

1986

# McCune and McCune, et al, v. Mountain Bell Telephone, McCune and McCune, et al, v. Public Service Commission of Utah: Brief of Appellant

Utah Supreme Court

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Floyd A. Jensen; Attorney for Defendant.

George M. McCune; Pro Se .

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IN THE SUPREME COURT

86 0049

OF THE

STATE OF UTAH

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MCCUNE & MCCUNE, et al,

Plaintiffs

Appellants

vs.

MOUNTAIN BELL TELEPHONE,

Defendant

Respondent.

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MCCUNE & MCCUNE, et al,

Plaintiffs

Petitioners

vs.

PUBLIC SERVICE COMMISSION  
OF UTAH,

Respondent.

Case No. 860049

(Category 9)

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BRIEF OF APPELLANT  
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Writ of Review from a Public Service Commission Report and Order  
issued November 15, 1985, and Order Denying Application for  
Rehearing issued December 20, 1985.

Floyd A. Jensen  
250 Bell Plaza, 16th Floor  
Salt Lake City, UT 84111  
Telephone (801) 237-6409  
Attorney for Defendant

George M. ~~MCCUNE~~  
Pro Se  
Suite 2 Intrade North West  
1399 South 700 East  
Salt Lake City, Utah 84105  
Telephone (801) 485-8433

**LIST OF ALL PARTICIPANTS TO THE PROCEEDING**

MCCUNE & MCCUNE  
Box 897  
Centerville, UT 84014  
Plaintiff

GEORGE M. MCCUNE  
Suite 2 Intrade North West  
1399 South 700 East  
Salt Lake City, UT 84105  
Plaintiff

JAMES P. MCCUNE  
1211 East 400 South  
Provo, UT 84601  
Plaintiff

ARLENE C. MCCUNE  
1211 East 400 South  
Provo, UT 84601  
Plaintiff

MOUNTAIN BELL TELEPHONE  
250 Bell Plaza  
Salt Lake City, UT 84111  
Defendant

PUBLIC SERVICE COMMISSION  
OF UTAH  
160 East 300 South  
Salt Lake City, UT 84145

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Floyd A. Jensen  
250 Bell Plaza, 16th Floor  
Salt Lake City, UT 84111  
Telephone (801) 237-6409  
Attorney for Defendant

George M. McCune  
Pro Se  
Suite 2 Intrade North West  
1399 South 700 East  
Salt Lake City, Utah 84105  
Telephone (801) 485-8433

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Defendant

PUBLIC SERVICE COMMISSION  
OF UTAH  
160 East 300 South  
Salt Lake City, UT 84145

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PUBLIC SERVICE COMMISSION	)	
OF UTAH,	)	
	)	
Respondent.	)	

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The Public Service Commission did not act properly, but with passion, bias, and prejudice, insufficient evidence, insufficient findings, disregard of the issues it should have decided, and shirking of its responsibility to review tariffs for lawfulness and constitutionality.

2. The present tariff regarding transfer of bills to other accounts is unlawful under statutory and case law, the PSC improperly avoided construction of the word "customer" in Mountain Bell's tariffs, and the PSC improperly avoided interpretation of the tariffs previously and now in existence regarding transfer of account balances from one phone number to another.

3. The Public Service Commission made a mistake in disregarding the distinctions between legal entities, their rights and benefits, and the necessary due process and equal protection and other constitutional standards; overlooked the unconstitutional nature of the telephone monopoly's tariffs, practices, and procedures pertaining to billing

of one account by transfer to another account and of granting or denying service or credit to public utility customers; and in prescribing fair, reasonable, and proper tariffs regarding transfer of accounts from one telephone number to another.

4. The Public Service Commission has disregarded the distinction between regular commerce in the free marketplace where competition exists and the monopolistic nature of public utilities.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES,  
RULES AND REGULATIONS

Title 54, Chapters 1-8, UCA 1953  
Tariff A2.2.1 of Mountain Bell  
Tariff A2.2.3.2(4) of Mountain Bell in effect July 1984  
Tariff A2.2.3.2(3) of Mountain Bell in effect now  
Tariff A2.3.2, A2.3.3.A, A2.3.3.B  
Article 1, Sections 1, 2, 3, 7, and 11, Utah Constitution  
Article 5, Section 1, Utah Constitution  
Amendment 14, Section 1, U. S. Constitution  
Rule 52, URCP

STATEMENT OF THE CASE

This case involves correct and proper determination by the Public Service Commission of germane issues of a presently stayed Third District Court suit involving causes alleging improper termination of telephone service, negligence, and unlawful and unconstitutional transfer of telephone account balances from a partnership account to personal residence and also sole proprietorship telephone accounts of the partners of the partnership. The Public Service Commission dismissed Plaintiffs' complaint by Report and Order issued November 15, 1985, after a pre-trial conference and subsequent hearing before an Administrative Judge; Plaintiffs filed an Application for Review or Rehearing with the PSC; the PSC denied the application by Order Denying Application for Rehearing dated December 20, 1985; and this Writ of Review was commenced by

### STATEMENT OF THE FACTS

1. On February 11, 1885, Plaintiffs/Appellants commenced a lawsuit against defendant Mountain Bell and certain other separate individuals to among other things recover money damages for unconstitutional acts and omissions including breach of contract and negligence and to declare certain practices and any tariffs allowing them to be unlawful and unconstitutional and to permanently enjoin defendant and the other defendants named in said suit from engaging in said practices against plaintiffs in the future. R250, R250, R250

2. Since filing said suit, defendant submitted law indicating that the Public Service Commission of Utah had primary original jurisdiction to hear and determine matters pertaining to certain allegations raised in the Third District Court suit, petitioners stipulated to a stay of the district court action until the Public Service Commission could decide certain issues over which the PSC had original jurisdiction.

3. On March 19, 1885, the District Court suit was stayed until the PSC could hear issues over which it had jurisdiction.

4. On March 7, 1985, a PSC complaint was filed by petitioners, Case No. 85-049-03. R107

5. On September 3, 1985, a pre-trial conference was held at which the administrative judge declined to hear

whether or not termination of service at a private residence phone number after transfer of a business account to that private residence violated the law and tariffs in existence at the time saying that since service had been restored, the question was moot. R107

6. The administrative judge, however, did say at the pre-trial conference that at the hearing to be held later he would hear the following questions:

The validity of the transfer of the partnership debt to the individual partner business telephone number under the tariff then existing at the time the transfer was initially made and under the tariffs as they are currently in effect.

The justness, reasonableness, and conformity with existing law of the tariffs regarding transfer of accounts as they now exist.

R193-194

7. The administrative judge held a hearing on October 11, 1985, at which he manifested from the start a prejudiced and biased attitude; a lack of interest in the significance of the issues presented; and a expedience is more important than justice disposition. It was very difficult for Plaintiffs even to be allowed to present testimony. R197

7. On November 15, 1985, the PSC issued a Report and Order delineating the administrative judge's analysis report for the commission to review and approve which contained the administrative judge's findings and conclusions. The findings did not reflect any evidence about the cost of administra-

tive hearings or the cost to rate payers to collect unpaid partnership phone bill accounts through regular judicial proceedings, nor did they contain any findings regarding the reasonableness of the tariff now in existence, its justness, constitutionality, or lawfulness regarding transfer of one outstanding phone bill to another phone bill at either a personal residence account or a sole proprietor account. R197-199

8. The administrative judge's findings also failed to address any of the questions of the justness, reasonableness, or conformity with existing law of the transfer tariff in effect at the time of the transfer to the personal residence account of one of the partners or to the sole proprietor account of the other partner during the months of June 1984 and January 1985. R198

9. Indeed, the administrative judge's findings stated inaccurate statements of the evidence as to basic dates.

10. The administrative judge's conclusions commenced by reciting an irrelevant provision of the Public Utilities statute dealing with rates questions.

He then completely avoided the question of "interpreting the transfer tariff" (its lawfulness) and also its justness, reasonableness, etc. and went off on a justification trail creating his logic that even though partnership law requires partnership assets to be exhausted before partner individual assets and rights can be touched, the phone monopoly can refuse service and credit just as a normal merchant can in

a regular competitive market, so they had the right to do so to the partner with the sole proprietor account. R199-203

11. The administrative judge also failed in his conclusions to construe the meaning of "customer" in the phone monopoly's tariff. He then makes statements that rates will be impacted if partnership accounts need be collected from regular judicial small claims actions but no evidence about how many partnership service accounts in a year or other period of time arise where transfer to an individual partner are made or any other testimony or evidence regarding rates. R199-203

12. The Commission next disclosed their prejudice, bias, and passion by irrelevant commentary and remarks wholly misappropo to the objective review of the issues and facts presented at hearing in evidence. R203-204

13. The Commission once again displayed their bias by curtly denying a detailed Application for Rehearing or Review which set forth creditable argument and case law showing the error of the administrative judge's analysis. R228-229

#### SUMMARY OF ARGUMENTS

The administrative judge and commissioner reflected attitudes of bias, prejudice, and passion through the judges actions at the hearing and the written comments of the order. The findings lack attention to relevant facts and the conclusions

lack proper evidence to support their regular rates.

Business telephone accounts can not be transferred to resident accounts under the Utah Case Law. The tariff on transfer needs change. Nor is it right to transfer legal entities bill to another.

Constitutional procedural and equal protection are violated when partnership law is circumvented by the phone company.

The tariffs for advance payments and deposits provide subtle security for one granting of telephone service and public utilities are not regular free enterprise business with regular influence.

## STANDARDS OF REVIEW OF PUBLIC SERVICE COMMISSION ORDERS

At the beginning, it may be helpful to delineate the standards of review established by this honorable court for Writs of Review of Public Service Commission orders:

1. Findings are reviewed to see if they are supported by substantial evidence.
2. Regarding general principles of law - statutory or case - including constitutional questions - the Supreme Court takes no deference to the PSC.
3. The High Court will not defer to even the organic statute unless the PSC, by virtue of the PSC's expertise and experience, is in a superior position to give effect to the regulatory objectives or the provisions of the statute make it clear that the PSC was intended to have broad discretion in construing.<sup>1</sup>

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<sup>1</sup>Big K Corp v PSC, 689 P2d 1349 (Utah 1984); Utah Dept. of Administrative Services v PSC, 658 P2d 601 (Utah 1983).



THE PUBLIC SERVICE COMMISSION DID NOT ACT PROPERLY, BUT WITH PASSION, BIAS, AND PREJUDICE, INSUFFICIENT EVIDENCE, INSUFFICIENT FINDINGS, DISREGARD OF THE ISSUES IT SHOULD HAVE DECIDED, AND SHIRKING OF ITS RESPONSIBILITY TO REVIEW TARIFFS FOR LAWFULNESS AND CONSTITUTIONALITY.

Did the Public Service Commission act with passion and prejudice in their review of the matter?

Administrative tribunals, "must be as above suspicion and reproach as courts themselves."<sup>1</sup>

A prejudiced or biased judge deprives the party adversely affected of due process of law.<sup>2</sup>

Bias and prejudice means a hostile feeling or spirit of ill-will, or undue friendship or favoritism, towards one of the litigants.<sup>3</sup>

Passion means to be swayed by feelings, not consistent with honest intention.<sup>4</sup> It includes fear, hate, love, and joy and violent and intense emotions.<sup>5</sup>

The actions of judges and commissioners and their verbal expressions give view to their attitudes of bias, prejudice,

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<sup>1</sup>Fleck v King Co., 558 P2d 254 (Wash. App. 1977).

<sup>2</sup>Beall v Reidy, 457 P2d 376 (N.M. 1968).

<sup>3</sup>In re Guardianship of Styer, 536 P2d 717 (Ariz. App.).

<sup>4</sup>Town of Clinton v Davis, 177 SW2d 848 (Tennessee).

<sup>5</sup>People v. Garnier, 213 P2d 111 (California).

The deportment of the administrative judge and the irrelevant statements of the commission without basis in the evidence were prejudicial. Personal opinions outside the scope of the proceedings which the judge and commission are mandated by statute to objectively review are within the definitions stated above.

Whether plaintiffs are janitors, President of the United States, doctors, or even PSC commissioners should bear no relevancy, materiality, or competency to the questions before the Commission. But they have let themselves lower their required integrity to the detriment of the justice of the public administration system.

Was there proper evidentiary grounds upon which the Public Service Commission and its administrative judge made its conclusions?

Findings of the commission must be supported by substantial evidence.<sup>1</sup> Is it there? No. The administrative judge and the commission talks about impact on rates and costs of administrative proceedings. But they have no evidence in the record upon which to rave on and on. Decisions of the commission must be based upon evidence adduced at the hearing and cannot be based upon reports and decisions not made a part of the proceedings in chief or by reference.<sup>2</sup>

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<sup>1</sup>Big K Corp v PSC, 689 P2d 1349 (Utah 1984)

<sup>2</sup>Utah Power & Light Co. v. PSC, 152 P2d 542 (Utah, citing earlier Utah cases).

Was there findings on all material issues of the case?

An examination of the record discloses that the plaintiffs presented evidence showing the unreasonableness and unjustness of the tariffs in question, testimony was aduced by the defendant's own employee witness as to the different tariffs in existence at the time of the pertinent transfers of bills and the lack of study of the lawfulness of, the reasonableness of, and the justness of the proposed reversion back to the tariff previously in existence but supposedly "inadvertantly" changed in a general tariff revision in several states where Mountain Bell operates.

However, no findings can be had regarding justness, reasonableness, and lawfulness. No conclusions can likewise be found. The administrative judge and commission completely sidestepped interpretation of the tariffs as to the definition of "customer" and as to the lawfulness of them, particularly in light of a supreme court case of 1978 from this very court, the supreme court of this state, telling both the phone utility Mountain Bell and the Public Service Commission itself what the public policy of this state is regarding the transfer of business sills to personal residence accounts.<sup>1</sup> But the employee of Mountain Bell said he oeever at all even looked at or compared the case law of this state in putting the tariffs together.

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<sup>1</sup>Josephson v Mountain Bell, 576 P2d 850 (Utah 1978).

THE PRESENT TARIFF REGARDING TRANSFER OF BILLS TO OTHER ACCOUNTS IS UNLAWFUL UNDER STATUTORY AND CASE LAW, THE PSC IMPROPERLY AVOIDED CONSTRUCTION OF THE WORD "CUSTOMER" IN MOUNTAIN BELL'S TARIFFS, AND THE PSC IMPROPERLY AVOIDED INTERPRETATION OF THE TARIFFS PREVIOUSLY AND NOW IN EXISTENCE REGARDING TRANSFER OF ACCOUNT BALANCES FROM ONE PHONE NUMBER TO ANOTHER.

Is the present tariff regarding transfer of bills to other accounts unlawful under the statutory and case law of the State of Utah?

Has the Public Service Commission improperly avoided construction of the word "customer" in Mountain Bell's tariffs?

Has the Public Service Commission improperly avoided interpretation of the tariffs then and now in existence and is the tariff on transfer of accounts from one phone number to another presently in existence lawful and constitutional?

What issues should the PSC hear and what issues should be left to the district court to hear regarding plaintiffs' district court complaint and did the administrative judge inappropriately restrict the issues to be heard and then fail to properly address even the issues he said he would decide?

The broad powers of the PSC have just recently been acknowledged again.<sup>1</sup> But from those powers, there are no inherent regulatory powers.<sup>2</sup> The powers all come from that granted to it by the legislature.<sup>3</sup>

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<sup>1</sup>Utah Power & Light v PSC, 24 UAR 24 (December 17, 1985, Utah).

