

# MAINE STATE LEGISLATURE

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## Chapter 44.

### Public Utilities Commission.

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**Purpose of chapter.**—The general purpose of this chapter is to place the entire regulation and control of all public service corporations (or individuals engaged in supplying a public utility) in the hands of a board or commission which can investigate conditions, hear parties, and grant relief much more expeditiously and fairly than the legislature itself. In re Searsport Water Co., 118 Me. 382, 108 A. 452.

**The public utilities commission is a creature of statute** and bound to act in accordance with the statute which created it. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

**The public utilities commission is an administrative body** of limited, though extensive authority, having such powers as are expressly delegated to it by the legislature, and incidental powers necessary to the full exercise of those so invested.

*Rockland v. Camden & Rockland Water Co.*, 134 Me. 95, 181 A. 818.

**But its proper orders have the effect of judgments.**—The public utilities commission possesses only statutory powers. If it exceeds those powers, or, though it has jurisdiction over the subject matter, proceeds in a manner unauthorized by this chapter, or otherwise exceeds its authority, its decrees are of no validity, and may be attacked collaterally. If, however, it keeps within the bounds marked out by the legislature, its orders, unreversed or unmodified in the manner provided by this chapter, have the effect of judgments, and cannot be attacked in another proceeding, because of some alleged error of law, which might have been corrected on proper application to the court of last resort under section 67. *S. D. Warren Co. v. Maine Central R. R.*, 126 Me. 23, 135 A. 526.

### Appointment, General Authority and Duties.

**Cross Reference.**—See c. 24, § 12-sub. § I, re land for airport, etc.

**Sec. 1. Appointment of commissioners; tenure; vacancies; clerks; office and equipment; salary; expenses.** — The public utilities commission, as heretofore established, shall consist of 3 members appointed by the governor, with the advice and consent of the council, from time to time upon the expiration of the terms of the several members, for terms of 7 years. Any vacancy occurring in said commission shall be filled by appointment for the unexpired portion of the term in which such vacancy occurs. One member of the commission shall be designated by the governor as chairman. The commission shall adopt and have a seal and be provided with an office at the state house in which its records shall be kept. The commission shall appoint a clerk and, subject to the provisions of the personnel law, an assistant clerk. The clerk shall keep a full and minute record of the proceedings of the commission which shall be open to public inspection at all times. The assistant clerk shall assist the clerk in the performance of his duties, and in the absence of the clerk shall have the same powers as the clerk. The clerk shall have authority to certify to all official acts of the commission, administer oaths, issue subpoenas and issue all processes, notices, orders or other documents necessary to the performance of the duties of the commission.

The commission shall have custody and control of all records, maps and papers pertaining to the offices of the former board of railroad commissioners and the former state water storage commission.

The chairman shall receive a salary of \$9,000 per year, and the other commissioners a salary of \$8,500 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.)

**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 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.)

**Sec. 3. Rules and regulations; assistance.**—The commission may make all necessary rules and regulations and may employ such expert, professional or other assistance as is necessary in making investigations or in otherwise carrying out the provisions of this chapter. (R. S. c. 40, § 3.)

**Sec. 4. Investigation; reasonable facilities furnished by public utility.**—The commission shall have authority to inquire into the management of the business of all public utilities and shall keep itself informed as to the manner and method in which each is conducted; and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

Every public utility within the state shall furnish all reasonable facilities to the commission for the prompt and faithful discharge of its duties. (R. S. c. 40, § 4.)

**Cross reference.**—See c. 47, § 24, re ap- Co., 118 Me. 367, 108 A. 446.  
plicability of § 4 to street railroads. **Stated in** In re Searsport Water Co.,  
**Quoted in part in** In re Guilford Water 118 Me. 382, 108 A. 452.

**Sec. 5. Inspection of books and papers; agents to produce authority; not to divulge information.**—The commission or any commissioner or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility in relation to its business and affairs and to take copies thereof. Any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection. Such person or persons so employed shall not directly or indirectly divulge any information so derived to anyone except to the commission or under direction of the commission. Any person violating the provisions of this section shall be punished by a fine of not more than \$1,000, and by imprisonment for not more than 11 months. (R. S. c. 40, § 5.)

**Cited in** Eaton v. Thayer, 124 Me. 311,  
128 A. 475.

**Sec. 6. Public utilities to furnish information.**—Every public utility shall furnish the commission with all information necessary to carry into effect

the provisions of this chapter; and in case it is unable to furnish such information, it shall give a good and sufficient reason for such failure, and the reason for such failure shall be verified by an officer, owner or agent of such public utility and returned to the commission at its office within the time fixed by the commission. (R. S. c. 40, § 6.)

Cited in *In re Caribou Water, Light & Power Co.*, 121 Me. 426, 117 A. 579.

**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 an action on the case, which may be instituted by the commission in the name of the state. (R. S. c. 40, § 7.)

**Sec. 8. Violations of law by public utilities; attorney general and county attorneys to aid commission; actions to recover penalties.**—The commission shall inquire into any neglect or violation of the laws of the state by any public utility doing business therein, or by the officers, agents or employees thereof or by any person operating the plant of any public utility; and shall enforce the provisions of this chapter and all other laws relating to public utilities and shall report all violations thereof to the attorney general. Upon the request of the commission, the attorney general or the county attorney of the proper county shall aid in any investigation, hearing or trial had under the provisions of this chapter, and shall institute and prosecute all necessary actions or proceedings for the enforcement of the provisions of this chapter and of all other laws of this state relating to public utilities and to the punishment of all violations thereof. Any forfeiture or penalty herein provided shall be recovered and suit therefor be brought in the name of the state in the superior court in the county where the main office of the public utility is located or in Kennebec county. Complaint for the recovery of any such forfeiture may be made by the commission or any member thereof, and when so made the action so commenced shall be prosecuted by the attorney general. The commission may employ counsel in any proceeding, investigation or trial. (R. S. c. 40, § 8.)

**Sec. 9. Collection of information relating to water powers of state.**—The commission shall collect information relating to the water powers 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, and such other hydrographic 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 increasing the capacity of the water powers of the state. (R. S. c. 40, § 9.)

**Sec. 10. Authorized to confer with U. S. 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 hydrographic and geological surveys, and the preparation of a contour topographic survey and map of the state. (R. S. c. 40, § 10.)

See c. 1, § 20, re topographic mapping.

**Sec. 11. Plans of proposed dams filed.**—Every person, firm or corporation before commencing the erection of a dam for the purpose of developing any water power in this state, or the creation or improvement of a water storage basin or reservoir for the purpose of controlling the waters of any of the lakes or rivers of the state, shall file with said commission for its information and use copies of plans for the construction of any such dam or storage basin or reservoir, and a statement giving the location, height and nature of the proposed dam and appurtenant structures and the estimated power to be developed thereby; and in case a dam is to be constructed solely for the purpose of water storage and not for the development of a water power at its site, plans and statements shall be filed with the commission showing the extent of the land to be flowed, the estimated number of cubic feet of water that may be stored and the estimated effect upon the flow of the stream or streams to be affected thereby. (R. S. c. 40, § 11.)

Quoted in *Brown v. DeNormandie*, 123 Me. 535, 124 A. 697.

**Sec. 12. Data relating to water power and resources in biennial report; water storage capacity; data relating to proposed dams.**—The commission shall publish in its biennial report an account of its operations and include such data as it may deem advisable bearing on the water powers and water resources of the state; and may report upon a comprehensive and practical plan for the improvement and creation of such water storage basins and reservoirs as will tend to develop and conserve the water powers of the state. The commission may also report so far as its investigations will permit on the development of the water powers of the state with reference to the general plan proposed so that the legislature may have before it a comprehensive summary of the possibilities that lie in the development of the water powers of the state as a natural resource, and the necessary steps that should be taken by the state to further increase and conserve them.

So far as any proposed plan devised by the commission for the improvement and increase of water storage basins or reservoirs shall include the construction of a dam or dams upon or at the headwaters of any river or watercourse, the commission shall ascertain and report as nearly as may be the water storage capacity in cubic feet of the reservoir to be created, the recorded rainfall on the watershed above such proposed dam, and the maximum, minimum and average flow of water per second in cubic feet during each month in the year in said river or watercourse. It shall, as nearly as practicable, estimate the increased power that would be developed by such proposed dam in the rivers or streams to be affected thereby. (R. S. c. 40, § 12.)

**Sec. 13. Advice for purification of water supply and disposal of sewage; complaints of pollution, procedure, appeal; jurisdiction; assistants.**—The commission shall consult with and advise the authorities of cities and towns and persons and corporations having, or about to have, systems of water supply, drainage or sewage as to the most appropriate source of water supply and the best method of assuring its purity or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other cities, towns or persons or corporations which may be affected thereby. It shall also consult with and advise persons or corporations engaged or intending to engage in any manufacturing or other business whose drainage or sewage may tend to pollute any inland water, as to the best method of preventing such pollution, and it may conduct experiments to determine the best method of the purification or disposal of drainage or sewage. No person shall be required to bear the expense of such consultation, advice or experiment. Cities, towns, persons and corporations may submit to said commission for its advice their proposed system of water supply or of the disposal of drainage or sewage. In this section the term "drainage" means rainfall, surface and subsoil water only, and "sewage" means domestic and manufacturing filth and refuse.

Upon petition to said commission by the mayor of a city or the selectmen of a town the managing board or officer of any public institution, or by a board of water commissioners, or the president or other official of a water or ice company, stating that manure, excrement, garbage, sewage or any other matter pollutes or tends to pollute the waters of any stream, pond, spring or watercourse used by such city, town, institution or company as a source of water supply, the commission shall appoint a time and place within the county where the nuisance or pollution is alleged to exist for a hearing, and after such notice thereof to parties interested and a hearing, if in its judgment the public health so requires may, by an order served upon the party causing or permitting such pollution, prohibit the deposit, keeping or discharge of any such cause of pollution, and shall order him to desist therefrom and to remove any such cause of pollution; but the commission shall not prohibit the cultivation and use of the soil in the ordinary methods of agriculture if no human excrement is used thereon. Said commission shall not prohibit the use of any structure which was in existence on or before the 1st day of January, 1917, upon a complaint made by any city, town, corporation or water district, water or ice company, unless such city, town, corporation, water district or company files with said commission a vote of its city government, selectmen, corporation, water district or company that such city, town, corporation, water district or company will, at its own expense, make such changes in said structure or its location as said commission shall deem expedient. Such vote shall be binding on such city, town, corporation, water district or company and all damages caused by any such change shall be paid by such city, town, corporation, water district or company. If the parties cannot agree thereon, the damage shall, on petition of either party filed within 1 year after such changes are made, be assessed by a jury in the superior court for the county where such structure is located.

