

CHAPTER 184

SECURITIES OF PUBLIC SERVICE CORPORATIONS

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184.01 Definitions. In this chapter, unless the context otherwise requires:

(1) "Public service corporation" means and embraces every corporation, except municipalities and other political subdivisions, which is a public utility as defined in section 196.01, and every corporation which is a railroad as defined in section 195.02, but shall not include a public utility corporation receiving an annual gross revenue of less than \$1,000 for the calendar year next preceding the issuance of any securities by it.

(2) "Commission" means the transportation commission in the case of railroads and the public service commission in the case of other public service corporations.

(3) "Securities" means capital stock and evidences of indebtedness of a public service corporation, not including, however, (a) any obligation of a public service corporation which is not a public utility as defined in the federal power act, falling due one year or less after its date and bearing date not later than the day of sale; or (b) any evidence of indebtedness of a public service corporation which is a public utility as defined in the federal power act, the issuance, renewal or assumption of which is exempt from sec. 204 (a) of the federal power act by the provisions of sec. 204 (e) thereof; or (c) any obligation issued to the United States of America in connection with loans for rural telephone facilities made pursuant to the rural electrification act of 1936, as amended; or (d) any securities issued by a corporation organized under ch. 185 for the purpose of furnishing telephone service in rural areas.

History: 1971 c. 164 s. 88; 1977 c. 29.

A contract by a utility for the purchase of all of the stock of a corporation in instalments over a period of years is not a "security". *Wisconsin Southern Gas Co. v. Public Serv. Comm.* 57 W (2d) 643, 205 NW (2d) 403.

184.02 Power of alienation, state control. The power to create liens or mortgages on

corporate property by public service corporations in this state, or to deed such property in trust, or to issue capital stock, is a special privilege, the right of supervision, regulation, restriction and control of which shall be vested in the state, and such power shall be exercised according to the provisions of these statutes.

184.03 Issue of securities. (1) No securities shall be issued by any public service corporation until it shall first have obtained from the commission, and recorded upon its books a certificate authorizing such issue; and the commission shall not authorize the issuance of securities for any purposes which are not proper corporate purposes, or in an amount greater than is reasonably necessary for such corporate purposes, having in view the immediate requirements of the corporation and its prospective requirements over a reasonable period in the future, and other relevant considerations.

(2) All securities issued in violation of any of the provisions of this chapter shall be void.

Securities valid when issued will not be voided by (2) if the issuance has not been stayed. *Wis. Power & Light v. Bardwell*, 71 W (2d) 718, 239 NW (2d) 78.

184.04 Consideration for securities. No securities shall be issued by any public service corporation except for money, property or services actually received by it. The amount of money, and the value of the property or the services to be so received shall be: (a) in case of stock having a par value, not less than the par value thereof; (b) in case of stock having no par value, not less than the amount specified in the commission's certificate of authority as the selling price of such stock; and (c) in case of evidences of indebtedness, such sum as the commission may determine to be a reasonable price, but in any event not less than 75% of their face value. The limitations of this section shall not apply to the sale of evidences of indebtedness of

a public service corporation by way of enforcement of a pledge of such evidences of indebtedness, made by the corporation pursuant to a certificate of authority issued by the commission, as security for lawful indebtedness of the corporation; but in all such cases the instrument of pledge shall contain a provision to the effect that none of the pledged securities shall be sold or become the absolute property of the pledgee, either directly or indirectly, except at public sale, notice whereof shall be published as a class 3 notice, under ch. 985, in the place where such sale shall take place, and further to the effect that the sale shall not be made below the price fixed therefor by the commission in its certificate authorizing the pledging of such securities.

184.05 Securities. (1) APPLICATION TO ISSUE. Any public service corporation desiring to issue securities shall file with the commission an application verified by its president or vice president and its secretary or assistant secretary (or by the signers of its articles of organization if it has not yet elected officers), setting forth: (1) The amount and character of the proposed securities; (2) the purposes for which they are to be issued; (3) the terms on which they are to be issued, including a detailed description and a detailed statement of the value of any property or services that are to be received in full or partial payment therefor, and of any property or services already received by the corporation, the cost of which is to be reimbursed to the corporation by the proceeds of such securities; and (4) a statement of the assets and liabilities of the corporation as of the most recent available date, together with such further financial information as the commission may require.