Recently this honorable court has said:

Tortious or contractual liability which does not not call in question the validity of orders of the PSC or trench upon its delegated powers are [by statute and for which the PSC can give appropriate relief] subject to the jurisdiction of the district court.<sup>1</sup>

The question is what "calls in question" in the fact situation of this case?

Also, what are PSC orders? Do they incorporate all tariffs because the PSC ordered the tariff's approval? What is "delegated powers" in this fact situation?

Can the district court go ahead and decide improper disconnection without prior determination of the validity of the tariff by the PSC?

These are all questions which the district court and the parties need enlightenment on from the High Court before the proceedings on the district court level can resume after the decision of the High Court in this matter.

A reading of the PSC and the district court complaints needs to be done and a determination made by the High Court as to what is appropriate for the PSC to hear and what is not. I don't think there is much more law which can be set forth. It is just a matter of what the High Court's opinion is. Please clarify the issues for us for the administrative judge didn't seem to know and the commission seems very foggy also.

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<sup>3</sup>Idaho St. Homebuilders v Wash. Water Power, 690 P2d 350 (Id .984).

<sup>1</sup>Atkin Wright & Miles v Mt. Bell, 709 P2d 230 (Utah 1985).

The commission has been told it must take jurisdiction to supervise and regulate all of the business of public utilities and to do all things necessary or convenient in carrying out the exercise of such power.<sup>1</sup>

This honorable court has said this means that the commission has the responsibility to determine the relative rights and obligations between a utility and the consumer.<sup>2</sup>

The commission in this case must serve in an advisory capacity to the district court. To refuse to exercise its responsibility in such regard for the benefit of the district court when it is mandated to do certain things by the legislature, denies the aggrieved party a remedy by putting him in a catch 22 situation. He can't proceed with the district court proceeding until the PSC decides certain things and the PSC won't rule on interpretation of the tariffs in question nor will they consider the situation of the lawfulness of the tariff because the PSC says it is moot since a terminated phone at a personal residence has been reconnected.

Regarding mootness, our supreme court has said that one need not violate law to test the validity of a statute or rule.<sup>3</sup>

Our supreme court has recently recognized our Utah Constitution's open court privilege to everyone to have their controversies heard. Our state constitution also recognizes

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<sup>1</sup>See 54-4-1 UCA 1953.

<sup>2</sup>North Salt Lake v St. Joseph W. & I. Co., 223 P2d 577 (Utah).

<sup>3</sup>Kesler & Sons Const. Co v Ut. St. Div. Health, 513 P2d 1017 (Ut 1973).

other important rights to enjoy and defend liberties, to protect property, and to protest against wrongs and petition for redress of grievances<sup>1</sup> These rights will be frustrated if the PSC is allowed to sidestep its legislative mandates.

In examining the situation in this case, the PSC and administrative judge completely misunderstood the PSC's function and made mistakes regarding general law.

The PSC must follow established law, however. There is no way of avoiding the law. The PSC has the following legislative mandate to obey:

[The commission shall see] that the provisions of the Constitution and statutes of this state affecting public utilities are enforced and obeyed.<sup>2</sup>

In addition, the statute the PSC and administrative judge should have looked at in the Public Utilities law but didn't states that the commission shall determine just, reasonable, and sufficient calssifications, rules, regulations, practices, and contracts, and shall fix the same by order.<sup>3</sup>

The commission shall also determine and prescribe rules and regulations, which are just, reasonable, proper, and ádequate or sufficient by establishing rules, regulations, practices, services, or methods to be observed, furnished, enforced, and employed.<sup>4</sup>

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<sup>1</sup>Berry v. Beech Aircraft, 25 UAR 30, 32 (Utah 1985); Art. 1, Secs. 1 and 2, Utah Constitution.

<sup>2</sup>See 54-7-21 UCA 1953.

<sup>3</sup>See 54-7-20 UCA 1953.

<sup>4</sup>See 54-4-7 UCA 1953.

It is the duty of the PSC not to take a passive stance in protecting the public interest.<sup>1</sup> And the PSC must give a party a full and fair opportunity to present evidence and contentions on the issues raised and to have adequate considerations and a correct determination of them.<sup>2</sup>

What should the administrative judge and PSC done? They should have looked at the pertinent tariffs, compared them with existing law, and made a determination in accordance with the strict construction mandated by this honorable court as to their lawfulness, justness, reasonableness, and constitutionality along with changing them if they are not.

The standard of construction mandated by Utah law has been stated:

These observations are pertinent: They are filed by the utilities themselves and thus mainly serve their own interests. They should be construed strictly against the utility; and the utility should be required to strictly comply with them; and they must be fair, reasonable, and lawful.<sup>3</sup>

The tariffs which should have been looked at are:

A2.2.1 DEFINITION OF TERMS  
CUSTOMER

A person, firm, corporation, or governmental agency responsible for paying the telephone bills and for complying with the rules and regulations of the Company.

A2.2.3.2(4) PAYMENT OF BILLS [In effect 6-84 to 3-85]

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<sup>1</sup>Big K Corp v PSC, 689 P2d 1349 (Utah 1984).

<sup>2</sup>Armored Motos Serv. v PSC, 464 P2d 582 (Utah 1970)/

<sup>3</sup>Josephson v Mountain Bell, 576 P2d 850, 852 (Utah 1978).



In the event a customer is indebted to the Company for charges and services previously rendered in Utah, or for service under one or more numbers at the same location, and the customer does not pay the charges or satisfy such indebtedness, the Company may charge and bill such indebtedness for a residence account against the same customer's residence service or a business account against the customer's business service.

A2.2.3.2(3) PAYMENT OF BILLS [Replaced above on 3-85]

In the event a customer is indebted to the Company for charges and services rendered at a prior time, of any nature, or for service at more than one number or location, and the customer does not pay the charges or satisfy such indebtedness, the Company may charge and bill such indebtedness against the account of the customer's present service or to the account of either service in the case where more than one number or location is being served.

Mountain Bell claims the tariff in effect in June 1984 and until March 1985 was a mistake and inadvertently placed there. They discovered this difference when things started to get serious with plaintiffs in January 1985 and immediately petitioned the PSC for a routine change of the transfer tariff so it would read as it did prior to Josephson. This is misplaced logic, however, because the wording of the tariff in effect from June 1984 to March 1985 must have been drafted by someone somewhere and it is very interesting to note that it comports perfectly with the holding in Josephson

This Josephson case is the law the PSC should have held up to the replacement tariff placed back in the Mountain Bell books in March 1985. That case held after comparing the different holdings on the matter that the better view adopted by the Utah court would be as follows:

The question is thus squarely presented: Where the customer had paid all current charges on his home phone, was the defendant [Mountain Bell] within its rights to disconnect that phone because charges were not paid on the separate business phone?... [T]he company, as a public utility, has a higher obligation to render service to the public than does the ordinary business.... [A]s one of the conditions to being allowed that privilege [a monopoly in rendering a necessary public service] is that it must render service to all members of the public who so request and pay for it....

The defendant [Mountain Bell] is not without other remedies to collect its charges against the separate business entities conducted by plaintiff John Josephson. But it is our opinion that the defendant should not be permitted to use the pressure of imposing a penalty upon the home and the family by denying them a public service they are entitled to and paying for....

In accordance with what has been said above, we cannot see it as other than a deprivation of the plaintiffs of their rights to cut off their home phone service because charges on the separate business phone were delinquent (See 95 ALR 556, annotation and authorities therein cited supporting that proposition which we believe is the sounder view, but citing some cases contra.)

We therefore agree with plaintiffs' contention that the disconnection of their home phone was wrongful.<sup>1</sup>

Applying the holding above to the two tariffs on transfer, the one previously in existence on June 1984 through to March 1985 restricting transfer of business accounts to residential accounts is right, lawful, and proper; while the present tariff on transfer just does not conform to the precedent law in the State of Utah and should be held unlawful and replaced by the other tariff.

As relates to the application of the transfer tariff to partnership accounts, it is important to remember that not all

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<sup>1</sup>Josephson v Mountain Bell, 5/6 P2d 850, 852-853 (Utah 1978).

general points of law have yet had occasion to be addressed by our Utah courts. But that does not detract from their universality. Such is the case with regards to the law of liquidation of partnerships. There is well established precedent on the subject in many jurisdictions all coming to the same conclusion:

Where the partnership assets are insufficient to meet firm liabilities, the creditors may look to the separate property of any one of the general partners. But the rule that partnership debts may be paid out of individual assets is subject to the modification that the individual assets may be so applied only where there are no firm assets, or where the firm assets have become exhausted.<sup>1</sup>

Also, from the other standard legal encyclopaedia is stated:

Under the general rule as to marshaling partnership and individual assets, as discussed supra Sec. 185, the rule that partnership debts may be paid out of individual assets is subject to the modification that the individual assets may be so applied where, and only where, there are no firm assets or where the firm assets have become exhausted.<sup>2</sup>

The rule also reads:

Each partner has the right to have the partnership property applied to the payment or security of partnership debts in order to relieve him from personal liability.<sup>3</sup>

The Oklahoma courts have articulated well the standard law regarding partnership liability and assets in this fashion:

Every general partner is liable jointly with his co-partners to third persons for all the obligations of the partnership [Oklahoma statute cited] but the partnership is a distinct entity from the individuals

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<sup>1</sup>See 60 Amer. Juris. 2d Partnership 307.

<sup>2</sup>See 68 Corpus Juris 2d Partnership 195b.

<sup>3</sup>See 60 Amer. Juris. 2d Partnership 305.

who compose it. However, partners as such are not directly or personally liable on a debt or liability of the partnership. Their liabilities arise out of their connection with the firm and are traceable only through the firm and must be established by a judgment against the firm. No personal judgment may be entered against a partner as such; his property may be subject to payment of the partnership liabilities when the assets of the partnership are insufficient to pay its obligation. [citations omitted]....

A judgment against a partnership is a necessary precedent to any judgment that would have the effect of subjecting the property of the individual members to payment of partnership obligations. In the case of *Heaton v. Schaeffer*, 34 Okl. 631, 126 P 797, 798, 43 L.R.A N.S., 540, we said, "...the members of a firm are not directly liable upon a debt of the partnership, but their liability arises out of their connection with the firm, and is only traceable through the firm, and must be established by a judgment against the firm."<sup>1</sup>

A judgment on a partnership liability should be against the partnership; in a proper manner the individual property of the member or members served or who appeared and defended in the action against the partnership, thereby waiving service, may be reached for the purpose of satisfying it in the event that the partnership property is insufficient. [citations omitted]. In a suit against a partnership it is error to render a personal or individual judgment against any of the partners even though served.<sup>2</sup>

What does this do in regards to partnership law when a judgment is rendered against a partnership and the judgment creditor desires to go against the individual partners to satisfy the judgment from the individual partner assets?

Our state supreme court held consistent with the above decision and above body of law from the encyclopaedias by holding in Hamner in 1898 just after state status was given in Utah:

Hamner, and two other individuals were associated

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<sup>1</sup>Fowler v Brooks, 146 P2d 304, 307 (Oklahoma 1944).

<sup>2</sup>Ibid. citing cases including 100 A.L.R. 994, 997.

together and doing business by the common name of Clackburn & Co. and the defendant, B. K. Block & Co. sued them by that name, and by that name obtained judgment against the firm....

The firm had a legal existence, and a name by which it was capable of doing business and of being sued, and to that extent had, in law, a separate and distinct existence from natural persons. In law there were four persons: The one was artificial, and with a more limited capacity....

But the judgment binds only the joint property of the natural persons associated together under the common name [citations excluded]. The execution upon the judgment against the firm, so far as it purported to be against the individual property of its members, was absolutely void....

The law required them [the judgment creditors] to know the judgment was not against the owner of the money, the plaintiff in this case [one of the partners] and therefore it could not shield them from the consequences of the unlawful act. [citations excluded].<sup>1</sup>

Taking the multitudenous cases cited in the encyclopaedias and the Oklahoma case of Fowler and especially combining them with the Hamner precedent decision in our own state, they establish the law requiring the exhaustion of partnership assets before other assets can be resorted to or, as was held in Hamner, individual partners are bothered or otherwise served execution or garnishment or the like final remedies.

The present tariff or even the tariff in existence during June 1984 to March 1985 regarding transfer of service does not provide a procedure for complying with the above law in reaching individual partners. It only goes far enough to indicate that a "customer's" account is involved. And when we look at the tariff defining customer we find that entities and individuals are referred to.

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<sup>1</sup>Hamner v B. K. Bloch & Co., 57 P 770 (Utah 1898).

The Josephson case requires us to construe tariffs strictly against the utility. Therefore, there can be no broad connotations as to who the responsible parties are. They must be legal entities - corporations, partnerships, associations, sole proprietorships, and individuals.

Accordingly, unless a broadening tariff is enacted conforming to due process standards detailing an orderly and just procedure to determine exhaustion of partnership assets, the public utility must resort to traditional judicial action against the partnership if first required and then after proper determination of exhaustion of assets is made through supplemental proceedings and the like that the partnership no longer has assets, the courts would allow valid executions and garnishments to issue against the individual property of individual partners.

This is general law and this is the way it should be.

THE PUBLIC SERVICE COMMISSION MADE A MISTAKE IN DISREGARDING THE DISTINCTIONS BETWEEN LEGAL ENTITIES, THEIR RIGHTS AND BENEFITS, AND THE NECESSARY DUE PROCESS AND EQUAL PROTECTION AND OTHER CONSTITUTIONAL STANDARDS; OVERLOOKED THE UNCONSTITUTIONAL NATURE OF THE TELEPHONE MONOPOLY'S TARIFFS, PRACTICES, AND PROCEDURES PERTAINING TO BILLING OF ONE ACCOUNT BY TRANSFER TO ANOTHER ACCOUNT AND OF GRANTING OR DENYING SERVICE OR CREDIT TO PUBLIC UTILITY CUSTOMERS; AND IN PRESCRIBING FAIR, REASONABLE, AND PROPER TARIFFS REGARDING TRANSFER OF ACCOUNTS FROM ONE TELEPHONE NUMBER TO ANOTHER.

Has the Public Service Commission made a mistake in disregarding the distinctions between legal entities, their rights and benefits, and the necessary due process and equal protection and other constitutional standards which apply to users of telephone service?

I think it has. A partnership in Utah has been held to be a separate legal entity distinct from its partners.<sup>1</sup> As such, even the legal entity is entitled to constitutional protection of its rights as certainly due the individuals who are a part of it.

Built and woven into the textile of constitutional law in this state is also the provisions granting all men the inherent and inalienable right to enjoy and defend

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<sup>1</sup>Wall Investment Co. v Garden Gate Distributing, Inc., 593 P2d 552, 544 (Utah 1979) and Hamner v B. K. Bloch & Co., 57 P 770 (Utah 1898).

liberties, protect property, and protest against wrongs, and petition for redress of grievances.<sup>1</sup>

In the arsenal of freedoms is also the guarantee of equal protection and benefit from government<sup>2</sup> and the entitlement of due process of law before being deprived of life, liberty or property.<sup>3</sup>

These freedoms combine with the National freedoms stated in the Amendment 14 of the United States Constitution.

We cannot minimize the importance of constitutional privileges for they are the supreme foundation for government which governs conflicting statutory enactments.<sup>4</sup> The sovereign is the people.<sup>5</sup> As such, state policy is to follow reason to give recognition in the highest possible degree to all rights assigned by all constitutional provisions.<sup>5</sup>

Equal protection and due process standards work to give each individual the full benefits of the law. Thus people who are similarly situated are vested with the power to be treated in a similar fashion and persons who are dissimilarly situated have the privilege of being treated dissimilarly.<sup>6</sup>

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<sup>1</sup>See Article 1, Section 1, Utah Constitution.

