tects the interests of travelers on a highway crossing the railroad, but not the interests of travelers on a highway not crossing the railroad. Hence, the presence of brush and shrubbery along a railroad right of way, which obstructs the view of occupants of an automobile traveling on a highway not crossing the railroad, but which did not obstruct their view on their turning onto a highway crossing the railroad, was not a violation of the statute which could be assigned as actionable negligence on the part of the railroad company with reference to the ensuing collision with a train. Wilmet v. Chicago & N. W. R. Co. 233 W 335, 289 NW 815.

A city may be held liable if an accident results from the obstruction of view of a railroad crossing by untrimmed trees which the city has an obligation to trim. The defense of sovereign immunity is not available. Bosin v. M. St. P. & S. S. M. R. Co. 183 F Supp. 820.

**195.291 History:** 1951 c. 712; Stats. 1951 s. 195.291.

**195.30 History:** 1909 c. 540; Stats. 1911 s. 1797—12h, 1797—12j; 1915 c. 136; 1923 c. 291 s. 3; Stats. 1923 s. 195.22, 195.24; 1929 c. 504 s. 200; Stats. 1929 s. 195.30.

**195.31 History:** 1909 c. 540; 1911 c. 590; Stats. 1911 s. 1797—12k; 1923 c. 291 s. 3; Stats. 1923 s. 195.25; 1929 c. 504 s. 201; Stats. 1929 s. 195.31; 1943 c. 275 s. 49.

**195.32 History:** 1913 c. 518; Stats. 1913 s. 1325h; 1923 c. 108 s. 260; Stats. 1923 s. 87.15; 1933 c. 159 s. 19; 1943 c. 275 s. 38; 1943 c. 334 s. 167; Stats. 1943 s. 195.32; 1945 c. 22.

**195.33 History:** 1905 c. 362 s. 20; Supl. 1906 s. 1797—20; 1923 c. 291 s. 3; Stats. 1923 s. 195.37; 1929 c. 504 s. 203; Stats. 1929 s. 195.33; 1961 c. 33; 1969 c. 276 s. 590 (1).

**195.34 History:** 1905 c. 362 s. 30; Supl. 1906 s. 1797—30; 1911 c. 472; 1913 c. 772 s. 101; 1923 c. 291 s. 3; Stats. 1923 s. 195.47; 1929 c. 504 s. 204; Stats. 1929 s. 195.34.

**195.35 History:** 1905 c. 362 s. 25; Supl. 1906 s. 1797—25; 1923 c. 291 s. 3; Stats. 1923 s. 195.42; 1929 c. 504 s. 205; Stats. 1929 s. 195.35.

195.35, Stats. 1947, applies only to wilful breaches of duty. A complaint against a railroad company for injuries sustained in a train-automobile collision at a grade crossing, which did not charge that the watchman's faulty manipulation of the crossing gates was wilful or wanton, did not state a cause of action for treble damages because of the watchman's failure to operate the gates properly. Reuling v. Chicago, St. P., M. & O. R. Co. 257 W 485, 44 NW (2d) 253.

**195.36 History:** 1905 c. 362 s. 27; Supl. 1906 s. 1797—27; 1911 c. 663 s. 337; 1923 c. 291 s. 3; Stats. 1923 s. 195.44; 1929 c. 504 s. 206; Stats. 1929 s. 195.36.

**195.37 History:** 1907 c. 582; 1909 c. 136; 1911 c. 28; 1911 c. 664 s. 3; Stats. 1911 s. 1797—37m; 1913 c. 66; 1923 c. 291 s. 3; Stats. 1923 s. 195.54; 1927 c. 344 s. 2, 3; 1929 c. 504 s. 207; Stats. 1929 s. 195.37; 1951 c. 712.

The proper refund may be ordered if the rate be found to be either erroneous, illegal, unusual or exorbitant. Any rate not reasonable and just may be found to be erroneous or illegal. Chicago & Northwestern R. Co. v. Railroad Comm. 156 W 47, 145 NW 216.

The railroad commission had power to authorize a refund of charges on the basis of local rates for carriage as to which a joint rate had not been fixed, after establishing joint rates lower than the rates theretofore prevailing. Although a rate fixed by the commission may be charged until changed in a lawful manner, if it becomes an unreasonable rate through change of conditions, the railroad company may not retain the overcharge collected by it between the time when the rate becomes unreasonable and the time when a new reasonable rate has been determined. Marinette, T. & W. R. Co. v. Railroad Comm. 195 W 462, 218 NW 724.

**195.38 History:** 1913 c. 59; Stats. 1913 s. 1797—12a; 1915 c. 428; 1923 c. 291 s. 3; Stats. 1923 s. 195.18; 1927 c. 344 s. 1; 1929 c. 504 s. 208; Stats. 1929 s. 195.38.

Secs. 1797—37m and 1797—12a, Stats. 1921, do not deprive the courts of jurisdiction to hear an action or a counterclaim based upon the failure of a public utility to perform its contract duty of adequate service. Waukesha G. & E. Co. v. Waukesha M. Co. 175 W 420, 184 NW 702.

In an action by a railroad company to recover freight charges on intrastate shipments of sand and gravel, the defendant consignee, claiming loss of material in transit, could not assert any rights under 195.38 where the defendant had never sought to avail himself of any rights which he might have had under such statute. Chicago, St. P., M. & O. R. Co. v. Kileen, 243 W 161, 9 NW (2d) 616.

**195.39 History:** 1929 c. 504 s. 209; Stats. 1929 s. 195.39.

**195.40 History:** 1953 c. 14; Stats. 1953 s. 195.40; 1959 c. 441.

**195.45 History:** 1969 c. 402; Stats. 1969 s. 195.45.

## CHAPTER 196.

### Regulation of Public Utilities.

**196.01 History:** 1907 c. 499; 1911 c. 48; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—1; 1917 c. 386; 1921 c. 248; 1923 c. 291 s. 3; Stats. 1923 s. 196.01; 1929 c. 504 s. 227; 1937 c. 365; 1943 c. 380; 1947 c. 420; 1961 c. 60; 1969 c. 104.

Where the owner of a building installed a plant for the heating and lighting of the building and furnished the surplus power to persons adjoining such building, such plant was not thereupon constituted a public utility. Cawker v. Meyer, 147 W 320, 133 NW 157.

A corporation securing authority from the legislature to build a dam across a river for the improvement of navigation and the development of power to be furnished under contract to a village is a public utility. Kilbourn v. Southern W. P. Co. 149 W 168, 135 NW 499.

Individuals who undertook to render no public service, but constructed a private line by which they were able to secure electric current, are not a "public utility," and the railroad commission is without jurisdiction to order

them to permit their neighbors to share in the benefits of such enterprise. Schumacher v. Railroad Comm. 185 W 303, 201 NW 241.

"Public utility" included a canal company whose valuable asset was the right to own and use the surplus water of a river, rather than its real estate adjacent to the river, especially where it undertook to furnish hydroelectric power to the public, with a provision for an increase in its rent from any increase in rates charged the public. Its property, therefore, was protected from condemnation proceedings by another public utility. Wisconsin T., L., H. & P. Co. v. Green Bay & M. C. Co. 188 W 54, 205 NW 551.

Under the public utility law the water plant of the city of Milwaukee, constructed pursuant to ch. 475, P. & L. Laws 1871, as amended by ch. 279, Laws 1919, is a public utility, subject to the regulation and control of the railroad commission, and a new schedule of water rates must first be submitted to the commission before being put into effect. Pabst Corp. v. Milwaukee, 190 W 349, 208 NW 493.

Where a city as a public utility maintained a power plant, a corporation which contracted to deliver electric power to the city plant and construct its line upon streets of the city for that purpose under authority of an ordinance, did not thereby acquire an "indeterminate permit," which could only be terminated as provided in 196.01 to 197.10, Stats. 1925. Central W. P. Co. v. Wisconsin T., L., H. & P. Co. 190 W 557, 209 NW 755.

The distinguishing feature which stamps the business as a public utility is the furnishing of those things mentioned in the statute to or for the public; in determining whether a corporation is a public utility its acts and not the authority conferred by its charter control. Commonwealth T. Co. v. Carley, 192 W 464, 213 NW 469.