(2) HEARINGS AND INQUIRIES. In order to determine whether the proposed issue complies with the provisions of this chapter, the commission may make such inquiry or investigation, hold such hearings, and examine such witnesses, books, papers, documents or contracts, as it may deem material. It shall determine the value of any property or services for which the securities, in whole or in part, are to be issued. It may also make a valuation, in detail, of all property of the corporation and may determine the full amount of its liabilities if deemed pertinent.

(3) VALUATION OF FRANCHISES. In determining the value of property under this chapter, no franchise to be a corporation and no franchise or privilege granted to a corporation shall be appraised at more than the sum paid therefor to the state or municipality granting the same.

(4) CLASSES PROPORTIONATE. The amount of securities of each class which any public

service corporation may issue shall bear a reasonable proportion to each other and to the value of the property, due consideration being given to the nature of the business of the corporation, its credit and prospects, the possibility that the value of the property may change from time to time, the effect which such issue will have upon the management and operation of the corporation by reason of the relative amount of financial interest which the various classes of stockholders will have in the corporation, and other considerations deemed relevant by the commission. The provisions of this subsection shall not apply to common stock issued by a public service corporation which has issued or proposes to issue its notes, bonds or other evidences of indebtedness to the United States of America in connection with loans for rural telephone facilities made pursuant to the rural electrification act of 1936, as amended.

184.06 Certificate of authority, Impounding securities. (1) Upon the conclusion of its investigation, if the commission shall find that the proposed issue complies with the provisions of this chapter and that the financial condition, plan of operation and proposed undertakings of the corporation are such as to afford reasonable protection to purchasers of the securities to be issued, it shall issue to the corporation a certificate of authority stating: (1) The amount of securities reasonably necessary and the character of the same; (2) the purposes for which they are to be issued in such detail as the commission may deem necessary; and (3) the terms on which they are to be sold or otherwise disposed of, including a description and a determination of the value of any property or services to be received in partial or full payment therefor; and the corporation shall not issue the securities on any other terms or for any other purposes than that stated in such certificate. If any portion of the securities authorized by the certificate are evidences of indebtedness which are to be pledged to secure lawful obligations of the applicant, the commission in its certificate shall state the minimum price at which such securities may be sold in the event of any enforcement of the pledge. If the purpose of the issue is, in whole or in part, to provide funds for properties to be constructed or acquired, the commission may, if it finds that the public interest so requires, require the applicant to impound the proceeds of such securities, or furnish suitable bonds to guarantee the completion of such project, under such conditions as the commission shall find to be reasonable and shall specify in the certificate.

(2) The commission may attach to the issuance of any certificate under this chapter such terms, conditions or requirements as in its judgment are reasonably necessary to protect the public interest. Any public service corporation dissatisfied with any of the terms or conditions so imposed by the commission in such certificate of authority shall be limited in its remedy to an action to modify or set aside the commission order authorizing a certificate of authority, as provided by section 184.08. Any public service corporation issuing securities pursuant to any certificate of authority, not having brought any such action to set aside such order shall be deemed thereby to have waived any and all objections to the terms, conditions and requirements contained in such certificate of authority.

184.07 Securities accounted for. The commission may by provision inserted in its certificate of authority require issuers to account for the disposition of all securities requiring its approval. If the securities are issued for money, it may require the issuer to report the price at which the securities were issued, the amount of securities so issued, and the amount of cash which has been received; if they are issued for the refunding or discharge of securities or other indebtedness it may require the issuer to report the amount of securities issued for such purpose, the price at which issued, and the amount and nature of securities or other indebtedness refunded or discharged by such issuance; if they are issued for the acquisition of property or services it may require the issuer to report the amount of securities issued for such purpose, the price at which issued, and information regarding the property or services for which such securities were issued.