<sup>2</sup>See Article 1, Section 2, Utah Constitution.

<sup>3</sup>See Article 1, Section 7, Utah Constitution.

<sup>4</sup>Dean v Rampton, 556 P2d 205 (Utah 1976).

<sup>5</sup>Shelmidine v Jones, 550 P2d 207 (Utah 1976).

<sup>6</sup>State v Bishop, 31 UAR 9 (Utah, March 1986).



Our state High Court has defined due process to mean:

Such exercise of powers of government as the settled maxims of law permit and sanction and under such safeguards for protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs.

When analyzing the transfer of accounts from a partnership to a sole proprietor or from a business to a residence, then, applying the cases cited just before now, it can be pretty clear that not only statutory law is violated when the tariff in question allows any bill to be tacked on to whoever is wanted, but it is also as equally constitutionally improper as a denial of protection of equal nature and also of process in a due (required) way.

I am not treated alike with others in the group if utilities can disregard the requirement of exhausting partnership debt and proving that it is exhausted to a judicial tribunal and merely attach bills, make threats, and exert pressure in that way to collect an alleged balance.

I am not afforded the procedure or process for which I am due if the public utility is the only one who can forget about observing the standards set up for every other person or entity dealing with the separately recognized existence of a partnership. I am entitled and have the constitutional right to be treated the same as every other partner.

In like manner, involving individuals in family residences who have nothing to do with the business or businesses where charges are supposedly unpaid is not equal protection nor due process before their property rights, liberty, and pursuit of happiness are infringed. The tariff which allows transfers

of telephone accounts from a business to a residence or from one business entity to another is not in conformance with constitutional standards.

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<sup>1</sup>Trade Commission v Skaggs Drug Centers, Inc., 446 P2d 958 (Utah 1968).

THE PUBLIC SERVICE COMMISSION HAS DISREGARDED THE DISTINCTION BETWEEN REGULAR COMMERCE IN THE FREE MARKETPLACE WHERE COMPETITION EXISTS AND THE MONOPOLISTIC NATURE OF PUBLIC UTILITIES.

Has the Public Service Commission disregarded the monopolistic distinction and nature of telephone public utilities and telephone public utilities' special privileges in the marketplace which require special responsibilities to be strictly observed in giving and denying service, forwarding calls, referring calls to new numbers, collecting unpaid accounts, utilizing the judicial system for determination of unpaid accounts, utilizing extrajudicial tactics including transfer of accounts of one number to another number, and giving credit without regard to the distinctions between legal entities and the nature of service at the various phone numbers and without regard to the distinctions between businesses competing in the regular free enterprise marketplace where there is competition for similar goods and services?

Regular merchants have competition. It is not just one store which offers or is allowed to offer a certain product or service. The free enterprise system allows a myriad of such stores and businesses to exist and to compete with each other under the regular principles of supply and demand.

Accordingly, though one merchant may for reasons of past credit history or affiliation with credit risks deny service or credit, yet the store will certainly sell its products to the person if he pays cash or gives sufficient security.

The stores are not entitled to coerce the customer to pay a debt which another legal entity owes. The major distinction with the "denial of credit" theory of the administrative judge is that the free marketplace counterbalances one merchant's denial of service or credit. It allows the customer to go to another office supplier and obtain his supplies or to another dry cleaners to get his clothes cleaned. The original store which denies the credit has the economic balancer of "competition" pressing in on him. He must consider that the person he desires to deny credit to because of past affiliation with an entity that owes him money can and most likely will go to his competitor and give his competitor business which he otherwise would have had, thus decreasing the merchant's revenues and increasing his competitor's business.

But that is not the case with public monopolies. They are the only recognized and allowable source of supply for the particular service. For this reason, they sit in a special place in our democratic system of free enterprise. They are not subject to the pressures of competition. They are only subject to the public will manifest by the regulatory agencies set up by the people and their government to make sure that the monopolistic power granted them is not abused, that fundamental rights are not infringed, and that the status quo of customer and vendor are maintained as nearly equal to that of the free marketplace as possible.

Instead of free competition, the public utility is obligated to provide services as long as it is paid for by

the legal entity or individual who receives it. As a counterbalance to the monopoly's lost flexibility over its right to give or deny service or credit is the tariff structure set up for advance payments and deposits.

The phone utility has a tariff allowing it to require advance payments, accept guarantees of payment from good people or businesses, and to pay deposits.<sup>1</sup> This is the way the utilities are allowed to make sure they will get paid.

This state's high court said in Josephson:

[T]he company, as a public utility, has a higher obligation to render service to the public than does the ordinary business....

[A]s one of the conditions to being allowed that privilege [a monopoly in rendering a necessary public service] is that it must render service to all members of the public who so request and pay for it....

The defendant [Mountain Bell] is not without other remedies to collect its charges against the separate business entities conducted by plaintiff....<sup>2</sup>

Public monopolies have been taken out of the mainstream of free enterprise competition. A public utility's purpose is to:

Insure the continuation of service to the public with reasonable efficiency, at fair rates, and without discrimination against particular users or classes of users.<sup>3</sup>

Public utilities, therefore, must live within the scope of the tariffs they have to govern their operation and existence. Deposits and advances are their alternative for denying services or credit.

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<sup>1</sup>A2.3.3.A & B. Tariff of Mountain Bell

<sup>2</sup>Josephson v Mountain Bell, 576 P2d 850 (Utah 1978).

## CONCLUSION

Guidance is sought to define the responsibilities of the PSC in deciding what issues of the district court case so that division of authority is clearly set forth and the PSC knows its duty in the future.

The present "customer" definition of the tariffs is requested to be construed to mean the legal entity contracted with for the services with partnerships determined to be a legal entity.

The present case of Josephson v Mountain Bell is respectfully requested to be clarified and the present tariff for transfer of phone accounts from any account to another be replaced by the tariff in existence from June 1984 to March 1985.

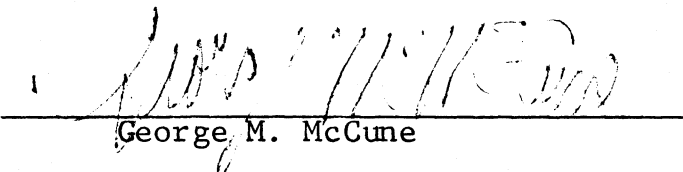
The responsibility of the PSC to interpret the lawfulness, etc. of tariffs when a complaint is filed to do so should be declared.

And the mistaken logic of the administrative judge is requested to be pointed out together with a reiteration of the distinctions of commerce in the regular marketplace and utility monopolies and their responsibilities to provide services with deposits and advance payments tariffs as a safeguard instead of denial of service or credit.

DATED June 4, 1986.

CERTIFICATE OF MAILING

Mailed 4 copies of the foregoing brief to Mr.  
Floyd A. Jensen, Mountain Bell, 250 Bell Plaza, 16th Floor, Box  
30960, Salt Lake City, UT 84125; and the same number of copies  
to the Public Service Commission, 160 East 300 South, Box 55585,  
Salt Lake City, UT 84145, each in securely sealed envelopes, in  
the United States Mail, postage prepaid, on this 4th day of  
September, 1986.

  
George M. McCune

## APPENDIX



**TITLE 54. PUBLIC UTILITIES**

Chapter 1. Public Service Commission.  
 Chapter 2. Definitions.  
 Chapter 3. Duties of Public Utilities.  
 Chapter 4. Authority of Commission Over Public Utilities.  
 Chapter 4a. Division of Public Utilities.  
 Chapter 5. Public Utilities Regulation Fee.  
 Chapter 6. Motor Vehicle Transportation.  
 Chapter 6a. Enforcement Provisions Relating to Carriers.  
 Chapter 7. Hearings, Practice and Procedure.  
 Chapter 8. Underground Conversion of Utilities Law.  
 Chapter 8a. Damage to Underground Utility Facilities.  
 Chapter 8b. Public Telecommunications Utility Law.  
 Chapter 9. Thermal Power Facilities.  
 Chapter 10. Committee of Consumer Services.  
 Chapter 11. Ridesharing.  
 Chapter 12. Small Power Production and Co-generation.

**Chapter 1. Public Service Commission**

54-1-1. Establishment of commission - Functions.  
 54-1-1.5. Appointment of members - Terms - Qualifications - Chairman - Quorum - Removal - Vacancies - Compensation.  
 54-1-1.6. Pro tempore commissioner - Appointment - Qualifications.  
 54-1-2. Powers and duties.  
 54-1-3. Transaction of business by commissioners - Quorum - Effect of vacancy - Proceedings by single commissioner or administrative law judge - Effect of actions.  
 54-1-4. Official seal.  
 54-1-5. Office and office hours.  
 54-1-6. Employment of staff - Status of employees - Administrative law judges.  
 54-1-6.5. Executive staff director - Appointment - Functions.  
 54-1-7. Secretary of commission - Appointment - Functions.  
 54-1-7.5. Adoption of internal organization measures.  
 54-1-8. Expenses of commission.  
 54-1-9. Right to free service from common carriers.  
 54-1-10. Conservation planning - Annual reports.  
 54-1-11. Prohibited interests, relationships and actions by commissioners and employees.  
 54-1-12. Deposit of funds with state treasurer.

**54-1-1. Establishment of commission - Functions.**

The public service commission of Utah is established as an independent agency. The public service commission is charged with discharging the duties and exercising the legislative, adjudicative, and rule-making powers committed to it by law and may sue and be sued in its own name.

1983

**54-1-1.5. Appointment of members - Terms - Qualifications - Chairman - Quorum - Removal - Vacancies - Compensation.**

The commission shall be composed of three members appointed by the governor by and with the consent of the senate. The terms of the members shall be staggered so that one commissioner is appointed for a term of six years on March 1, of each odd-numbered year. Not more than two members of the commission shall belong to the same political party. One member of the commission shall be designated by the governor as chairman and any two commissioners may constitute a quorum. Any member of the commission may be removed for cause by the governor. Vacancies shall be filled for unexpired terms by the governor. Commissioners shall receive compensation as established by law and all actual and necessary expenses

incurred in attending to official business. Each commissioner at the time of appointment and qualification shall be a resident citizen of the United States and of the state of Utah and shall be not less than thirty years of age. Except as provided by law, no commissioner shall hold any other office, either under the government of the United States or of this state or of any municipal corporation within this state.

1983

**54-1-1.6. Pro tempore commissioner - Appointment - Qualifications.**

In the event a commissioner is temporarily disabled or is disqualified from sitting as a commissioner, the governor may appoint a commissioner pro tempore. Any person appointed as a commissioner pro tempore shall possess the qualifications required for public service commissioners in section 54-1-1.5 and have previous utility regulatory experience or other comparable professional experience. Senate confirmation is not required for the appointment of a commissioner pro tempore. The governor may appoint a retired or resigned public service commissioner as a commissioner pro tempore in order to render findings, orders, or decisions on matters which the retired or resigned commissioner had fully heard before the commissioner's retirement or resignation.

1983

**54-1-2. Powers and duties.**

The public service commission shall succeed to all powers and discharge all duties and perform all the functions which by existing and continuing law are conferred upon and required to be discharged or performed by the public utilities commission of Utah. Whenever any existing and continuing law referring to or naming the public utilities commission of Utah or any officer, agent or employee of such commission, the same shall be construed to mean, refer to and name the public service commission of Utah or the corresponding officer, agent or employee of such public service commission; provided, however, that the department of transportation shall have jurisdiction over those safety functions transferred to it by the Department of Transportation Act.

1975

**54-1-3. Transaction of business by commissioners - Quorum - Effect of vacancy - Proceedings by single commissioner or administrative law judge - Effect of actions.**

(1) A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the commission. Any action taken by a majority of the commission shall be deemed the action of the commission. Any vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission so long as a majority of the commission remains. The commission may hold hearings at any time or place within or without the state.

(2) The following proceedings shall be heard by at least a majority of the commissioners:

(a) General rate proceedings to establish rates for public utilities which have annual revenues generated from Utah utility service in excess of \$2-00,000,000; or

(b) Any proceeding which the commission determines involves an issue of significant public interest.

If a commission proceeding requiring a majority

25 commenced and the unavoidable absence of one or more commissioners results in less than a majority being available to continue the proceeding, the proceeding may continue before a single commissioner or specified administrative law judge only upon agreement of the involved public utility and, if it is a party, the division of public utilities.

(3) Any other investigation, inquiry, hearing or proceeding which the commission has power to undertake may be conducted before less than a majority of the commission or before an administrative law judge appointed by the commission.

(4) All proceedings conducted before less than a majority of the commission or before an administrative law judge shall be deemed proceedings of the commission and the findings, orders, and decisions made by less than a majority of the commission or by an administrative law judge, when approved and confirmed by the commission and filed in its office, shall be deemed findings, orders, and decisions of the commission and shall have the same effect as if originally made by the commission. 1983

#### 54-1-4. Official seal.

The commission shall adopt and use an official seal with the words "Public Service Commission of Utah" and such other designations as the commission may prescribe engraved thereon; by which seal it shall authenticate its acts, orders, and proceedings; and of which seal the courts of this state shall take judicial notice. An impression of such seal shall be filed with the Division of Archives. 1984

#### 54-1-5. Office and office hours.

The office of the commission shall be at the state capitol in such rooms in the capitol or in such other public building as shall be assigned to it, and such office shall be open for business between the hours of 9 a.m. and 5 p.m. each business day in the year; one or more responsible persons, to be designated by the commission or by the secretary under the direction of the commission, shall be on duty at such times in immediate charge thereof. 1953

#### 54-1-6. Employment of staff - Status of employees - Administrative law judges.

The annual budget of the public service commission shall provide sufficient funds for the commission to hire, develop, and organize an advisory staff to assist the commission in performing the powers, duties, and functions committed to it by law. The commission is empowered to hire: (1) economists, accountants, engineers, statisticians, lawyers, law clerks, and other professional and technical experts; (2) court reporters, clerks, secretaries, and other administrative and support staff; (3) additional experts as required for a particular matter; and (4) administrative law judges, who shall be members of the Utah state bar, and shall constitute a separate organizational unit reporting directly to the commission.

With the exception of clerical workers in nonconfidential positions, all staff of the public service commission are exempt employees under the State Personnel Management Act and serve at the pleasure of the commission. Administrative law judges are exempt employees under the State Personnel Management Act and may only be removed from office upon due notice and by a unanimous vote of the commission. Pay schedules shall be determined by the division of personnel management which will utilize standard techniques for determining compensation. The division of

personnel management may make its compensation determinations based upon compensation practices common to utility companies throughout the United States.