The test for determining whether a corporation is a public utility is whether its plant, equipment or some portion thereof is used to furnish light, heat or power to the public. The dedication of utility property to a public use is not complete until there is an acceptance or at least an acquiescence by an existent public. Union Falls Power Co. v. Oconto Falls, 221 W 457, 265 NW 722.

By the public utility act the legislature has determined that the public interest requires that public utilities, within their undertaking, shall furnish their service to all who reasonably require the same, and the legislature lays down no test of substantial public interest on which the public service commission must predicate its orders under 196.37 (2), Stats. 1941. Northern States P. Co. v. Public Service Comm. 246 W 215, 16 NW (2d) 790.

A project developer which proposed to construct and operate a multiple-apartment complex and to operate its own generators to supply exclusively to prospective tenants leasing apartments heat, gas, air conditioning and electricity (included in a flat rental) was not a "public utility" within the definition of 196.01 (1), Stats. 1963, and hence did not come under the jurisdiction of the public service commission. Sun Prairie v. Public Service Comm. 37 W (2d) 96, 154 NW (2d) 360.

A city furnishing water and electricity to consumers is a public utility as to such consumers, is under the control of the railroad commission, and is under obligation to furnish reasonably adequate service, at reasonable rates. 3 Atty. Gen. 568.

A farmers' mutual telephone company is a public utility though unincorporated and though it owns only part of the complete system. 10 Atty. Gen. 849.

A pipeline company transporting natural gas into the state and selling it for resale is subject to regulation by the federal power commission and is not subject to regulation by the public service commission as to such transactions. 39 Atty. Gen. 487.

**196.02 History:** 1907 c. 499; Stats. 1911 s. 1797m—2, 1797m—35 to 1797m—40; 1913 c. 772 s. 101; 1923 c. 291 s. 3; Stats. 1923 s. 196.02; 1929 c. 504 s. 228; 1931 c. 183 s. 2.

On equality, inherent rights, and exercises of police power see notes to sec. 1, art. I; on legislative power generally and on delegation of power see notes to sec. 1, art. IV; on judicial power generally see notes to sec. 2, art. VII; on securities of public service corporations see notes to various sections of ch. 184; and on municipal acquisition of public utilities see notes to various sections of ch. 197.

The commission may prescribe reasonable rules, but has no jurisdiction to determine or adjudicate as to their violation. Madregano v. Wisconsin G. & E. Co. 181 W 611, 195 NW 861.

The jurisdiction of the railroad commission is not confined to a corporation which has obtained a certificate of public convenience and necessity, but it embraces all corporations which perform services to or for the public with respect to those things which are included in the definition of a public utility. Commonwealth T. Co. v. Carley, 192 W 464, 213 NW 469.

See note to sec. 3, art. VII, on control over corporations and non-judicial officers, citing State ex rel. Reynolds v. Appleton, 197 W 442, 222 NW 244.

The jurisdiction of the railroad commission to fix rates is broad and all-inclusive. The commission could fix a 5 cent rate for the use of public telephones and require the company to discontinue service to a hotel which kept a public telephone, but refused to conform to the rate fixed by the commission, and the company could cut off a hotel which persisted in charging a 10 cent rate for calls. Hotel Pfister v. Wisconsin T. Co. 203 W 20, 233 NW 617.

Under 196.02 (2), Stats. 1939, classification of services with a different rate for each class is warranted only if the services are in fact different, and one of the most important considerations is the comparative costs of the services. Fox Point v. Public Service Comm. 242 W 97, 7 NW (2d) 571.

Legislative control of public utilities in Wisconsin. Crow, 18 MLR 80.

**196.03 History:** 1907 c. 499; Stats. 1911 s. 1797m—3; 1923 c. 291 s. 3; Stats. 1923 s. 196.03; 1929 c. 390; 1929 c. 504 s. 229; 1949 c. 328.

A public utility must furnish adequate service to all users at prescribed rates, but may enforce reasonable rules of service. Madre-

gano v. Wisconsin G. & E. Co. 181 W 611, 195 NW 861.

A company supplying gas and electricity, whether under contract or under the duty imposed by 196.03, Stats. 1925, must furnish reasonably adequate service, but is not an insurer of continuous service if conditions beyond its control cause interruptions, provided it exercises reasonable care and diligence in so constructing and operating its plant as to prevent such interruptions. Waukesha G. & E. Co. v. Waukesha M. Co. 190 W 462, 209 NW 590.

A running foot charge made by a city water utility as a condition of connecting to a water main which was installed without an assessment is neither a tax nor an assessment. It is a charge for service subject to regulation by the public service commission. De Pere v. Public Service Comm. 266 W 319, 63 NW (2d) 764.

**196.04 History:** 1907 c. 499; 1911 c. 546; Stats. 1911 s. 1797m—4; 1923 c. 291 s. 3; Stats. 1923 s. 196.04; 1927 c. 337; 1929 c. 504 s. 230; 1951 c. 712.

Physical connection between telephone systems may be ordered only when public convenience and necessity require it and where it will not result in irreparable injury to the owners or users of either of such systems, nor in substantial detriment to the service. The words "public convenience and necessity" mean a strong or urgent need; and the words "irreparable injury" do not have the meaning accorded them when used in equitable actions, nor does the word "injury" mean the violation of a legal right; but the phrase denotes a substantial financial loss to one or both of the companies concerned for which there will be no legal or equitable remedy. Wisconsin T. Co. v. Railroad Comm. 162 W 383, 156 NW 614.

Where the railroad commission approved a contract whereby one competing telephone company furnished connections to subscribers of another, the commission could not require continuance of the relation after one company terminated the agreement under a right reserved in the contract. Allen v. Railroad Comm. 202 W 223, 231 NW 184.

See note to 197.05, citing Wisconsin P. & L. Co. v. Public Service Comm. 219 W 104, 261 NW 711.

**196.05 History:** 1907 c. 499; Stats. 1911 s. 1797m—5 to 1797m—7; 1923 c. 291 s. 3; Stats. 1923 s. 196.05; 1929 c. 504 s. 231; 1951 c. 726.

On lawful rates and reasonable service see notes to 196.37.

**196.06 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—8 to 1797m—12; 1923 c. 291 s. 3; Stats. 1923 s. 196.06; 1929 c. 504 s. 232; 1951 c. 726.

**196.07 History:** 1907 c. 499; Stats. 1911 s. 1797m—13; 1913 c. 264; 1919 c. 48; 1923 c. 291 s. 3; Stats. 1923 s. 196.07; 1929 c. 504 s. 233; 1951 c. 512; 1961 c. 219; 1967 c. 291 s. 14.

**196.08 History:** 1907 c. 499; Stats. 1911 s. 1797m—14; 1919 c. 576 s. 1; 1923 c. 291 s. 3; Stats. 1923 s. 196.08; 1925 c. 95; 1929 c. 504 s. 234; 1965 c. 252.

**196.09 History:** 1907 c. 499; Stats. 1911 s. 1797m—15; 1923 c. 291 s. 3; Stats. 1923 s. 196.09; 1929 c. 504 s. 235; 1931 c. 183 s. 3; 1955 c. 661 s. 32.

It is proper to include as a part of the total cost of each year's service furnished by a telephone company a reasonable allowance for depreciation, which includes, besides the wear and tear resulting from use and the elements, such loss in value as results from improvements which reduce the value of old material or methods. Miles v. People's T. Co. 166 W 94, 163 NW 652.

**196.10 History:** 1907 c. 499; Stats. 1911 s. 1797m—16; 1923 c. 291 s. 3; Stats. 1923 s. 196.10; 1929 c. 504 s. 236.

**196.11 History:** 1907 c. 499; Stats. 1911 s. 1797m—17; 1923 c. 291 s. 3; Stats. 1923 s. 196.11; 1929 c. 504 s. 237.

**196.12 History:** 1907 c. 499; Stats. 1911 s. 1797m—18; 1915 c. 366; 1923 c. 291 s. 3; Stats. 1923 s. 196.12; 1929 c. 504 s. 238; 1951 c. 726.

