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Corporation Commission

and

The Regulation of  
Public Service Corporations



Revised Statutes of Arizona  
1928

Article 1, Chapter 15  
Arizona Corporation Commission

Article 2, Chapter 15  
Regulation of Public Service  
Corporations

Article 3, Chapter 15  
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Storage of Cotton or Wool

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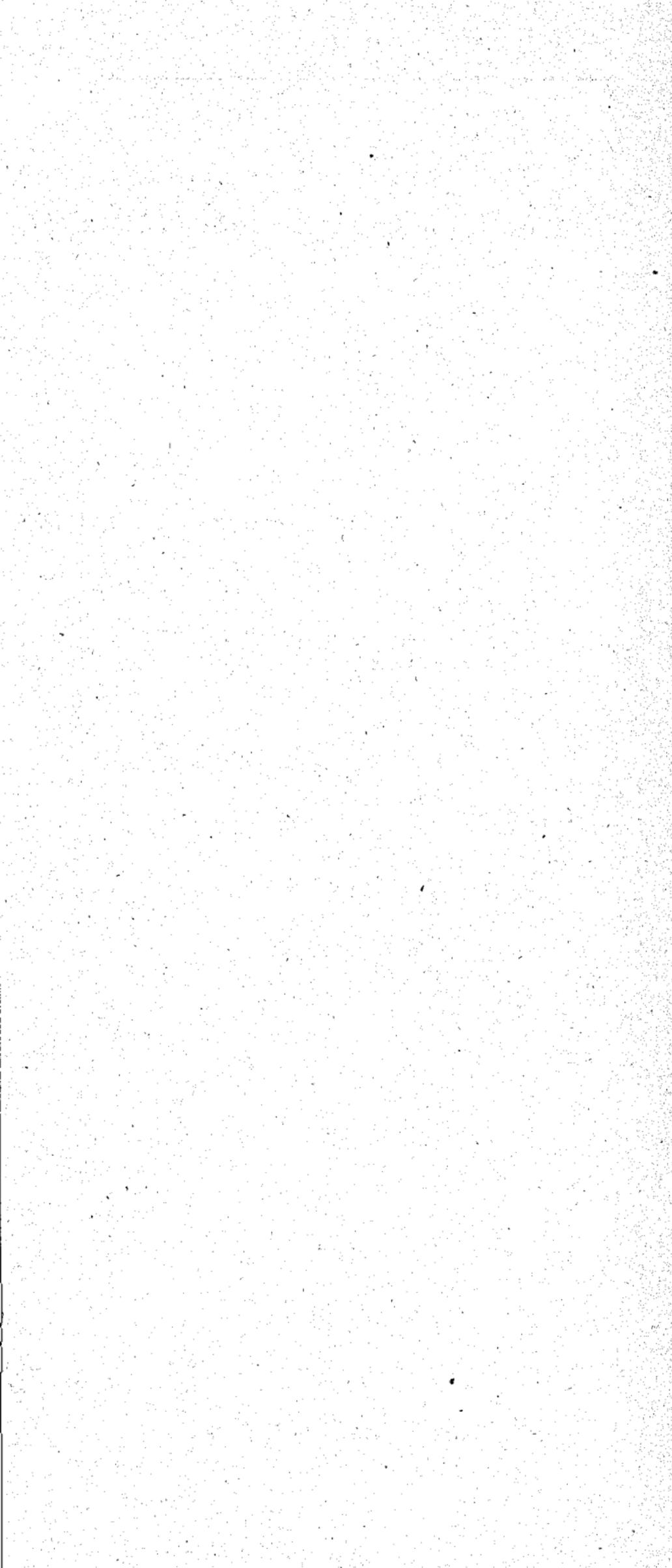
Article 1, Chapter 15  
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Article 3, Chapter 15  
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## Article 2. Regulation of public service corporations.

§ 673. **Definition of terms.** Words and phrases used in this article, unless the context requires otherwise, mean or include: "Transportation of persons" includes every service in connection with the carriage, and delivery of such person and his baggage; "transportation of property" includes every service in connection with the transportation and handling of property and the transmission of credit by express corporations; "street railroad" includes every railway operated along any street or public way for the public transportation of persons or property, but does not include a commercial or interurban railway; "railroad" includes every railway, other than a street railroad, operated for the public transportation of persons or property; "express corporation" includes every person engaged in the business of transporting property, for compensation on the line of any common carrier or stage line within this state; "pipe line" includes all property used in the transmission for compensation of air, steam or fluid substances, except water, through pipe lines; "gas plant" includes all property used in connection with the production, transmission or delivery of gas for light, heat, or power for sale; "electric plant" includes all property used in connection with the production, transmission or delivery of electricity for light, heat, or power for sale; "telephone line" includes all property used in connection with communication by telephone, for compensation, with or without the use of transmission wires; "telegraph line" includes all property used in connection with communication by telegraph, for compensation, with or without the use of transmission wires; "water system" includes all property used in connection with the diversion, development, storage, distribution and sale, of water for beneficial uses, for compensation. (§ 2, Ch. 70, L. '12; 2278, R. S. '13, rev.)

§ 674. **Charges; facilities; rules and regulations must be just and reasonable.** All charges demanded or received by any public service corporation for any commodity or service shall be just and reasonable. Every un-

just or unreasonable charge demanded or received is prohibited and unlawful. Every public service corporation shall furnish and maintain such service, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, and reasonable. All rules and regulations made by a public service corporation affecting or pertaining to its charges or service to the public shall be just and reasonable. (§ 13, Ch. 90, L. '12; 2289, R. S. '13, rev.)

§ 675. **Schedules of rates and tolls.** Every common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges and classifications for the transportation between termini, within this state, of persons and property, from each point upon its route to all other points thereon; and from each point upon its route to all points upon every other route leased, operated or controlled by it; and from each point on its route or upon any route leased, operated or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the schedules of the several carriers in such through route shall show the separately established rates, fares, charges, and classifications applicable to the through transportation. The schedules shall plainly state the places between which property and persons will be carried, and the classification of passengers or property in force, and shall also state separately all terminal, storage or icing charges and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and all rules or regulations which may in any wise change, affect or determine any part, or the aggregate of, such rates, fares, charges and classifications, or the value of the service rendered to the passenger, shipper or consignee.

Such schedules shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible for in-

spection by the public in every station or office of such carrier where passengers or property are received for transportation, when such station or office is in charge of an agent, and in every station or office of such carrier where passenger tickets, or tickets for sleeping, or parlor car, or other train accommodations are sold, or bills of lading or way bills or receipts for property are issued. Such schedules shall be produced by such carrier for inspection upon the demand of any person. A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person, and that the agent will assist any person to determine from such schedules any rates, fares, rules or regulations in force, shall be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of such schedule shall be prescribed by the commission, and shall conform in the case of common carriers subject to the acts of congress as nearly as may be to the form of schedules prescribed by the interstate commerce commission.

Under such rules and regulations as the commission may prescribe, every other public service corporation shall file with the commission, and shall print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications to be collected or enforced, together with all rules, regulations, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service. The commission may, however, from time to time, approve or fix rates, tolls, rentals or charges in excess of or less than those shown by said schedules. The commission may, from time to time, determine and prescribe by order such changes in the form of the schedules as it may find expedient, and modify the requirements of any of its orders, rules, or regulations. (§ 14, id.; 2290, R. S. '13, rev.)