No personnel or other employee of the commission shall appear as a party or witness in any proceeding before the commission, any commissioner, or any administrative law judge; nor shall the staff of the commission have the right to appeal any finding, order, or decision of the commission. 1983

#### 54-1-6.5. Executive staff director - Appointment - Functions.

The commission shall appoint an executive staff director, who shall serve at the pleasure of the commission and shall supervise and coordinate staff functions, assist the chairman of the commission with administrative duties, and perform any other duties the commission may direct. 1983

#### 54-1-7. Secretary of commission - Appointment - Functions.

The commission may appoint a secretary of the commission, who shall serve at the pleasure of the commission. It shall be the duty of the secretary to keep a true full record of all the proceedings of the commission and of all determinations, rulings and orders made by the commission, or by any of the commissioners, and of the approval and confirmation by the commission of the determinations, rulings and orders made by individual commissioners or administrative law judges. The secretary shall be the custodian of the records of the commission, and shall file and preserve at its general office all books, profiles, tariffs, schedules, reports, maps and documents, and all papers whatsoever filed with it or entrusted to its care, and the secretary shall be responsible to the commission for the custody thereof. Under the direction of the commission the secretary shall superintend its clerical business, conduct its correspondence, give notice of all hearings, determinations, rulings and orders of the commission, prepare for service papers and notices required by the commission, and perform other duties the commission may prescribe. The secretary shall have power to administer oaths in all parts of the state in all proceedings by or before the commissioners and in all cases or matters pertaining to the duties of the office of secretary. In the absence of the secretary, the commission may designate another individual to perform the secretary's duties. 1983

#### 54-1-7.5. Adoption of internal organization measures.

The commission shall have authority to adopt internal organizational measures to effectuate efficiency and economy in the management and operations of the commission. 1983

#### 54-1-8. Expenses of commission.

The public service commission shall be provided by the state with such offices, equipment and facilities as may be proper and necessary for the performance of its duties. All necessary expenses of the commission including salaries of the secretary, and the compensation of all other persons employed by the commission, and all expenses of every kind incurred in the administration of this title shall be paid from the funds appropriated for the use of the commission after being approved by the commission upon claims therefor to be duly audited by the proper authority. The commissioners and secretary and such clerks, experts, attorneys and other subordinates as may be employed by it, shall be entitled

to receive their necessary traveling expenses for authorized travel on business of the commission. 1953

#### 54-1-9. Right to free service from common carriers.

The commissioners and officers and employees of the commission shall, when in the performance of their official duties, have the right to travel free of charge on all railroads, cars and other vehicles of every common carrier, subject in whole or in part to control or regulation by the commission, between points within this state, and such persons shall not be denied the right to travel upon any railroad, car or other vehicle of such common carrier, whether such railroad, car or other vehicle is used for the transportation of passengers or of freight, regardless of its class. 1967

#### 54-1-10. Conservation planning - Annual reports.

The public service commission shall engage in long-range planning regarding public utility regulatory policy in order to facilitate the well-planned development and conservation of utility resources. The commission shall make and submit to the governor and the legislature an annual report containing a full and complete account of the transaction of its office, together with any facts, suggestions and recommendations it may deem necessary. The division of public utilities shall provide any assistance the commission may require in the preparation of the annual report. The report shall be made and submitted by October 1, of each year or as soon after as may be feasible and shall be published as are the reports of other departments of the state. 1983

#### 54-1-11. Prohibited interests, relationships and actions by commissioners and employees.

(1) No person employed as a commissioner or as personnel of the commission shall, while so employed:

(a) Have any pecuniary interest, whether as the holder of stock or other securities, or otherwise have any conflict of interest with any public utility or other entity subject to the jurisdiction of the commission;

(b) Have any office, position or relationship, or be engaged in any business or avocation which interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment with the commission;

(c) Accept any gift, gratuity, emolument or employment from any public utility or other entity subject to the jurisdiction of the commission or from any other officer, agent, or employee thereof; or

(d) Solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person or entity to any office or employment with any public utility or other entity subject to the jurisdiction of the public service commission.

(2) No officer, agent, attorney or employee of any public utility shall directly or indirectly solicit, request, or recommend to the governor, any state senator, the commission, or the division of public utilities the appointment of any person as a commissioner or as executive director of the commission, or the appointment of any person to any commission staff position. 1983

#### 54-1-12. Deposit of funds with state treasurer.

All money collected by the commission under any provision of this title shall be deposited without deduction in the state treasury on or before the 15th day of each month next succeeding the month in

which the same was received, accompanied by a statement showing the date received, from whom received, on what account the same was received and the amount thereof. A duplicate statement shall be delivered by the commission to the state auditor and the state treasurer shall give his receipt for the money received and deliver a duplicate thereof to the state auditor. 1983

## Chapter 2. Definitions

### 54-2-1. Terms defined - Utilities subject to jurisdiction and regulation - Sale or exchange of surplus electric power, gas, or water to public utility.

When used in this title:

(1) "Commission" means the Public Service Commission of the state of Utah.

(2) "Commissioner" means a member of the commission.

(3) "Corporation" includes an association, and a joint stock company having any powers or privileges not possessed by individuals or partnerships. It does not include towns, cities, counties, conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.

(4) "Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of the person transported, and the receipt, carriage, and delivery of that person and his baggage.

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

(6) "Street railroad" includes every railway, and each branch or extension of a railway, by any power operated, being mainly upon, along, above, or below any street, avenue, road, highway, bridge or public place within any city or town, together with all real estate, fixtures, and personal property of every kind used in connection with a railway, owned, controlled, operated, or managed for public service in the transportation of persons or property. It does not include a railway constituting or used as a part of a commercial or interurban railway.

(7) "Street railroad corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any street railroad for public service within this state.

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

(9) "Railroad corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any railroad for public service within this state.

(10) "Express corporation" includes every corporation and person, their lessees, trustees, and receivers, engaged in or transacting the business of trans-

porting any freight, merchandise, or other property for public service on the line of any common carrier or stage or auto line within this state.

(11) "Automobile corporation" includes every corporation and person, their lessees, trustees, and receivers, engaged in or transacting the business of transporting passengers or freight, merchandise, or other property for public service by means of automobiles or motor stages on public streets, roads, or highways along established routes within this state.

(12) "Aerial bucket tramway corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any aerial bucket tramway for public service in this state, except where the aerial tramway is used only for the purpose of delivering raw material to an industrial or manufacturing plant from its customers.

(13) "Common carrier" includes every: (a) railroad corporation; (b) street railroad corporation; (c) automobile corporation; (d) scheduled aircraft carrier corporation; (e) aerial bucket tramway corporation; (f) express corporation; (g) dispatch, sleeping, dining, drawing-room, freight, refrigerator, oil, stock, and fruit car corporation; (h) freight line, car loaning, car-renting, car-loading, and every other car corporation, and person; (i) their lessees, trustees, and receivers, operating for public service within this state; and (j) every corporation and person, their lessees, trustees, and receivers, engaged in the transportation of persons or property for public service over regular routes between points within this state.

(14) "Heating plant" includes all real estate, fixtures, machinery, appliances, and personal property controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of artificial heat.

(15) "Heat corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any heating plant for public service within this state.

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

(17) "Gas corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any gas plant for public service within this state or for the selling or furnishing of natural gas to any consumer or consumers within the state for domestic, commercial, or industrial use, except where gas is made or produced on, and distributed by the maker or producer through, private property alone, solely for his own use or the use of his tenants and not for sale to others.

(18) "Electric plant" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power.

(19) "Electrical corporation" includes every corporation, cooperative association, and person, their

lessees, trustees, and receivers, owning, controlling, operating, or managing any electric plant, or in any way furnishing electric power, for public service or to its consumers or members for domestic, commercial, or industrial use, within this state, except independent energy producers, and except where electricity is generated on or distributed by the producer solely for his own use, or the use of his tenants, or by an association of unit owners formed under Chapter 8, Title 57, Condominium Ownership Act, and not for sale to others.

(20) "Wholesale electrical cooperative" includes every electrical corporation:

(a) which is in the business of the wholesale distribution of electricity it has purchased or generated to its members and the public; and

(b) which is required to distribute or allocate savings in excess of additions to reserves and surplus to members or patrons on the basis of patronage.

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

(22) "Telephone corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any telephone line for public service within this state, provided, however, that all corporations, partnerships, or firms providing intrastate cellular telephone service shall cease to be "telephone corporations" nine months after both the wire-line and the nonwire-line cellular service providers have been issued covering licenses by the Federal Communications Commission. It does not include hospitals, hotels, motels, or inns, which provide on a sale or resale basis any telephone or telecommunication service to their registered patrons.

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

(24) "Telegraph corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line for public service within this state.

(25) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, appointment, apportionment, or measurement of water for power, fire protection, irrigation, reclamation, or manufacturing, or for municipal, domestic, or other beneficial use. It does not include private irrigation companies engaged in distributing water only to their stockholders.

(26) "Water corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any water system for public service within this state. It does not include private irrigation companies engaged in distributing water only to their stockholders.

lders, or towns, cities, counties, water conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.

(27) "Sewerage corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage system for public service within this state. It does not include private sewerage companies engaged in disposing of sewage only for their stockholders, or towns, cities, counties, conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.

(28) "Warehouseman" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any grain elevator or any building or structure in which property is regularly stored for public use within this state, in connection with or to facilitate the transportation of property by a common carrier or the loading or unloading of that property.

(29) "Aircraft carrier" includes every corporation and person, their lessees, trustees, and receivers, operating for public service for hire engaged in intrastate transportation of persons or property. It does not include air carriers operating with a certificate of convenience and necessity issued by the federal government.

(30) "Avoided costs" means the incremental costs to an electrical corporation of electric energy or capacity or both which, due to the purchase of electric energy or capacity or both from small power production or cogeneration facilities, the electrical corporation would not have to generate itself or purchase from another electrical corporation.

(31)(a) "Cogeneration facility" means a facility which produces:

- (i) electric energy; and
- (ii) steam or forms of useful energy, such as heat, which are used for industrial, commercial, heating, or cooling purposes; and

(b) is a qualifying cogeneration facility under federal law.

(32) "Small power production facility" means a facility which:

(a) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, geothermal resources, or any combination of them;

(b) has a power production capacity which, together with any other facilities located at the same site, is not greater than 80 megawatts; and

(c) is a qualifying small power production facility under federal law.

(33) "Independent energy producer" means every person or corporation, their lessees, trustees, or receivers, that own, operate, control, or manage a small power production or cogeneration facility.

(34) "Purchasing utility" means any electrical corporation that is required to purchase electricity from small power production or cogeneration facilities pursuant to the Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

(35)(a) "Public utility" includes every common carrier, gas corporation, electrical corporation, wholesale electrical cooperative, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, independent energy producer not described in Subsection (e), and warehouseman where the service is performed for, or the commodity delivered to, the public generally,

or in the case of a gas corporation or electrical corporation where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use.

(b)(i) If any common carrier, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, independent energy producer not described in Subsection (e), or warehouseman performs a service for or delivers a commodity to the public, or (ii) if a gas corporation, independent energy producer not described in Subsection (e), or electrical corporation sells or furnishes gas or electricity to any member or consumers within the state, for domestic, commercial, or industrial use, for which any compensation or payment is received, that common carrier, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, independent energy producer, and warehouseman is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title.

(c) If any person or corporation performs any service for or delivers any commodity to any public utility as defined in this section, that person or corporation is considered to be a public utility and is subject to the jurisdiction and regulation of the commission and to this title, except as exempted in Subsection (e).

(d) Any corporation or person not engaged in business exclusively as a public utility as defined in this section is governed by this title in respect only to the public utility owned, controlled, operated, or managed by it or by him, and not in respect to any other business or pursuit.

(e) An independent energy producer is exempt from the jurisdiction and regulations of the commission and this title except Subsections 54-2-1(19), (31), (32), (33), and (35) if it meets the requirements of (i) or (ii):

(i) the real property occupied by the recipient of the commodity or service is owned by the provider of the commodity or service; or

(ii) the commodity is sold to an electrical corporation by an independent energy producer.

(f) If any person or corporation not engaged in business as a public utility as defined by this section is able to produce a surplus of electric energy or power, gas, or water beyond the needs of its own business and desires to sell, exchange, deliver, or otherwise dispose of the surplus to or with any public utility as defined in this section, the public utility desiring to effect a purchase or exchange of the surplus shall submit to the commission, for authorization by the commission, a proposed contract covering the purchase or exchange. The commission shall then determine, after a public hearing, whether, in the public interest it is advisable that the contract be executed and, if not adverse to the public interest, the commission shall authorize the execution of the contract. The public utility shall then have the right to purchase and receive or exchange the surplus product in accordance with the terms of the contract. The person or corporation selling or exchanging the surplus product under the authorized contract is not considered a public utility within the meaning of this section, nor is it subject to the jurisdiction of the commission.

(g) Any person or corporation defined as an electrical corporation or public utility under this section may continue to serve its existing customers

subject to any order or future determination of the commission in reference to the right to serve those customers.

(36) "Private telecommunications system" includes all facilities for the transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that are owned, controlled, operated, or managed by a corporation or person, including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that corporation or person and not for the shared use with or resale to any other corporation or person on a regular basis.

(37) "Person" means individuals, government entities, corporations, partnerships, associations, trusts, and companies. 1985

### Chapter 3. Duties of Public Utilities

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54-3-1. Charges must be just; service adequate; rules reasonable.

All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient, just and reasonable. All rules and regulations made by a

public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. The scope of definition "just and reasonable" may include, but shall not be limited to, the cost of providing service to each category of customer, economic impact of charges on each category of customer, and on the well-being of the State of Utah; methods of reducing wide periodic variations in demand of such products, commodities or services, and means of encouraging conservation of resources and energy. 1977

54-3-2. Schedules of rates and classification - Posting and right of inspection - Changes by commission.

(1) Every common carrier shall file with the commission, and shall print and keep open to 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 upon any route owned, 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 on such through route shall show the separately established rates, fares, charges and classifications applicable to the through transportation. The schedules printed as aforesaid 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 charges, storage charges, 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 anywise change, affect or determine any part of the aggregate of such rates, fares, charges and classifications or the value of the services rendered to the passenger, shipper or consignee. Subject to such rules and regulations as the commission may prescribe, such schedules shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible for inspection 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 passengers tickets or tickets for sleeping or parlor cars of other train accommodations are sold or bills of lading or waybills or receipts for property are issued. Any or all of such schedules shall be immediately produced by such carrier for inspection upon the demand of any person. A notice printed in bold type, 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 every such schedule shall be prescribed by the commission, and shall conform, in the case of common carriers subject to the Act of Congress entitled "An Act to Regulate Commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, as nearly as may be to the form of schedules prescribed by the

interstate commerce commission under said acts.

(2) Under such rules and regulations as the commission may prescribe every public utility, other than a common carrier, shall file with the commission within such time and in such form as the commission may designate, and shall print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges and classifications collected or enforced, or 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, charges, classifications or service. Nothing in this section contained shall prevent the commission from approving or fixing rates, tolls, rentals or charges from time to time greater, or less, than those shown by said schedules.

(3) The commission shall have power from time to time in its discretion to determine and prescribe, by order, such changes in the form of the schedules referred to in this section as it may find expedient, and to modify the requirements of any of its orders, rules or regulations in respect to any matters in this section referred to.

1953

#### 54-3-3. Changes by utilities in schedules - Notice.

Unless the commission otherwise orders, no change shall be made by any public utility 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, classification 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, the time when they shall take effect and the manner in which they shall be filed and published. When any change is proposed in any rate, fare, toll, rental, charge or classification, or in any form of contract or agreement, or in any rule, regulation or contract relating to or affecting any rate, toll, fare, rental, charge or classification, or in any form of contract or agreement, or in any rule, regulation or contract relating to or affecting any rate, toll, fare, rental, charge, classification or service, or in any privilege or facility, 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.

1953

#### 54-3-4. Joint tariffs.

The names of the several public utilities 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, toll, fare, contract, classification or charge need be filed with the commission by only one of the parties to it, provided 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.