**196.13 History:** 1907 c. 499; Stats. 1911 s. 1797m—19; 1919 c. 674 s. 2; Stats. 1919 s. 1753—65, 1797m—19; 1923 c. 291 s. 3; Stats. 1923 s. 183.41, 196.13; 1925 c. 381 s. 32; Stats. 1925 s. 196.13; 1929 c. 504 s. 239; 1943 c. 275 s. 50; 1951 c. 726.

**196.14 History:** 1907 c. 499; Stats. 1911 s. 1797m—20, 1797m—21; 1923 c. 291 s. 3; Stats. 1923 s. 196.14; 1929 c. 504 s. 240.

**196.15 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—22; 1923 c. 291 s. 3; Stats. 1923 s. 196.15; 1929 c. 504 s. 241.

**196.16 History:** 1907 c. 499; Stats. 1911 s. 1797m—23; 1923 c. 291 s. 3; Stats. 1923 s. 196.16; 1929 c. 504 s. 242.

**196.17 History:** 1907 c. 499; Stats. 1911 s. 1797m—24, 1797m—25; 1923 c. 291 s. 3; Stats. 1923 s. 196.17; 1929 c. 504 s. 243.

**196.171 History:** 1935 c. 251; Stats. 1935 s. 196.171.

**196.18 History:** 1907 c. 499; Stats. 1911 s. 1797m—26; 1923 c. 291 s. 3; Stats. 1923 s. 196.18; 1929 c. 504 s. 244.

**196.19 History:** 1907 c. 499; 1911 c. 546; Stats. 1911 s. 1797m—27 to 1797m—30; 1923 c. 291 s. 3; Stats. 1923 s. 196.19; 1929 c. 504 s. 245; 1931 c. 183 s. 2.

When a valid contract for street lighting by a public utility has been filed with the railroad commission the rate agreed upon therein becomes presumptively reasonable and enforceable until a different rate is established pursuant to law. Oconto E. Co. v. Peoples L. & M. Co. 165 W 467, 161 NW 789.

**196.20 History:** 1907 c. 499; Stats. 1911 s. 1797m—31; 1923 c. 291 s. 3; Stats. 1923 s. 196.20; 1929 c. 504 s. 246; 1931 c. 183 s. 2; 1945 c. 510; 1947 c. 480.

While the city of Milwaukee may initiate changes in its water rates, notice of the change must nevertheless be given the railroad commission. Pabst Corp. v. Milwaukee, 190 W 349, 208 NW 493.

**196.21 History:** 1907 c. 499; Stats. 1911 s. 1797m—32; 1923 c. 291 s. 3; Stats. 1923 s. 196.21; 1929 c. 504 s. 247.

**196.22 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—33; 1923 c. 291 s. 3; Stats. 1923 s. 196.22; 1929 c. 504 s. 248.

In an action by a public utility the defendant counterclaimed for damages suffered in consequence of the plaintiff's failure to supply gas and electric current in quantities stipulated in the contract. The counterclaim was subject to criticism because it did not allege that the contract rates had been approved by the railroad commission. Waukesha G. & E. Co. v. Waukesha M. Co. 175 W 420, 184 NW 702.

A city could not recover anything in excess of certain contract rates, paid by another city, for service rendered in furnishing water to such other city between the date of the termination of the contract and the date on which the city furnishing the water filed a higher rate with the public service commission. Milwaukee v. West Allis, 236 W 371, 294 NW 625.

In an action by a public utility to recover from a customer for gas service furnished at less than applicable rate because of underbillings by the utility, the customer could base neither a counterclaim for damages, nor a defense, on negligent billing by the utility, which would result in the customer's paying less for gas than the proper rate, since it is unlawful for any public utility to receive a greater or less compensation for its services than is specified in its rate schedules. Wisconsin P. & L. Co. v. Berlin Tanning & Mfg. Co. 275 W 554, 83 NW (2d) 147.

**196.23 History:** 1907 c. 499; Stats. 1911 s. 1797m—34; 1923 c. 291 s. 3; Stats. 1923 s. 196.23; 1929 c. 504 s. 249.

**196.24 History:** 1907 c. 499; Stats. 1911 s. 1797m—41; 1923 c. 291 s. 3; Stats. 1923 s. 196.24; 1929 c. 504 s. 250; 1945 c. 406.

A representative of the railroad commission was without authority to employ a stenographer to take testimony. Retelle v. State, 198 W 393, 223 NW 840.

The practice of hearing testimony by an examiner of the public service commission, as authorized by 196.24 (3), is the declared public policy of the state, and the procedure thus authorized does not jeopardize a party's rights. Lake Superior D. P. Co. v. Public Service Comm. 244 W 543, 13 NW (2d) 89.

**196.25 History:** 1907 c. 499; Stats. 1911 s. 1797m—42; 1923 c. 291 s. 3; Stats. 1923 s. 196.25; 1929 c. 504 s. 251.

**196.26 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—43 to 1797m—47; 1923 c. 291 s. 3; Stats. 1923 s. 196.26; 1929 c. 504 s. 252; 1951 c. 712.

A controversy between a municipality and a public service corporation over service rates claimed to be excessive must be passed upon by the railroad commission before an action can be maintained thereon. A plaintiff city (not a party to a previous action to review an order fixing rates to be charged by a public service corporation in 40 municipalities, in which the order was reversed and remanded to the commission for further proceedings) cannot claim that the adjudication of the court that the rates established by the order were unreasonable as to the 40 cities was an adjudication that such rates were excessive as to the plaintiff. La Crosse v. Wisconsin-Minnesota L. & P. Co. 181 W 151, 194 NW 47.

Existing rates charged by a public utility cannot be arbitrarily changed by the railroad commission but must be based upon its finding, after investigation, that existing rates are unjust and unreasonable. A rate producing a net earning of less than 5 8/10% on invested capital is not unreasonably high, and the commission has no power to substitute a lower rate. Wisconsin-Minnesota L. & P. Co. v. Railroad Comm. 183 W 96, 197 NW 359.

Under 196.26, 196.28, 196.29, 196.37 (1), 196.39, and 196.395, Stats. 1933, considered together, the public service commission has no authority to make an order fixing rates without the consent or against the objection of a utility unless it gives the utility a hearing, whether the order be styled temporary or an order in due course; and it is immaterial whether the order is based on a complaint, on a summary investigation, or on the commission's own motion. Wisconsin Tel. Co. v. Public Service Comm. 232 W 274, 287 NW 122 and 593.

The statute does not contemplate that, in an investigation of the reasonableness of rentals by the railroad commission, notice shall be given to all occupants of the property under investigation. 9 Atty. Gen. 537.

**196.27 History:** 1907 c. 499; Stats. 1911 s. 1797m—48; 1923 c. 291 s. 3; Stats. 1923 s. 196.27; 1929 c. 504 s. 253.

**196.28 History:** 1907 c. 499; Stats. 1911 s. 1797m—49; 1923 c. 291 s. 3; Stats. 1923 s. 196.28; 1929 c. 504 s. 254.

**196.29 History:** 1907 c. 499; Stats. 1911 s. 1797m—50, 1797m—51; 1923 c. 291 s. 3; Stats. 1923 s. 196.29; 1929 c. 504 s. 255.

**196.30 History:** 1907 c. 499; Stats. 1911 s. 1797m—52; 1923 c. 291 s. 3; Stats. 1923 s. 196.30; 1929 c. 504 s. 256.

**196.32 History:** 1907 c. 499; Stats. 1911 s. 1797m—54; 1913 c. 772 s. 101; 1923 c. 291 s. 3; Stats. 1923 s. 196.32; 1929 c. 504 s. 258.

**196.33 History:** 1907 c. 499; Stats. 1911 s. 1797m—55; 1913 c. 772 s. 101; 1913 c. 773 s. 119; 1923 c. 291 s. 3; Stats. 1923 s. 196.33; 1929 c. 504 s. 259.