§ 676. **No change without consent of commission.** No change shall be made by any public service corporation in any rate, fare, toll, rental, charge, or classification, or in any rule, regulation, or contract relating to or affecting any rate, toll, fare, rental, charge, classifica-

tion, or service, or in any privilege or facility, except after thirty days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect. The commission, for good cause shown, may allow changes without requiring the thirty days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. When any change is proposed attention shall be directed to such change on the schedule filed with the commission, by some character to be designated by the commission, immediately preceding or following the item. (§ 15, id.; 2291, R. S. '13, rev.)

§ 677. **Joint tariffs; concurrence.** The names of the several public service corporations which are parties to any joint tariff, rate, fare, toll, contract, classification or charge shall be specified in the schedule or schedules showing the same. Unless otherwise ordered by the commission, a schedule showing such joint tariff, rate, fare, toll, contract, classification or charge need be filed with the commission by only one of the parties to it; provided, that there is also filed with the commission, in such form as the commission may require, a concurrence in such joint tariff, rate, toll, fare, contract, classification or charge by each of the other parties thereto. (§ 16, id.; 2292, R. S. '13.)

§ 678. **Filing schedules before transacting business; schedule rate governs; free or reduced rates; rebating.** No common carrier shall engage or participate in the transportation of persons or property, between points within this state, until its schedules of rates, fares, charges and classifications shall have been filed and published in accordance with the provisions of this chapter. No common carrier shall, directly or indirectly, issue, give or tender any free or reduced rate of transportation for passengers between points within

this state, except to its employees, its officers, agents, surgeons, physicians, and attorneys at law, and their families; to members of the police and fire departments in cities and towns, when on duty, whether uniformed or not; to ministers of religion, traveling secretaries of Railroad Young Men's Christian Association, inmates of hospitals, and charitable institutions and persons exclusively engaged in charitable work; to indigent and homeless persons, when transported by charitable societies or hospitals, and to the necessary agents employed in such transportation; to inmates of the homes for soldiers, including those about to enter and those returning after discharge, and to the boards of managers of such homes; to necessary caretakers of live stock, poultry, milk and fruit while in transit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone corporations; to railway mail service employees, post office, custom and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested; to persons injured in wrecks and physicians and nurses attending such persons. The term "employee" as used in this section shall include furloughed or pensioned employees and persons who have become disabled or infirm in the service of such carrier, and the remains of a person killed in the employment of the carrier, and ex-employees traveling to reenter the service of such carrier; the term "families" shall include the families of those persons excepted, also the families of persons killed, and the widows during widowhood, and minor children during minority, of persons who died while in the service of any such common carrier. Nothing herein shall be construed to prohibit the interchange of passes for the officers, agents and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free to provide relief in cases of general epidemic, pestilence, or other calamitous visitation.

With the consent of the commission, every common carrier may transport free, or at reduced rates, former soldiers and sailors for the purpose of attending any convention, contrac-

tors and their employees, material or supplies, engaged in construction, operation, or maintenance work, on the line of the issuing carrier, to the extent only that such free or reduced rate transportation is provided for in the specifications upon which the contract is based and in the contract itself. Common carriers may also enter into contracts with each other for an exchange of service.

Every common carrier shall, on the first Monday in July of each year, and at such other time as may be required by the commission, file with the commission a verified list of all tickets, passes, or reduced rate transportation issued for other than actual bona fide money consideration at full established rates during the preceding year, together with the names of the recipients thereof, the amount received therefor, and the reason for issuing the same.

Except as in this section otherwise provided, no public service corporation shall charge, demand, collect, or receive a greater or less or different compensation for the transportation of persons or property, or for any product or commodity or for any service rendered, in connection therewith than the rates, fares, tolls, rentals, and charges applicable to such transportation or product, commodity or service specified in its schedule on file and in effect at the time, nor shall any such public service corporation refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, fares, tolls, rentals, and charges so specified, nor extend to any person any form of contract, or agreement or any rule or regulation, or any facility or privilege except such as are regularly and uniformly extended to all persons and except upon order of the commission. (§ 7, *id.*; 2293, R. S. '13, *am.*, Ch. 14, L. '21; Ch. 34, L. '23, *rev.*)

**§ 679. Discrimination and preference unlawful.** No public service corporation shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage. No public service corporation shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other re-

spect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section. (§ 19, Ch. 90, L. '12; 2295, R. S. '13.)

§ 680. **Sliding scale of charges permissible.** Any person engaged in the production, generation, transmission, or furnishing of heat, cold air, light, water, or power, or telegraph, or telephone service, may establish a sliding scale of charges, and may enter into an arrangement for a fixed period for the automatic adjustment of charges for heat, cold air, light, water, or power or telegraph, or telephone service, in relation to the profit to be realized by such person; provided, that a schedule showing the scale of charges under such arrangement shall first be filed with the commission and such schedule and each rate set out therein approved by it. The commission may revoke its approval at any time and fix other rates and charges for the product or commodity or service, as authorized herein. (§ 21, id.; 2297, R. S. '13, rev.)

§ 681. **Interchange of business.** Every common carrier shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage, and cars, loaded, or empty, between the lines owned, operated, controlled or leased by it and the lines of every other common carrier, and shall make such interchange and transfer promptly without discrimination between shippers, passengers or carriers either as to compensation charged, service rendered or facilities afforded. Every railroad corporation shall receive from every other railroad corporation, at any point of connection, freight cars of proper standard and in proper condition, and shall haul the same either to destination, if the destination be upon a line owned, operated or controlled by such railroad corporation, or to a point of transfer according to route billed, if the destination be upon the line of some other railroad corporation. Nothing in this section shall limit or modify the duty of a common carrier to establish joint rates, fares and charges for the transportation of passengers and property over the lines owned,

operated, controlled or leased by it and the lines of other common carriers, nor as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares and charges. Every telephone corporation and telegraph corporation operating in this state shall receive, transmit and deliver, without delay or discrimination, the conversations and messages of every other telephone or telegraph corporation with whose line a physical connection may have been made. (§ 22, id.; 2298, R. S. '13.)

§ 682. False billing to avoid rate. No common carrier shall, by means of known false billing, classification, weight, weighing or report of weight, or by any other device or means, assist, suffer or permit any person to obtain transportation for any person or property between points within this state, at less than the rates and fares then established and in force as shown by the schedules filed and in effect at the time. No person shall, by means of false billing, false or incorrect classification, false weight or weighing, false representation as to contents or substance of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of a common carrier, seek to obtain or obtain such transportation for such property at less than the rates then established and in force therefor. (§ 23, id.; 2299, R. S. '13, rev.)

§ 683. False billing by shipper to obtain rebate or damage. No person shall knowingly, directly or indirectly, by any false statement or representation as to cost or value, or the nature or extent of an injury, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit or deposition, or upon any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate or payment for damage, in connection with or growing out of the transportation of persons or property, or an agreement to transport such persons or property, whether with or without the consent or connivance of a common carrier, nor shall any common carrier knowingly pay or offer to pay any such allow-

ance, rebate or claim for damage. (§ 23, id.; 2299, R. S. '13, rev.)

§ 684. **Long and short haul.** No common carrier shall charge or receive any greater compensation in the aggregate for the transportation of persons or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation as a through rate than the aggregate of the intermediate rates; but this shall not be construed as authorizing any such common carrier to charge or receive as great a compensation for a shorter as for a longer distance or haul.