184.08 Court review. Any action of the commission under the provisions of this chapter shall be subject to review in the manner provided in chapter 227.

184.09 Penalties. (1) Any public service corporation, or any agent, director or officer thereof, who shall directly or indirectly, issue or cause to be issued, any securities for whose issuance a certificate is required contrary to the provisions of this chapter, or who shall apply the proceeds from the sale thereof to any purpose other than that specified in the certificate of the commission, shall forfeit to the state not less than five hundred dollars nor more than ten thousand dollars for each offense.

(2) Every director, president, secretary or other official or agent of any public service

corporation, who shall practice fraud or knowingly make any false statement to secure a certificate of authority to issue any security, or issue under a certificate so obtained and with knowledge of such fraud, or false statement, or negotiate, or cause to be negotiated, any security, in violation of this chapter, shall be punished by a fine of not less than five hundred dollars, or by imprisonment in the state prison not less than one or more than 10 years, or by both fine and imprisonment.

184.10 Fees for authority to issue securities, expenses. (1) Each public service corporation on filing an application for authority to issue any securities to which this chapter is applicable shall pay with such application, prior to the issuance of a certificate, a fee of \$1 per thousand for each \$1,000 par value of each authorized issue of securities, but in no case less than \$10 for any issue, and for applications filed after December 31, 1972, in no case more than \$1,000 for any issue. If any such securities have no par value, the price at which such securities are issued or sold shall be deemed the par value for the purposes of computing the fee payable under this section.

(2) The fee provisions of sub. (1) shall not apply, but the provisions of sub. (3) shall apply, to the issuance, renewal or assumption by a public service corporation which is a public utility as defined in the federal power act, of evidences of indebtedness maturing not more than one year after the date of issue, renewal or assumption thereof.

(3) Whenever the commission deems it necessary to make an investigation of the books, accounts and practices or to make an appraisal of the property of any public service corporation which has filed an application for authority to issue any securities to which this chapter is applicable, such public service corporation shall pay all expenses reasonably attributable to such special investigation, or to such an appraisal of the property. The procedure set up by s. 195.60 or 196.85, whichever is appropriate, for the rendering and collection of bills shall be in all ways applicable to the rendering and collection of bills under this section. All amounts paid to the public service commission under authority of this subsection shall be credited to the appropriation made in s. 20.155 (1) (g).

History: 1971 c. 125; 1977 c. 29.

184.11 Impaired capital. Whenever the commission shall find that the capital of any public service corporation is impaired it may, after investigation and hearing, issue an order directing such public utility to cease paying

dividends on its common stock until such impairment has been made good. Nothing in this section shall be construed to modify the requirements of s. 180.38.

184.12 Judicial sale of corporation, reorganization. Whenever the rights, powers, privileges and franchises of any domestic public service corporation shall be sold at judicial sale or pursuant to the foreclosure of a mortgage, the purchaser shall, within sixty days after such sale, organize a new corporation pursuant to the laws respecting corporations for similar purposes and shall convey to such corporation the rights, privileges and franchises which the former corporation had, or was entitled to have, at the time of such sale, and such as are provided by the statutes applicable thereto. The amount of securities which may be issued by the new corporation for the purpose of acquiring the property of the former corporation shall be determined in accordance with sections 184.04, 184.05, and 184.06.

184.13 Stock. Subject to the regulatory jurisdiction of the commission under this chapter

and to all other applicable provisions of law relating to railroad or other special types of corporations, all classes and series of stock of a public service corporation shall be governed by the provisions of ch. 180.

184.14 Validation of securities issued without certificate. Securities issued by any such corporation, for the issuance of which a certificate should have been, but through excusable neglect or mistake was not, applied for, may be validated by the commission upon application of such corporation, signed and verified by the president and secretary, and setting forth the information required by section 184.05 (1), and in addition thereto a concise statement of the reasons why such application was not made at the time such securities were issued. If the commission shall find and determine that such failure to make application was due to excusable neglect or mistake, and was not occasioned by any design to evade compliance with the law, and that such issue was otherwise in accordance with law, the commission shall issue to the corporation a validating certificate.