Whoever is aggrieved by an order passed under the provisions of this section may appeal therefrom to the superior court sitting in the county where appellant resides; but such notice of the pendency of the appeal as the court shall order shall also be given to the board of water commissioners and the mayor of the city or chairman of the selectmen of the town or president or other officer of the water or ice company interested in such order. While the appeal is pending, the order of the commission shall be complied with unless otherwise authorized by the commission.

The supreme judicial court and the superior court shall have jurisdiction in equity, upon the application of the commission or of any party interested, to enforce its orders, or the orders, rules and regulations of said commission, and to restrain the use or occupation of the premises, or such portion thereof as said commission may specify, on which said material is deposited or kept, or such other cause of pollution exists until the orders, rules and regulations of said commission have been complied with.

The agents and servants of said commission may enter any building, structure or premises for the purpose of ascertaining whether sources of pollution or danger to the water supply there exists, and whether the rules, regulations and orders aforesaid are obeyed.

Unless the commission determines that public health will not thereby be seriously injured, no sewage, drainage, refuse or polluting matter of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream used as a source of ice or water supply by a city, town, public institution or water company for domestic use or render it injurious to health, and no human excrement shall be discharged into any such pond or stream or upon the banks thereof if any filtering basin in use is there situated. The prohibition against the deposit of sewage, drainage, refuse, polluting matter and human excrement shall not apply to the following rivers, namely, the Penobscot, the Kennebec, the Androscoggin and the Saco.

The commission may appoint, employ and fix the compensation of such agents,

clerks, engineers and expert assistants as is considered by said commission necessary for carrying out the provisions of this section.

Whoever violates any rule, regulation or order made under the provisions of this section shall be punished for each offense by a fine of not more than \$500 to the use of the state, or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 40, § 13. 1949, c. 267.)

**Sec. 14. Removal of ice dams.**—Whenever, upon application of a municipality, county, state department or agency, private person or corporation, it appears to the satisfaction of the commission that accumulations of ice or debris in the bed of any river or stream above tidewater threaten substantial damage to public or private property, highways or bridges, the commission may grant to the applicant permission to abate the same under the direction of the commission, and subject to such conditions as it shall impose. (1945, c. 97.)

**Sec. 15. Rules governing use and operation of headlights on electric cars.**—The commission shall prepare rules and regulations from time to time governing the use and operation of headlights on electric cars, and may from time to time alter, rescind or add to any rules and regulations previously made by it. Such rules and regulations of the commission and any changes therein shall take effect when approved by the governor and council and published at least once in each daily newspaper in the state. The certificate of the clerk of the commission shall be received as prima facie evidence in any court of law to prove that said rules and regulations have been prepared, approved and published as herein provided.

Whoever, either as owner or operator, fails to comply with any of the effective rules and regulations established by the commission as provided in this section shall be punished by a fine of not more than \$5 for each offense. (R. S. c. 40, § 14.)

See c. 22, §§ 43, 44, re lights on motor vehicles and snow removal or sanding equipment.

### Definitions.

**Sec. 16. Definitions.**—Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

I. "Commission" means the public utilities commission.

II. "Commissioner" means one of the members of the commission.

III. "Common carrier" includes every railroad company, street 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.

IV. "Corporation" includes municipal and quasi-municipal corporations.

V. "Electrical company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

VI. "Electric plant" includes all real estate, fixtures and personal property



owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of electricity for light, heat or power, for public use and all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power for public use.

**VII.** "Express company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in or transacting the business of transporting any freight, merchandise or other property for compensation on the line of any common carrier or over any stage line or auto stage line within the state.

**VIII.** "Gas company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any gas plant for compensation within this state, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

**IX.** "Gas plant" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of gas for light, heat or power.

**X.** "Person" includes an individual, a copartnership and a voluntary association.

**XI.** "Public heating company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing a plant for the purpose of selling heat to the general public, but shall not include any of the aforesaid corporations, persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever who sells heat to a limited number of individuals or corporations not in excess of 75,000 square feet of direct radiation or its equivalent.

**XII.** "Public utility" includes every common carrier, gas 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.

**May conduct other activities not within jurisdiction of commission.** — Where a public utility, as herein defined, conducts another business in connection with its basic activity, that other branch of its activities is not by that fact brought within the jurisdiction of the commission. In

re Milo Water Co., 128 Me. 531, 149 A. 299.

**Cited in** Hamilton v. Portland Pier Site District, 120 Me. 15, 112 A. 836; Gilman v. Somerset Farmers' Co-operative Tel. Co., 129 Me. 243, 151 A. 440.

**XIII.** "Railroad" includes every commercial, interurban and other railway other than a street railroad and each and every branch and extension thereof by whatsoever power operated, together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures and equipment and all other real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.

**XIV.** "Railroad company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, own-

ing, controlling, operating or managing any railroad for compensation within this state.

**XV.** "Steam railroad" or "steam railroad company" as used in this chapter and in chapters 45 and 46 shall be construed to mean any railroad or terminal company, however chartered, using steam as its motive power or using Diesel engines; and the term "electric railroad" or "electric railroad company" shall be construed to mean any railroad or terminal company using electricity as its motive power. (1951, c. 71)

**XVI.** "Street railroad" includes every railway, and each and every branch or extension thereof, by whatsoever power operated, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place within any city or town, together with all real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.

**XVII.** "Street railroad company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any street railroad for compensation within this state.

**XVIII.** "Telegraph company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any telegraph line for compensation within this state.

**XIX.** "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments and appliances and all other real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate communication by telegraph, whether such communication is had with or without the use of transmission wires.

**XX.** "Telephone company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any telephone line for compensation within this state.

Stated in *Gilman v. Somerset Farmers' Co-operative Tel. Co.*, 129 Me. 243, 151 A. 440.

**XXI.** "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments and appliances and all other real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.

**XXII.** "Transportation of persons" includes every service in connection with or incidental to the safety, comfort and convenience of the person transported and the receipt, carriage and delivery for such person and his baggage.

**XXIII.** "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage and handling, and the transmission of credit by express or telegraph companies.

**XXIV.** "Vessel" includes every steamboat which is owned, controlled, operated or managed for public use in the transportation of persons or property for compensation within this state.

**XXV.** "Warehouseman" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning,

controlling, operating or managing any building or structure in which property is regularly stored for compensation within this state, in connection with or to facilitate the transportation of property by a common carrier or vessel, or the loading or unloading of the same, other than a dock, wharf or structure, owned, operated, controlled or managed by a wharfinger.

**XXVI.** "Water company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any water works for compensation within this state.

Cited in *Eaton v. Thayer*, 124 Me. 311, 128 A. 475.

**XXVII.** "Water works" includes all reservoirs, tunnels, shafts, dams, dikes, head gates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for municipal and domestic use.

**XXVIII.** "Wharfinger" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any dock, wharf or structure used by vessels in connection with or to facilitate the receipt or discharge of freight or passengers for compensation within this state. (R. S. c. 40, § 15. 1951, c. 71.)

### Rates and Accounting.

**Regulation of rates valid exercise of police power of the state.**—The control or regulation of rates charged by public utilities is a legislative or governmental function and a legitimate exercise of the police powers of the state. The power to regulate the rates of public utilities, however, is not dependent on the immediate concern of the public health or safety therein. In re *Searsport Water Co.*, 118 Me. 382, 108 A. 452.

That the state, as an attribute of sovereignty, is endowed with authority to regulate the rates of charges of public utilities, is past dispute. In re *Guilford Water Co.*, 118 Me. 367, 108 A. 446.

**And right to exercise power is implied reservation in all contracts.**—From the very nature of their subject matter, all contracts relating to public service entered into between the private person or corporation operating a public utility and the municipality and the private consumer contain an implied reservation of the right of the state lawfully to exercise its police power for the general welfare. In re *Guilford Water Co.*, 118 Me. 367, 108 A. 446.

**Exoneration from state control not to be implied.**—The general provision in a railroad company's charter that it may make all needful rates, regulations, and by-laws touching the rates of toll does not constitute an irrevocable contract with the company that it shall have the right for all future time to prescribe the rates of toll free from legislative control. Exoneration from state control is neither to be presumed nor implied. The grant, or what is equivalent thereto, the ratification, must be in express and not to be mistaken terms. It is only when the right is very clearly conferred that the state will be held to have relinquished the power to regulate rates. In re *Guilford Water Co.*, 118 Me. 367, 108 A. 446.

**Commission has quasi-legislative and quasi-judicial power to fix rates.**—Subject to review on questions of law, the public utilities commission has authority, inclusive of both quasi-legislative and quasi-judicial power, to fix rates and charges for all public utility services. In re *Guilford Water Co.*, 118 Me. 367, 108 A. 446.

**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. Every unjust or unreasonable charge for such service is prohibited and declared unlawful. (R. S. c. 40, § 16. 1953, c. 377, § 1.)

**Business entered with understanding that rates must be reasonable.**—The company engages in a voluntary enterprise. It is not compelled, at the outset, to enter into the undertaking. It must enter, if at all, subject to the contingencies of the business, and subject to the rule that its rates must not exceed the value of the services rendered to its customers. It has accepted valuable franchises granted by the state, franchises ordinarily exclusive for the time being, franchises which ordinarily debar the public from serving themselves satisfactorily in any other way—and in return it must perform the duties to the public which it has voluntarily assumed, at rates not exceeding the value of the services to the public, taken as individuals, and this irrespective of the remuneration it may itself receive. *Gay v. Damariscotta-Newcastle Water Co.*, 131 Me. 304, 162 A. 264.

**The reasonableness of rates relates both to the utility and the consumer.** The public is entitled to demand that no more be exacted from it for the services of a public utility in the form of rates or charges than the services rendered are reasonably worth. *Gay v. Damariscotta-Newcastle Water Co.*, 131 Me. 304, 162 A. 264.

The reasonableness of rates relates both to the company and to the customer. Rates must be reasonable to both, and if they cannot be to both, they must be to the customer. *Hamilton v. Caribou Water, Light & Power Co.*, 121 Me. 422, 117 A. 582.

**Unreasonable rates under contract may be altered.** — The mere fact that a town had paid in advance a part of the agreed price for the service to be furnished, pursuant to a contract, would not deprive the state from considering all the circumstances and determining upon all the facts whether the total amount received by the utility under the contract constituted reasonable and just rates for the service furnished. Once determined to be unreasonable the rates become unlawful and the contract cannot be enforced, whereupon the commission may establish such new rates as it determines upon all the facts to be reasonable and just; see sections 40 and 58. *In re Caribou Water, Light & Power Co.*, 121 Me. 426, 117 A. 579.