No telephone or telegraph corporation shall charge or receive any greater compensation in the aggregate for the transmission of any long distance message or conversation for a shorter than for a longer distance over the same line or route in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates or tolls subject to the provisions hereof; but this shall not be construed as authorizing any such corporation to charge and receive as great a compensation for a shorter as for a longer distance. Upon application to the commission, a telephone or telegraph corporation may, in special cases after investigation, be authorized by the commission to charge less for a longer than for a shorter distance service for the transmission of messages or conversations, and the commission may from time to time prescribe the extent to which such corporation may be relieved from the operation and requirements of this section. (§ 24, id.; 2300, R. S. '13, rev.)

§ 685. **Switches and sidetracks.** Every railroad corporation, upon the application of a shipper or receiver or contemplated shipper or receiver of freight, for a connection between the railroad of such railroad corporation and an existing or contemplated private track, or railroad of such person, shall make such connection and provide such switches and tracks as may be necessary and deliver and receive cars

thereover; provided, that such connection is reasonably practicable and can be installed and used without materially increasing the hazard of the operation of the railroad with which such connection is sought, and that the business which may reasonably be expected to be received by such railroad corporation over such connection is sufficient to justify the expense of such connection to such railroad corporation. Under the conditions of the foregoing proviso, every railroad corporation, upon the application of a shipper or receiver or contemplated shipper or receiver of freight, shall construct upon its right-of-way a spur to receive and deliver freight thereby, and shall receive and deliver freight thereby. (§ 25, id.; 2301, R. S. '13, rev.)

§ 686. **Street and interurban railway charges.** No street or interurban railroad shall charge, or receive more than five cents for one continuous ride in the same general direction within the corporate limits of any city or town, except upon a showing before the commission that such greater charge is justified. Every street or interurban railroad shall upon such terms as the commission shall find to be just and reasonable furnish to its passengers transfers entitling them to one continuous trip in the same general direction over and upon the portions of its lines not reached by the originating car. (§ 27, id.; 2303, R. S. '13, rev.)

§ 687. **Reports and statements to commission.** Every public service corporation shall furnish to the commission, in such form and detail as the commission shall prescribe, tabulations, computations, annual reports, monthly or periodical reports of earnings and expenses, and all other information required by it to carry into effect any of the provisions of this article and shall make specific answers to all questions submitted by the commission; if unable to answer any question, it shall give a good and sufficient reason for such failure. Whenever required by the commission, every public service corporation shall deliver to the commission copies of any maps, profiles, contracts, franchises, books, papers and records in its possession, or in any way relating to its property or affecting its business, and also a

complete inventory of all its property in such form as the commission may direct. No information furnished to the commission by a public service corporation, except such matters as are specifically required to be open to public inspection shall be open to public inspection or made public except on order of the commission, or by the commission, or a commissioner in the course of a hearing or proceeding. Any officer or employee of the commission who divulges any such information shall be guilty of a misdemeanor. (§ 28, id.; 2304, R. S. '13, rev.)

§ 688. **Power of regulation; compliance.** The commission is vested with power and jurisdiction to supervise and regulate every public service corporation in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction; and every public service corporation shall comply with every order, decision, rule or regulation made by the commission in any matter relating to or affecting its business as a public service corporation, and shall do everything necessary to secure compliance with and observance of every such order, decision, rule or regulation. (§ § 30-1, id.; 2306-7, R. S. '13, cons. & rev.)

§ 689. **May investigate and fix rates.** Whenever the commission shall find that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded or collected by any public service corporation for any service or product or commodity, or in connection therewith, or that the rules, regulations, practices, or contracts, are unjust, discriminatory or preferential, illegal or insufficient, the commission shall determine and fix the same by order as hereinafter provided. (§ 32, id.; 2308, R. S. '13, rev.)

§ 690. **Regulation of joint rates.** Whenever the commission shall find that the rates, fares or charges in force over two or more common carriers, between any two points in this state, are excessive, or that no satisfactory joint rate, fare, or charge exists between such points, and that the public convenience and necessity demand the establishment of a joint

rate, fare or charge between such points, the commission may order such common carriers to establish a through route and may establish and fix a joint rate, fare or charge which will be reasonable and sufficient, and the terms and conditions under which such through route shall be operated. The commission may order that freight moving between such points shall be carried by the different common carriers, parties to such through route and joint rate, by the nearest and most practicable route and without being transferred from the originating cars. If the common carriers do not agree between them upon the division of the joint rates, fares or charges, the commission shall, after hearing, by supplementary order, establish such division; provided, that where any railroad which is made a party to a through route has itself over its own line an equally satisfactory through route between the termini of the through route established, such railroad may require as its division of the joint rate, fare or charge, its local rate, fare or charge over the portion of its lines comprised in such through route, and the commission may, in its discretion, allow to such railroad corporation more than its local rate, fare or charge, whenever it will be equitable so to do. (§ 33, id.; 2309, R. S. '13, rev.)

§ 691. **Interstate rates.** The commission may investigate all existing or proposed interstate rates, fares, tolls, charges and classifications, and all rules and practices in relation thereto, for or in relation to the transportation of persons or property or the transmission of messages or conversations, where any act in relation thereto shall take place within this state; and when the same are excessive or discriminatory or in violation of the acts of congress or in conflict with the orders or regulations of the interstate commerce commission, the commission may apply to the interstate commerce commission or to any court of competent jurisdiction for relief. (§ 34, id.; 2310, R. S. '13, rev.)

§ 692. **Commission may fix rules and methods of service.** Whenever the commission shall find that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, dis-

tribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient and shall fix the same by its order or regulation. The commission shall prescribe regulations for the performance of any service or the furnishing of any commodity and upon proper demand and tender of rates, such public service corporation shall furnish such commodity or render such service within the time and upon the conditions prescribed. (§ 35, id.; 2311, R. S. '13, rev.)

**§ 693. May order additional facilities.** Whenever the commission finds that additions or improvements to, or changes in, the existing plant or physical properties of any public service corporation ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, the commission shall make and serve an order directing that such changes be made or such structure be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any such changes require joint action by two or more public service corporations, the commission shall notify the said corporations thereof and that the same shall be made at their joint cost, whereupon the said corporations shall have such reasonable time as the commission may grant within which to agree upon the division of cost. If at the expiration of such time such corporations fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of same, the commission may make an order fixing the proportion of such cost or expense to be borne by each corporation, and the manner of payment. (§ 36, id.; 2312, R. S. '13, rev.)

**§ 694. May order better service by railroad and street car companies.** Whenever the commission shall find that any railroad or street railroad does not run a sufficient number of trains or cars, or possess or operate suffi-

cient motive power, reasonably to accommodate the traffic, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places, or does not run any train or cars upon a reasonable time schedule for the run, the commission may make any order that it may determine to be reasonably necessary to accommodate and transport the traffic, passengers or freight, transported or offered for transportation. (§ 37, id.; 2313, R. S. '13, rev.)

§ 695. **May order physical connections between railway companies.** Whenever the commission shall find that the public convenience and necessity would be subserved by having connections made between the tracks of any two or more railroad corporations, so that cars may readily be transferred from one to the other, the commission may order any two or more such corporations owning, or operating tracks of the same gauge to make physical connections at any and all crossings, and at all points where a railroad or street railroad shall begin to terminate or run near to any other railroad or street railroad. After the necessary franchise or permit has been secured from the city, county, or town, the commission may likewise order such physical connection, within such city, county, or town, between two or more railroads which enter the limits of the same. The commission shall by order direct whether the expense thereof shall be borne jointly or otherwise. (§ 38, id.; 2314, R. S. '13, rev.)