**196.34 History:** 1907 c. 499; Stats. 1911 s. 1797m—56; 1923 c. 291 s. 3; Stats. 1923 s. 196.34; 1929 c. 504 s. 260.

**196.36 History:** 1907 c. 499; Stats. 1911 s. 1797m—58, 1797m—59; 1923 c. 291 s. 3; Stats. 1923 s. 196.36; 1929 c. 504 s. 262.

**196.37 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—60; 1923 c. 291 s. 3; Stats. 1923 s. 196.37; 1929 c. 504 s. 263; 1931 c. 183 s. 1.

The proper basis for public utility rates is the fair value of the property used and useful in the public service. Rate making is primarily and exclusively a legislative or administrative function. Courts go no further than to declare rates valid or invalid. A rate which does not permit a reasonable return on such

present fair value is confiscatory, and, before a court can declare a rate unreasonably low, it must clearly appear that it will yield less than the minimum return which invested capital has a right to demand. The court approaches the rate question from an entirely different standpoint from that of the railroad commission. The latter should take into consideration the question of public policy as declared by the legislature, whereas the court excludes the question of public policy. It is the duty of the commission to fix a rate which is "just and reasonable," not so low as to approach confiscation, nor so high as to be unjust or oppressive. The court to ascertain whether a rate is reasonable must determine the fair value of the property actually used or useful, and this value is the amount upon which the utility is entitled to earn a reasonable rate. While no formula is deduced it is stated that were the court to accord rank to the various factors, in accordance with the weight which is to be given to each in determining present fair value for the purpose of establishing a rate base, it would be as follows: (1) cost of the plant prudently invested (prima facie the investment was prudently made); (2) under normal conditions, cost of reproduction less depreciation; (3) going concern value; (4) working capital; (5) other elements of value which may be presented in a particular case. That a utility failed to earn operating expenses and depreciation because of inability to secure fuel, due to strikes, the effects of which had ceased, was a hazard of the business and not of controlling weight in valuing the property for rate making. Waukesha G. & E. Co. v. Railroad Comm. 181 W 281, 194 NW 846.

In fixing rates to be charged by a gas company, the railroad commission, to arrive at the valuation of the property of the utility, took a valuation made by it in 1912, added thereto the cost of additions since made, the increase of land values, and the cost of materials and supplies on hand plus working capital. The method employed by the commission does not substantially reflect or agree with present or recent reproduction cost less depreciation as required by the federal rule and is confiscatory and unreasonable. Waukesha G. & E. Co. v. Railroad Comm. 191 W 565, 211 NW 70.

Where a contract by a city to furnish water to an adjoining city at specified rates was terminated, the city furnishing water, if able to establish that the service rendered by it upon the basis of quantum meruit was worth more than the amount which it had received, would be entitled to recover therefor unless precluded on other grounds, and whether it was entitled to recover and the amount of recovery would be judicial questions not within the jurisdiction of the public service commission. Milwaukee v. West Allis, 217 W 614, 258 NW 851, 259 NW 724.

The "reasonable rate" to be found by the public service commission lies somewhere between the lowest rate that is not confiscatory and the highest rate that is not excessive or extortionate. Wisconsin Tel. Co. v. Public Service Comm. 232 W 274, 287 NW 122 and 593.

An order of the public service commission, directing a hot water heating utility to furnish service to the residence of a former customer, which was within the scope of the utility's undertaking, and required no extension of the utility's system or expenditure of large sums of money but only the reconnection of the service from an existing main, was not void as being unlawful or unreasonable. Northern States P. Co. v. Public Service Comm. 246 W 215, 16 NW (2d) 790.

Public utilities, within the scope of their undertaking, must furnish their service to all who reasonably require the same, and must render adequate and reasonably efficient service. Lodi Telephone Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

See note to 196.58, citing Milwaukee v. Public Service Comm. 268 W 116, 66 NW (2d) 716.

A petitioner (such as a water utility) seeking a rate change has a duty to show that its total return on its investment is inadequate; it is its responsibility to prove its cost of service as a whole and to show the public service commission what total revenue or rate will give it a reasonable return. West Allis v. Public Service Comm. 42 W (2d) 569, 167 NW (2d) 401.

Legal concepts of rate base and rate of return in utility regulation. Demet, 42 MLR 331.

Use of index numbers in making valuations of public utilities. Laurent, 11 WLR 276.

**196.375 History:** 1915 c. 380 s. 3; Stats. 1915 s. 1596—24; 1917 c. 474 s. 27; Stats. 1917 s. 31.27; 1969 c. 276 s. 234; Stats. 1969 s. 196.375.

That a dam was constructed on a navigable stream for the purpose of generating power does not of itself make the producer of such power a public utility, within 31.27, Stats. 1929, so as to be immune from local taxation under ch. 76. Ford Hydro-Electric Co. v. Aurora, 206 W 489, 240 NW 418.

**196.38 History:** 1907 c. 499; Stats. 1911 s. 1797m—61; 1923 c. 291 s. 3; Stats. 1923 s. 196.38; 1929 c. 504 s. 264.

**196.39 History:** 1907 c. 499; Stats. 1911 s. 1797m—62; 1923 c. 291 s. 3; Stats. 1923 s. 196.39; 1929 c. 504 s. 265; 1931 c. 183 s. 2.

**196.395 History:** 1931 c. 183 s. 3; Stats. 1931 s. 196.395.

The power of the public service commission under 196.395, Stats. 1933, to issue conditional, temporary, emergency, and supplemental orders is subject to the procedural requirements of other provisions of ch. 196, relating to the rate-making power of the commission, because they are *in pari materia*, and this requires that a hearing shall be accorded. Wisconsin Tel. Co. v. Public Service Comm. 232 W 274, 287 NW 122 and 593.

**196.40 History:** 1907 c. 499; Stats. 1911 s. 1797m—63; 1923 c. 291 s. 3; Stats. 1923 s. 196.40; 1929 c. 504 s. 266; 1945 c. 405.

The complaining utility is entitled to have the independent judgment of the trial court reviewing the record made before the public service commission in a rate proceeding but, in the exercise of its independent judgment, the reviewing court, in view of 196.40 and 196.46, Stats. 1933, should give much weight to the determination of the commission. A rate fixed by the commission may be unlawful or unreasonable within the meaning of 196.40,

196.41 (1) and 196.46 even though not confiscatory. Wisconsin Tel. Co. v. Public Service Comm. 232 W 274, 287 NW 122 and 593.

Under 196.40 and 196.46, Stats. 1941, an order of the public service commission determining the rates to be charged by a water utility is prima facie "lawful" and the burden of showing unlawfulness is on the party seeking to set aside the order. Fox Point v. Public Service Comm. 242 W 97, 7 NW (2d) 571.

**196.405 History:** 1931 c. 183 s. 3; 1931 c. 475 s. 5; Stats. 1931 s. 196.405; 1945 c. 405.

The provisions of 196.405 and 196.44, Stats. 1933, give the utility full opportunity to present and argue a matter to the public service commission on the basis of its finding and decision, and they obviate and cure any defect in a proceeding as to notice. Wisconsin Tel. Co. v. Public Service Comm. 232 W 274, 287 NW 122 and 593.

The circuit court has no jurisdiction under 227.15 to review a decision of the public service commission constituting an order in a utility case, where no application for a rehearing in respect to matters determined by such decision was filed with the commission within 20 days; the court's lack of jurisdiction cannot be waived by the general appearance of interested parties. A motion to "reopen" the proceedings before the commission for additional evidence does not toll the time for filing an application for a rehearing with the commission; and such a motion cannot be treated as an application for a rehearing, particularly where it does not meet the requirements of 196.405 (2) as to the grounds to be stated in an application for a rehearing. Milwaukee v. Public Service Comm. 259 W 30, 47 NW (2d) 298.

Appellants cannot raise a new issue on appeal since 196.405 (2) requires that an application for rehearing be filed first. Cobb v. Public Service Comm. 12 W (2d) 441, 107 NW (2d) 595.

**196.41 History:** 1907 c. 499; Stats. 1911 s. 1797m—64; 1913 c. 401; 1923 c. 291 s. 3; Stats. 1923 s. 196.41; 1929 c. 504 s. 267; 1931 c. 183 s. 2; 1943 c. 375 s. 76.