1953

#### 54-3-5. Repealed.

1983

#### 54-3-6. Common carriers - Filing schedules a condition precedent to doing business - Charges to conform to - Free service forbidden; exceptions - Report of franks issued.

(1) No common carrier subject to the provisions of this title 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 title.

(2) No common carrier shall charge, demand, collect or receive a greater or less or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit, in any manner or by any device, any portion of the rates, fares or charges so specified, except upon order of the commission as hereinafter provided, or extend to any person any privilege or facility in the transportation of passengers or property except such as are regularly and uniformly extended to all persons.

(3) No common carrier subject to the provisions of this title shall, directly or indirectly, issue, give or tender any free ticket, free pass or free or reduced-rate transportation for passengers between points within this state, except to its officers, agents, employees, attorneys, physicians and surgeons, and members of their families; to ministers of religion, traveling secretaries of railroadmen's religious associations, or executive officers, organizers or agents of railroad employees' mutual benefit associations giving the greater portion of their time to the work of any such association; to inmates of hospitals or charitable or eleemosynary institutions, to persons exclusively engaged in charitable or eleemosynary work, and to persons and property engaged or employed in educational work or scientific research or in patriotic work, when permitted by the commission; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals and to the necessary agents employed in such transportation; to inmates of the national homes or state homes for soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge, and to boards of managers of such homes; to necessary caretakers of livestock, poultry, milk or fruit; to employees on sleeping cars and express cars, and to linemen of telegraph and telephone corporations; to railway mail service employees, United States internal revenue officers, post-office inspectors, customs officers and inspectors and immigration inspectors when traveling in the course of their official duty; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the carrier is interested; to persons injured in accidents or wrecks and physicians and nurses attending such persons. The term "employees" as used in this section shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such carrier, ex-employees traveling for the purpose of entering the service of any such carrier, and the remains of persons dying while in the employment of any such carrier. The term "families" as used in this section shall include the families of



those persons heretofore named in this section, the families of persons killed and the widows during widowhood and minor children during minority of persons who have died while in the service of any such carrier. No free ticket, free pass or free or reduced-rate transportation shall be issued, given or tendered to any officer, agent or employee of a common carrier who is at the same time a shipper or receiver of freight, unless such officer, agent or employee devotes substantially his entire time to the service of such carrier. Nothing in this title contained shall be construed to prohibit the issue by express corporations of free or reduced-rate transportation for express matter to their officers, agents, employees, attorneys, physicians and surgeons, and members of their families, or the interchange of free or reduced-rate transportation for passengers or express matter between common carriers, their officers, agents, employees, attorneys, physicians and surgeons, and members of their families, where such common carriers are subject in whole or in part to the jurisdiction of the commission or of the interstate commerce commission, provided such express matter is for the personal use of the person or for whom such free or reduced-rate transportation is granted, or of his family; or to prohibit the issue of passes or franks by telegraph or telephone corporations to their officers, agents, employees, attorneys, physicians and surgeons, and members of their families, or the exchange of passes or franks between telephone and telegraph corporations or between such corporations and common carriers, for their officers, agents, employees, attorneys, physicians and surgeons, and members of their families; or to prohibit free or reduced-rate service by other public utilities to their officers, directors and employees; or to prevent the carrying out of contracts for free or reduced-rate passenger transportation or other public utility service heretofore made, founded upon adequate consideration and lawful when made; or to prevent a common carrier from transporting, storing or handling, free or at reduced rates, the household goods and personal effects of its employees or persons entering or leaving its service or of persons killed or dying while in its service.

(4) Every common carrier subject to the provisions of this title may transport, free or at reduced rates, persons or property for the United States, state, county or municipal governments, or for charitable purposes, or for patriotic purposes, or to provide relief in cases of general epidemic, pestilence or other calamitous visitation, also property to or from fairs or expositions for exhibit thereat; also contractors and their employees, material or supplies for the use of, or engaged in carrying out their contracts with, said carriers for construction, operation or maintenance work, or work incidental thereto, 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 telephone and telegraph corporations for an exchange of service.

(5) Every common carrier shall at such times as may be required by the commission file with the commission a verified list of all tickets, passes, mileage books, franks 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 reci-

pients thereof, the amount received therefor and the reason for issuing the same. 1953

**54-3-7. Charges not to vary from schedules - Exception - Refunds and rebates forbidden.**

Except as in this chapter otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such products or commodity or service as specified in its schedules on file and in effect at the time; nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, 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 corporations and persons; provided, that the commission may, by rule or order, establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to any public utility. 1953

**54-3-8. Preferences forbidden - Power of commission.**

No public utility 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 utility shall establish or maintain any unreasonable difference as to rates, charges, service or facilities, or in any other respect, either as between localities or as between classes of service. The commission shall have power to determine any question of fact arising under this section. 1953

**54-3-8.5. Rate on electricity for agricultural irrigation or drainage.**

The commission in approving any rate applicable to customers who use electric power for agricultural irrigation or soil drainage purposes which includes a demand or power charge as a separate charge shall take into consideration the productive utilization of agricultural water and electric energy. 1953

**54-3-9. Sliding scale of charges - Control by commission.**

Nothing in this title shall be taken to prohibit a corporation or person engaged in the production, generation, transmission, or furnishing of heat, light, water or power, or telegraph or telephone service, from establishing a sliding scale of charges, provided a schedule showing such scale of charges shall first have been filed with the commission and the rates set out therein are approved by it. Nothing in this title shall be taken to prohibit any such corporation or person from entering into an arrangement for a fixed period for the automatic adjustment of charges for heat, light, water or power, or telegraph or telephone service, in relation to the dividends to be paid to stockholders of such corporation or the profit to be realized by such person, provided a schedule showing the scale of charges under such arrangement shall first have been filed with the commission and each rate set out therein is approved by it. Nothing in this section shall prevent the commission from revoking its approval at any time and fixing other rates and charges for the product or commodity or service, as authorized by this title. 1953



**54-3-10. Interchange of business required.**

(1) 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 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 point of transfer according to route billed, if the destination is upon the line of some other railroad corporation. Nothing in this section contained shall be construed as in anywise limiting or modifying 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, or as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares and charges.

(2) Every telephone corporation and telegraph corporation operating in this state shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telephone or telegraph corporation with whose line a physical connection may have been made. 1953

**54-3-11. Rebates and damages obtained by false records or statements forbidden.**

(1) No common carrier, or any officer or agent thereof or any person acting for or employed by it, 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, corporation or any officer, agent or employee of a corporation shall, by means of false billing, false or incorrect classification, false weight or weighing, false representation as to the 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 or any of its officers, agents or employees, seek to obtain or obtain such transportation for such property at less than the rates then established and in force therefor.

(2) No person or corporation, or any officer, agent or employee of a corporation, shall knowingly, directly or indirectly, by any false statement or representation as to cost or value, or the nature or extent of any 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 or any of its officers, agents or employees; nor shall any

common carrier, or any officer, agent or employee thereof, knowingly pay or offer to pay any such allowance, rebate or claim for damage. 1953

**54-3-12. Freight charges on coal.**

No common carrier shall collect from any consignee for coal in carload lots delivered at any point within this state freight charges for any weight in excess of the actual weight of the coal delivered to said consignee, if railroad track scales are maintained at the point of delivery or in the line of transit; and in determining the actual weight of such coal the common carrier shall be entitled to take the weight of the empty car, as determined by weighing such car at the point where the coal is loaded for shipment, and to deduct such weight from the gross weight of the car and coal as weighed on the railroad track scales at the point nearest in the line of transit to the point of delivery. Such weighing shall be done within a reasonable time after the arrival of the car at its destination. No charge shall be made to the consignee by such common carrier for such weighing. If the difference between the original net weight as determined at the point of shipment and the net weight obtained by reweighing at the track scales nearest in the line of transit to or at the destination does not exceed 200 pounds on a carload of coal, then the weight determined at the point of shipment shall not be changed. 1953

**54-3-13. Weighman's certificate required.**

Before the payment by the consignee of the freight upon any carload of coal delivered by a common carrier within this state, if track scales are maintained in the line of transit to or at the place of delivery, such common carrier shall deliver to said consignee a certificate signed by a competent and disinterested weighman, stating the gross weight of the car and the coal contained therein as weighed at the track scales nearest in line of transit to the destination or at the point of delivery, and shall endorse on such certificate the weight of the empty car as determined at the point where such coal was loaded, and no freight charges for the transportation of any such coal shall be due or payable until the same has been so weighed and the certificate of the weight thereof given. 1953

**54-3-14. Penalty for violation.**

Any common carrier who collects freight on a carload of coal where railroad track scales are maintained in the line of transit to or at the point of delivery without causing the same to be weighed within the time and in the manner required by the next two preceding sections is guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than \$100 nor more than \$299. 1953

**54-3-15. Liability of carriers for loss or damage to freight.**

Every common carrier receiving property for transportation from one point in this state to another point in this state shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it, or by any common carrier to which such property may be delivered or over whose line or lines such property may pass within this state when transported on a through bill of lading; and no contract, receipt, rule, regulation or other limitation of any character whatsoever shall exempt such common carrier from the liability hereby imposed. Any such common carrier so receiving property for transportation or any

common carrier delivering such property to the consignee shall be liable to the lawful holder of said receipt or bill of lading, or to any party entitled to recover thereon whether such receipt or bill of lading has been issued or not, for the full actual loss, damage or injury to such property caused by it, or by any common carrier to which such property may have been delivered or over whose line or lines such property may have passed within this state when transported on a through bill of lading, notwithstanding any limitation of liability or of the amount of recovery, or any representation or agreement as to the value of such property in any such receipt or bill of lading or in any contract, rule or regulation; and any such limitation, without respect to the manner or form in which it is sought to be made, is hereby declared to be unlawful and void; provided, however, that the provisions hereof respecting liability for full actual loss, damage or injury notwithstanding any limitation of liability or of recovery, or any representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply:

(1) To baggage carried on passenger trains or on trains carrying passengers.

(2) To property, except livestock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property; in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or agreed upon.

1953

**54-3-16. Limitation of time for presenting claims and bringing suit.**

It shall be unlawful for any such common carrier to prescribe by rule, contract, regulation or otherwise a shorter period than ninety days for giving notice of claims for any loss, damage or injury to such property, or for the filing of such claims, a shorter period than four months, or for the institution of suits, a shorter period than two years; provided, however, that if the loss or injury complained of is due to delay, or damage while being loaded or unloaded, or damage in transit caused by carelessness or negligence, no notice of claim, and no filing of claim shall be required as a condition precedent to recovery.

1953

**54-3-17. Contribution between connecting carriers.**

The common carrier paying for the loss of or damage to such property so transported or received shall be entitled to recovery from the common carrier responsible for the same, or on whose line the loss, damage or injury shall have been sustained, the amount of such loss or damage it may have been required to pay to the persons entitled thereto.

1953

**54-3-18. Bills of lading - Form.**

Bills of lading issued by any common carrier for the transportation of goods within this state shall conform to this title.

1953

**54-3-19. Long and short distance service - Through and intermediate rates.**

(1) No common carrier shall charge or receive any greater compensation, in the aggregate, for transportation of persons or of like kinds 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.

(2) 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; but this shall not be construed as authorizing any such telephone or telegraph corporation to charge or receive as great a compensation for a shorter as for a longer distance.

(3) Upon application to the commission any common carrier, telegraph or telephone 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 transportation of passengers or property or for the transmission of messages or conversations, and the commission may from time to time prescribe the extent to which such common carrier, telegraph or telephone corporation may be relieved from the operation and requirements of this section.

1953

**54-3-20. Railroad connections by switches and spurs.**

(1) Every railroad corporation, upon the application of any corporation or person being a shipper or receiver or contemplated shipper or receiver of freight for a connection between the railroad of such railroad corporation and any existing or contemplated private track, tracks or railroad of such corporation or person, shall make such connection and provide such switches and tracks as may be necessary for that purpose, 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 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.

(2) Under the conditions specified in the proviso in subsection (1) hereof, every railroad corporation, upon the application of any person being a shipper or receiver or contemplated shipper or receiver of freight, shall construct upon its right of way a spur or spurs for the purpose of receiving and delivering freight thereby, and shall receive and deliver freight thereby.

1953

**54-3-21. Commission to be furnished information and copies of records - Hearings before commission to be public - Privilege.**

(1) Every public utility shall furnish to the commission in such form and such detail as the commission shall prescribe all tabulations and computations and all other information required by it to carry into effect any of the provisions of this title, and shall make specific answers to all questions submitted by the commission.

(2) Every public utility receiving from the comm-

mission any blanks with directions to fill the same shall cause the same to be properly filled so as to answer fully and correctly each question propounded therein, in case it is unable to answer any question, it shall give a good and sufficient reason for such failure

(3) Whenever required by the commission every public utility shall deliver to the commission copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, 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

(4) Hearings or proceedings of the commission or of any commissioner shall be open to the public, and all records of all hearings or proceedings or orders, rules or investigations by the commission or any commissioner shall be at all times open to the public, provided, that any information furnished the commission by a public utility or by any officer, agent or employee of any public utility may be withheld from the public whenever and during such time as the commission may determine that it is for the best interests of the public to withhold such information. Any officer or employee of the commission who in violation of the provisions of this subsection divulges any such information is guilty of a misdemeanor

1953

#### 54-3-22. Reports of earnings and expenses.

Every public utility shall furnish to the commission at such time and in such form as the commission may require a report in which the public utility shall specifically answer all questions propounded by the commission upon or concerning any matter upon which the commission may desire information. The commission shall have authority to require any public utility to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized to inquire or to keep itself informed or which it is required to enforce. All reports shall be under oath when required by the commission

1953

#### 54-3-23. Commission's orders must be obeyed.

Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, or in any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees

1953

#### 54-3-24. Hostage situation - Telephone communication prevention.

The supervising law enforcement official having jurisdiction in a geographical area where hostages are held, who has probable cause to believe that the holder of one or more hostages is committing a crime, may order a previously designated telephone company security employee to arrange to cut, reroute or divert telephone lines that serve the area in which the hostages are being held, in an emergency, for the purpose of preventing telephone communications by the holder of the hostages with any person other than a peace officer or a person authorized by a peace officer

The serving telephone company within the geographi-

caphical area of the law enforcement unit shall designate a telephone company security official and an alternate to provide all required assistance to law enforcement officials to carry out the purpose of this section. Good faith reliance on an order given by a supervising law enforcement official shall constitute a complete defense to any action brought for conduct allowed under this section

1981

### Chapter 4. Authority of Commission Over Public Utilities

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ties.  
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**54-4-1. General jurisdiction.**

The commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction; provided, however, that the department of transportation shall have jurisdiction over those safety functions transferred to it by the Department of Transportation Act. 1975

**54-1-1.1. Wholesale electrical cooperative exempt from rate regulation - Requirements for rate increase.**

The commission does not have the authority under the provisions of this title to regulate, fix, or otherwise approve or establish the rates, fares, tolls, or charges of a wholesale electrical cooperative. A wholesale electrical cooperative shall not vary its charges within any type or classification of service to any member or the public, one from the other, or from schedules of rates, fares, tolls, or charges which schedules shall be filed at least annually with the Division of Public Utilities for informational purposes only. The prohibition of this section applies only to the rates, fares, tolls, or charges and does not exempt wholesale electrical cooperatives from other areas of regulation under this title including, but not limited to, regulation having an indirect effect on rates, fares, tolls, or charges but which does not constitute an approval or establishment of them.