§ 696. **May order construction of spur tracks.** Whenever the commission shall find that application has been made by any person to a railroad corporation for a connection or spur; that the corporation has refused and that the applicant is entitled thereto, the commission shall make an order therefor and for the maintenance and use of the same, upon terms which the commission may prescribe. When so provided, any person shall be entitled to connect with the private track, thereby connected with the railroad and to use the same or to use the spur upon payment to the party

incurring the primary expense of such private track, or spur, of a reasonable proportion of the cost thereof to be determined by the commission after notice and hearing; provided, such connection and use can be made without unreasonable interference with the rights of the party incurring such primary expense. The commission may likewise require one railroad corporation to switch to private spurs and industrial tracks upon its own railroad the cars of a connecting railroad corporation and to prescribe the terms and compensation for such service. (§ 39, id.; 2315, R. S. '13, rev.)

§ 697. **May order connections and joint rates between telephone or telegraph companies.** Whenever the commission shall find that a physical connection can reasonably be made between the lines of two or more telephone or telegraph corporations to form a continuous line of communication, and that public convenience and necessity will be subserved thereby, or shall find that two or more telegraph or telephone corporations have failed to establish joint rates, tolls or charges for service by or over their said lines, and that such ought to be established, the commission may require that such connection and joint charges 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 may require that conversations be transmitted and messages transferred over such connections under such rules and regulations as the commission may establish. If such telephone or telegraph corporations do not agree upon the division of the cost of such physical connection, or the divisions of the joint charges established, the commission shall after further hearing, establish such division by supplemental order. (§ 40, id.; 2316, R. S. '13, rev.)

§ 698. **May order joint use of facilities.** Whenever the commission shall find that public convenience and necessity require the use by one public service corporation of the equipment, or any part thereof, on, over, or under any street or highway, and belonging to another public service corporation, and that such use will not result in irreparable injury to the

other users thereof or in any substantial detriment to the service, and that such public service corporations have failed to agree upon such use or the terms and conditions for the same, the commission may by order direct that such use be permitted and prescribe a reasonable compensation and terms for the joint use. If such use be directed, the corporation to whom the use is permitted, shall be liable to the owner or other users of such equipment for such damage as may result therefrom to the property of such owner or other users thereof. (§ 41, *id.*; 2317, R. S. '13, rev.)

§ 699. **May order safety devices.** The commission may by order, rule or regulation, require every public service corporation to maintain and operate its line, plant, system, equipment, and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers and the public, and to this end may prescribe the installation, use, maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signalling, establish uniform or other standards of equipment, and require the performance of any other act which health or safety may demand. (§ 42, Ch. 90, L. 12; 2318, R. S. '13, rev.)

§ 700. **Crossings, powers of commission over.** No public highway or street shall hereafter be constructed across the track of any railroad at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad at grade, without having first secured the permission of the commission; provided, that this shall not apply to the replacement of lawfully existing tracks. The commission may refuse its permission or grant it upon such terms and conditions as it may prescribe. The commission shall have the exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each of such crossings and to alter or abolish any such crossings; to prescribe the terms upon which and the proportions in which

the expense of the alteration or abolition of such crossing shall be divided between the parties affected or in interest. Whenever the commission shall find that public convenience and necessity demands the establishment, creation or construction of a crossing of a street or highway over, under or upon the tracks or lines of any public service corporation, the commission may by order require the establishment, construction or creation of such crossing, and said crossing shall thereupon become a public crossing. The commission shall have the exclusive power to prescribe the character of crossings to be constructed and maintained by railroads where their lines cross public roads or town streets. (§ 43, id.; 2319, R. S. '13; Ch. 118, L. '19, cons. & rev.)

**§ 701. Commission shall investigate accidents.** The commission shall investigate the cause of all accidents upon the property of any public service corporation, or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to persons or property, and may make such order or recommendation with respect thereto, as seems just and reasonable. Every public service corporation shall file with the commission a report of each accident so occurring, but such report, order and recommendation, shall not be admitted as evidence in any action for damages arising out of said accident. (§ 44, id.; 2320, R. S. '13, rev.)

**§ 702. May regulate freight, express and baggage service and demurrage charges.** The commission may provide by rules and regulations the time within which all railroad corporations shall furnish, after demand therefor, all cars, equipment and facilities necessary for the handling of freight in car load and less than car load lots, the time within which consignors or persons ordering cars shall load the same, and the time within which consignees or persons to whom freight may be consigned shall unload and discharge the same and receive freight from the freight rooms, and provide penalties for the failure to conform to such rules. Charges for demurrage shall be uniform so that the same penalty shall be paid by both shipper, consignee and railroad for an

equal number of cars for each day for which demurrage is charged. The commission may provide the time within which express packages shall be received, gathered, transported and delivered at destination, and the limits within which express packages shall be gathered and distributed, and telegraph and telephone messages delivered, without extra charge. The commission may provide the time within which baggage shall be received, transported, delivered and stored. The commission may enforce reasonable regulations for the weighing of cars and freight offered for shipment over any line of railroad, and test the weights made by any railroad and scales used in weighing freight or cars. (§ 45, id.; 2321, R. S. '13, rev.)

§ 703. May prescribe standards of service by electrical, gas and water companies; right to test appliances. The commission may ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished and followed by all electrical, gas and water corporations; ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any such public service corporation; prescribe reasonable regulations for the examination and testing of such product, commodity or service and for the measurement thereof; establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements; and provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any such corporation. The commission, its officers and employees, may enter upon any premises occupied by any public service corporation, for the purpose of making the examinations and tests and exercising any of the other powers provided for in this article, and may set up and use on such premises any apparatus and appliances necessary therefor. The agents and employees of such public service corporation shall have the right to be present at the making of such examinations and tests. Any consumer

or user of any product, commodity or service of a public service corporation may have any appliance used in the measurement thereof tested upon paying the fees fixed by the commission, the fee to be paid by the consumer or user at the time of his request, but to be paid by the corporation and repaid to the consumer or user if the appliance is found defective or incorrect to the disadvantage of the consumer or user. (§ 46, id.; 2322, R. S. '13, rev.)

§ 704. **May establish system of accounting.** The commission may establish a system of accounts to be kept by public service corporations, or classify said corporations and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept. It may prescribe the forms of accounts, records and memoranda to be kept, including the records of the movement of traffic as well as the receipts and expenditures of money, and any other records necessary to carry out any of the provisions of this article. The same shall not be inconsistent, in the case of corporations subject to the regulations of the interstate commerce commission, with the systems and forms established for such corporations by said commission, but the commission may prescribe forms of accounts, records and memoranda covering information in addition to that required by the interstate commerce commission. The commission may prescribe the accounts in which particular outlays and receipts shall be entered, charged or credited. It shall be unlawful for any such corporation to keep any accounts, records or memoranda other than those prescribed by the commission, or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records or memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed. (§ 48, id.; 2324, R. S. '13, rev.)

§ 705. **May order depreciation account to be carried.** The commission may, after hearing, require public service corporations to carry a proper and adequate depreciation account in accordance with such regulations and forms of account as it may prescribe. It may ascertain and fix the proper and adequate

rates of depreciation of the several classes of property for each, and each corporation shall conform its depreciation accounts to the rates so ascertained and fixed, and shall set aside the money so provided for out of earnings and carry the same in a depreciation fund and expend such fund, and the income therefrom, only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the commission may prescribe. (§ 49, id.; 2325, R. S. '13, rev.)