**Rates must be reasonable in relation to business activities within the state.** — Where the business of a utility is both interstate and intrastate, the question whether a scheme of maximum rates fixed by the state for intrastate services affords a fair return must be determined by considering separately the value of the property employed in the intrastate business and the compensation allowed in that business under the rates prescribed. The reason is that the state cannot justify unreasonably low rates for domestic services, considered alone, upon the ground that the utility is earning large profits on its interstate business, and, on the other hand, the utility cannot justify unreasonably high rates on domestic business because only in that way is it able to meet losses on its interstate business. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

**And this is determined by consideration of relative use of facilities in intrastate service.**—Fair rates to a utility operating both an interstate and an intrastate business can be decided only by giving due consideration to the relative use of the facilities of the utility in intrastate and in interstate service after apportioning the expenses which should be properly allocated to each service. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

Where the commission, in determining rates, is concerned with what portion of the plant of the company was properly allotted to intrastate service in Maine and also what portion of the expenses should be charged to the operation of it, the only proper way to decide these questions is to determine them on the basis of the relative use of the plant in the two services, intrastate and interstate. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

**Stated in** *In re Searsport Water Co.*, 118 Me. 382, 108 A. 452.

**Cited in** *North Berwick v. North Berwick Water Co.*, 125 Me. 446, 134 A. 569; *Kennebunk, Kennebunkport & Wells Water District v. Wells*, 128 Me. 256, 147 A. 188; *Rockland v. Camden & Rockland Water Co.*, 134 Me. 95, 181 A. 818.

**Sec. 18. Valuation of property made for fixing rates.**—In determining reasonable and just rates, tolls and charges, the commission shall fix a rea-

sonable 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, current value thereof, less depreciation on each, and any other factors or evidence material and relevant thereto. 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.)

**State may control rates to assure fair return.**—So long as the property is devoted to the public use the state may control the rates at all times, as well when they are unfair to the utility because of failure to produce a "fair return," as when they are unfair to the public because too high. In re Searsport Water Co., 118 Me. 382, 108 A. 452.

**Jurisdiction of the commission** is to determine judicially the fair value of the utility property devoted to public service, figure a just return thereon, and establish a rate which shall be reasonable, to apply with substantial equality to all receiving a similar service. Rockland v. Camden & Rockland Water Co., 134 Me. 95, 181 A. 818.

**The ascertainment of the fair value of the property used for the convenience of the public is not controlled by artificial rules.** It is not a matter of formula, but there must be a reasonable judgment, having its basis in a proper consideration of all relevant facts. New England Tel. & Tel. Co. v. Public Utilities Comm., 148 Me. 374, 94 A. (2d) 801.

**Commission must recognize current cost.**—The commission in its rulings must abide by this section and must in establishing its rate base recognize current costs both insofar as those costs affect the fair value of its plant within the state of Maine and the operation of it. The company is entitled to have determined as its rate base the fair value of its plant and equipment, together with the value of its net working capital. It makes no difference that such figure may be more or less than the average net investment even though that may have been the rate base on which the company had based its figures previously. New England Tel. & Tel. Co. v. Public Utilities Comm., 148 Me. 374, 94 A. (2d) 801.

**Rates not to be measured by amount of taxes assessed on company property.**—Although relief from taxation by agreement for a consideration has been upheld by the supreme judicial court, it does not follow that a rate-making body has authority to measure in any part the rates which should

be paid for a municipal service by the amount of the taxes assessed upon the property of a utility, even though it undertakes to do so under the guise of making it a part of the amount to be paid by the town for the service furnished by the utility. In re Caribou Water, Light & Power Co., 121 Me. 426, 117 A. 579.

The amount of taxes which a company pays is immaterial. Rates which should be paid for municipal service cannot be measured in any part by the amount of taxes assessed upon the property of the utility. Gay v. Damariscotta-Newcastle Water Co., 131 Me. 304, 162 A. 264.

**But taxes considered as part of operating expenses.**—In any proceeding before the commission to determine rates for the public service, the entire public service, and it may be the income from the service to private consumers as well, must be considered. In making such determination taxes to which the defendant is subject are to be considered as part of its operating expenses in determining reasonable rates, and are not to be regarded in part as a measure of such rates. North Berwick v. North Berwick Water Co., 125 Me. 446, 134 A. 569.

**Company entitled to a fair return on its property devoted to public service within the state.**—The company is entitled to earn a reasonable and just return on the fair value of its property devoted to the public service within the state of Maine after making due allowance for the expenses of operating its plant and facilities within the state of Maine. New England Tel. & Tel. Co. v. Public Utilities Comm., 148 Me. 374, 94 A. (2d) 801.

The commission must find the fair value of the company's property devoted to the public service within this state before it can determine what rates will yield a fair return on the fair value of such property. New England Tel. & Tel. Co. v. Public Utilities Comm., 148 Me. 374, 94 A. (2d) 801.

**In apportioning value between property used in interstate and intrastate property,** there should be assigned to each business that proportion of the total value of the

property which will correspond to the extent of its employment in that business. So also there must be a division of expenses and these should be apportioned on the same basis of relative use. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

**The present value of the property is the value upon which the utility is entitled to a fair return.** Usually, it is ascertained by finding the cost of reproduction new less depreciation. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

Fair value is held to be present value, value at the time the inquiry is made, and must include increases in value over original cost. Thus the amount of the capital prudently invested in the property, though it is a factor which may be considered, is given a secondary place in determining fair value. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

**And actual cost of property is not conclusive evidence thereof.**—The actual cost of the plant and property together with proper allowances for depreciation is legal and competent evidence upon the question of the present value of the same. It is competent evidence, but it is not conclusive. It is not a controlling criterion of value, but it is evidence. Of course this element is subject to inquiry as to whether the works were built prudently, and whether they were built when prevailing prices were high so that actual cost, in such respects, may exceed present value. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

In determining what would be a fair return, undoubtedly, the amount of money actually and wisely expended is a primary consideration. Actual cost bears upon reasonableness of rates, as well as upon the

present value of the structure as such. It thus bears upon what is a fair return upon the investment, and so upon the value of the property. In estimating structure value, prior cost is not the only criterion of present value, and present value is what is to be ascertained. The present value may be affected by the rise or fall of prices of materials. If in such way the present value of the structure is greater than the cost, the company is entitled to the benefit of it. If less than the cost, the company must lose it. And the same factors should be considered in estimating the reasonableness of returns. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

Fair value means present value and original cost is but one of several criteria of such value. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

**Enforcement of rates which do not allow fair return is deprivation of property without due process of law.**—It is the general rule that the enforcement of rates which are not sufficient to allow a fair return on the value of the property devoted to the public service at the time it is being used deprives a public utility of its property in violation of the Fourteenth Amendment to the Constitution of the United States. *Gay v. Damariscotta-Newcastle Water Co.*, 131 Me. 304, 162 A. 264.

**The failure to consider evidence of a fair value is an error of law** which can properly be brought before the supreme judicial court on exceptions. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

It is error for the commission to figure the rate of return on a base which represents "net investment" and not "fair value." If fair value is less than net investment, the public is paying too much for the service rendered; if fair value is more than net investment, the company may not be receiving as much as it is entitled to have. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

**Sec. 19. Uniform system of accounts.**—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. In formulating a system of accounting for any class of public utilities, the commission shall consider any system of accounting established by any federal law, commission or department, and any system authorized by the national association of such utilities. (R. S. c. 40, § 18.)

**Sec. 20. Utility to render account of subsidiary business.** — Every public utility engaged directly or indirectly in any other subsidiary business shall,

if ordered by the commission, keep and render separately to the commission in like manner and form, the accounts of all such business, in which case all the provisions of this chapter shall apply with like force and effect to the books, accounts, papers and records of such other business. (R. S. c. 40, § 19.)

**Sec. 21. Form of books and records prescribed.** — The commission shall prescribe the forms of all books, accounts, papers and records required to be kept, and every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission and to comply with all directions of the commission relating to such books, accounts, papers and records; provided that the requirements of this section shall not apply to a public utility having no property located within this state other than such as is employed therein while in transit, but every such public utility shall appoint an agent residing in this state upon whom all notices, processes of the commission or other papers relating to the provisions of this chapter may be served, and shall file a copy of such appointment with the clerk of the commission. (R. S. c. 40, § 20.)

**Sec. 22. Blanks prepared.**—The commission shall cause suitable blanks to be prepared for carrying out the purposes of this chapter and shall, when necessary, furnish such blanks to each public utility. (R. S. c. 40, § 21.)

**Sec. 23. Other systems prohibited.** — No public utility shall keep any other books, accounts, papers or records of its business transacted than those prescribed or approved by the commission; provided, however, that nothing contained in this chapter shall require any public utility engaged in interstate commerce to do, or not to do, anything contrary to the requirements of any federal law relating thereto. (R. S. c. 40, § 22.)

**Sec. 24. Accounts closed December 31st; balance sheet filed.**—The accounts of all public utilities shall be closed annually on the 31st day of December unless a different date is fixed by the commission, and a balance sheet of that date, or of the date so fixed, promptly taken therefrom. Within 2 months after said date, or the date so fixed, such balance sheet together with such other information as the commission shall prescribe, verified by an officer or owner of the public utility, shall be filed with the commission; provided, however, that said commission may by general order extend said time not exceeding 1 month and may, in its discretion, excuse any public utility from filing such returns when the gross revenue of such utility does not exceed the sum of \$1,000. (R. S. c. 40, § 23.)

**Sec. 25. Audit of accounts.**—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. (R. S. c. 40, § 24.)

Cited in *Eaton v. Thayer*, 124 Me. 311,  
128 A. 475.

**Sec. 26. Agents to inspect records.** — The agents, accountants or examiners employed by the commission shall have authority within or outside the state under the direction of the commission to inspect and examine any and all books, accounts, papers, records and memoranda kept by any public utility. (R. S. c. 40, § 25.)

Cited in *Eaton v. Thayer*, 124 Me. 311,  
128 A. 475.

**Sec. 27. Public utility to file schedule of rates, and rules and regulations.**—Every public utility shall file with the commission, within a time to be fixed by the commission, schedules which shall be open to public inspection 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 or in conjunction therewith. Every public utility shall file with and as a part of such schedules all rules and regulations that in any manner affect the rates charged or to be charged for any service. (R. S. c. 40, § 26.)

**Purpose of section.**—According to the plain intent of this section, rates must be filed with the commission in order that they may be of public record and be complained against by any person aggrieved thereby. Until this is done, the courts will not enforce the recovery of them in a suit at law. *Kennebunk, Kennebunkport & Wells Water District v. Wells*, 128 Me. 256, 147 A. 188.

**Quoted** in part in *Eastport Water Co. v. Raye*, 136 Me. 175, 4 A. (2d) 841.

**Cited** in *North Berwick v. North Berwick Water Co.*, 125 Me. 446, 134 A. 569; *Pejepscot Paper Co. v. Lisbon*, 127 Me. 161, 142 A. 194; *In re Milo Water Co.*, 128 Me. 531, 149 A. 229; *De Rochemant v. Camden & Rockland Water Co.*, 129 Me. 421, 152 A. 534.

