and place for a hearing as provided.

R.S.1954, c. 44, § 56.

§ 293. Notice of hearing

The commission shall give the public utility and the complainants at least 7 days' notice of the time and place when and where such formal public hearing will be held. Both the public utility and the complainants shall be entitled to be heard and have process to enforce the attendance of witnesses as in civil actions in the Superior Court.

R.S.1954, c. 44, § 57.

§ 294. Decision; extension of service

If upon such formal public hearing the rates, tolls, charges, schedules or joint rates shall be found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of chapters 1 to 17, the commission shall have power to fix and order substituted therefor such rate or rates, tolls, charges or schedules as shall be just or reasonable. If upon such public hearing it shall be found that any regulation, measurement, practice, act or service complained of is unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of chapters 1 to 17 or if it is found that any service is inadequate or that any reasonable service cannot be obtained, the commission shall have power to establish and substitute therefor such other regulations, measurements, practice, service or acts, and to make such order respecting and such changes in such regulations, measurements, practice, service and acts as shall be just and reasonable.

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, made applicable hereunder, shall be those applicable by law in like cases concerning public utilities organized under Title 13, sections 71 to 79. Any public utility organized by special Act of the Legislature which is authorized 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, file with the Secretary of State a certificate exhibiting such authorization of the commission, and thereupon the power to serve 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.1954, c. 44, § 58; 1955, c. 186.

§ 295. Conformity to decision; copies

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. 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 one year after the date of said order without the approval of the commission. At the expiration of one 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 section 64. 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.1954, c. 44, § 59; 1959, c. 317, § 16.

§ 296. Investigations; notice

Whenever the commission believes that any rate or charge is unjust or unreasonable, or that any service is inadequate or can-

not be obtained, or that an investigation of any matter relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same with or without notice. If after making such summary investigation the commission becomes satisfied that sufficient grounds exist to warrant a formal public hearing being ordered as to matters so investigated, it shall furnish such public utility interested a written statement giving notice of the matter under investigation. Seven days after such notice has been given, the commission may proceed to set a time and place for a formal public hearing as provided.

R.S.1954, c. 44, § 60.

§ 297. Notice of public hearing

Notice of the time and place of such hearing shall be given to the public utility and to such interested persons as the commission shall deem proper as provided in section 293; and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative thereto. Like orders may be made in reference thereto as if such investigation had been made on complaint.

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 69 or section 293 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 65.

R.S.1954, c. 44, § 61; 1955, c. 202.

§ 298. Adjustment of excessive rates

The commission may institute or any public utility may make complaint as to any matter affecting its own product, service or charges, with like effect as though made by any 10 persons, firms, corporations or associations. The commission may authorize reparation or adjustment where the utility admits that a rate charged was excessive or unreasonable or collected through error, and where it further appears that the utility, within 90 days, or in the case of railroads 6 months after the rendering of any service within the State under such rate, has filed a reduced rate in place of the rate which admittedly was excessive or unreasonable or collected through error. Such new rate so published shall continue in force one year unless sooner changed by the order or with the consent of the commission, and the amount of reparation which may be authorized by the commission shall not exceed the difference between the charges based on the reduced rate and the charges based on the rate canceled thereby. Within 2 years after the rendering of any service within the State by any public utility, for which service a rate, toll or charge is made by such utility, any person, firm, corporation or association aggrieved may complain to the commission that the rate, toll or charge exacted for such service is unjustly discriminatory against him or it, either because it is higher than that charged by the same utility for the same service or service of similar value and cost rendered to other users or consumers thereof, or because the utility has failed, without reasonable cause, to make a more favorable rate, toll or charge published by it for the same or a similar service applicable to the said user or consumer or to the class of users or consumers to which he or it belongs, or at the place at which said service is rendered. Within 6 months after an order has been made authorizing reparation or adjustment under the 2nd and 3rd sentences of this section, any person, firm, corporation or association aggrieved may complain to the commission that he or it is entitled to reparation from the same utility by reason of the payment of the same rates which said utility admits are excessive or unreasonable or collected through error, provided said utility might lawfully have been permitted to make such reparation on its own petition, and provided such person, firm, corporation or association shall have made written request for such utility to file its own petition for authority to make such reparation or adjustment not less than 30 days before filing the aforesaid complaint. Upon receipt of either of the complaints, the commission shall make such investigation as it deems necessary to determine whether a hearing ought to be given thereon. It may order a

hearing upon such notice to said utility as it deems just and reasonable. If, upon such hearing, the commission shall decide that the complainant has been injured in either of the ways mentioned, it shall find what sum said utility ought to refund or repay to said complainant on account thereof, which said sum said utility shall have the right to refund. If it shall refuse or neglect to make such refund within 30 days, the party aggrieved may maintain an action in the courts of this State to recover said amount, and in the trial thereof the findings of this commission shall be prima facie evidence of the truth of the facts found by it, and no utility shall be permitted to avail itself of the defense of such action that the service involved was in fact made on the published tariff rate in force at the time it was rendered; but no utility making a refund upon the order of the commission or pursuant to judgment of the court shall be liable for any penalty or forfeiture or subject to any prosecution under the laws of this State on account of making such refund.