§ 706. **Certificate of necessity required before construction by street railroads and other utilities.** No street railroad, gas, electrical, telephone or water corporation shall begin the construction of a street railroad, or of a line, or plant or system, or of any extension thereof, without first having obtained from the commission a certificate of public convenience and necessity. This section shall not require any such corporation to secure such certificate for an extension within any city, county or town within which it shall have theretofore lawfully commenced operations, or for an extension into territory either within or without a city, county or town, contiguous to its street railroad or line, plant, or system, and not theretofore served by a public service corporation of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business; provided, that if any public service corporation, in constructing or extending its line, plant or system, shall interfere or be about to interfere with the operation of the line, plant or system of any other public service corporation, already constructed, the commission, on complaint of the corporation claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants or systems affected as to it may seem just and reasonable.

No such corporation shall exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which

has been suspended for more than one year, without first having obtained from the commission a certificate of public convenience and necessity; provided, that when the commission shall find, after hearing, that a corporation has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such corporation may proceed under such rules and regulations as the commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege; and provided, further, that this section shall not validate any right or privilege now invalid or hereafter becoming invalid under any law of this state.

Before any certificate may issue a certified copy of its articles of incorporation, if the applicant be a corporation, shall be filed in the office of the commission. Every applicant for a certificate shall submit to the commission such evidence as required by the commission to show that such applicant has received the required consent, franchise or permit of the proper county, city and county, municipal or other public authority. The commission may, after hearing, issue said certificate, or refuse to issue the same, or issue it for the construction of a portion only of the contemplated street railroad, line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require. If a public service corporation desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not yet been granted to it, such corporation may apply to the commission for an order preliminary to the issue of the certificate; the commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe, issue the desired certificate, upon such terms and conditions as it may designate, after the corporation has

obtained the contemplated franchise or permit; upon presentation to the commission of evidence that such franchise or permit has been secured by such corporation, the commission shall thereupon issue such certificate. (§ 50, id.; 2326, R. S. '13, rev.)

§ 707. Alienation or mortgage of property by public service corporations; stock in other service corporations. No railroad, street railroad, pipe line, gas, electrical, telephone, telegraph, or water corporation shall sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant, or system, necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder; nor merge the same or any part thereof, with any other public service corporation, without first having secured from the commission an order authorizing it so to do. Every such disposition, encumbrance or merger made other than in accordance with the order of the commission authorizing the same shall be void. Such approval or permit of the commission, under this section, shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture. Nothing contained herein shall prevent the sale, lease or other disposition by any such corporation 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 corporation shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

No public service corporation shall purchase or acquire, take or hold, any part of the capital stock of any other public service corporation, organized or existing under or by virtue of the laws of this state, without a permit from the commission. Every assignment, transfer, contract, or agreement for assignment or transfer, of any stock in violation of the provisions of this section shall be void, and such transfer shall not be made on the books of any public

service corporation. (§ 51, id.; 2327, R. S. '13, rev.)

§ 708. Issuance of stocks and bonds; sale of same; penalties for non-compliance, and for breach of orders of commission. The power of public service corporations to issue stocks and stock certificates, bonds, notes and other evidences of indebtedness, and to create liens on their property situated within this state, is a special privilege, the right of supervision, restriction and control of which is vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe.

A public service corporation may issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for the following purposes and no other: For the acquisition of property; the construction, completion, extension or improvement of its facilities; the improvement or maintenance of its service; the discharge or lawful refunding of its obligations; the reimbursement of moneys actually expended from income or from any other moneys in the treasury not secured by or obtained from the issue of stocks or stock certificates, or bonds, notes or other evidence of indebtedness of such public service corporation, within five years next prior to the filing of an application with the commission for the required authorization; or for any of the aforesaid purposes, except maintenance of service and replacements, if the applicant has kept its accounts and vouchers for expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which such expenditure was made. Such corporation shall first secure from the commission an order authorizing such issue, and stating the amount thereof and the purpose or purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property or labor to be procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order, and that, except as otherwise permitted in the order in the case of

bonds, notes or other evidences of indebtedness, such purpose or purposes are not, in whole or in part, reasonably chargeable to operative expenses or to income. The commission shall hold a hearing, and may make such inquiry or investigation, and examine such witnesses, books, papers and documents, and require the filing of such data as it may deem of assistance. The commission may grant or refuse permission for the issue of such evidences of indebtedness or grant the same in a lesser amount, and may attach to its permission such conditions as it deems reasonable and necessary. The commission may authorize such issues less than, equivalent to or greater than the authorized or subscribed capital stock of the corporation, and the provisions of the general laws of the state, with reference thereto, have no application to public service corporations. A public service corporation shall not, without the consent of the commission, apply the issue of any stock or stock certificate, or bond, note or other evidence of indebtedness, or any part thereof, or any proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order. A public service corporation may issue notes, for proper purposes and not in violation of law payable at periods of not more than twelve months after the date of issuance of the same, without the consent of the commission, but no such note shall, in whole or in part, be refunded by any issue of stocks or stock certificates, or of bonds, or notes or any other evidence of indebtedness, without the consent of the commission.

The commission may not authorize the capitalization of the corporate franchise, or of any franchise or permit whatsoever, or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of taxes or annual charges) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public service corporation

issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger. The commission may require public service corporations to account for the disposition of the proceeds of all sales of stocks and stock certificates, and bonds, notes and other evidences of indebtedness, in such form and detail as it may deem advisable, and may establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose specified in its order.

All stock and every stock certificate, and every bond, note or other evidence of indebtedness, of a public service corporation, issued without a valid order of the commission authorizing the same, or if issued with the authorization of the commission, but not conforming to the order of authorization of the commission, shall be void; but no failure in any other respect to comply with the terms or conditions of the order of authorization of the commission shall render the same void, except as to a person taking the same otherwise than in good faith and for value and without actual notice.

Every public service corporation which, directly or indirectly, issues or causes to be issued any such evidences of indebtedness, in non-conformity with the order of the commission authorizing the same, or contrary to law, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose specified in the commission's order, or to any purpose specified in the order in excess of the amount in said order authorized for such purpose, is subject to a penalty of not less than five hundred dollars nor more than twenty thousand dollars for each offense. Every person who knowingly authorizes, directs, aids in, issues or executes any such evidences of indebtedness, in non-conformity with the order of the commission authorizing the same, or contrary to law; or who, in any proceeding before the commission, knowingly makes any false statement or representation or with knowledge of its falsity files or causes to be filed with the commission any false statement or representation, which may tend to influence the commission to make an order authorizing the issue of any such

evidences of indebtedness, or which results in procuring from the commission the making of any such order; or who, with knowledge that any false statement or representation was made to the commission in any proceeding, tending in any way to influence the commission to make such order, issues, or executes or negotiates, or causes to be issued, executed or negotiated any such stock or stock certificate, or bond, note or other evidence of indebtedness; or who, directly or indirectly, knowingly applies, or causes or assists to be applied the proceeds or any part thereof, from the sale of any such evidences of indebtedness, to any purpose not specified in the commission's order or to any purpose in excess of the amount authorized for such purpose; or who, with knowledge that any such evidence of indebtedness, has been issued or executed in violation of any of the provisions of this article, negotiates, or causes the same to be negotiated, shall be guilty of a felony, and shall be imprisoned for not less than two years and not more than ten years. (§ 52, id.; 2328, R. S. '13, rev.)