**Sec. 28. Copy of schedules on file for public.**—A copy of so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type and kept on file in every station or office of said public utility where payments are made by the consumers or users, open to the public under such rules and regulations as may be prescribed by the commission. (R. S. c. 40, § 27.)

**Sec. 29. Schedule of joint rates.**—Where a schedule of joint rates or charges is or may be in force between 2 or more public utilities, such schedules shall in like manner be printed and filed with the commission and so much thereof as the commission shall deem for the use of the public shall be filed in every such station or office as provided in section 28. (R. S. c. 40, § 28.)

**Sec. 30. Thirty days' notice given commission; new rates filed 30 days before effective; discretion.**—No change shall be made in any schedule, including schedules of joint rates, except upon 30 days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules by filing new schedules in lieu thereof 30 days prior to the time the same are to take effect; provided that the commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section and the following section in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions. (R. S. c. 40, § 29.)

**Applied** in *S. D. Warren Co. v. Maine Central R. R.*, 126 Me. 23, 135 A. 526.

**Cited** in *In re Searsport Water Co.*, 118 Me. 382, 108 A. 452.

**Sec. 31. New tariffs filed at offices of company 30 days before effective.**—Copies of all new schedules shall be filed as hereinbefore provided in every station and office of such public utility, where payments are made by customers or users 30 days prior to the time the same are to take effect, unless the commission shall prescribe a less time as provided in the preceding section. (R. S. c. 40, § 30.)

**Sec. 32. Rates on through shipments over connecting lines.**—It shall be unlawful for any public utility to charge, demand, collect or receive a greater or less compensation, except as otherwise provided in section 40, for any service performed by it within the state or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect or receive any rate, toll or charge not specified in such schedules; provided, however, that the total charges for through shipments over connecting lines of common carriers shall not exceed the combination of intermediate charges over the several lines between the 2 terminals of the shipment for the same commodity under the most favorable terms



prescribed in the printed schedules of the connecting common carriers, and no carrier shall refuse to consign through to destination in this state, and no connecting carrier shall refuse to receive and transport on the combination of such intermediate charges any commodity which is regularly a subject of carriage and through billing or consignment on the same and such connecting lines. The rates, tolls and charges named therein shall be the lawful rates, tolls and charges until the same are changed as provided in this chapter. The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient. (R. S. c. 40, § 31.)

**Applied** in *North Berwick v. North Berwick Water Co.*, 125 Me. 446, 134 A. 569.      **Quoted** in part in *Eastport Water Co. v. Raye*, 136 Me. 175, 4 A. (2d) 841.

**Sec. 33. Connecting steam railroads to establish joint rates.**—The commission may, after hearing, on a complaint or upon its own motion without complaint, require any 2 or more railroads operated by steam whose lines form a continuous line of transportation, or could be made reasonably to do so by the construction and maintenance of switch connection or interchange track at connecting points, to establish through routes and joint rates, fares, charges and classifications for the transportation of property or passengers, provided there is no reasonable existing through route between the places it is desired to serve. (R. S. c. 40, § 32.)

**Sec. 34. Joint rates prescribed.**—On failure of such railroads to establish joint rates, fares, charges or classifications, as provided in the preceding section, the commission may, in the same proceeding, or in a separate proceeding involving rates, fares, charges or classifications, prescribe joint rates, fares, charges and classifications as the maximum to be exacted for the transportation by them of property or passengers, and if such companies cannot agree as to the division of rates, fares or the conditions under which such through routes or transportation shall be established or such cars or other equipment operated, the commission may, after due hearing, determine and prescribe the proportionate portions of such through rates, fares or charges payable to each of such companies necessary to the establishment of such through routes or transportation and the conditions under which such through routes or transportation shall be established, or the conditions under which such cars or other equipment shall be operated. (R. S. c. 40, § 33.)

**Sec. 35. Public hearing to investigate proposed change of rates by public utility; rate pending hearing suspended.**—Whenever the commission receives notice of any change or changes proposed to be made in any schedule of rates filed with said commission under the provisions of law, it shall have power at any time before the effective date of such change or changes, either upon complaint or upon its own motion and after reasonable notice, to hold a public hearing and make investigation as to the propriety of such proposed change or changes. 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 public utility. After such hearing and investigation, the commission may make such order with reference to any new rate, joint rate, fare, rental, toll, classification, charge, rule, regulation or form of contract or agreement proposed as would be proper in a proceeding initiated upon complaint or upon motion of the commission in any rate investigation.

Pending such investigation and order, the commission may at any time within said period preceding the effective date of any such schedule, by filing with such schedule and delivering to the public utility affected thereby a statement of its reasons for said suspension, suspend the operation of such schedule or any part thereof, but not for a longer period than 3 months from the date of said order of suspension; provided, however, that if said investigation cannot be concluded within said period of 3 months, said commission may in its discretion extend the

time of suspension for a further period of 5 months; and provided further, that nothing in this section contained shall apply to any schedule filed with the commission and proposing any change or changes in any new rate, joint rate, fare, rental, toll, classification, charge, rule, regulation or form of contract or agreement affecting the transportation of freight. (R. S. c. 40, § 34. 1949, c. 16.)

**Commission may suspend rates.**—If for any reason it is deemed advisable that proposed changes in certain utility rates, if complained against, should not be collected until they have been determined to be reasonable by the utilities commission, then a complaint must be filed and a hearing and investigation had, before they become effective, which may involve the power of suspension pending investigation. *S. D. Warren Co. v. Maine Central R. R.*, 126 Me. 23, 135 A. 526.

**Sec. 36. Proposed change in freight rates; joint hearing with interstate commerce commission.**—Whenever the commission receives notice of any change or changes proposed to be made in any schedule of new rates, joint rates, fares, rentals, tolls, classifications, charges, rules, regulations or forms of contract or agreement affecting the transportation of freight, and filed with said commission under the provisions of law, said commission shall have power at any time within 30 days after the effective date of such change or changes, either upon complaint or upon its own motion and after reasonable notice, to hold a public hearing and make investigation as to the propriety of such proposed change or changes.

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 not less than 6 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 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 commis-

sion 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.)

**Provision for refund is appropriate.**—If for any reason it is deemed proper that proposed changes in certain rates would not be suspended upon complaint, but should become effective and be collected pending investigation as to their reasonableness, a provision for refunding any excess collected over what the utilities commission may determine to be the maximum reasonable rate for such service seems both logical and appropriate. *S. D. Warren Co. v. Maine Central R. R.*, 126 Me. 23, 135 A. 526.

**Section applies only to sums collected before rates ordered reduced.** — It is to persons from whom sums "have been collected" that this section applies, and to whom by the order of the commission the refund is to be made. As to all sums un-

lawfully collected after rates are ordered reduced, the complainant has his remedy at common law. *S. D. Warren Co. v. Maine Central R. R.*, 126 Me. 23, 135 A. 526.

**There can be no occasion for a complaint being filed before the rates become effective**, if it is filed and a hearing held within a reasonable time following, which the legislature has fixed in this instance as 30 days. *S. D. Warren Co. v. Maine Central R. R.*, 126 Me. 23, 135 A. 526.

**No prescribed form of order.** — A "proper" order under this section is not an order in any prescribed form, but one appropriate to the situation and to carry out the findings of the commission. *S. D. Warren Co. v. Maine Central R. R.*, 126 Me. 23, 135 A. 526.

**Sec. 37. Comprehensive classification of service.** — The commission shall provide for a comprehensive classification of service for each public utility and such 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 is required to conform its schedules of rates, tolls and charges to such classification. (R. S. c. 40, § 36.)

**Decision of commission is final.**—The establishing of classes of users is a matter of judgment, and is vested finally in the commission, under this section, and a finding by the commission on such questions will not be disturbed by the supreme judi-

cial court unless clearly without any basis on which to rest, or resulting in confiscation or the taking of property without due process. *Kennebunk, Kennebunkport & Wells Water District v. Wells*, 128 Me. 256, 147 A. 188. See note to § 67.

### Regulation and Control.

**Sec. 38. Utilities must not give special privileges.**—It shall be unlawful for any public utility to demand, charge, collect or receive from any person, firm or corporation less compensation for any service rendered or to be rendered by such public utility in consideration of the furnishing by such person, firm, or corporation of any part of the facilities incident thereto; provided that nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to the production, transmission, delivery or furnishing of heat, light, water or power, or the conveyance of telephone or telegraph messages and paying a reasonable rental therefor, or as requiring any public utility to furnish any part of such appliances which are situated in or upon the premises of any customer or user, except telephone station equipments upon the subscribers' premises, and unless otherwise ordered by the commission, meters and appliances for the measurement of any product or service; and provided further, that nothing herein shall affect scheduled classifications of telephone service wherein separate charges are made for facilities and for service or scheduled classifications of rural telephone service wherein a portion of the facilities are regularly furnished by the user of the service. (R. S. c. 40, § 37.)

**Sec. 39. Unjust discrimination defined.**—If any public utility makes or gives any undue or unreasonable preference or advantage to any particular person, firm or corporation or any undue or unreasonable prejudice or disadvantage

in any respect whatever, such public utility shall be deemed guilty of unjust discrimination which is prohibited and declared unlawful. (R. S. c. 40, § 38.)

**Discrimination in favor of a municipal corporation is not unreasonable.** *Belfast v. Belfast Water Co.*, 115 Me. 234, 98 A. 738.

Cited in *In re Searsport Water Co.*, 118

Me. 382, 108 A. 452; *Kennebunk, Kennebunkport & Wells Water District v. Wells*, 128 Me. 256, 147 A. 188.

**Sec. 40. Unlawful to receive or solicit rebates.**—It shall be unlawful for any person, firm or corporation knowingly to solicit, accept or receive any rebate, discount or discrimination in respect to any service rendered, or to be rendered by any public utility, or for any service in connection therewith whereby any such service shall in any manner, or by any device whatsoever, be rendered free or at a rate less than named in the schedules in force as provided herein or whereby any service or advantage is received other than is herein specified; provided that the provisions of this chapter shall not prohibit such free or reduced rates by public utilities as is defined and provided for in the acts of congress entitled, "An Act to Regulate Commerce" and acts amendatory thereof, nor free or reduced transportation to the officers of leased lines or to police officers or firemen in uniform or of municipal fire apparatus, call men of fire departments wearing badges, while going to or returning from fires, chiefs, captains, sergeants, lieutenants and inspectors of police departments, in plain clothes and wearing badges, editors and regular reporters of newspapers; nor shall it be construed to prohibit any public utility from granting service at free or reduced rates for charitable or benevolent purposes, or for national or civilian defense purposes, nor to prohibit any public utility from supplying water and service free or at reduced or special rates to any person, firm or corporation for fire protection purposes through or by means of any apparatus or appliances furnished, installed or maintained by such person, firm or corporation, provided the same be approved by the commission; nor shall it be unlawful for any public utility to make special rates to its employees or in case of emergency service, nor shall the furnishing by any public utility of any product or service at the rates and upon terms and conditions provided for in any contract in existence January 1, 1913 be construed as constituting a discrimination or undue or unreasonable preference or advantage within the meaning specified; provided, however, that when any such contract or contracts are or become terminable by notice of such utility, the commission shall have power in its discretion to direct by order that such contract or contracts shall be terminated by such utility as and when directed by such order; and provided further, that it shall be lawful for any public utility to make a contract for a definite term subject to the approval of the commission for its product or service, but such published rates shall not be changed during the term of the contract without the consent of the commission.