In actions by coal dealers and railroad companies and employes, to set aside an order of the public service commission authorizing a company to construct a pipe line to connect its facilities with those of an Illinois natural gas pipe-line company at the state line, complaints alleging that the substitution of natural gas for manufactured gas will result in loss of business to the coal dealers and railroad companies, and loss of employment to the employes, do not show that any legal rights of the plaintiffs will be invaded as the result of the order, and do not show that the plaintiffs have such legal interest in the controversy as is necessary to entitle them to maintain such actions. Wisconsin Coal Bureau, Inc. v. Public Service Comm. 244 W 435, 12 NW (2d) 743.

The public service commission's determination of the value of the water utility of a town pursuant to 66.03 (4) is a "determination" within 196.41 and a "decision" within 227.15, so as to be subject to judicial review under ch. 227, Stats. 1953. St. Francis v. Public Service Comm. 270 W 91, 70 NW (2d) 221.

An order of the public service commission is prima facie valid, and to be upset it must be shown to be otherwise by clear and satisfactory evidence. West Allis v. Public Service Comm. 42 W (2d) 569, 167 NW (2d) 401.

**196.43 History:** 1907 c. 499; Stats. 1911 s. 1797m—66; 1913 c. 401; 1923 c. 291 s. 3; Stats. 1923 s. 196.43; 1929 c. 504 s. 269; 1943 c. 375 s. 78; 1945 c. 511.

**196.48 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—72; 1923 c. 291 s. 3; Stats. 1923 s. 196.48; 1929 c. 504 s. 274.

**196.49 History:** 1931 c. 183 s. 3; 1931 c. 475 s. 7, 8; Stats. 1931 s. 196.49; 1937 c. 17; 1943 c. 48; 1947 c. 126; 1957 c. 523; 1965 c. 252.

196.49 (4), in providing that the public service commission "may" refuse a certificate of convenience and necessity to a public utility under certain circumstances, vests in the commission a discretionary power in the matter. The function of the commission is the same when a city applies for an authorization as when any other public utility applies for a like authorization. Wisconsin Hydro Electric Co. v. Public Service Comm. 234 W 627, 291 NW 784.

Where a city, operating its own distribution system, applied to the public service commission for permission to install a diesel generating plant, and the commission ordered that a certificate of authority be issued subject to the condition that the city as a public utility should waive consideration by the commission, in the fixation of rates, of the increase, if any, in costs of service which might be occasioned by the proposed installation, the common council of the city had power to adopt a resolution providing for such waiver. Flottum v. Cumberland, 234 W 654, 291 NW 777.

**196.495 History:** 1955 c. 432; Stats. 1955 s. 196.495; 1961 c. 490.

Where a city, operating for its retail customers its own electric power plant, supplemented by emergency power supplied under contract by a private utility which had constructed its facility for that purpose, terminated the contract with the private utility and entered into a new agreement with an electric cooperative on more advantageous terms, the subsequent grant of authority to the city by the public service commission to construct necessary new facilities for interconnection with the plant of the cooperative did not come within the prohibition of 196.495 (1), Stats. 1967, as duplicatory of the facilities theretofore constructed. Wisconsin P. & L. Co. v. Public Service Comm. 45 W (2d) 253, 172 NW (2d) 639.

**196.50 History:** 1907 c. 499; 1911 c. 546; 1911 c. 663 s. 359; 1911 c. 664 s. 118; Stats. 1911 s. 1797m—74; 1913 c. 610; 1923 c. 291 s. 3; Stats. 1923 s. 196.50; 1927 c. 532; 1929 c. 504 s. 275; 1951 c. 389.

The amendment of sec. 1797m—77, Stats. 1911, by ch. 596, Laws 1911, converting existing franchises into indeterminate permits, made sec. 1797m—74 (3), Stats. 1911, a part of the franchise of a utility company then oper-

ating under a city ordinance; and a provision in the municipal franchise reserving to the city the right to do a competing commercial business was abrogated. The fact that a city at the time of such enactment was operating a plant for the lighting of its streets and public buildings did not carry with it the right to take on commercial lighting. Neither did the fact that the city had furnished a few lights to one private store building and one residence for a short time, the service being then discontinued, make the city a public utility doing a commercial lighting business so as to exempt it from the provisions of said subsection. Wisconsin T., L., H. & P. Co. v. Menasha, 157 W 1, 145 NW 231.

See note to 196.01, citing Central W. P. Co. v. Wisconsin T., L., H. & P. Co. 190 W 557, 209 NW 755.

Under the common law a public utility had no right to a monopoly, and the limited monopoly given by statute is not absolute and may be regulated by the railroad commission. Commonwealth T. Co. v. Carley, 192 W 464, 213 NW 469.

See note to 196.04, citing Allen v. Railroad Comm. 202 W 223, 231 NW 184.

A franchise to operate a public utility is a legislative privilege, and the power to grant a certificate of convenience and necessity which the legislature has delegated to the public service commission is legislative in character. The policy to be followed in the exercise of such power is one very largely in the discretion of the commission, and in no event will its orders or determinations in respect to such a certificate be disturbed by the courts unless unreasonable. Failure of patrons of a telephone company to take steps before the commission to coerce proper service justified denial of such a certificate to another company, and absence of proof that the applicant had financial ability to furnish adequate service also warranted the denial. Union Co-op. T. Co. v. Public Service Comm. 206 W 160, 239 NW 409.

As to necessity for a certificate of convenience by the railroad commission in granting a village franchise to operate a utility, see note to 66.061 (2), citing South Shore U. Co. v. Railroad Comm. 207 W 95, 240 NW 784.

Under the public utility law a city which is receiving light, heat and power from a single utility operating therein under an indeterminate permit is not entitled to construct and operate a plant for lighting its streets and public buildings without first procuring a certificate of convenience and necessity from the public service commission. Wisconsin P. & L. Co. v. Beloit, 215 W 439, 254 NW 119.

The right of a telephone company to serve the territory in which it is authorized to operate is qualified and not absolute. The public service commission can properly protect a public utility against competition only as long as such protection is consistent with public convenience and necessity, and the commission is a primary judge of when such point is reached. Among the factors to be considered are the effect of a loss of subscribers on the revenues of the utility already in the field, with possible adverse effect on the service which that utility can give to its remaining patrons, but such matters are questions of fact to be determined by the commission and not to be ignored or reversed by the court when there is evidence in support of the commission's findings. Lodi T. Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

Duplication of lines is not forbidden where 2 telephone companies are operating in a given territory, but in such case the public service commission, under its statutory powers of regulation, may make orders affecting competition and duplication based on the existence of public convenience and necessity, and its finding according to the facts of the matter may require an extension of line and plant which may permit and require the duplication of lines as well as provide against undue extension. Lodi Tel. Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

On indeterminate franchises for telephone companies under 196.50 and 182.017 and the duties of companies and authority of the commission to order extension of service see Weyauwega T. Co. v. Public Serv. Comm. 14 W (2d) 536, 111 NW (2d) 559.

A town containing an unincorporated village is authorized to establish waterworks, without permission from the state, unless by reason of there being already a waterworks utility furnishing service therein, a certificate of convenience and necessity is required. 3 Atty. Gen. 598.

**196.51 History:** 1911 c. 14; 1911 c. 664 s. 2; Stats. 1911 s. 1797m—74m; 1923 c. 291 s. 3; Stats. 1923 s. 196.51; 1929 c. 504 s. 276.

**196.52 History:** 1931 c. 183 s. 3; 1931 c. 475 s. 9, 10; Stats. 1931 s. 196.52; 1951 c. 712 s. 18 to 20; 1957 c. 672.

**196.525 History:** 1933 c. 440 s. 2; Stats. 1933 s. 196.525.

**196.53 History:** 1907 c. 499; Stats. 1911 s. 1797m—75; 1923 c. 291 s. 3; Stats. 1923 s. 196.53; 1927 c. 473 s. 39; 1929 c. 504 s. 278.

**196.54 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—76; 1923 c. 291 s. 3; Stats. 1923 s. 196.54; 1929 c. 504 s. 279.