§ 709. **Hearings and investigations before commission; rules of practice.** All hearings and investigations before the commission or any commissioner shall be governed by this article, and by rules of practice and procedure to be adopted by the commission. Neither the commission nor any commissioner shall be bound by the technical rules of evidence, and no informality in any proceeding, or in the manner of taking testimony, before the commission or any commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission. (§ 53, id.; 2329, R. S. '13, rev.)

§ 710. **Compelling attendance and testimony of witnesses; fees; depositions; self-incrimination and perjury.** Each commissioner may administer oaths and certify to all official acts. Each witness who shall appear, by order of the commission or a commissioner, shall receive for his attendance the same fees allowed by law to a witness in civil actions, to be paid by the party at whose request such witness is subpoenaed. The fees of a witness subpoenaed

by the commission, shall be paid from the fund appropriated for the use of the commission as other expenses of the commission are paid. Any witness subpoenaed, except one subpoenaed by the commission, may, at the time of service, demand his mileage and one day's attendance, and if not paid need not attend. A witness furnished with free transportation shall not receive mileage. The commission or a commissioner, or any party, may take depositions as in a court of record. No person shall be excused from testifying or from producing any books or papers in any investigation or hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, or book or paper required of him, may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty for or on account of any act or thing concerning which he shall, under oath, have testified or produced documentary evidence thereof, except for perjury committed by him in his testimony. Nothing herein contained shall be construed as in any manner giving to any public service corporation immunity of any kind. (§ 55, id.; 2331, R. S. '13, rev.)

§ 711. **Orders to be recorded; records as evidence.** Copies of all official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary under the official seal of the commission to be true copies of the originals, shall be evidence in a like manner as the originals. Every order, authorization or certificate issued or approved by the commission under this article shall be in writing and entered on the records of the commission. Any such order, authorization or certificate, or a copy thereof, or a copy of the record thereof certified by a commissioner or by the secretary under the official seal of the commission to be a true copy of the original, may be recorded in the office of the recorder of any county in which is located the principal place of business of the corporation affected thereby, or in which is situated any of its property. A certificate under the seal of the commission that any such order, authorization or certifi-

cate has not been modified, stayed, suspended or revoked may also be likewise recorded. (§ 56, id.; 2332, R. S. '13, rev.)

**§ 712. Examination of accounts of corporations by commission.** The commission, each commissioner and person employed by the commission may, at any and all times, inspect the accounts, books, papers and documents of any public service corporation, and any of said persons who are authorized to administer oaths may examine under oath, any officer, agent or employee of such public service corporation in relation to the business and affairs of said corporation. Any person other than a commissioner or an officer of the commission demanding such inspection shall produce under the hand and seal of the commission his authority to make such inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission. (§ 58, id.; 2334, R. S. '13, rev.)

**§ 713. Production of records kept without state.** The commission may require, by order served on any public service corporation in the manner provided herein for the service of orders, the production within this state, at such time and place as it may designate, of any books, accounts, papers or records kept in any office or place without this state, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the commission or under its direction. (§ 59, id.; 2335, R. S. '13.)

**§ 714. Complaints; who may make; proceedings when filed.** Complaint may be made by the commission of its own motion, or by any person or association of persons by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission; provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless the same be signed by the mayor or a majority of the legislative body of the city

or town, if any, within which the alleged violation occurred, or by not less than twenty-five consumers or purchasers or prospective consumers or purchasers, of such service. All matters upon which complaint may be founded may be joined in one hearing, and a complaint is not defective for misjoinder or non-joinder of parties or causes, either before the commission, or on review by the courts. The commission need not dismiss a complaint because of the absence of direct damage to the complainant. Upon the filing of the complaint, the commission shall fix the time when and a place where a hearing will be had upon the complaint and shall serve notice thereof, with a copy of the complaint, upon the party complained of, not less than ten days before the time set for such hearing, unless the commission shall find that the public necessity requires that such hearing be held at an earlier date. The service may be made as a summons in a civil action is required to be served, or may be made in any manner giving actual notice; and no irregularity in the service is an excuse or a defense. (§ 60, id.; 2336, R. S. '13, rev.)

**§ 715. Hearing and decision; time of compliance.** The complainant and the party complained of, and such persons as the commission may allow to intervene, shall be heard in person or by attorney, and may introduce evidence at the hearing. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing, the commission shall make and file its order, containing its decision. A copy of such order, certified under the seal of the commission, shall be served upon the person complained of, or his attorney. Said order shall take effect and become operative twenty days after the service thereof, except as otherwise provided, and shall continue in force either for the period designated therein, or until changed or abrogated by the commission. The commission may on application and for good cause shown, extend the time for compliance fixed in its order. The proceedings on any formal hearing, and all testimony, shall be stenographically reported by a shorthand reporter appointed by the commission. (§ 61, id.; 2337, R. S. '13, rev.)

**§ 716. Corporation may make complaint.** Any public service corporation shall have a right to complain, and the same procedure shall be followed as in other cases, except that the complaint may be heard *ex parte* by the commission, or may be served upon any parties designated by the commission. (§ 62, *id.*; 2338, R. S. '13, *rev.*)

**§ 717. Rates not to be raised without order of commission; hearing on rate charges.** No public service corporation shall raise any rate, fare, toll, rental, or charge or so alter any classification, contract, practice, rule or regulation so as to result in any increase whatever, except upon a showing before the commission and a finding by the commission that such increase is justified. Whenever there shall be filed with the commission any schedule stating an individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, not increasing or resulting in an increase, the commission may, without answer or other pleadings by the interested corporation, but upon reasonable notice, enter upon a hearing concerning the propriety of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, and pending the hearing and the decision thereon, the same shall not go into effect; provided, that the period of suspension thereof shall not extend one hundred and twenty days beyond the time when the same would otherwise go into effect, unless the commission extends the period of suspension for a further period not exceeding six months. On such hearing the commission shall establish the rates, fare, tolls, rentals, charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or establish others in lieu thereof, which it shall find to be just and reasonable; and if not suspended shall, on the expiration of thirty days from the time of filing the same with the commission, or in such lesser time as the commission may grant, go into effect and be established, subject to the power of the commission, as herein provided, to alter or modify the same. (§ 63, *id.*; 2339, R. S. '13, *rev.*)

§ 718. **May rescind or amend order; orders not subject to collateral attack.** The commission may at any time, upon notice to the corporation affected, and after opportunity to be heard as upon a complaint, rescind, alter or amend any order or decision made by it, and when served upon the corporation affected, has the same effect as an original order or decision. In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive. (§ § 64-5, id.; 2340-1, R. S. '13, rev.)