A wholesale electrical cooperative must, prior to the implementation of any rate increase after January 1, 1984, hold a public meeting for all its customers and members. Notice must be mailed at least ten days prior to the meeting. In addition, any schedule of new rates or other change that results in new rates must be approved by the board of directors of the wholesale electrical cooperative. 1984

**54-4-1.5. Investigations, providing information, audits and recommendations by director.**

In addition to its other powers and duties provided by law, the public service commission may, with respect to any matter within its jurisdiction, order the director of the division of public utilities to:

- (1) Conduct research, studies, and investigations;
- (2) Provide information, documents or records in compliance with the provisions regarding ex parte communications set forth in section 54-7-1.5;
- (3) Conduct audits and inspections or take other enforcement actions to assure compliance with commission decisions and state and federal laws; and
- (4) Make recommendations regarding public utility regulations. 1983

**54-4-2. Investigations - Hearings and notice - Findings.**

Whenever the commission believes that in order to secure a compliance with the provisions of this title or with the orders of the commission, or that it will be otherwise in the interest of the public, an investigation should be made of any act or omission to act, or of anything accomplished or proposed, or of any schedule, classification, rate, price, charge, fare, toll, rental, rule, regulation, service or facility of any public utility, it shall investigate the same upon its own motion, and may fix a time and place for a hearing thereof with notice to the public utility concerning which such investigation shall be made, and upon such hearing shall make such findings and orders as shall be just and reasonable with respect to any such matter. 1953

**54-4-3. Rates - Of carriers - Dependent on declared value of shipment.**

The commission shall have power, after hearing, to fix and establish rates dependent upon and varying with the value of freight and property transported by any common carrier as declared by the shipper or agreed upon by such carrier and the shipper as the released value thereof, whenever such rates would in its opinion be just and reasonable under the circumstances, and any tariff schedule filed with the commission pursuant to any order fixing such rates shall contain specific reference to such order. 1953

**54-4-4. Classification and fixing after hearing.**

(1) Whenever the commission shall find after a hearing that the rates, fares, tolls, rentals, charges or classifications, or any of them demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices or contracts, or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in anywise in violation of any provisions of law, or that such rates, fares, tolls, rentals, charges or classifications are insufficient, the commission shall determine the just, reasonable or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

(2) The commission shall have power to investigate a single rate, fare, toll, rental, charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts and practices, or any number thereof, of any public utility, and to establish, after hearing, new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices, or schedule or schedules in lieu thereof.

(3) The commission, in its determination of just and reasonable rates, may consider recent changes in the utility's financial condition or changes reasonably expected, but not speculative, in the utility's revenues, expenses or investments and may adopt an appropriate future test period, not exceeding twelve months from the date of filing, including projections or projections together with a period of actual operations in determining the utility's test year for rate-making purposes. 1975

**54-4-5 Through and joint rates of carriers - Division**

Whenever the commission shall find after a hearing, that the rates, fares or charges in force over the lines of two or more common carriers between any two points in this state are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate, fare or charge exists between such points, or that public convenience and necessity demand the establishment of a through route and joint rate, fare or charge between such points, the commission shall order such common carriers to establish such through route, and may establish and fix a joint rate, fare or charge which will be fair, just, reasonable and sufficient to be allowed, charged, enforced, demanded and collected in the future, 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, without being transferred from the originating cars. In case the common carriers do not agree between themselves upon the division of the joint rates, fares or charges established by the commission over such through routes, the commission shall, after hearing by supplementary order establish such division. The commission shall have the power to establish and fix through routes and joint rates, fares or charges for common carriers and to fix the division of such joint rates, fares or charges.

1953

**54-4-6 Unlawful interstate rates - Petition to interstate commerce commission.**

The commission shall have the power, and it shall be the duty of the commission, to 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, in the opinion of the commission, excessive or discriminatory or in violation of the Act of Congress entitled "An Act to Regulate Commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, or of any other Act of Congress, or in conflict with the rulings, orders or regulations of the interstate commerce commission, the commission shall apply by petition or otherwise to the interstate commerce commission or to any court of competent jurisdiction for relief.

1953

**54-4-7. Rules, equipment, service - Regulation after hearing.**

Whenever the commission shall find, after a hearing, that the rules, regulations, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation. The commission, after a hearing, shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied

by any public utility and on proper demand and tender of rates such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules. 1953

**54-4-8 Improvements, extensions, repairs - Regulations - Apportioning costs**

Whenever the commission shall find that additions, extensions, repairs or improvements to or changes in the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made or that a new structure or structures ought to be erected to promote the security or convenience of its employees or the public or in any way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If any additions, extensions, repairs, improvements or changes or any new structure or structures which the commission has ordered to be created require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at the joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or any new structure or structures which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or of such new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

1953

**54-4-9 Railroads and street railroads - Service, schedules and stops.**

Whenever the commission shall find, after a hearing, that any railroad corporation or street railroad corporation does not run a sufficient number of trains or cars, or possess or operate sufficient motive power to reasonably accommodate the traffic, passenger or freight 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 trains, car or cars, upon a reasonable time schedule for the run, the commission shall have the power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power, or to change the time for starting its trains or cars, or to change the time schedule for the run of any train or car, or to change the stopping place or places thereof, or to make any other order that the commission may determine to be reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.

1953

**54-4-10. Connections between tracks - Adjustment of expense.**

Whenever the commission shall find that public convenience and necessity would be subserved by saving connections made between the tracks of any two or more railroad or street railroad corporations so that cars may readily be transferred from one to the other at any of the points hereinafter in this section specified, the commission may order any two or more such corporations owning, controlling, operating or managing 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 or terminate or run near to any other railroad or street railroad. After the necessary franchise or permit has been secured from the county, city or town the commission may likewise order such physical connection within such county, city or town between two or more railroads which enter the limits of the same. The commission shall by order direct whether the expense of the connections referred to in this section shall be borne jointly or otherwise.

1953

**54-4-11. Spurs and switching service.**

(1) Whenever the commission shall find that application has been made by any person to a railroad corporation for a connection or spur as provided in section 54-3-20, and that the railroad corporation has refused to provide such connection or spur and that the applicant is entitled to have the same provided for him under said section 54-3-20, the commission shall make an order requiring the providing of such connection or spur and the maintenance and use of the same upon reasonable terms which the commission shall have power to prescribe. Whenever such connection or spur has been so provided any person shall be entitled to connect with the private track, tracks or railroad thereby connected with the railroad of the railroad corporation, and to use the same or to use the spur so provided upon payment to the person incurring the primary expense of such private track, tracks or railroad, or the connection therewith or of such spur, of a reasonable proportion of the cost thereof, to be determined by the commission after notice to the interested parties and a hearing thereon; provided, that such connection and use can be made without unreasonable interference with the rights of the person incurring such primary expense.

(2) The commission shall likewise have the power to require any 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.

1953

**54-4-12. Telegraph and Telephone - Connections - Joint rates - Division.**

Whenever the commission shall find, after a hearing, that a physical connection can reasonably be made between the lines of two or more telephone corporations, or two or more telegraph corporations, whose lines can be made to form a continuous line of communication by the construction and maintenance of suitable connections for the transfer of messages or conversations, and that public convenience and necessity will be subserved thereby, or shall find that 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 joint rates, tolls or charges ought to be established, the commission may, by its order,

require that such connection be made, except where the purpose of such connection is primarily to secure the transmission of local messages or conversations between points within the same city or town, and that conversations be transmitted and messages transferred over such connections under such rules and regulations as the commission may establish and prescribe, and that through lines and joint rates, tolls and charges be made and be used, observed and be in force in the future. If such telephone or telegraph corporations do not agree upon the division between themselves of the cost of such physical connection or connections, or upon the division of the joint rates, tolls or charges established by the commission over such through lines, the commission shall have authority, after a further hearing, to establish such division by supplemental order.

1953

**54-4-13. Joint use of properties by utilities - Adjustment of costs - Cable television easement rights.**

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

(2) Whenever a public utility including its successors, assigns, lessees, licensees and agents, is granted a right-of-way easement to construct, operate, maintain or remove utility facilities, electric power and other facilities as it may require upon, over, under and across land or upon, over, under and across a dedicated public utility strip, and such public utility has also entered into a pole attachment contract with a cable television company which has been granted a franchise by a city, county, municipal or other public authority including the right to use the wires, conduits, cables, or poles of such public utility, and providing for the attachment or installation of wires, cables, and other equipment of a cable television company, to certain poles or in certain conduits of such public utility under controlled conditions designed to ensure the continued safe operation of the utilities service and facilities without any additional burden on the grantor's property then, and in that event, the cable television company, has the right to share in and enjoy the use of the right-of-way easement, subject to the terms and conditions provided in the pole attachment contract, and the right-of-way easement or interest granted the public utility is apportionable to the cable television company under the following limitations or conditions:

(a) Consent is secured from the private property owner where the easement is located except this

requirement shall not apply in the case of a dedicated public utility strip.

(b) The public service commission determines that under the terms and conditions of the pole attachment contract the use of the utilities facilities by the cable television company will not interfere with the primary utility function or render its facilities unsafe, and that the contract is in the public interest.

(c) The right-of-way easement is not restricted to the sole use of the public utility; provided, that such restriction shall not apply in any easement granted for the use of a dedicated public utility strip.

(d) The use contemplated by the cable television company is the same or similar to that granted the public utility and that such use will not impose an additional burden upon the servient tenement.

(e) The use of the easement by the cable television company will not cause irreparable injury or damage to the grantor's property. 1973

#### 54-4-14. Safety regulation.

The commission shall have power, by general or special orders, rules or regulations, or otherwise, to require every public utility to construct, maintain and operate its line, plant, system, equipment, apparatus, tracks 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 to prescribe, among other things, 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 system of signaling, and to establish uniform or other standards of construction and equipment, and to require the performance of any other acts which the health or safety of its employees, passengers, customers or the public may demand, provided, however, that the department of transportation shall have jurisdiction over those safety functions transferred to it by the Department of Transportation Act. 1975

#### 54-4-15. Grade crossings - Transportation department - Commission - Regulation.

(1) No track of any railroad shall be constructed across a public road, highway or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without the permission of the department of transportation having first been secured; provided, that this subsection shall not apply to the replacement of lawfully existing tracks. The department shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

(2) The department shall have the 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 crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad and of each crossing of a public road or highway by a railroad or street railroad, and of a street by a railroad or vice versa, and to alter or abolish any such crossing, to restrict the use of such crossings to certain types of traffic in the interest of public safety and is vested with power and it shall be its duty to designate the railroad crossings to be traversed by school buses and motor vehicles

carrying passengers for hire, and to require, where in its judgment it would be practicable, a separation of grades at any such crossing heretofore or hereafter established, and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected, or between such corporations and the state, county, municipality or other public authority in interest.

(3) Whenever the department shall find that public convenience and necessity demand the establishment, creation or construction of a crossing of a street or highway over, under or upon the tracks or lines of any public utility, the department may by order, decision, rule or decree require the establishment, construction or creation of such crossing, and such crossing shall thereupon become a public highway and crossing.

(4) The commission shall retain exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the department pursuant to this section. 1975

#### 54-4-15.1. Signals or devices at grade crossings - Duty of transportation department to provide.

The department of transportation so as to promote the public safety shall as prescribed in this act provide for the installing, maintaining, reconstructing, and improving of automatic and other safety appliances, signals or devices at grade crossings on public highways or roads over the tracks of any railroad or street railroad corporation in the state. 1975

#### 54-4-15.2. Signals or devices at grade crossings - Funds for payment of costs.

The funds provided by the state for purposes of this act shall be used in conjunction with other available moneys, including those received from federal sources, to pay all or part of the cost of the installation, maintenance, reconstruction or improvement of any signals or devices described in section 54-4-15.1 at any grade crossing of a public highway or any road over the tracks of any railroad or street railroad corporation in this state. 1973

#### 54-4-15.3. Signals or devices at grade crossings - Apportionment of costs by transportation department - Liability of cities, towns and counties - Claims for payment of cost.

The department of transportation, in accordance with the provisions of section 54-4-15, shall apportion the cost of the installation, maintenance, reconstruction or improvement of any signals or devices described in section 54-4-15.1 between the railroad or street railroad and the public agency involved. Unless otherwise ordered by the department, the liability of cities, towns and counties to pay the share of maintenance cost assigned to the local agencies by the department shall be limited to the funds provided under this act. Payment of any moneys from the funds provided shall be made on the basis of verified claims filed with the department of transportation by the railroad or street railroad corporation responsible for the physical installation, maintenance, reconstruction or improvement of the signal or device. 1975

#### 54-4-15.4. Signals or devices at grade crossings - Transportation department to provide costs in annual budget.

The department of transportation shall provide in



annual budget for the costs to be incurred under  
fact. 1975

**4-16. Accidents - Investigations - Reports provided - Transportation department powers - Commission jurisdiction.**

The commission shall investigate the cause of all accidents occurring within this state upon the property of any public utility, or directly or indirectly arising from or connected with its maintenance operation, resulting in loss of life or injury to persons or property and requiring in the judgment of the commission investigation by it, and shall have the power to make such order or recommendation with respect thereto as in its judgment may seem just and reasonable; provided, that neither the order nor recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damages based on or arising out of the loss of life or injury to person or property in this section referred to. Every public utility is hereby required to file with the commission, under such rules and regulations as the commission may prescribe, a report of each accident so occurring of such kinds or classes as the commission may from time to time designate. The department of transportation where private and public carriers are involved shall have and assume the powers heretofore held by the commission pursuant to this section; provided that the commission shall retain exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any order of the department issued pursuant thereto. 1975

**4-17. Car supply - Demurrage - Express, telephone, telegraph service - Freight - Baggage - Regulation.**

(1) The commission shall have power to prescribe proper 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 carload and less than carload 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 to provide penalties to be paid for failure on the part of railroad corporations, consignors and consignees to conform to such rules; and the commission shall have power to limit the number of cars that shall constitute a train operated on any railroad in this state. Charges for demurrage shall be uniform so that the same penalty shall be paid by both shipper or consignee and railroad corporation for an equal number of cars for each day or which demurrage is charged.

(2) The commission shall also have power to prescribe 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.

(3) The commission shall also have power to prescribe the time within which baggage shall be received, transported, delivered and stored.

(4) The commission shall also have power to enforce reasonable regulations for the weighing of cars and freight offered for shipment over any line of railroad, and to test the weights made by any railroad corporation and scales used in weighing

freight on cars. 1953

**54-4-18. Electric, gas, water service - Rates - Meters and tests.**

The commission shall have power, after a hearing, to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed and followed by all electrical, gas and water corporations; to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other conditions pertaining to the supply of the product, commodity or service furnished or rendered by any such public utility; to prescribe reasonable regulations for the examination and testing of such products, commodity or service, and for the measurement thereof; to establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements; and to provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any such public utility. 1953

**54-4-19. Right of officers of commission and transportation department to enter upon public utility premises.**

The commissioners and officers and employees of the commission and the department of transportation where public carriers are involved, shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests and exercising any of the other powers provided for in this title and to set up and use on such premises any apparatus and appliances necessary therefor. The agents and employees of such public utility shall have the right to be present at the making of such examinations and tests. 1975

**54-4-20. Consumer may have meter tested upon paying fee.**

Any consumer or user of any product, commodity or service of a public utility may have any appliance used in the measurement thereof tested, upon paying the fees fixed by the commission. The commission shall establish and fix reasonable fees to be paid for testing such appliances on the request of the consumer or user; the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user under such rules and regulations as may be prescribed by the commission, if the appliance is found defective or incorrect to the disadvantage of the consumer or user. 1953

**54-4-21. Valuation of public utilities.**

The commission shall have power to ascertain the value of the property of every public utility in this state and every fact which in its judgment may or does have any bearing on such value. The commission shall have power to make revaluations from time to time and to ascertain the value of new construction, extensions, and additions to the property of every public utility; provided, that the valuation of the property of all public utilities doing business within this state located in Utah as recorded in accordance with section 54-4-22 of this chapter shall be considered the actual value of the properties of said public utilities in Utah unless otherwise changed after hearings by order of the commission. In case the commission changes the valuation of the properties of any public utility said new valuations found by the commission shall be the valuations of



said public utility for all purposes provided in this chapter. 1953

**54-4-22. Statements of valuations - Affidavits - Records of valuation.**

The public service commission must on or before the first day of December of each year furnish every public utility doing business in the state of Utah whose rates are based on the valuation of its properties or the amount of its investments with blank forms providing spaces for statements of the valuation of all of the properties of the public utilities located within this state. Said blank forms shall provide for whatever segregation or division of the values of said properties as the commission may require.