Any person, firm or corporation violating any of the provisions of this section shall be punished by a fine of not more than \$1,000 for each offense. (R. S. c. 40, § 39.)

**Purpose of section.** — By the common law a public service corporation must serve all similarly situated whom it is under a duty to serve, upon equal terms and without discrimination. Free service to some is discriminatory. The same principle is declared in this section. The purpose of the law, both common and statutory, is to protect the public. Persons sui juris, and business corporations, are presumed to be able to protect themselves. *Belfast v. Belfast Water Co.*, 115 Me. 234, 98 A. 738.

It was to remove any doubt as to the guilt of those giving or receiving any un-

due preference or advantage under contracts already existing that it was provided that continued service under such contracts should not be construed as constituting a discrimination within the meaning of this and succeeding sections. *In re Searsport Water Co.*, 118 Me. 382, 108 A. 452.

**Section has prospective effect.** — There is nothing in this section which tends to show that the legislature intended to impair the obligation of any existing lawful contract. The language indicates that the legislation was to have a prospective, not a retroactive, effect. To give it a retroactive

effect would impair the obligation of a contract valid at common law, which is forbidden by the federal constitution. *Belfast v. Belfast Water Co.*, 115 Me. 234, 98 A. 738.

**State may regulate rates fixed by contract.**—The language of this and succeeding sections is clearly broad enough to include the regulation and control of every rate, toll, charge or schedule of every public utility whether fixed by contract or by the utility itself, unless limited in some manner by the terms of these sections, or the state has previously suspended its regulatory powers in respect to the rates or charges in question. In *re Searsport Water Co.*, 118 Me. 382, 108 A. 452.

Where the public health, morals or safety is involved the power to control vested rights whether obtained by contract or otherwise, must prevail. All must yield in these respects to the common welfare. In *re Searsport Water Co.*, 118 Me. 382, 108 A. 452.

All contracts remain valid, binding obligations unaffected in their terms, until the utilities commission has found that the rates contained therein are "unjust, unreasonable or insufficient," when just and reasonable rates may then be substituted therefor. In *re Searsport Water Co.*, 118 Me. 382, 108 A. 452. See §§ 58 and 59.

**And such regulation does not constitute impairment of contracts.**—Contracts fixing rates may bind the parties, but as against the state they must be regarded as entered into in contemplation of the state's authority to regulate all rates for the public service. Such regulation does not constitute an impairment of contracts within the meaning of the constitution. In *re Searsport Water Co.*, 118 Me. 382, 108 A. 452.

**But state may suspend its authority by express provision.**—It has been settled that a state may authorize one of its municipalities to establish, by an inviolable contract, the rates to be charged, for a definite term, not unreasonable in point of time, by a public utility. But the authority to make such contract must be expressly and specifically bestowed. It is beyond the recognized general powers of a municipal corporation to make that kind of a contract. Doubts must be resolved in favor of the continuance of the governmental prerogative of regulating rates and charges. In *re Guilford Water Co.*, 118 Me. 367, 108 A. 446.

The fixing of rates which may be charged by public service corporations is a legislative function of the state, and while the right to make contracts which shall prevent the state during a given pe-

riod from exercising this important function has been recognized and approved by judicial decisions, it has uniformly been held by the supreme judicial court that the renunciation of a sovereign right of this character must be evidenced by terms so clear and unequivocal as to permit of no doubt as to their proper construction. All doubts must be resolved in favor of the retention of the power in the state. In *re Searsport Water Co.*, 118 Me. 382, 108 A. 452.

The state may in its discretion vest in one of its municipalities the authority to enter into an inviolable contract for a reasonable period regulating the rates to be charged by a public utility for its service. That in this respect, at least, it may suspend its authority during the life of such contract to exercise this important governmental function of police power in fixing rates, and that such a contract is protected against impairment by the state under Sec. 10, Art. 1 of the Federal Constitution is generally accepted. In *re Searsport Water Co.*, 118 Me. 382, 108 A. 452.

**Authority of commission supersedes arbitration provisions of contracts.**—In case of a failure of the parties to agree upon terms of renewal under a contract the authority of the utilities commission must supersede the provision for arbitration. The tribunal created by law takes the place of the tribunal which the parties have agreed may be created upon their application, but which is not in existence. *North Berwick v. North Berwick Water Co.*, 125 Me. 446, 134 A. 569.

**Discrimination in favor of public not prohibited.**—Free service to the public is not, at common law, unreasonably, and therefore, unlawfully, discriminatory. The law against unreasonable discrimination rests on public policy. It is forbidden because it is opposed to the interest of the public, which requires that all should be treated alike under like circumstances. Discriminations, however, in favor of the public are not opposed to public policy, because they relieve the people generally of part of their burdens. In the absence of legislation upon the subject such discriminations cannot be held illegal as matter of law without overturning the foundation upon which the rule itself is built. *Belfast v. Belfast Water Co.*, 115 Me. 234, 98 A. 738.

**A utility cannot repudiate a contract at will.** Nor does the filing of new schedules under Section 30 have the effect of changing the rates fixed by contract. In *re Searsport Water Co.*, 118 Me. 382, 108 A. 452.

**Sec. 41. Limitation of power of public utilities to make contracts and loans to certain stockholders.**—No public utility doing business in this state shall extend credit or make loans to or make any contract or arrangement, providing for the furnishing of management, supervision of construction, engineering, accounting, legal, financial or similar services, or for the furnishing of any service other than those above enumerated, with any corporation, person, partnership or trust, holding, controlling or owning in excess of 25% of the voting capital stock of such public utility, or with any other corporation which is itself owned or controlled by or affiliated with any corporation, person, partnership or trust, holding, controlling or owning a majority of the voting capital stock of such public utility, unless and until such contract or arrangement shall have been found by the commission not to be adverse to the public interest and shall have received their written approval. Provided, however, that the commission shall in the case of any utility have the power to exempt herefrom, from time to time, such classes of transactions as it may specify in writing in advance and which in its judgment will not affect the public interest. (R. S. c. 40, § 40.)

### Investigation of Accidents.

**Sec. 42. Accidents investigated; reports.**—In the event of an accident resulting in the loss of human life occurring upon the premises of any public utility or directly or indirectly arising from or connected with its maintenance or operation, the commission shall cause an investigation thereof to be made forthwith; and in the event of any such accident resulting in personal injury or damage to property, the commission may make such investigation if in its judgment the public interest requires it, which investigation shall be held in the locality of the accident, unless for the greater convenience of those concerned it shall order such investigation to be held at some other place. Such investigation may adjourn from place to place as may be found necessary and convenient. The commission shall seasonably notify the public utility of the time and place of the investigation, and such public utility may then be heard; and the commission shall have power to make such order or recommendation with respect thereto as in its judgment may seem just and reasonable. Every public utility is required to file with the commission, under such rules and regulations as the commission may prescribe, reports of accidents so occurring, in the manner and form designated by the commission; provided, however, that in case of accidents resulting in loss of human life, such reports shall be made immediately by telephone or telegraph followed by a detailed written report; provided that neither the order nor recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damages based on or arising out of the loss of life or injury to person or property referred to in this section. (R. S. c. 40, § 41.)

### Approval of Stocks, Bonds and Notes.

**Sec. 43. Issue of stocks, bonds and notes by public utilities.**—Any public utility, now organized and existing or hereafter incorporated under and by virtue of the laws of this state and doing business in the state, may issue stocks, bonds which may be secured by mortgages on its property, franchises or otherwise, notes or other evidences of indebtedness, payable at periods of more than 12 months after the date thereof, when necessary for the acquisition of property to be used for the purpose of carrying out its corporate powers, the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, including capital stock, or to reimburse its treasury for moneys used for the acquisition of property, the construction, completion, extension or improvement of its facilities, for the discharge or lawful refunding of its obligations, and which actually were expended from income or from other moneys in the treasury

of the corporation not secured by or obtained from the issue of stocks, bonds, notes or other evidences of indebtedness of such corporation, or for any other lawful purposes; provided and not otherwise, that upon written application, setting forth such information as the commission may require, there shall have been secured from the commission an order authorizing such issue and the amount thereof and stating that in the opinion of the commission the sum of the capital to be secured by the issue of said stocks, bonds, notes or other evidences of indebtedness is required in good faith for purposes enumerated in this section. Every such order authorizing the issue of stock shall, if authorized to be sold at less than its par value, specify a minimum price at which the shares so authorized are to be sold, and any and all shares of stock, issued in accordance with the provisions of such an order, shall be fully paid stock and not liable to any further call or payment thereon, notwithstanding it may have been authorized for sale at less than its par value; but the provisions of this chapter shall not apply to any stocks or bonds or other evidences of indebtedness heretofore lawfully authorized and issued; provided, however, that the commission may at the request of any public utility approve the issue of any stocks or bonds heretofore authorized but not issued. For the purpose of enabling the commission to determine whether it shall issue such an order, the commission shall make such inquiries for investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. No order of the commission authorizing the issue of any stocks, bonds, notes or other evidences of indebtedness shall limit or restrict the powers of the commission in determining and fixing any rate, fare, toll, charge, classification, schedule or joint rate as provided in this chapter; provided, however, that no public utility shall be required to apply to the commission for authority to issue stocks, bonds, notes or other evidences of indebtedness for the acquisition of property, for the purposes of carrying out its corporate powers, the construction, completion, extension or improvement of its facilities, or the improvement or maintenance of its service outside the state, and this proviso shall apply also to the following section.