The fact that the public service commission permits a demand charge for fire protection in sales of water outside the municipality does not result in an indeterminate permit, nor does the voluntary act of the city in selling water to another municipality result in a permit. The city of Milwaukee is included under the exception in the last sentence of 66.061 (1) (d). Milwaukee v. Public Service Comm. 11 W (2d) 111, 104 NW (2d) 167.

**196.55 History:** 1907 c. 499; 1909 c. 180; 1911 c. 596; 1911 c. 664 s. 134; Stats. 1911 s. 1797m—77; 1923 c. 291 s. 3; Stats. 1923 s. 196.55; 1929 c. 504 s. 280.

Amendment of sec. 1797m—74 by ch. 596, Laws 1911, had the effect to abrogate a preexisting franchise granted by a city, at least so far as the provisions of secs. 1797m—1 to 1797m—108, Stats. 1911, were inconsistent therewith, those sections becoming, in effect, a part of the new or altered franchise. Wisconsin T., L., H. & P. Co. v. Menasha, 157 W 1, 145 NW 231.

See note to section 197.02, citing State ex rel. Wisconsin T., L., H. & P. Co. v. Circuit Court, 162 W 234, 155 NW 139.

A corporation doing a commercial lighting business in 1907, when the public utility law took effect, pursuant to a city ordinance purporting to grant a franchise to do commercial and municipal lighting, was by that law made a "public utility"; and, the corporation having commenced municipal lighting pursuant to the ordinance 2 years after the utility law took effect, its franchise to do such lighting became indeterminate and empowered it to continue its business although its articles of incorporation did not expressly authorize it to do so. Oconto E. Co. v. Peoples L. & M. Co. 165 W 467, 161 NW 789.

After the expiration of the time limited therefor by statute a public utility had no power to surrender its franchise and the municipality had no power to accept the surrender. Wisconsin Public Service Corp. v. Public Service Comm. 230 W 663, 284 NW 582.

**196.56 History:** 1911 c. 217; 1911 c. 664 s. 28; Stats. 1911 s. 1797m—77m; 1913 c. 552; 1923 c. 291 s. 3; Stats. 1923 s. 196.56; 1929 c. 504 s. 281.

**196.57 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—78; 1923 c. 291 s. 3; Stats. 1923 s. 196.57; 1929 c. 504 s. 282.

196.56 applies only to franchises granted prior to July 11, 1907. In proceedings for the acquisition of the plant and equipment of an electric utility company by a municipality, the utility company, operating under a franchise which its predecessor in title had applied for in 1909 and accepted and operated under up to the time of the sale of the property, was estopped to deny that it was exercising privileges granted by the 1909 permit. Accordingly, the company must be considered as operating under the indeterminate permit granted in 1909 and consequently the company was not entitled to a jury trial upon the question of necessity for the taking of its property by the municipality. Pardeeville E. L. Co. v. Public Service Comm. 219 W 482, 263 NW 366; Commonwealth T. Co. v. Public Service Comm. 219 W 607, 263 NW 665.

**196.58 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—87; 1923 c. 291 s. 3; Stats. 1923 s. 196.58; 1929 c. 504 s. 283; 1931 c. 183 s. 3; 1943 c. 48; 1947 c. 126; 1961 c. 369.

A contract by a public utility to furnish free electricity to a city, being inconsistent with the public utility act, was not validated by sec. 1797m—87, Stats. 1911. Milwaukee E. R. & L. Co. v. Milwaukee, 173 W 329, 180 NW 339.

Sec. 1797m—87, Stats. 1917, does not empower the railroad commission to require public utilities to make extensions or additions to their plants. That power resides with the municipalities concerned. State v. Washburn W. Co. 182 W 287, 196 NW 537.

Where the contract of a municipal water utility, which has a right to procure easements through an adjoining town and which agrees to give service in specified areas of such town, specifies that the utility shall give service to owners of property which abuts on a street in which it acquires an easement and lays its mains, the public service commission has jurisdiction to require the utility to permit an abutting property owner to connect to the main. Milwaukee v. Public Service Comm. 252 W 358, 31 NW (2d) 571.

The water system of the city of Milwaukee is a public utility subject to regulation the same as is any other public utility. Every public utility has the obligation, within the scope of its undertaking, to furnish its service to all who reasonably require it. The duty to enforce such obligation is imposed on the public service commission, and, in the case of a municipal water utility, such jurisdiction is not limited to the boundaries of the municipality but extends to all areas where the utility has undertaken to serve. Milwaukee v. Public Service Comm. 268 W 116, 66 NW (2d) 716.

Liability of utility for insufficient supply of water. 17 MLR 234.

**196.59 History:** 1929 c. 384; 1929 c. 529 s. 8; Stats. 1929 s. 196.59.

**196.60 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—89; 1923 c. 291 s. 3; Stats. 1923 s. 196.60; 1929 c. 504 s. 285; 1951 c. 712; 1963 c. 499.

Sec. 1797m—89, Stats. 1915, amends franchises of existing utilities and supersedes them when the utility secures an indeterminate permit; and a contract by an electric company to furnish free electricity to the city was likewise superseded when the company began to operate under such a permit. (Oshkosh v. Eastern W. E. Co. 172 W 85, 178 NW 308, distinguished.) Milwaukee E. R. & L. Co. v. Milwaukee, 173 W 329, 180 NW 339.

Foreign-exchange service, available to certain rural patrons of the L. telephone company herein petitioning for local service from the C. telephone company from the same exchange from which the latter was already furnishing local service to other rural patrons in the same town, but which foreign-exchange service involved an extra charge to the petitioners, not required of their neighbors already being furnished with such local service, was not the answer to the problem of providing the petitioners with adequate telephone service, especially in view of 196.60, Stats. 1949, prohibiting any telephone utility from charging customers more or less than it charges other customers for the same service. Lodi T. Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

**196.605 History:** 1955 c. 284; Stats. 1955 s. 196.605.

See note to sec. 1, art. IV, on legislative power generally, citing 44 Atty. Gen. 144.

**196.61 History:** 1907 c. 499; 1909 c. 213; Stats. 1911 s. 1797m—90; 1923 c. 291 s. 3; Stats. 1923 s. 196.61; 1929 c. 504 s. 286.

**196.62 History:** 1907 c. 499; Stats. 1911 s. 1797m—91; 1923 c. 291 s. 3; Stats. 1923 s. 196.62; 1929 c. 504 s. 287.

A contract, contained in the certificates of shares issued by a telephone company to the effect that each share carries with it the ownership of one telephone and the use of the company's lines and is assessable annually for the payment of current expenses to an amount not exceeding $10, is not an unlawful discrimination as against other persons charged $12 for annual service. Miles v. People's T. Co. 166 W 94, 163 NW 652.

The acceptance of an ordinance requiring free electricity to a city does not estop the

electric company, after commencing operating under an indeterminate permit, to insist on the invalidity of the ordinance, because, bearing the burdens, it is entitled to the benefits of the indeterminate permit. Milwaukee E. R. & L. Co. v. Milwaukee, 173 W 329, 180 NW 339.

Where an electric company has its wires installed and ready for service for present owners or occupants, they are entitled to present service, and it is within the power of the railroad commission to order it furnished to them. Willow River P. Co. v. Railroad Comm. 197 W 1, 220 NW 173.

196.62, Stats. 1929, providing that furnishing by a public utility of any product or service at rates and upon terms and conditions provided for in a contract executed prior to April 1, 1907, should not constitute a discrimination, does not deprive the railroad commission of jurisdiction to revise rates to be charged by a municipality for water under a contract executed prior to April 1, 1907, where the rate prescribed by contract was claimed to be unreasonable. Milwaukee v. Railroad Comm. 217 W 606, 258 NW 854.

Discriminations in public service are forbidden and public utilities are required to exact rates fixed by the railroad commission for such service. The rates fixed by the railroad commission annul all conflicting contract rates agreed upon after April 1, 1907. 8 Atty. Gen. 237.