R.S.1954, c. 44, § 62.

§ 299. Hearings; examiners

Each of the commissioners, for the purposes mentioned in chapters 1 to 17, 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.1954, c. 44, § 63; 1961, c. 272.

§ 300. Witnesses and fees

Each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the Superior Court, which shall be audited and paid by the State in the same manner as other state expenses are audited and paid upon the presentation of proper vouchers approved by the commission. In all investigations under section 141, where the public utility is a common carrier of persons, it shall transport all witnesses over its lines free of charge under such regulations as the commission may establish. There shall be deducted from the mileage allowed witnesses under this section who travel, or may travel, to and from the place of hearing on any pass or other form of free transportation, a sum equal to the fare to and from said place at the lowest published rates for single trip or return trip tickets.

R.S.1954, c. 44, § 64.

§ 301. Depositions

The commission or any party may, in any formal public hearing, use the deposition of witnesses residing within or outside the State. Such depositions shall be taken in the manner prescribed by law for taking depositions in civil actions in the Superior Court.

R.S.1954, c. 44, § 65.

§ 302. 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 Personnel Law.

R.S.1954, c. 44, § 66; 1955, c. 50.

§ 303. Questions of law; certification of decisions

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, re-

spectively, as "the commission," "the clerk of the commission," or other appropriate term. The result 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.1954, c. 44, § 67; 1961, c. 317, § 92.

§ 304. Appeal does not stay orders

While an appeal as provided in section 303 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.1954, c. 44, § 68; 1961, c. 317, § 93.

§ 305. Additional court review

Notwithstanding sections 303 and 304, 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 cer-

tificate that the attorney for the plaintiff is of 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 before 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.

R.S.1954, c. 44, § 69; 1961, c. 300; c. 317, § 94.

§ 306. Orders altered or amended

The commission may at any time upon notice to the public utility, and after opportunity to be heard as provided in section 293, rescind, alter or amend any order fixing any rate or rates, tolls, charges or schedules or any other order made by the commission, and certified copies of the same shall be served and take effect as provided for original orders.

R.S.1954, c. 44, § 70.

§ 307. Burden of proof

In all trials, actions and proceedings arising under chapters 1 to 17 or growing out of the exercise of the authority and powers

granted to the commission, the burden of proof shall be upon the party adverse to the commission or seeking to set aside any determination, requirement, direction or order of said commission complained of as unreasonable, unjust or unlawful as the case may be. In all original proceedings before said commission where an increase in rates, tolls, charges or schedules, or joint rate or rates is complained of, the burden of proof shall be upon the public utility to show that such increase is just and reasonable.

R.S.1954, c. 44, § 71.

§ 308. Practice and rules of evidence; process service

In all actions and proceedings arising under chapters 1 to 17, all processes shall be served and the practice and rules of evidence shall be the same as in civil actions in the Superior Court except as otherwise provided. Every sheriff or other officer empowered to execute civil processes may execute any process issued under chapters 1 to 17 and shall receive such compensation therefor as may be prescribed by law for similar service.

R.S.1954, c. 44, § 72.

§ 309. Self-incrimination; immunity

No person shall be excused from testifying or from producing books, accounts and papers in any proceeding based on or growing out of chapters 1 to 17 on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or to subject him to a penalty or forfeiture. No person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence. No person so testifying shall be exempt from prosecution or punishment for perjury.

R.S.1954, c. 44, § 73.

§ 310. Certified copies of orders furnished

Upon application of any person and upon payment therefor as the commission may by rule provide, the commission shall furnish certified copies under the seal of the commission of any order made by it, which shall be evidence of the facts stated therein.

R.S.1954, c. 44, § 74.

§ 311. Orders temporarily suspended, altered or amended

Whenever the commission shall deem it necessary in order to prevent injury to the business of any public utility or to the interest of the people, or in case of any emergency which the commission may adjudge to exist, it shall have power, temporarily, to alter, amend or, with the consent of the public utility concerned, suspend any existing rates, schedules or orders relating to or affecting any public utility. Such rates so made by the commission shall apply to one or more of the public utilities in this State or to any portion thereof as may be directed by the commission, and shall take effect at such time and remain in force for such length of time as may be prescribed by the commission.

R.S.1954, c. 44, § 75.

§ 312. Exhausting rights before commission; application to Legislature

No public utility shall apply to the Legislature to grant it any right, privilege or immunity which the commission has power to grant to said utility until said utility shall first have exhausted its rights in that behalf before said commission. In making such application to the Legislature said utility shall make a statement in writing which shall accompany the proposed legislation, that it has applied to said commission for the right, privilege or immunity requested and that said commission has denied its application.

R.S.1954, c. 44, § 76.

§ 313. Substantial compliance; no waiver of right of action

A substantial compliance with the requirements of chapters 1 to 17 shall be sufficient to give effect to all rules, orders, acts and regulations of the commission and they shall not be declared inoperative, illegal or void for any omission of a technical or immaterial nature in respect thereto. Chapters 1 to 17 shall not have the effect to release or waive any right of action by the State or by any person for any right, penalty or forfeiture which may have arisen or which may hereafter arise under any law of this State.

R.S.1954, c. 44, § 77.