

# MAINE STATE LEGISLATURE

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November 15, 1923

To Hon. Charles E. Gurney, Chairman, Public Utilities Commission  
Re: Date of Filing Increase of Capital Stock, Ch. 55, R. S.; Ch. 115,  
P. L. 1919.

. . . A consideration of the question leads me to believe that whether or not the provision requiring a public utility voting to increase its capital stock to file within fifteen days after such action a notice of the proposed increase with the Commission is mandatory, or imperative, or merely directory, is unnecessary to decide, for the reason that the Commission has the power to approve or withhold approval of such increase, and it may properly, I think, adopt as its general rule that no such increase will be approved unless the terms of the statute are complied with by the filing of such notice within the prescribed fifteen days.

Such a general rule is justified whether the requirement regarding time of filing be mandatory or directory, because the Commission has a right to predicate its approval or refusal to approve upon the conditions as they exist at the time of such vote and not long afterwards or at such time as the utility may see fit to file its notice.

If the above conclusion is correct, it is in effect a ruling that the provision as to filing notice of increase is mandatory and such construction, I think, the Commission has the right to adopt.

The general rule gathered from a study of the cases seems to be that the directions of a statute are mandatory when a failure to observe them may result in prejudicing the rights of those interested.

Applying this rule, it would seem, for the reasons stated above, that the public utilities should be held to a strict observance of the statute in question.

William H. Fisher  
Deputy Attorney General