Each blank form shall have affixed thereto an affidavit which must be substantially as follows:

"I, \_\_\_\_\_, do swear that I am \_\_\_\_\_ (position held), of the \_\_\_\_\_ (name of company), and that as such I am in a position to know the valuations of both the tangible and intangible properties of the \_\_\_\_\_ (name of company), located in the state of Utah, and that to the best of my knowledge the above figures represent the true valuations of said properties at 12:00 o'clock noon on the first day of January of the year 19\_\_\_\_."

Said affidavit in addition to the above must state the principal place of business of the public utility and other information required by the commission.

The public service commission shall require every public utility doing business within the state of Utah whose rates are based on the valuation of its properties or the amount of its investments to declare through its authorized agent on said blank forms the full value of all of the tangible and intangible properties of said utility which are located within the state of Utah, and it shall furthermore require that the valuation of the tangible properties be listed separately from the intangible properties. In making such declaration every public utility may take into consideration any increase or decrease in values of such property during the tax year last past and may raise or lower its declared true values accordingly.

It shall furthermore require that said blank form be filed with the commission on or before a specific date each year to be determined by the commission, and shall require the affidavit of said blank form to be signed and sworn to by a duly qualified and acting officer of said public utility in the manner provided by law. The public service commission shall furthermore prepare each year a book to be called "Record of Valuations of Utility Companies," in which must be entered the names of every person, organization, or corporation engaged in any utility business in Utah together with the valuation of the tangible and the valuation of the intangible properties of each of said person, organization or corporation as determined and declared by the duly qualified officers of said public utilities and as declared and filed in accordance with the provisions of this section or as otherwise determined by the commission according to law. The public service commission shall accept the values filed as provided herein unless otherwise changed by the commission upon evidence taken by and filed with the commission as the true values of the tangible and the intangible properties of said public utility and said last declared values shall be the values upon which said utility might earn a fair return. Under no circumstances shall an increase in the rates of any public

utility be found justified by the commission if said increase shall result in an earning by said utility of an amount greater than a fair return on the value of the properties of said public utility located in the state of Utah as shown on the forms provided herein. 1953

**54-4-23. Accounts and records of utilities.**

The commission shall have power to establish a system of accounts to be kept by public utilities subject to its jurisdiction, to classify said public utilities and to establish a system of accounts for each class and to prescribe the manner in which such accounts shall be kept. It may also, in its discretion prescribe the forms of accounts, records and memoranda to be kept by such public utilities, including accounts, records and memoranda of the movement of traffic as well as of the receipts and expenditures of moneys, and any other forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this title. The system of accounts established by the commission and the forms of accounts, records and memoranda prescribed by it shall not be inconsistent, in the case of corporations subject to the provisions of the Act of Congress entitled, "An Act to Regulate Commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, with the system and forms from time to time established for such corporations by the interstate commerce commission; but nothing herein contained shall affect the power of the commission to prescribe forms of accounts, records and memoranda covering information in addition to that required by the interstate commerce commission. The commission may, after hearing had upon its own motion or upon complaint, prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. When the commission shall have prescribed the forms of accounts, records or memoranda to be kept by any public utility corporation for any of its business it shall thereafter be unlawful for such public utility to keep any accounts, records or memoranda for such business other than those so prescribed or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records or other memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the commission. 1953

**54-4-24. Depreciation accounts and fund.**

The commission shall have power to require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the commission may prescribe. The commission may from time to time ascertain, determine and, by order, fix the proper and adequate rates of depreciation of the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined 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 only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the commission may prescribe. The income upon investments of money in such fund shall likewise be carried in such fund. 1953

**54-4-25. Certificate of convenience and necessity prerequisite to construction and operation - Certificates issued to electrical corporations brought under act - Air carriers.**

(1) No railroad corporation, street railroad corporation, aerial bucket tramway corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, heat corporation, automobile corporation, aircraft carrier (corporation), water corporation or sewerage corporation shall henceforth establish, or begin construction or operation of a railroad, street railroad, aerial bucket tramway, line, route, plant or system or of any extension of such railroad, street railroad, aerial bucket tramway, line, route, plant or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require such construction; provided, that this section shall not be construed to require any such corporation to secure such certificate for an extension within any city or town within which it shall have heretofore lawfully commenced operations, or for an extension into territory, either within or without a city or town, contiguous to its railroad, street railroad, aerial bucket tramway, line, plant or system not theretofore served by a public utility of like character, or for an extension, within or to territory already served by it, necessary in the ordinary course of its business; provided further, that if any public utility 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 utility already constructed, the commission, on complaint of the public utility 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.

(2) No public utility of a class specified in subsection (1) hereof shall henceforth 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 that public convenience and necessity require the exercise of such right or privilege; provided, that when the commission shall find, after hearing, that a public utility 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 public utility 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 be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state.

(3) Every applicant for a certificate shall file in the office of the commission such evidence as shall be required by the commission to show that the applicant has received the required consent, franchise or permit the proper county, city, municipal or other public authority. Every such applicant, except a legal or administrative entity created pursuant to section 11-13-5.5, shall also file in the office of the commission a statement that any

proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to such existing fixed public utility. The commission shall have power, after a hearing, to issue the certificate as requested or to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated railroad, street railroad, aerial bucket tramway, 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 public convenience and necessity may require. If a public utility 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 public utility 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 public utility has obtained such contemplated franchise or permit. Upon presentation to the commission of evidence satisfactory to it that such franchise or permit has been secured by such public utility, the commission shall thereupon issue such certificate.

(4) Any supplier of electricity which is brought under the jurisdiction and regulation of the public service commission by this act, may file with the commission an application for a certificate of convenience and necessity, giving the applicant the exclusive right to serve the customers it is serving in the area in which it is serving at the time of this filing, subject to the existing right of any other electrical corporation to likewise serve its customers in existence in such area at such time. The application shall be prima facie evidence of the applicant's rights to such a certificate, and the certificate shall be issued within thirty days after said filing, pending which, however, the applicant shall have the right to continue its operations. Notwithstanding the foregoing, however, and upon good cause shown to the commission by anyone protesting the issuance of such a certificate, or upon the commission's own motion, a public hearing may be had to determine if said applicant has sufficient finances, equipment and plant to continue its existing service; and, the commission shall issue its order within 45 days after said hearing according to the proof submitted at said hearing.

Every electrical corporation, save and except those applying for a certificate to serve only the customers served by applicant on the effective date of this act, applying for such a certificate shall have established a ratio of debt capital to equity capital or will within a reasonable period of time establish a ratio of debt capital to equity capital which the commission shall find renders the electrical corporation financially stable and which financing shall be found to be in the public interest.

(5) Nothing herein contained shall affect the existing rights of municipalities.

(6) All carriers by aircraft who are presently conducting for hire, operation or hauling either passengers or property under the jurisdiction of the aeronautics board or as may have been exempt from

regulation by that board may make application to the commission and shall be granted a certificate to perform the service in similar manner and to a similar extent as heretofore performed; provided, that sufficient evidence be presented to the commission showing that said carrier has sufficient equipment in good and safe operating condition and is properly licensed, insured, and that the carrier is financially able to conduct such an operation. The commission may issue a certificate of convenience and necessity to any aircraft carrier actually operating in good faith and doing business as of July 1, 1969, if such carrier meets the conditions and requirements specified in this act provided the application therefor shall have been filed with the commission on or before January 2, 1970. The commission may issue a temporary certificate of public convenience and necessity pending action on such application and disposition thereof. 1951

**54-4-26. Contracts calling for expenditures - Commission to approve.**

Every public utility when ordered by the commission shall, before entering into any contract for construction work or for the purchase of new facilities or with respect to any other expenditures, submit such proposed contract, purchase or other expenditure to the commission for its approval; and, if the commission finds that any such proposed contract, purchase or other expenditure diverts, directly or indirectly, the funds of such public utility to any of its officers or stockholders or to any corporation in which they are interested, or is not proposed in good faith for the economic benefit of such public utility, the commission shall withhold its approval of such contract, purchase or other expenditure, and may order other contracts, purchases or expenditures in lieu thereof for the legitimate purposes and economic welfare of such public utility. 1953

**54-4-27. Payment of dividends - Notice - Restraint.**

No gas or electric corporation doing business in this state shall pay any dividend upon its common stock prior to thirty days after the date of the declaration of such dividend by the board of directors of such utility corporation. Within five days after the declaration of such dividend the management of such corporation shall notify the utilities commission in writing of the declaration of said dividend, the amount thereof, the date fixed for payment of the same, and shall also cause to be published a notice in a newspaper having general circulation in the city or town where its principal place of business is located, stating in substance the contents of the notice herein required to be given the utilities commission. If the commission, after investigation, shall find that the capital of any such corporation is being impaired or that its service to the public is likely to become impaired or is in danger of impairment, it may issue an order directing such utility corporation to refrain from the payment of said dividend until such impairment is made good or danger of impairment is avoided. The district court of any county in which said utility is doing business in this state is authorized upon a suit by the commission to enforce the order of the commission, and empowered to issue a restraining order pending final determination of the action. 1953

**54-4-28. Merger only on consent of utilities commission.**

No public utility shall combine, merge nor consolidate with another public utility engaged in the same general line of business in this state, without the consent and approval of the public utilities commission, which shall be granted only after investigation and hearing and finding that such proposed merger consolidation or combination is in the public interest. 1953

**54-4-29. Acquiring voting stock or securities of like utility only on consent of commission.**

Hereafter no public utility shall purchase or acquire any of the voting securities or the secured obligations of any other public utility engaged in the same general line of business without the consent and approval of the public utilities commission, which shall be granted only after investigation and hearing and finding that such purchase and acquisition of such securities, or obligations, will be in the public interest. 1953

**54-4-30. Acquiring properties of like utility only on consent of commission.**

Hereafter no public utility shall acquire by lease, purchase or otherwise the plants, facilities, equipment or properties of any other public utility engaged in the same general line of business in this state, without the consent and approval of the public utilities commission. Such consent shall be given only after investigation and hearing and finding that said purchase, lease or acquisition of said plants, equipment, facilities and properties will be in the public interest. 1953

**54-4-31. Electrical corporation to issue securities only on consent of commission - Exceptions - Validity of securities.**

No electrical corporation shall issue any security, nor shall any electrical corporation assume any obligation or liability as guarantor, endorser, surety or otherwise, in connection with any security of another person relating to the financing of pollution control revenue bonds, without prior written approval of the public service commission. Authorization of the commission shall not be required for the issuance or renewal of, or assumption of liability on, a note or draft maturing not more than one year after the date of the issue, renewal, or assumption of liability, and aggregating (together with all other then outstanding notes and drafts of a maturity of one year or less on which the public utility is primarily or secondarily liable) not more than five percent of the par value of the other securities of the public utility then outstanding. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of issue.

Any securities issued pursuant to an order entered by authority of this section shall be valid notwithstanding the outcome of any further proceedings unless application for stay is filed with the Supreme Court of the State of Utah within five days following the issuance of said order and a stay is entered by the court within ten days following the date of issuance of the order. 1977

**54-4-32. Filing of notice of existence and services of telecommunications system - Penalty for failure to file.**

(1) The commission may require any corporation or person, including their lessees, trustees, receivers, or trustees appointed by any court, that owns, controls, operates, or manages any existing or new private telecommunications system or expands any

ing private telecommunications system to serve regional locations within the state or to provide regional transmission capacity to locations within the state, to file a notice with the commission disclosing the existence of the private telecommunications system and to whom the service is being provided.

Any corporation or person who fails to comply with the notification requirements of Subsection (1) shall pay to the state a civil penalty of up to \$500 as determined by the commission. Any such penalty shall be in addition to any other fines and penalties assessed under this title. 1985

**43. Moratorium for involuntary termination for non-payment of utility bills - Eligibility criteria - Department of Social Services to establish and administer.**

The Department of Social Services shall establish a program for a seasonal moratorium for involuntary termination for non-payment by residential customers of essential utility bills. An essential utility is a utility regulated by the Public Service Commission under Title 54, which is in the business of the retail distribution of electricity or natural gas. A residential customer is a customer defined as a residential class by the Public Service Commission.

A residential customer must meet the following criteria to qualify for the program:

- (a) gross household income is less than 125% of the federal poverty level; or
- (b) the household has suffered a medical or emergency, loss of employment, or is experiencing other circumstances which have resulted in a substantial loss of income; and
- (c) the customer has made application to public utility private energy assistance programs; and
- (d) the customer is willing to make a good faith effort to pay these utility bills on a consistent basis;

(e) any additional information required by the Department of Social Services.

A residential customer may file with a local Department of Social Services office an affidavit attesting eligibility under the criteria in Subsection (1). The department shall certify that the customer meets the eligibility requirements and forward a copy of the affidavit to the effected utility and the Public Service Commission. 1985

**44. Contest of customer's eligibility by utility - Department to determine case.**

When a utility contests the eligibility of any residential customer to participate in the program, the Director of the Department of Social Services or his designee shall act as an administrative law judge to make a determination on the case. 1985

**45. Pre-moratorium customers may also be eligible for moratorium - Criteria.**

A residential customer that has had service of an essential utility discontinued for non-payment prior to the time the moratorium takes effect shall have service restored and continued during the period of the moratorium if the customer meets the requirements of Section 54-4-32 and the customer has entered into a deferred payment agreement with the utility as to arrearages. 1985

**46. Effective period - Extension of moratorium by rule.**

The moratorium shall be in effect from November 15 to March 15 of each year. The Department of Social Services may by rule begin the

moratorium at an earlier date or extend it to a later date when severe weather conditions warrant that action. 1985

**Chapter 4a. Division of Public Utilities**

**54-4a-1. Establishment of division - Functions.**

**54-4a-2. Director of division - Appointment - Authority and responsibility.**

**54-4a-3. Budget of division - Employment of personnel.**

**54-4a-4. Legal counsel.**

**54-4a-5. Interests, relationships and actions by employees prohibited.**

**54-4a-6. Objectives.**

**54-4a-1. Establishment of division - Functions.**

There is established within the department of business regulation, a division of public utilities which shall have the following duties, powers, and responsibilities:

(1) To commence original proceedings, file complaints, appear as a party and otherwise participate in proceedings before the public service commission and, in connection therewith, present factual information and evidence, examine witnesses, advocate policy recommendations, commence appeals, and engage in all other activities consistent with its statutory responsibilities.