Subject to the foregoing and subsequent provisions of this section, any railroad corporation may issue bonds or other interest-bearing securities maturing at periods of more than 12 months after the date thereof and may issue 1 or more classes of preferred stock which may have attached thereto warrants entitling the holder thereof to subscribe for shares of common stock or preferred stock of any class in such amounts, at such future date or dates, at such price or prices and on such terms and conditions as may be specified in said warrants; such bonds or other interest-bearing obligations and such preferred stock also may be issued with provision therein or thereon that the same may be converted into shares of common stock or preferred stock of any class in such amounts, at such future date or dates, at such price or prices and on such terms and conditions as may be specified in or on such bonds or other interest-bearing obligations or in or on the certificates representing such preferred stock. The foregoing provisions of this paragraph shall apply to securities of the character specified in this paragraph issued by any railroad corporation on or after October 1, 1934; and such securities need not be offered to the stockholders unless the stockholders, by majority vote, shall so require, and common or preferred stock of any class authorized to be hereafter issued to meet the purchase rights of such warrants issued on or after October 1, 1934, or in exchange for any such convertible securities so issued, shall be wholly exempt from any provisions of section 23 of chapter 45 requiring that certain increases in capital stock shall be offered to stockholders.

Without in any way restricting the general language hereof, this section shall be construed to authorize any municipal or quasi-municipal corporation referred to in this chapter to issue, upon vote of its trustees or similar governing board, bonds, notes or other evidences of indebtedness for the purposes herein specified

and subject to the approval of the commission as herein provided. The trustees or similar governing boards of any such corporations may issue notes or other evidences of indebtedness payable at periods of less than 12 months after the date thereof when necessary to carry out the purposes of such corporations.

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 such proposed action. 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.)

**Purpose of section.**—The plain intent of this section, and a fair interpretation of its language, is that the permanent securities issued by a utility shall be balanced by its investment in capital assets. Bond discount is deferred interest and may not be capitalized. In re Central Maine Power Co., 130 Me. 28, 153 A. 187.

**Transfers in reorganization proceeding**

**not included.**—The transfer of the property and franchises by the purchasers to a reorganized corporation is not a purchase or acquisition of property within the meaning of this section, nor one of the purposes for which capital stock may be issued and over which the public utilities commission has jurisdiction. In re Damariscotta-Newcastle Water Co., 126 Me. 141, 136 A. 721.

**Sec. 44. Conditions under which public utility may issue stocks, bonds and notes.**—No public utility shall issue any stocks, bonds, notes or other evidences of indebtedness, unless payable within 1 year from date thereof, for money, property or services, in payment for the same, either directly or indirectly, until there shall have been recorded upon the books of such public utility the order of the commission as herein provided; and no indebtedness shall in whole or in part, directly or indirectly, be refunded by any issue of stocks or bonds or by any other evidence of indebtedness, running for more than 12 months, without the consent of the commission. (R. S. c. 40, § 43.)

**Reorganization proceedings not under jurisdiction of commission.**—The purchase of the franchises and property of a utility corporation from a receiver, the organization of a corporation to hold the same, fixing the amount of capital stock, the division of it into shares, and the distribution of it to the purchasers and incorporators, are

a part of a reorganization and must be done under the direction and approval of the court. It requires no approval or consent of the public utilities commission. In re Damariscotta-Newcastle Water Co., 126 Me. 141, 136 A. 721.

**Applied in** In re Maine Central Power Co., 130 Me. 28, 153 A. 187.

**Sec. 45. Issuance of stock for organization purposes.** — Any public utilities corporation at the time of its organization may issue for organization purposes, without the consent of the commission, not more than 6 shares of stock at par for cash or, if non-par stock, for the consideration of \$100 per share, such shares when issued to be a part of the total capital issue. (R. S. c. 40, § 44.)

**Sec. 46. No decrease of capital or change of purposes without consent.**—No public utility shall decrease its capital or declare any stock, bond or



scrip dividend, or divide the proceeds of the sale of its own or any stock, bonds or scrip among stockholders without the consent of the commission, and no change of purposes of a public utility, unless specially chartered, shall become effective until approved by the commission and its certificate of approval filed with the secretary of state within 20 days of the date thereof. (R. S. c. 40, § 45.)

### Authorization of Leases, Consolidations and Mortgages.

**Sec. 47. Public utilities not to sell, lease or mortgage, nor acquire stock of other public utilities, without authority.**—Any public utility may henceforth sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or by any means whatsoever, direct or indirect, merge or consolidate its property, franchises or permits, or any part thereof, with any other public utility when, and not otherwise, it shall have first secured from the commission an order authorizing it to do so. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing the same shall be void. The sale, lease, assignment, mortgage or other disposition or encumbrance of a franchise or permit under the provisions of this section shall not be construed to revive or validate any lapsed or invalid franchise or permit or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit or to waive any forfeiture. Nothing in this section contained shall be construed to prevent the sale, lease or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such public utility shall be conclusively presumed to have been of property which is not necessary or useful in the performance of its duties to the public, as to any purchaser of such property in good faith for value. Nothing in this section shall apply to property, franchises, permits or rights of any utility owned and operated exclusively outside this state. No public utility shall hereafter purchase or acquire, take or hold any part of the capital stock of any other public utility organized or existing under or by virtue of the laws of this state without having been first authorized to do so by the commission. Every assignment, transfer, contract or agreement for assignment or transfer of any stock by or through any person or corporation to any corporation or otherwise in violation of any of the provisions of this section shall be void and of no effect; and no such transfer shall be made on the books of any public utility. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired or to prevent the acquiring of additional stock by a public utility which now owns a majority of the stock of such other utility. No railroad corporation engaged in interstate commerce shall be required to make application to the commission or to procure consent, approval, authority or an order from the commission as a condition precedent to executing an assignment or mortgage of any of its property, or encumbering the same, when such mortgage, assignment or encumbrance is executed, or is to be executed, in connection with an issue of securities in respect of which the 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 such securities. (R. S. c. 40, § 46.)

**Company may not disable itself from continuing business without authority.**—A public service corporation cannot without authority lawfully sell all of its corporate

property so as to disable itself from continuing in business. *Hodges v. South Berwick Water Co.*, 139 Me. 40, 26 A. (2d) 645.

**Sec. 48. Abandonment of property or service by public utilities.**—No public utility as defined in this chapter shall abandon all or any part of its plant, property or system necessary or useful in the performance of its duties to

the public, or discontinue the service which it is rendering to the public by the use of such facilities, without first securing the approval of the commission. In granting its approval, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. Any public utility abandoning all or any part of its plant, property or system or discontinuing service in pursuance of authority granted by the commission under the provisions of this section shall be deemed to have waived any and all objections to the terms, conditions or requirements imposed by the commission in that regard. The provisions of this section shall not apply to any railroad corporation engaged in interstate commerce while and so long as such corporation is required by federal law to make application to and procure consent from the interstate commerce commission as a condition precedent to any such abandonment of property or discontinuance of service as is herein contemplated; nor to action under any order of a court having and exercising jurisdiction over a public utility in bankruptcy, foreclosure or receivership proceedings. (R. S. c. 40, § 47.)

**Company may not discontinue service without permission.**—This section establishes no basis for justifying the discontinuance of service by a public utility as a matter of right but vests authority in the commission to approve, or decline to approve, such action. *Casco Castle Co., Petitioner*, 141 Me. 222, 42 A. (2d) 43.

**Commission may not enforce operation at a loss.**—A law purporting to vest power in a regulatory body to enforce operation of a public service at a loss would infringe the Constitution of the United States. *Casco Castle Co., Petitioner*, 141 Me. 222, 42 A. (2d) 43.

### Physical Connections.

**Sec. 49. Physical connection of telephone and telegraph lines, and joint rates.**—Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that a physical connection can reasonably be made between the lines of 2 or more telephone companies or 2 or more telegraph companies whose lines can be made to form a continuous line of communication, by the construction and maintenance of suitable connections, for the transfer of messages or conversations, and that public convenience and necessity will be subserved thereby, or shall find that 2 or more telegraph or telephone companies have failed to establish joint rates, tolls or charges for service by or over their said lines, and that joint rates, tolls or charges ought to be established, the commission may, by its order, require that such connection be made, except where the purpose of such connection is primarily to secure the transmission of local messages or conversations between points within the same city or town, and that conversations be transmitted and messages transferred over such connection under such rules and regulations as the commission may establish, and prescribe through lines and joint rates, tolls and charges to be made and to be used, observed and enforced in the future. If such telephone or telegraph companies do not agree upon the division between them of the cost of such physical connection or connections or the division of the joint rates, tolls or charges established by the commission over such through lines, the commission shall have authority, after further hearing, to establish such division by supplemental order. (R. S. c. 40, § 48.)

**Cross reference.**—See note to § 52.

**Commission may require reasonable connection.**—The public utilities commission, like the legislature which created it, may require reasonable connection of public utility telephone lines, so long as there

is no interference with individual ownership and use, save to complement service by the transmission of messages from other lines. *Gilman v. Somerset Farmers' Co-Operative Tel. Co.*, 129 Me. 243, 151 A. 440.

**Sec. 50. Physical connection between electric and steam railroads.**—Whenever it is practicable and the same may be accomplished without endangering the equipment, tracks or appliances of either party, and whenever and wherever public convenience and interest require the same, the commission may, up-

on application and after reasonable notice and hearing, require the construction of physical connection between the tracks of any steam railroad company and electric railroad company. The expense of constructing such physical connection may be apportioned by the commission in such manner as it may deem equitable, if the parties to any such petition are themselves unable to agree as to the distribution of the cost of such construction. Said commission may, upon application and reasonable notice and hearing, require any such steam railroad company to permit any electric railroad company to haul, by means of such physical connection, loaded freight cars containing what is called "carload lots" from the tracks of such steam railroad company to points along the line of said electric railroad company for unloading the contents of such cars by the owners thereof and to haul empty freight cars from the tracks of such steam railroad company onto the tracks of such electric railroad company to be loaded for shipment, and such steam railroad company shall accept each such loaded car and transport the same over its lines in accordance with the proper and lawful billing of the shipper of the contents of any such car. Provided that nothing in this chapter shall be construed to require through billing of freight between steam railroad companies and electric railroad companies; nor as requiring or authorizing said commission to require any electric railroad to engage in interstate commerce. (R. S. c. 40, § 49.)

See § 52 and note thereto, re application of provisions of § 50.

**Sec. 51. Cars hauled over each other's tracks; regulations when corporations are unable to agree.**—Whenever a physical connection has been made between the tracks of a steam railroad company and an electric railroad company, either voluntarily or by order of the commission, as provided in the preceding section, such steam railroad company or electric railroad company shall at reasonable times, for reasonable compensation, and under reasonable rules and conditions, draw over their respective tracks the merchandise and cars of the steam railroad company or electric railroad company as the case may be with which such physical connection is so established; provided such cars are of proper gauge, are in good running order, properly equipped and loaded and otherwise safe for transportation. If the corporations cannot agree upon the times at which, or the rules and conditions under which, cars shall be drawn, or the compensation to be paid, the commission shall upon petition of either party and notice to the other and after hearing the parties interested, determine the rate of compensation and fix such rules, conditions and periods, having reference to the convenience and interests of the corporations and of the public to be accommodated thereby. Any agreement entered into between any 2 or more such corporations under the provisions of this section, or any order of the commission hereunder, shall at all times be subject to annulment, alteration or modification by said commission after notice and hearing. (R. S. c. 40, § 50.)