**196.625 History:** 1882 c. 196; Ann. Stats. 1889 c. 1791a; 1893 c. 236; Stats. 1898 s. 1791a; 1923 c. 291 s. 3; Stats. 1923 s. 175.06; 1955 c. 696 s. 41; Stats. 1955 s. 196.625.

A mere difference in methods of dealing with customers, some by implied agreement to pay at schedule rates and others by express contract, does not constitute discrimination, if neither is unreasonable. People's T. Co. v. Lewis, 151 W 75, 138 NW 100.

Under 175.06 and 180.19, Stats. 1935, where a telephone company refused to furnish a subscriber, whose mill was burning, a connection to obtain aid of a city fire department on the ground the subscriber was in default in telephone payments, which was erroneous, the company was liable for the resultant damage. Boldig v. Urban T. Co. 224 W 93, 271 NW 88.

175.06 and 182.019, Stats. 1949, have not abrogated the contract liability of a telephone company but have introduced a liability in tort as well, but even so, the duty of a telephone company is ordinarily limited to making a connection between telephones without unreasonable delay, and it is not under obligation to render special services or transmit messages except in cases where it has undertaken so to do. Christenson & Arndt, Inc. v. Wisconsin T. Co. 264 W 238, 58 NW (2d) 682.

**196.63 History:** 1907 c. 499; Stats. 1911 s. 1797m—92; 1923 c. 291 s. 3; Stats. 1923 s. 196.63; 1929 c. 504 s. 288.

**196.64 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—93; 1923 c. 291 s. 3; Stats. 1923 s. 196.64; 1929 c. 504 s. 289.

Where increased water rates established by the city of Milwaukee were illegal, it was liable to the person injured thereby in treble the amount of damages sustained. The payment of water rates to a city under a threat that service will be cut off is not voluntary. Pabst Corp. v. Milwaukee, 193 W 522, 215 NW 670.

The facts involved as to the acts of the city's agents in negligently maintaining the electric wire, and the resulting death of the child coming in contact with the fallen wire, rendered the city liable for the death on the basis of common law negligence, but did not render applicable the provisions of 196.64, Stats. 1937. Christian v. New London, 234 W 123, 290 NW 621.

In an action solely for treble damages under 196.64, Stats. 1939, an instruction, that the jury must be satisfied by a clear and convincing preponderance of the credible evidence to a reasonable certainty that the conduct of the defendant's employe in question was reckless or wilful, was proper. This section extends only to wilful, wanton or reckless defaults although not expressly so providing, the statute being highly penal in its nature. Chrome Plating Co. v. Wisconsin E. P. Co. 241 W 554, 6 NW (2d) 692.

**196.645 History:** 1947 c. 419; Stats. 1947 s. 196.645.

**196.65 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—94; 1923 c. 291 s. 3; Stats. 1923 s. 196.65; 1929 c. 504 s. 290.

**196.66 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—95, 1797m—98; 1919 c. 576 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 196.66, 196.69 (3); 1929 c. 504 s. 291; Stats. 1929 s. 196.66.

**196.665 History:** 1969 c. 276; Stats. 1969 s. 196.665.

**196.67 History:** 1919 c. 547; 1919 c. 671 s. 28; Stats. 1919 s. 1797m—95m; 1923 c. 291 s. 3; Stats. 1923 s. 196.67; 1929 c. 504 s. 292; 1951 c. 712; 1965 c. 338.

**196.675 History:** 1907 c. 542; 1911 c. 663 s. 477; Stats. 1911 s. 4552m; 1915 c. 40; 1917 c. 526; 1925 c. 4; Stats. 1925 s. 348.312; 1955 c. 696 s. 246A; Stats. 1955 s. 196.675; 1961 c. 495.

A district attorney may accept and hold the office of president of a telephone company without violating sec. 4552m, Stats. 1909. 1910 Atty. Gen. 654.

A district attorney may not argue a case in the supreme court on behalf of a common carrier, even though the case is fully prepared prior to the time he takes office, so that the argument in the supreme court is the only service remaining to be performed on behalf of said carrier. 1 Atty. Gen. 489.

A municipal judge who accepts a retainer from a telephone company thereby vacates his office. 3 Atty. Gen. 693.

A district attorney is not forbidden to be a stockholder or to act without compensation as a director of a common carrier of a public utility corporation. 3 Atty. Gen. 700.

A district attorney may not be employed by public utility, even though he be financially interested therein, or acts gratuitously. His partner may be so employed if the district attorney has no interest in the contract of employment. 1910 Atty. Gen. 629; 4 Atty. Gen. 762.

**196.68 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—96; 1923 c. 291 s. 3; Stats. 1923 s. 196.68; 1925 c. 200; 1929 c. 504 s. 293.

**196.69 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—97; 1923 c. 291 s. 3; Stats. 1923 s. 196.69 (1), (2); 1929 c. 504 s. 291, 294; Stats. 1929 s. 196.69.

**196.70 History:** 1907 c. 499; Stats. 1911 s. 1797m—99; 1923 c. 291 s. 3; Stats. 1923 s. 196.70; 1929 c. 504 s. 295.

In determining whether an emergency exists which warrants a temporary change of rates charged by a public utility, the railroad commission is not required to make such an inquest into its affairs as is required in establishing permanent reasonable rates and adequate service, the commission being empowered to act on its own motion and in a summary manner when it believes an emergency threatens the public or the utility. Its action in such cases will not be overruled unless it appears that it exceeded its powers or imposed unreasonable or unjust discriminatory burdens. La Crosse v. Railroad Comm. 172 W 233, 178 NW 867.

What the public service commission may do on the application of a utility under 196.70, Stats. 1933, in the way of increasing rates under emergency conditions is no measure of the commission's power to decrease rates under emergency conditions, since the legal considerations involved in increasing rates are different from those involved in decreasing rates. Wisconsin Tel. Co. v. Public Service Comm. 232 W 274, 287 NW 122 and 593.

**196.71 History:** 1929 c. 504 s. 297; Stats. 1929 s. 196.71.

**196.72 History:** 1907 c. 499; Stats. 1911 s. 1797m—101; 1923 c. 291 s. 3; Stats. 1923 s. 196.72; 1929 c. 504 s. 298; 1957 c. 649.

**196.74 History:** 1915 c. 61; Stats. 1915 s. 1797m—102o; 1923 c. 291 s. 3; Stats. 1923 s. 196.74; 1929 c. 504 s. 300; 1935 c. 404.

When a power transmission line is neither built, owned nor controlled by a public utility such utility is neither bound to inspect the line nor obligated to respond in damages for injuries sustained by its defective construction or condition unless the utility supplies current actually knowing of these conditions and the current is the cause of the injury sued for, in which case it is the energizing of the line with knowledge of the conditions, and not the conditions themselves, which forms the basis of liability. A farmer who built, owned and controlled a transmission line, by means of which he obtained electricity from a utility, was under a duty of a high degree of care to maintain such line in a safe condition, regardless of whether 196.74, Stats. 1937, or the state electrical code applied to him, the code not increasing, changing or making more specific the common law duty to exercise a high degree of care in the premises. Oesterreich v. Claas, 237 W 343, 295 NW 766.

196.74 authorized the public service commission to issue an electrical code which would apply to wires which are not "along or across any public or private way", particularly in view of 167.16 (1), in which the legislature recognized that the code is applicable to all electrical wiring. Musil v. Barron Electrical Co-op. 13 W (2d) 342, 108 NW (2d) 652.

**196.745 History:** 1951 c. 712; Stats. 1951 s. 196.745; 1969 c. 103.

**196.76 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—104; 1923 c. 291 s. 3; Stats. 1923 s. 196.76; 1929 c. 504 s. 302.

**196.77 History:** 1907 c. 499; 1911 c. 663 s. 362; Stats. 1911 s. 1797m—105; 1923 c. 291 s. 3; Stats. 1923 s. 196.77; 1929 c. 504 s. 303.