§ 719. **Rehearing; application for; order not stayed by.** After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder, bond holder, or other party pecuniarily interested in the corporation affected, or the attorney general on behalf of the state, may apply for a rehearing of any matter determined in said action or proceeding and specified in the application for rehearing, and the commission may grant such rehearing, if in its judgment sufficient reason therefor appears. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person, or the state, unless such corporation or person, or the state, shall have made, before the effective date of said order or decision, application to the commission for a rehearing. Such application shall set forth specifically the grounds on which it is based, and no person, nor the state, shall in any court urge or rely on any ground not set forth in said application. An application for a rehearing made ten days or more before the effective date of the order of which a rehearing is sought, shall be granted or denied before such effective date, or the order shall stand suspended until such application is granted or denied; if made within less than ten days before the effective date, and not granted within twenty days, it shall be deemed denied, unless the effective date of the order is, within said twenty days, extended for the period of the pendency of the application. If an application for a rehearing be granted without a suspension of the order involved, the commission shall forthwith hear the matter with all dispatch, and determine the same

within twenty days after final submission, and if such determination is not made within said time, the application shall be deemed denied. An application for rehearing shall not excuse any person from complying with and obeying any order or decision, or any requirements of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission may by order direct. If, after such rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission finds that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify the same, and such order or decision has the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision, unless so ordered by the commission. (§ 66, id.; 2342, R. S. '13, rev.)

§ 720. Action to set aside order; time for filing; hearing; jurisdiction of courts. Any party in interest, or the attorney general on behalf of the state, being dissatisfied with any order or decision of the commission, may within thirty days after a rehearing is denied or granted, and not afterwards, commence an action in the superior court of the county in which the commission has its domicile, against the commission as defendant, to vacate and set aside any such order or decision on the ground that the valuation, rate, joint rate, toll, fare, charge or finding, rule or regulation, classification or schedule, practice, demand, requirement, act or service fixed in such order or decision is unlawful, or that any regulation, practice, act or service fixed in such order is unreasonable. The answer of the commission shall be served and filed within twenty days after the service of the complaint, whereupon said action shall be at issue, and stand ready for trial upon ten days' notice to either party, and be tried and determined as other civil actions except as herein provided.

If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance. The trial shall conform, as near as may and except as herein otherwise prescribed, to other trials in civil actions. Judgment shall be rendered affirming, modifying, or setting aside such original or amended order. Either party to said action, or the attorney general on behalf of the state, within thirty days after the rendition of the judgment of the superior court, may appeal to the supreme court. In all trials, actions and proceedings the burden of proof shall be upon the party adverse to the commission or seeking to vacate or set aside any determination or order of the commission to show by clear and satisfactory evidence that the same is unreasonable or unlawful. Except as herein provided, no court of this state shall have jurisdiction to enjoin, restrain, suspend, delay or review any order or decision of the commission, or to enjoin, restrain or interfere with the commission in the performance of its official duties, and the rules, regulations, orders or decrees fixed by the commission shall remain in force pending the decision of the courts; provided, that the writ of mandamus shall lie from the supreme court to the commission in all proper cases. (§ 67, id.; 2343, R. S. '13, rev.)

§ 721. **Precedence of actions to which commission party.** All actions and proceedings to which the commission or the people of the state may be parties, or in which the attorney general has been allowed to intervene, and in which any question arises under this article, or under or concerning any order or decision of the commission, shall be preferred and shall be heard and determined in preference to all other civil business except election causes. (§ 69, id.; 2345, R. S. '13, rev.)

§ 722. **Hearings to ascertain valuation.** For the purpose of ascertaining the matters and things concerning the valuation or re-valuation of the property of public service cor-

porations, the commission may cause hearings to be held at such time or place as it may designate. Before any hearing or supplemental or further hearing is had the commission shall give the corporation affected thereby at least thirty days' written notice, specifying the time and place of such hearing, but this shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to or from inquiring into such matters in any other investigation or hearing. All corporations affected shall be heard and may introduce evidence at such hearing. The commission may receive evidence from other sources of information. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission. The commission shall make and file its finding of facts in writing upon all matters concerning which evidence has been introduced, which in its judgment bears upon the value of the property. The original or supplemental findings, so made and filed, when properly certified under seal, shall be admissible in evidence in any action, proceeding or hearing before the commission or any court, in which the commission, the state or any officer, department or institution thereof, or any county, city, municipality or other body politic and the corporation affected, may be interested, whether arising under the provision of this article or otherwise; such findings, when introduced in any action or proceeding arising under this article, shall be conclusive evidence of the facts therein stated as of the dates therein stated under conditions then existing, and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined. Findings made at supplemental hearings or investigations shall be considered in connection with and as a part of the original findings except in so far as such supplemental findings shall change or modify the findings made at the original hearing or investigation. (§ 70, *id.*; 2346, R. S. '13, rev.)

§ 723. **Reparation of overcharge; action for recovery.** When complaint has been made to the commission concerning any rate, fare, toll, rental or charge made by any public

service corporation, and the commission has found, after investigation, that the corporation has made an excessive or discriminatory charge the commission may order that the corporation make due reparation to the complainant with interest at the legal rate from the date of collection; provided, no discrimination will result from such reparation. If the corporation does not comply with the order for the payment of reparation within the time specified in such order, an action may be brought to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the action to enforce the order shall be brought within one year from the date of the order of the commission. The remedy given in this section is cumulative and in addition to any other remedy provided for the failure of a public service corporation to obey an order or decision of the commission. (§ 71, id.; 2347, R. S. '13, rev.)

§ 724. **Duty of commission and attorney general to enforce laws.** It is the duty of the commission to see that the laws affecting public service corporations, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected, and to this end it may sue in the name of the state. 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 article and to institute and prosecute actions or proceedings for the enforcement of the provisions of the constitution and statutes of this state affecting public service corporations and for the punishment of all violations thereof. (§ 72, id.; 2348, R. S. '13, rev.)

§ 725. **Liability of corporations to party damaged.** If any public service corporation shall do, or permit to be done, any thing forbidden or declared to be unlawful, or shall omit to do any thing required to be done, either by the constitution, laws or orders of the commis-

sion, such corporation shall be liable to the persons affected thereby for all loss, damages or injury caused thereby or resulting therefrom, and if the court shall find that the act or omission was wilful, the court may also award exemplary damages. A recovery under this section shall not in any manner affect a recovery by the state of the penalties in this article provided, or the exercise by the commission of its power to punish for contempt. (§ 73, id.; 2349, R. S. '13, rev.)

§ 726. **Rights and penalties to be cumulative.** This article shall not release or waive any right of action by the state, the commission, or any person for any right, penalty or forfeiture which may arise or accrue under any law of this state. All penalties accruing shall be cumulative of each other, and an action for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public service corporation, or any officer, or employee thereof, or any other person, or be a bar to the exercise by the commission of its power to punish for contempt. (§ 74, id.; 2350, R. S. '13, rev.)

§ 727. **Commission may order action to enjoin violations of law.** Whenever the commission shall be of the opinion that any public service corporation is failing or about to fail to do anything required of it by law, or by any order or requirement of the commission, or is doing or about to do, or permitting or about to permit anything to be done, contrary to law or to any order or requirement of the commission, it shall direct the attorney general of the state to commence a proceeding in the superior court in and for the county in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business or an agent for any purpose, or in which the commission has its domicile, in the name of the state of Arizona, to have such violations or threatened violations stopped and prevented, either by mandamus or injunction, and the attorney general shall thereupon begin such action or proceeding. The court shall thereupon specify a time, not exceeding twenty days after the service of the copy of the peti-

tion or complaint, within which the corporation complained of must answer the petition or complaint, and in the meantime the corporation may be restrained. In case of default in answer, or after answer, the court shall immediately try the action. Such persons as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. (§ 75, id.; 2351, R. S. '13, rev.)