See § 52 and note thereto, re application of provisions of § 51.

**Sec. 52. Auxiliary service, only, intended; steam railroad car returned to junction from which received.**—The duties imposed upon carriers and the authority conferred upon the commission by sections 50 and 51 shall extend only to an auxiliary service by electric railroads, and said commission shall not be authorized to require any physical connection or service herein provided for in any case where there are existing steam railroad facilities which can be with reasonable convenience used by the persons who desire the above-named electric railroad service. Whenever any steam railroad freight car is hauled onto the rails of any electric railroad company, such car shall be returned to the steam railroad at the same junction point where taken without other use than that for which such car was taken. It shall be the duty of said commission in making any order for physical connection and the service herein provided for to reason-

ably protect each steam railroad company from "short hauling" itself. Nothing herein contained shall be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business. (R. S. c. 40, § 51.)

**Commission may not take property or property rights of utility.** — The public utilities commission may, to some extent, affect and curtail the property and property rights of public utilities, but the commission may not, under the guise of

supervision, regulation, and control, take such property and rights. Property and property rights may not be taken, except (the taking be by eminent domain. *Gilman v. Somerset Farmers' Co-Operative Tel. Co.*, 139 Me. 243, 151 A. 440.

**Sec. 53. Railroad not required to "short haul" itself.**—In establishing any through route, the commission shall not require any company, without its consent, to embrace in any such route substantially less than the entire length of the railroad owned, leased, operated or controlled by it or operated in conjunction and under a common management therewith, which lies between the places to be served by such through route.

Nothing herein contained shall be construed to require, or as authorizing the commission to require, any steam railroad to "short haul" itself or to give the use of its tracks or of its terminal facilities to another carrier engaged in a like or similar business. (R. S. c. 40, § 52.)

**Sec. 54. Joint use of equipment by public utilities.** — Whenever the commission, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over or under any street or highway and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may by order direct that such use be permitted and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof. (R. S. c. 40, § 53.)

#### Procedure.

**Sec. 55. Complaints against public utilities.**—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. c. 40, § 54.)

Applied in *S. D. Warren Co. v. Maine*  
Central R. R., 126 Me. 23, 135 A. 526.

Cited in *In re Searsport Water Co.*, 118  
Me. 382, 108 A. 452.

**Sec. 56. Notice of complaint to public utility.**—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;

and 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 hereinafter provided. (R. S. c. 40, § 55.)

**Sec. 57. Notice to public utility of public 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. c. 40, § 56.)

**Applied** in *S. D. Warren Co. v. Maine Central R. R.*, 126 Me. 23, 135 A. 526.

**Sec. 58. Decision.** — 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 the provisions of this chapter, 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 this chapter or if it be 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. (R. S. c. 40, § 57.)

**Orders are final except as review thereof is provided.**—Though clothed with certain judicial powers, the public utilities commission is not a court in the strict sense of the term. Its functions are mainly legislative and administrative and not judicial. Acting within its powers, its orders and decrees are final except as a review thereof by the regularly constituted courts is authorized under section 67 and 69. *Hamilton v. Caribou Water, Light & Power Co.*, 121 Me. 422, 117 A. 582.

**Commission has complete power over**

**rates fixed by contract.**—The legislature intended to delegate to the utilities commission of this state as complete power over rates fixed by prior contracts that have been determined to be "unjust and unreasonable" as the state itself then possessed. In *re Searsport Water Co.*, 118 Me. 382, 108 A. 452. See note to § 40.

**Quoted** in part in *In re Guilford Water Co.*, 118 Me. 367, 108 A. 446.

**Stated** in *In re Searsport Water Co.*, 118 Me. 382, 108 A. 452.

**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 at law, and the supreme judicial court and the superior court in equity, 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.)

**Fixing of effective date of orders is not mandatory.**—The provision in this section, for the fixing of a date on which orders shall become effective is permissive, and not mandatory. Without a definite date

being fixed, it becomes effective upon the signing of such order and its service on the utility. *S. D. Warren Co. v. Maine Central R. R.*, 126 Me. 23, 135 A. 526.

**Sec. 60. Investigation; notice to public utility.**—Whenever the commission believes that any rate or charge is unjust or unreasonable, 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, 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 hereinbefore provided. (R. S. c. 40, § 59.)

**Applied** in *Public Utilities Comm. v. Johnson Motor Transport*, 147 Me. 138, 84 A. (2d) 142.

**Cited** in *In re Searsport Water Co.*, 118 Me. 382, 108 A. 452.

**Sec. 61. 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 57; 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; and like orders may be made in reference thereto as if such investigation had been made on complaint. (R. S. c. 40, § 60.)

**Sec. 62. Complaints; reparation or adjustment of excessive rate.**—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; provided, however, that such new rate so published shall continue in force 1 year unless sooner changed by the order or with the consent of the commission, and that 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, as aforesaid, 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 sentence 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 further, that 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 aforesaid 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 herein 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 thereby 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 as herein provided 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. c. 40, § 61. 1947, c. 43.)

**The commission is the judge of the facts in rate cases.** Only when the commission abuses the discretion entrusted to it, or fails to follow the mandate of the legislature, or to be bound by the prohibitions of the constitution, can the court intervene. Then the question becomes one of law. The court cannot review the commission's findings of fact and seek to determine what rates are reasonable and just. When the commission decides a case before it without evidence, or on inadmissible evi-

dence, or improperly interprets the evidence before it, then the question becomes one of law. *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

**Applied in** *Damariscotta-Newcastle Water Co. v. Damariscotta-Newcastle Water Co.*, 134 Me. 349, 186 A. 799.

**Cited in** *In re Searsport Water Co.*, 118 Me. 382, 108 A. 452; *S. D. Warren Co. v. Maine Central R. R.*, 126 Me. 23, 135 A. 526.

**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 the admissibility of evidence, the examiners shall note the same with the reasons therefor and incorporate such notation and reasons in their reports of the evidence according to the practice in taking depositions. The commission shall disregard or consider the evidence so objected to according to the rules governing the taking of evidence before the commission, and shall report its rulings thereon in its decision of the case. The commission shall fix the salary of said examiners. (R. S. c. 40, § 62.)

**Sec. 64. 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. Provided, however, that in all investigations under the provisions of section 42, 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; and provided further, that there shall be deducted from the mileage allowed witnesses under the provisions of 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. c. 40, § 63.)

**Sec. 65. 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. c. 40, § 64.)

**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 stenographer to be appointed by the commission subject to the provisions of the personnel law. (R. S. c. 40, § 65.)

**Sec. 67. Questions of law raised on exceptions to rulings; decision certified to clerk of commission.**—Questions of law may be raised by alleging exceptions to the ruling of the commission on an agreed statement of facts or on facts found by the commission, and such exceptions shall be allowed by the chairman of the commission and certified by the clerk thereof to the next term of the law court to be entered on the docket thereof and argued and determined according to the rules of procedure in said court. 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 provisions of law for the taxation of costs in appealed cases; execution for such costs shall be issued from the superior court of Kennebec county in the same manner as in cases originating therein. (R. S. c. 40, § 66.)

The method provided in this section is the exclusive remedy for raising questions of law relative to decrees of the public utilities commission. *Casco Castle Co., Petitioner*, 141 Me. 222, 42 A. (2d) 43.

The only power of review is found in this section and it relates only to questions of law. *O'Donnell, Petitioner*, 147 Me. 259, 86 A. (2d) 389.

Acting within its powers, the orders and decrees of the commission are final except as a review thereof by the regularly constituted courts is authorized under this section. *O'Donnell, Petitioner*, 147 Me. 259, 86 A. (2d) 389.

**Exceptions must be taken to ruling of commission.**—This section presupposes that before an exception can be taken of which the court will have cognizance, there must either be an agreed statement of facts, or facts found by the commission, and a rul-

ing upon the one or the other as the case may be. The exceptions which are to come before the court are to the ruling, to wit, the order or decree of the commission upon the facts in the case. It is this ruling which must be found erroneous in law before the court can sustain exceptions thereto. *Public Utilities Comm. v. Gallop*, 143 Me. 290, 62 A. (2d) 166; *O'Donnell, Petitioner*, 147 Me. 259, 86 A. (2d) 389.

It is to such erroneous rulings (orders or decrees) made upon either agreed statements of facts or facts found by the Commission and, to such rulings only, that the statutory right of exception is given. *O'Donnell, Petitioner*, 147 Me. 259, 86 A. (2d) 389.

**And specifically show wherein exceptant is aggrieved.**—The bill of exceptions must show wherein the exceptant is aggrieved by the ruling of which he complains, and



in addition he has the burden of affirmatively showing that he has suffered substantial prejudice thereby. *Public Utilities Comm. v. Gallop*, 143 Me. 290, 62 A. (2d) 389.

A bill of exceptions under this section should not be general, but should specifically set out in what respect the party excepting is aggrieved. *Hamilton v. Caribou Water, Light & Power Co.*, 121 Me. 422, 117 A. 582.

Though it is true that under the provisions of section 72, in hearings before the public utilities commission the ordinary 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. *Public Utilities Comm. v. Gallop*, 143 Me. 290, 62 A. (2d) 389.

The form of a bill of exceptions in such cases should, so far as possible, conform to the practice in the courts of law, (see § 72) and should be a summary statement of the contentions of the excepting party and, without referring to other documents or the evidence, except in cases where it is claimed that facts were found without any evidence, should show wherein the excepting party was aggrieved by the alleged ruling. *O'Donnell, Petitioner*, 147 Me. 259, 86 A. (2d) 389.

**But exception may be taken to other than final ruling.**—Mere form in the drafting of a bill of exceptions should not be allowed to defeat the purpose of this section, but form should yield to substance. An exception noted to a ruling of the commission at any stage of the proceedings, if the same be allowed and certified to this court after final decree of the commission, may be treated in effect as an exception to such ruling (order or decree) itself, with the preliminary ruling alleged as the reason therefor. If the preliminary ruling be erroneous in law, and is prejudicial in the sense of being the proximate cause of an erroneous ruling on facts found by the commission, it is ground for vacating the final decree. *Public Utilities Comm. v. Gallop*, 143 Me. 290, 62 A. (2d) 389.