**196.78 History:** 1872 c. 146 s. 5; 1874 c. 113 s. 7; R. S. 1878 s. 1789; Stats. 1898 s. 1789; 1905 c. 507 s. 6; Supl. 1906 s. 1789; 1919 c. 679 s. 80; 1923 c. 291 s. 3; Stats. 1923 s. 181.03; 1927 c. 534 s. 40; 1945 c. 372; 1951 c. 731 s. 4; Stats. 1951 s. 182.103; 1955 c. 338 s. 2; 1955 c. 661 s. 22; Stats. 1955 s. 196.78.

A corporation is not dissolved until the recording of a resolution (now articles) of dissolution in the proper register's office. State ex rel. Sheldon v. Dahl, 150 W 73, 135 NW 474.

A trust company deposited securities with the state treasurer, and the state treasurer surrendered them prior to the recording of a resolution dissolving the trust company. The surrender, although in good faith, was a violation of duty; but in the absence of proof of actual damages, nominal damages only were recoverable. State ex rel. Sheldon v. Dahl, 165 W 272, 162 NW 186.

A resolution of dissolution of a corporation certified by the proper officers to have been duly adopted should be accepted and filed by the secretary of state. An amendment, certified to have been adopted by less than the vote required, should not be filed. 3 Atty. Gen. 145.

No corporation engaged in the business of owning or operating a public utility at the time of going into effect of ch. 177, Laws 1923, may be dissolved except by consent of the railroad commission. 18 Atty. Gen. 309.

A railroad corporation may be dissolved under this section. 20 Atty. Gen. 49.

**196.79 History:** 1931 c. 183 s. 3; Stats. 1931 s. 196.79.

**196.80 History:** 1925 c. 366; Stats. 1925 s. 196.535; 1929 c. 219; 1929 c. 504 s. 305; Stats. 1929 s. 196.80; 1933 c. 440 s. 1; 1941 c. 78; 1947 c. 362 s. 2; 1953 c. 61 s. 115; 1955 c. 661 s. 33; 1957 c. 523; 1965 c. 53, 252, 433.

Merger of public utilities under this section ipso facto dissolves such public utilities as are absorbed or merged. 15 Atty. Gen. 416.

196.80 (4) (d), as created by ch. 78, Laws 1941, sets up the method for computing the filing fee for articles of incorporation of a consolidated public utility company whereby there is credited against the usual filing fee amounts paid by constituent companies in respect of authorized capital stock so that there will always be a minimum fee of at least $25. Only a single certified copy of the resolution adopting a consolidation plan need be filed with the secretary of state and no fee is required for filing such copy. 30 Atty. Gen. 179.

The term "public utility" as used in 196.80 (1) (d) comprehends a company owning and operating a street railway or interurban railway and the sale by such company of its trackless trolley system requires consent and approval of the public service commission. 31 Atty. Gen. 244.

**196.81 History:** 1931 c. 183 s. 3; 1931 c. 475 s. 12; Stats. 1931 s. 196.81; 1951 c. 565; 1957 c. 637.

A water heating utility could not diminish the scope of its original undertaking merely by filing declarations with the public service commission and avowedly holding itself out to furnish service only as limited by such declarations. Northern States P. Co. v. Public Service Comm. 246 W 215, 16 NW (2d) 790.

The public service commission had jurisdiction under 196.81, Stats. 1947, to order an electric interurban railway, not a part of a general steam-railroad system and not owning or operating any railway properties outside the state, to restore a connecting interstate freight service between points within the state, the U. S. government not having pre-empted the field, and the interstate commerce commission having stated that it was without jurisdiction, and the order in question not being discriminatory nor in any way interfering with interstate commerce. Kenosha M. C. Lines, Inc. v. Public Service Comm. 254 W 509, 37 NW (2d) 78.

Where the proceedings in question, terminating in the order authorizing a company (already authorized to operate streetcars and motorbusses) to establish a motorbus service which would be in competition with an existing street car service over a certain street and viaduct in Milwaukee, dealt not only with an application to change or establish routes of service but also with an application for abandonment of streetcar service, the order, without any finding of public convenience or necessity or of taking into consideration existing transportation facilities in the territory, was supported, under the evidence, as within the power of the public service commission to approve an abandonment of service on "such terms * * * as in its judgment are necessary to protect the public interest." Chicago & M. E. R. Co. v. Public Service Comm. 254 W 551, 37 NW (2d) 42.

A city has the right to enforce by court order the obligation of a street railway company to repair tracks and to remove them on abandonment, notwithstanding the public service commission's failure to impose terms or conditions on the abandonment. And the city could recover the necessary expenses of necessary repairs to the track zone after abandonment. In re Madison Railways Co. 102 F (2d) 178.

**196.85 History:** 1931 c. 183 s. 3; 1931 c. 475 s. 11; Stats. 1931 s. 196.85; Spl. S. 1931 c. 16; 1933 c. 4 s. 1, 2; 1933 c. 298; 1939 c. 446; 1943 c. 375 s. 80; 1949 c. 360; 1951 c. 261 s. 10; 1951 c. 712; 1957 c. 523; 1959 c. 135; 1965 c. 163; 1965 c. 433 s. 121; 1967 c. 43; 1967 c. 291 s. 14.

Where the public service commission has conducted an investigation upon a complaint against a railroad under 195.08 (9), Stats. 1943, it must, under the provisions of 196.85 (1), assess it against the railroad. 33 Atty. Gen. 40.

**196.855 History:** 1933 c. 438 s. 1; Stats. 1933 s. 196.855; 1947 c. 472; 1959 c. 659 s. 79.

**196.91 History:** 1915 c. 380 s. 3; Stats. 1915 s. 1596—14; 1917 c. 474 s. 15; Stats. 1917 s. 31.15; 1919 c. 571 s. 2; 1969 c. 276 s. 231; Stats. 1969 s. 196.91.

**196.92 History:** 1915 c. 380 s. 3; Stats. 1915 s. 1596—15; 1917 c. 474 s. 16; Stats. 1917 s. 31.16; 1965 c. 252; 1969 c. 276 ss. 231, 614; Stats. 1969 s. 196.92.

**196.93 History:** 1915 c. 380 s. 3; Stats. 1915 s. 1596—16; 1917 c. 474 s. 17; Stats. 1917 s. 31.17; 1969 c. 276 ss. 231, 614; Stats. 1969 s. 196.93.

## CHAPTER 197.

### Municipal Acquisition of Utilities.

**197.01 History:** 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—79; 1917 c. 305; 1921 c. 248, 360; 1923 c. 291 s. 3; Stats. 1923 s. 197.01; 1929 c. 504 s. 309.

On impairment of contracts see notes to sec. 12, art. I; on taking private property for public use see notes to sec. 13, art. I; and on formation of corporations see notes to sec. 1, art. XI.

A proceeding by a city to acquire a public utility under sec. 1797m—79, Stats. 1911, although denominated a purchase and requiring no notice to be given to the holders of liens upon the property was, in effect, a condemnation proceeding. Connell v. Kaukauna, 164 W 471, 159 NW 927, 160 NW 1035.

Ch. 197, Stats. 1927, has no effect upon a city's authority to condemn property for street purposes. Chicago & Northwestern R. Co. v. Racine, 200 W 170, 227 NW 859.

The methods prescribed by 66.06 and 197.01 to 197.05, Stats. 1933, for the municipal acquisition of public utilities are separate, distinct, and mutually exclusive. Wisconsin P. & L. Co. v. Public Service Comm. 222 W 25, 267 NW 386.

A majority of the electors of Edgerton voted affirmatively on the following question: "Shall the City of Edgerton purchase the rights and property of the Wisconsin Power and Light Company actually used and useful for transmission, delivery and furnishing of heat, light, and power within the City of Edgerton, and construct and operate a plant and equipment for production and furnishing of electricity?" The 2 propositions were clearly stated; those in favor of both would vote "Yes," while those in favor of either and opposed to the other, as well as those opposed to both, would vote "No." The proceedings were valid and authorized the acquisition of rights and property even if located outside the city limits if used and useful for furnishing power within the city limits. Wisconsin P. & L. Co. v. Public Service Comm. 224 W 286, 272 NW 50.

Ch. 197, Stats. 1935, provides a complete procedure for the acquisition by a city of a public utility operating under an indeterminate permit and an exclusive procedure for