§ 728. **Violations defined, penalties; corporate responsibility.** Any public service corporation which violates or fails to comply with any provision of the constitution or of this article, or which fails or neglects to obey, or comply with any order, rule, or requirement of the commission, in a case in which a penalty has not hereinbefore been provided, is subject to a penalty of not less than one hundred dollars nor more than five thousand dollars for each offense. Every violation is a separate offense, but violations continuing from day to day are but one offense. In enforcing penalties the act or omission of any officer, agent or employee of a public service corporation, acting within the scope of his duties or employment is the act, omission, or failure of such corporation. (§ 76, id.; 2352, R. S. '13, rev.)

§ 729. **Violation by officers, agents and employees; penalty.** Every officer, agent, or employee of any public service corporation, who violates or fails to comply with, or procures, aids, or abets any violation by any public service corporation of any provision of the constitution of this state or of this article, or of any order, rule or requirement, of the commission, is guilty of a misdemeanor, and punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both. (§ 77, id.; 2353, R. S. '13, rev.)

§ 730. **Violations by other than public service corporation.** Every corporation, other than a public service corporation, which violates any provision of this article, or which fails to obey or comply with any order, rule, or requirement of the commission, in a case in which a penalty has not hereinbefore been pro-

vided for such corporation, is subject to a penalty of not less than one hundred dollars nor more than five thousand dollars for each offense. Every person who, either individually, or acting as an officer, agent or employee of a corporation, other than a public service corporation, violates any provision of this article, or fails to obey or comply with any order, rule, or requirement, of the commission, or who procures, aids or abets any public service corporation in its violation or in its failure to obey or comply with any such order, rule, or requirement, in a case in which a penalty has not hereinbefore been provided for such person, is guilty of a misdemeanor, and punishable by a fine not exceeding one thousand dollars or by imprisonment in a county jail not exceeding one year, or by both. (§ § 78-9, id.; 2354-5, R. S. '13, cons. & rev.)

§ 731. **Actions to recover penalties.** Actions to recover penalties under this article shall be brought by the attorney general in the name of the state, in the superior court in and for the county in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business or an agent for any purpose, or in which the person resides, or in the county in which the commission has its domicile. (§ 80, id.; 2356, R. S. '13, rev.)

§ 732. **Punishment for contempt.** In case any corporation or person shall fail to observe or comply with any order, rule, or requirement of the commission or any commissioner, such corporation or person shall be in contempt of the commission and shall, after notice and hearing before the commission, be fined by the commission in a sum not less than one hundred dollars nor more than five thousand dollars, to be recovered as penalties. The remedy prescribed herein shall be cumulative. (§ 81, id.; 2357, R. S. '13, rev.)

§ 733. **Foreign public service corporations; restrictions on.** No foreign corporation, unless authorized to transact a public service business within this state, shall transact within this state any public service business, nor transact within this state any public

service business of a character different from that which it is authorized to transact; nor shall any license, permit or franchise to own, control, operate or manage any public service business be granted or transferred, directly or indirectly, to any foreign corporation not lawfully transacting within this state a public service business of like character; provided, that foreign corporations engaging in commerce with foreign nations, or commerce among the several states of the United States, may transact within this state such commerce and intra-state commerce of a like character. (§ 26, id.; 2302, R. S. '13, rev.)

§ 734. Use of roads and streets by public service corporations; notice; protest. Any person engaged in transportation or transmission business within the state, may construct and operate lines connecting any points within the state and connect at the state boundary with like lines; provided, that within the confines of municipal corporations the use and occupancy of streets shall be under such rights as may be acquired by franchises according to law, and subject to control and regulation by the municipal authorities; and, the use of highways, except state highways, by public utilities not within the confines of any incorporated city or town, shall be regulated by the board of supervisors of the county, by license or franchise. Such board of supervisors in granting such license or franchise, or at any time after the same is granted, may impose such restrictions and limitations as to the use of such public roads as may be deemed best for the public safety or welfare. Every franchise granted hereunder shall include provisions requiring the grantee thereof to bear all expenses, including damage and compensation for any alteration of the direction, surface, grade or alignment of any county road, made for the purpose of such franchise. If the surface of any county highway is used by any grantee for trackage, such franchise shall include reasonable regulations for the maintenance by such grantee of such portion of the highway as may be so used. (§ 1, Ch. 61, L. '12, 1st S. S.; 2361, R. S. '13, rev.)

§ 735. **Board of supervisors to give notice; voters may protest.** The board of supervisors, before granting any of the privileges herein contemplated, shall give public notice of its intention to make such grant, by publishing such notice in some newspaper of general circulation, published within the county, for at least once a week for three weeks prior to the day set for the consideration of such action. If, on or before such date, more than fifty per cent of the qualified electors of such county, shall petition said board of supervisors to deny such privilege, they shall so act, and any privilege granted against such petition shall be void. (§ 2, Ch. 61, L. '12, 1st S. S.; 2362 R. S. '13, rev.)

#### Article 2. Storage of cotton or wool.

§ 3275. **Storage of cotton or wool declared public service; permit required.** Any person dealing in the business of storage of cotton or wool for hire in the state, is a public service corporation and shall be subject to all the terms and provisions hereof; United States bonded warehouses and those operating under the provisions of federal laws excepted. Before engaging in said business, such person shall apply to the corporation commission for a permit to engage in said business, and the commission shall issue a permit to an applicant complying with the terms and conditions hereof. The application shall be on a form prescribed by the commission and shall state the name of the person, the place at which it is proposed to transact business, the amount of the estimated value of cotton or wool to be stored for the succeeding season, a general statement of the nature of the business proposed to be transacted, and be accompanied by a fee of three dollars to the commission. The commission may investigate the administration, and enforce the provisions of this article. (§ § 1-2, 4-5-6, 13, Ch. 79, L. '27, cons. & rev.)

§ 3276. **Bond required for benefit of patrons.** Such person shall also before engaging in the business, have issued and at all times in force in some indemnity or bonding company, a bond, payable to the state of Arizona in a sum equivalent to five per cent of the estimated

value of the cotton or wool in storage during the storage season, which bond shall however not be less than five thousand, nor more than fifty thousand dollars, and which bond shall provide, that successive actions may be maintained thereon by any person who may suffer damage by reason of the loss of any cotton or wool, or injury thereto while in storage and that any person may maintain action on said bond without joining the state; said bond being given to the state. (§ 3, Ch. 79, L. '27, rev.)

§ 3277. **Receipt to be issued and record kept.** Any person receiving cotton or wool for storage, for hire, shall issue a receipt therefor and no receipt shall be issued unless said cotton or wool has been in good faith received by said person, and is under his control at the time of issuing said receipt; nor shall any second receipt for any such cotton or wool be issued while a former receipt for the same, or any part thereof, is outstanding and uncanceled. The receipts shall distinctly state on their face for what they are issued and the distinguishing marks, and the rate of storage per month or season, and shall be negotiable in the same manner as warehouse receipts and with like effect. Such person shall keep a correct record showing the amount of cotton or wool stored, the amount of insurance carried and the number of receipts issued; which record shall be open to the inspection of the commission. (§ § 7-8, 10, Ch. 79, L. '27, cons. & rev.)

§ 3278. **Consent of receipt holder before removal.** No such person shall sell, encumber, ship, transfer, or remove beyond his immediate control, any property for which a receipt has been given without the consent in writing of the person holding such receipt plainly endorsed thereon in ink. (9, Ch. 79, L. '27 rev.)

§ 3279. **Violations; penalty.** Any person who shall fail to comply with any provision of this article, shall be guilty of a misdemeanor, and each day of violation shall constitute a separate offense. (12, Ch. 79, L. '27, rev.)