**Judgment of commission as to public policy or discretion not subject to review.**—The supreme judicial court has no power to review the entire proceedings before the Commission. It is expressly precluded from reviewing the findings of fact, unless they are made without any evidence to support them. It cannot review the judgment of the commission as to public policy or the discretion vested in it under the provisions of this chapter. In *re Sam-*

*oset Co.*, 125 Me. 141, 131 A. 692; *O'Donnell, Petitioner*, 147 Me. 259, 86 A. (2d) 389.

**Unless abuse thereof clearly shown.**—An exception, based upon the discretionary power of the commission, has no merit unless the ruling so made raises a question of law or shows a clear abuse of discretion. *O'Donnell, Petitioner*, 147 Me. 259, 86 A. (2d) 389.

**Decisions of commission on questions of fact will not be disturbed.**—Questions of fact pertaining to a case for consideration and decision by the public utilities commission. If a factual finding, basic of an order of the commission, is supported by any substantial evidence, that is, by such evidence as, taken alone, would justify the inference of the fact, the finding is final. Here, as with a jury verdict, a mere difference of opinion between court and commission, in the deductions from the proof, or inferences to be drawn from the testimony, will not authorize the disturbance of a finding. *Gilman v. Somerset Farmers' Co-Operative Tel. Co.*, 139 Me. 243, 151 A. 440; *Public Utilities Comm. v. Johnson Motor Transport*, 147 Me. 138, 84 A. (2d) 142; *O'Donnell, Petitioner*, 147 Me. 259, 86 A. (2d) 389.

If there was substantial evidence to amply support the factual findings of the commission, the findings are final and cannot be disturbed. *O'Donnell, Petitioner*, 147 Me. 259, 86 A. (2d) 389.

The supreme judicial court is not an appellate court from the public utilities commission, to retry questions of fact already tried and decided by that tribunal. The only power of review relates to questions of law. *Public Utilities Comm. v. Lewiston Water Com'rs*, 123 Me. 389, 123 A. 177; *Public Utilities Comm. v. Johnson Motor Transport*, 147 Me. 138, 84 A. (2d) 142.

**But they must be supported by substantial evidence.**—The facts on which the rulings of the commission are based must be either agreed to by the parties or be found by the commission. Facts thus determined upon are not open to question in this court, unless the commission should find facts to exist without any substantial evidence to support them, when such finding would be open to exceptions as being unwarranted in law. *Hamilton v. Caribou Water, Light & Power Co.*, 121 Me. 422, 117 A. 582; *O'Donnell, Petitioner*, 147 Me. 259, 86 A. (2d) 389.

**And the record of testimony must contain such evidence.**—In proceedings before the public utilities commission facts are for the consideration and determina-

tion of the commission, its findings of fact are final if supported by any substantial evidence and it is a question of law, reviewable under this section, whether the record of testimony on which a particular finding is based contains such evidence. *Casco Castle Co., Petitioner*, 141 Me. 222, 42 A. (2d) 43.

**To be entitled to exceptions, one should in some way be a party to the proceedings.** Parties having an interest and appearing in opposition should upon request be permitted to be joined, in order that their rights may be protected, *In re Samoset Co.*, 125 Me. 141, 131 A. 692.

**Applied in** *In re Searsport Water Co.*, 118 Me. 382, 108 A. 452; *Newport v. Maine*

*Central R. R.*, 123 Me. 383, 123 A. 172; *In re Damariscotta-Newcastle Water Co.*, 126 Me. 141, 136 A. 721; *In re Milo Water Co.*, 128 Me. 531, 149 A. 299; *In re Central Maine Power Co.*, 130 Me. 28, 153 A. 187; *Milo Water Co. v. Milo*, 133 Me. 4, 173 A. 152; *Damariscotta-Newcastle Water Co. v. Damariscotta-Newcastle Water Co.*, 134 Me. 349, 186 A. 799; *Public Utilities Comm. v. Utterstrom Bros.*, 136 Me. 263, 8 A. (2d) 207.

**Quoted in part in** *Augusta v. Lewiston, Augusta & Waterville Street Ry.*, 114 Me. 24, 95 A. 267; *Stoddard v. Public Utilities Comm.*, 137 Me. 320, 19 A. (2d) 427.

**Cited in** *Mitchell v. Mitchell*, 136 Me. 406, 11 A. (2d) 898.

**Sec. 68. Exceptions do not stay order of the commission.** — While questions of law are pending on exceptions to a ruling of the commission, as provided in the preceding section, no injunction shall issue suspending or staying any order of the commission and said exceptions 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.)

**Sec. 69. Additional court review.** — Notwithstanding the provisions of 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 supreme judicial court sitting as a law court shall also have jurisdiction upon a petition in equity 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 petition 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 petition shall be filed with the clerk of the law court in the county of Kennebec 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 petitioner 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; and double costs shall be assessed by the court upon any such party whose petition shall appear to the court not to be a fit subject for judicial inquiry or shall appear to be intended for delay. (1953, c. 377, § 3.)

**Sec. 70. 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 57, rescind, alter or amend any order fixing any rate or rates, tolls, charges or schedules or any other order made by the commission, or any decision, order or decree of the railroad commissioners, and certified copies of the same shall be served and take effect as herein provided for original orders. (R. S. c. 40, § 68.)

**Sec. 71. Burden of proof.**—In all trials, actions and proceedings arising under the provisions of this chapter or growing out of the exercise of the author-

ity and powers granted herein 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. c. 40, § 69.)

**Commission must set forth facts on which its orders are based.**—Since the burden is upon the utility which sets up and relies upon an adverse contention, it is clearly the duty of the commission, 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 for any erroneous rulings of law may be rendered futile. *Hamilton v. Caribou Water, Light & Power Co.*, 121 Me. 422, 117 A. 582.

**Applied** in *In re Searsport Water Co.*, 118 Me. 382, 108 A. 452; *In re Samoset Co.*, 125 Me. 141, 131 A. 692.

**Sec. 72. Practice and rules of evidence; service of process.**—In all actions and proceedings arising under the provisions of this chapter, 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 herein provided. Every sheriff or other officer empowered to execute civil processes may execute any process issued under the provisions of this chapter and shall receive such compensation therefor as may be prescribed by law for similar service. (R. S. c. 40, § 70.)

**Cross reference.**—See note to § 67.

**Erroneous admission or exclusion of evidence will not invalidate order of commission.**— Though it is true that under the provisions of this section, in hearings before the public utilities commission the ordinary 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. *Damariscotta-Newcastle Water Co. v. Damariscotta-Newcastle Water Co.*, 134 Me. 349, 186 A. 799.

**Quoted** in part in *Public Utilities Comm. v. Gallop*, 143 Me. 290, 62 A. (2d) 389.

**Cited** in *In re Samoset Co.*, 125 Me. 141, 131 A. 692.

**Sec. 73. Witness not excused from testifying because of incrimination; immunity from prosecution.**—No person shall be excused from testifying or from producing books, accounts and papers in any proceeding based on or growing out of the provisions of this chapter 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; and 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; provided, however, that no person so testifying shall be exempt from prosecution or punishment for perjury. (R. S. c. 40, § 71.)

**Sec. 74. Certified copies of all 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. c. 40, § 72.)

**Sec. 75. 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 1 or more of the public utilities in this state or to any portion thereof as may be directed by the commis-

sion, 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. c. 40, § 73.)

**Applied** in *New England Tel. & Tel. Co. v. Public Utilities Comm.*, 148 Me. 374, 94 A. (2d) 801.

**Sec. 76. Utility to first apply to commission for rights; 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; and 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. c. 40, § 74.)

**Sec. 77. Substantial compliance with law, sufficient; no waiver of right of action.**—A substantial compliance with the requirements of this chapter 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. This chapter 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. c. 40, § 75.)

#### Civil Liability of Utility.

**Sec. 78. Utility liable in damages in civil action.**—If any public utility shall do or cause to be done or permit to be done any matter, act or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by it, such public utility shall be liable in damages to the person, association or corporation injured thereby; provided that any recovery as in this section provided shall in no manner affect a recovery by the state of the penalty prescribed for such violation. (R. S. c. 40, § 76.)

#### General Penalties.

**Sec. 79. Contempt.**—Every public utility, corporation or person failing to observe, obey or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or portion thereof, of the commission or of any commissioner shall be in contempt of the commission and shall be punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section shall not be a bar to or affect any other remedy prescribed in this chapter, but shall be cumulative and in addition to such other remedy or remedies. (R. S. c. 40, § 77.)

**Sec. 80. Failure or refusal to obey orders, or to comply with the law.**—Any officer, agent or employee of any public utility who shall willfully fail or refuse to fill out and return any blanks required by this chapter, or shall willfully fail or refuse to answer any question therein propounded, or shall knowingly or willfully give a false answer to any such question, or shall willfully evade the answer to any question where the fact inquired of is within his knowledge, or who shall, upon proper demand, willfully fail or refuse to exhibit to the commission or to any commissioner or to any person authorized to examine the same, any book, paper, account, record or memorandum of such public utility which is in his possession or under his control, or who shall willfully fail properly to use and keep his system of accounting or any part thereof as prescribed by the commission or who shall willfully refuse to do any act or thing in connection with such system of accounting when and as directed by the commission, shall upon conviction thereof

be punished by a fine of not more than \$1,000 for each offense. A penalty of not more than \$1,000 shall be recovered from the public utility for each such offense when such officer, agent or employee acted in obedience to the direction, instruction or request of such public utility or any owner or general officer thereof. (R. S. c. 40, § 78.)

**Sec. 81. Each day's violation of order, a distinct offense.**—Every day during which any public utility or any officer, agent or employee thereof shall willfully fail to observe or comply with any order of the commission or to perform any order of the commission or to perform any duty enjoined by the provisions of this chapter shall constitute a separate and distinct offense. (R. S. c. 40, § 79.)

**Sec. 82. Illegal issue or misappropriation of proceeds of sale of stocks, bonds and notes.**—Any director or officer of any public utility who shall directly or indirectly issue or cause to be issued any stocks, bonds, notes or other evidences of indebtedness contrary to the provisions of this chapter, or who shall apply the proceeds from the sale thereof to any other purpose than that specified in the order of the commission, as herein provided, shall, upon conviction thereof, be punished by imprisonment for not less than 1 year nor more than 10 years. (R. S. c. 40, § 80.)

**Sec. 83. False statement as to issue of stocks, bonds and notes.**—Any officer, owner or agent of any public utility who shall knowingly or willfully make any false statement to secure the issue of any stock, bond or other evidence of indebtedness, or who shall, by false statement knowingly or willfully made, procure of the commission the making of the order herein provided, or issue with knowledge of such fraud, negotiate or cause to be negotiated any such stock, bond, note or other evidence of indebtedness in violation of the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not less than \$500, or by imprisonment for not less than 1 year nor more than 10 years, or by both such fine and imprisonment. (R. S. c. 40, § 81.)

**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 an action on the case 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.)