(2) To commence original proceedings, file complaints, appear as a party, appeal, and otherwise represent the public interest in matters and proceedings involving regulation of a public utility pending before any officer, department, board, agency, commission, governmental authority or court of the state or of another state or of the United States and to intervene in, protest, resist or advocate the granting, denial or modification of any petition, application, complaint, or other proceeding or any decision or order of any such governmental authorities.

(3) To investigate or study, upon complaint, upon order of the public service commission, or its own initiative, any matter within the jurisdiction of the commission.

(4) To conduct audits and inspections or take enforcement actions regarding any matter within the jurisdiction of the commission in order to insure compliance with decisions, orders, and policies of the public service commission, either upon order of the commission or upon its own initiative.

(5) To require any person or entity subject to the jurisdiction of the public service commission to: (a) provide information, reports, and other data compilations relevant to matters within the jurisdiction of the commission; (b) provide access to inspect and copy records and other data compilations relevant to matters within the jurisdiction of the commission; (c) permit inspection of properties and tangible things used in providing public utility service; and (d) engage in other methods of discovery authorized by the commission.

(6) Any investigations, studies, audits, inspections, enforcement actions, or requests for discovery of information pursuant to subsections (3), (4), or (5), shall be: (a) preceded by reasonable advance notice to the person or entity against whom investigation, study, audit, inspection, enforcement or discovery is sought; and (b) governed by the provisions of subsections 54-7-4.5(2)(a) (c) (d) and (e). Such person or entity may require that a complaint or other formal proceeding be instituted with the public service commission prior to the commencement

ent of the investigation, study, audit, inspection, enforcement, or discovery by the division pursuant to subsections (3), (4), or (5).

(7) To receive complaints from any person or entity regarding matters within jurisdiction of the public service commission.

(8) To review applications filed with the public service commission and present recommendations thereon.

(9) To make recommendations regarding public utility regulatory policy and long-range planning on matters within the jurisdiction of the public service commission.

(10) To engage in settlement negotiations and make stipulations or agreements regarding matters within the jurisdiction of the public service commission. Settlements, stipulations, or other forms of compromise or agreement are subject to approval of the commission, upon such notice and hearing as the commission by rule shall establish. 1983

#### **54-4a-2. Director of division - Appointment - Authority and responsibility.**

The director of the division of public utilities shall be appointed by the executive director of the department of business regulation and shall serve at the pleasure of the executive director. The director of the division of public utilities is subject to the administrative authority of the executive director of the department of business regulation and is responsible for the administration and supervision of the division. The director of the division of public utilities shall have authority to adopt internal organizational measures to effectuate efficiency and economy in the management and operation of the division. 1983

#### **54-4a-3. Budget of division - Employment of personnel.**

The annual budget of the division of public utilities shall provide sufficient funds for the division to hire, develop, and organize a technical and professional staff to perform the duties, powers, and responsibilities committed to it by law. The division director may hire economists, accountants, engineers, inspectors, statisticians, lawyers, law clerks, and other technical and professional experts as may be required. The division director may also retain additional experts as required for a particular matter, but only to the extent that it is necessary to supplement division staff in order to fulfill its duties. The division may also employ necessary administrative and support staff. Pay schedules shall be determined by the division of personnel management which will utilize standard techniques for determining compensation. The division of personnel management may make its compensation determinations based upon compensation common to utility companies throughout the United States. 1983

#### **54-4a-4. Legal counsel.**

The attorney general shall appoint sufficient full time legal counsel to assist, advise, and represent the division and its staff in the discharge of its duties and in all proceedings before the public service commission, and in all other proceedings. 1983

#### **54-4a-5. Interests, relationships and actions by employees prohibited.**

No employee of the division of public utilities shall, while so employed:

(1) Have any pecuniary interest, whether as the holder of stock or other securities, or otherwise

have any conflict of interest with any public utility or other entity subject to the jurisdiction of the commission;

(2) Have any office, position, or relationship, or be engaged in any business or avocation which interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment with the division;

(3) Accept any gift, gratuity, emolument, or employment from any public utility or any other entity subject to the jurisdiction of the commission or from any officer, agent, or employee thereof; or

(4) Solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person or entity to any office or employment with any public utility or other entity subject to the jurisdiction of the public service commission. 1983

#### **54-4a-6. Objectives.**

In the performance of the duties, powers, and responsibilities committed to it by law, the division of public utilities shall act in the public interest in order to provide the public service commission with objective and comprehensive information, evidence, and recommendations consistent with the following objectives:

(1) Promote the safe, healthy, economic, efficient, and reliable operation of all public utilities and their services, instrumentalities, equipment, and facilities;

(2) Provide for just, reasonable, and adequate rates, charges, classifications, rules, regulations, practices, and services of public utilities;

(3) Make the regulatory process as simple and understandable as possible so that it is acceptable to the public; feasible, expeditious, and efficient to apply; and designed to minimize controversies over interpretation and application;

(4) For purposes of guiding the activities of the division of public utilities, the phrase "just, reasonable, and adequate" encompasses, but is not limited to the following criteria:

(a) Maintain the financial integrity of public utilities by assuring a sufficient and fair rate of return;

(b) Promote efficient management and operation of public utilities;

(c) Protect the long-range interest of consumers in obtaining continued quality and adequate levels of service at the lowest cost consistent with the other provisions of subsection (4).

(d) Provide for fair apportionment of the total cost of service among customer categories and individual customers and prevent undue discrimination in rate relationships;

(e) Promote stability in rate levels for customers and revenue requirements for utilities from year to year; and

(f) Protect against wasteful use of public utility services. 1983

## **Chapter 5. Public Utilities Regulation Fee**

### **54-5-1. Repealed.**

**54-5-1.5. Regulation fee - Based upon gross revenues from intrastate business - Payment of fee - Appropriation for public utility regulation - Limitation on yearly fee - Supplemental levy committee - Supplemental fee imposed.**

**54-5-2. How gross operating revenue is determined.**

**54-5-3. Default in payment of fee - Procedure to collect - Penalties.**

**54-5-4. Penalties.**

**54-5-5. Repealed.**

ISSUED: Per U.P.S.C. Order No. 82-049-08  
and Order No. 83-049-05

EFFECTIVE: 12-16-83

A2. GENERAL REGULATIONS - CONDITIONS OF OFFERING

2.3 PAYMENT FOR SERVICE

2.3.1 CUSTOMER RESPONSIBILITY

The customer is responsible for payment of all charges for facilities and services furnished the customer, including charges for services originated, or charges accepted, at such facilities.

2.3.2 PAYMENT OF BILLS

1. All charges for exchange service, equipment, and facilities exclusive of charges for local messages in excess of the monthly allowance and toll messages, are payable monthly in advance. Charges for local messages in excess of the monthly allowance and toll messages are payable monthly except that the Company reserves the right to require payment of such charges at more frequent intervals.
- a. The Company may require payment of charges prior to the due date which may appear on any statement or bill rendered to the customer by the Company.
2. Where the rates and charges for a particular service is determined by applying a percentage or similar factor to a quoted rate, and such computation results in a fraction, the charge for the service shall be computed to the nearest cent, a half cent being increased to the next higher cent.
3. In the event a customer is indebted to the Company for charges and services previously rendered in Utah, or for service under one or more numbers at the same location, and the customer does not pay the charges or satisfy such indebtedness, the Company may charge and bill such indebtedness for a residence account against the same customer's residence service or a business account against the customer's business service.
4. In the event that payment from a customer is less than the total amount of all charges owing to the Company and the customer does not specifically designate the manner in which he wishes to apply said payment, then the Company may apply all or any part of the payments received to such accounts or indebtedness in any manner that the Company desires.

(C)

ISSUED: January 30, 1985  
(AL 85-02)

EFFECTIVE: March 4, 1985

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3. In the event a customer is indebted to the Company for charges and services rendered at a prior time, of any nature, or for service at more than one number or location, and the customer does not pay the charges or satisfy such indebtedness, the Company may charge and bill such indebtedness against the account of the customer's present service or to the account of either service in the case where more than one number or location is being served.
4. In the event that payment from a customer is less than the total amount of all charges owing to the Company and the customer does not specifically designate the manner in which he wishes to apply said payment, then the Company may apply all or any part of the payments received to such accounts or indebtedness in any manner that the Company desires.

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# CONSTITUTION OF UTAH

## Preamble

- Article I. Declaration of rights.
- Article II. State boundaries.
- Article III. Ordinance.
- Article IV. Elections and right of suffrage.
- Article V. Distribution of powers.
- Article VI. Legislative department.
- Article VII. Executive department.
- Article VIII. Judicial Department.
- Article IX. Congressional and legislative apportionment.
- Article X. Education.
- Article XI. Counties, cities and towns.
- Article XII. Corporations.
- Article XIII. Revenue and taxation.
- Article XIV. Public debt.
- Article XV. Militia.
- Article XVI. Labor.
- Article XVII. Water rights.
- Article XVIII. Forestry.
- Article XIX. Public buildings and state institutions.
- Article XX. Public lands.
- Article XXI. Salaries.
- Article XXII. Miscellaneous.
- Article XXIII. Amendment and revision.
- Article XXIV. Schedule.

## PREAMBLE

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the principles of free government, do ordain and establish this CONSTITUTION. 1896

## ARTICLE I. DECLARATION OF RIGHTS

- Section 1. [Inherent and inalienable rights.]
- Section 2. [All political power inherent in the people.]
- Section 3. [Utah inseparable from the Union.]
- Section 4. [Religious liberty - No property qualification to vote or hold office.]
- Section 5. [Habeas corpus.]
- Section 6. [Right to bear arms.]
- Section 7. [Due process of law.]
- Section 8. [Offenses bailable.]
- Section 9. [Excessive bail and fines - Cruel punishments.]
- Section 10. [Trial by jury.]
- Section 11. [Courts open - Redress of injuries.]
- Section 12. [Rights of accused persons.]
- Section 13. [Prosecution by information or indictment - Grand jury.]
- Section 14. [Unreasonable searches forbidden - Issuance of warrant.]
- Section 15. [Freedom of speech and of the press - Libel.]
- Section 16. [No imprisonment for debt - Exception.]
- Section 17. [Elections to be free - Soldiers voting.]
- Section 18. [Attainder - Ex post facto laws - Impairing contracts.]
- Section 19. [Treason defined - Proof.]
- Section 20. [Military subordinate to the civil power.]
- Section 21. [Slavery forbidden.]
- Section 22. [Private property for public use.]
- Section 23. [Irrevocable franchises forbidden.]
- Section 24. [Uniform operation of laws.]
- Section 25. [Rights retained by people.]
- Section 26. [Provisions mandatory and prohibitory.]
- Section 27. [Fundamental rights.]

### Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship

according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances, to communicate freely their thoughts and opinions, being responsible for the abuse of that right. 1896

### Section 2. [All political power inherent in the people.]

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require. 1896

### Section 3. [Utah inseparable from the Union.]

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land. 1896

### Section 4. [Religious liberty - No property qualification to vote or hold office.]

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution. 1896

### Section 5. [Habeas corpus.]

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it. 1896

### Section 6. [Right to bear arms.]

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms. 1985  
January 1, 1985

### Section 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law. 1896

### Section 8. [Offenses bailable.]

All prisoners shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption strong or where a person is accused of the commission of a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, and where the proof is evident or the presumption strong. 1973

### Section 9. [Excessive bail and fines - Cruel punishments.]

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor. 1896

### Section 10. [Trial by jury.]



In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded. 1896

**Section 11. [Courts open - Redress of injuries.]**

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party. 1896

**Section 12. [Rights of accused persons.]**

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense. 1896

**Section 13. [Prosecution by information or indictment - Grand jury.]**

Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information after examination and commitment by a magistrate, unless the examination be waived by the accused with the consent of the State, or by indictment, with or without such examination and commitment. The formation of the grand jury and the powers and duties thereof shall be as prescribed by the Legislature. 1949

**Section 14. [Unreasonable searches forbidden - Issuance of warrant.]**

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized. 1896

**Section 15. [Freedom of speech and of the press - Libel.]**

No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. 1896

**Section 16. [No imprisonment for debt - Exception.]**

There shall be no imprisonment for debt except in cases of absconding debtors. 1896

**Section 17. [Elections to be free - Soldiers voting.]**

All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers, in time of war, may vote at their post of duty, in or out of the State, under regulations to be prescribed by law. 1896

**Section 18. [Attainder - Ex post facto laws - Impairing contracts.]**

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed. 1896

**Section 19. [Treason defined - Proof.]**

Treason against the State shall consist only in levying war against it, or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act. 1896

**Section 20. [Military subordinate to the civil power.]**

The military shall be in strict subordination to the civil power, and no soldier in time of peace, shall be quartered in any house without the consent of the owner; nor in time of war except in a manner to be prescribed by law. 1896

**Section 21. [Slavery forbidden.]**

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State. 1896

**Section 22. [Private property for public use.]**

Private property shall not be taken or damaged for public use without just compensation. 1896

**Section 23. [Irrevocable franchises forbidden.]**

No law shall be passed granting irrevocably any franchise, privilege or immunity. 1896

**Section 24. [Uniform operation of laws.]**

All laws of a general nature shall have uniform operation. 1896

**Section 25. [Rights retained by people.]**

This enumeration of rights shall not be construed to impair or deny others retained by the people. 1896

**Section 26. [Provisions mandatory and prohibitory.]**

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise. 1896

**Section 27. [Fundamental rights.]**

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government. 1896

**ARTICLE II. STATE BOUNDARIES**

**Section 1. [State boundaries.]**

The boundaries of the State of Utah shall be as follows:

Beginning at a point formed by the intersection of the thirty-second degree of longitude west from Washington, with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the intersection of the same with the thirty-seventh degree of longitude west from Washington; thence due north along said thirty-seventh degree of west longitude to the intersection of the same with the forty-second degree of

## RULE 51

## Rules of Civil Procedure

UTAH

59 not later than ten days after entry of the judgment notwithstanding the verdict.

### (d) Same: Denial of Motion.

If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as respondent, assert grounds entitling him to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this Rule precludes it from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

## RULE 51. INSTRUCTIONS TO JURY; OBJECTIONS

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in said requests. The court shall inform counsel of its proposed action upon the requests prior to instructing the jury; and it shall furnish counsel with a copy of its proposed instructions, unless the parties stipulate that such instructions may be given orally, or otherwise waive this requirement. If the instructions are to be given in writing, all objections thereto must be made before the instructions are given to the jury; otherwise, objections may be made to the instructions after they are given to the jury, but before the jury retires to consider its verdict. No party may assign as error the giving or the failure to give an instruction unless he objects thereto. In objecting to the giving of an instruction, a party must state distinctly the matter to which he objects and the grounds for his objection. Notwithstanding the foregoing requirement, the appellate court, in its discretion and in the interests of justice, may review the giving or failure to give an instruction. Opportunity shall be given to make objections, and they shall be made, out of the hearing of the jury.

Arguments for the respective parties shall be made after the court has instructed the jury. The court shall not comment on the evidence in the case, and if the court states any of the evidence, it must instruct the jury that they are the exclusive judges of all questions of fact.

## RULE 52. FINDINGS BY THE COURT

### (a) Effect.

### (b) Amendment.

### (c) Waiver of Findings of Fact and Conclusions of Law.

### (a) Effect.

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rule 41(b).

### (b) Amendment.

Upon motion of a party made not later than ten

its findings or make additional findings and to amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made either a motion to amend them, a motion for judgment, or a motion for a new trial.

### (c) Waiver of Findings of Fact and Conclusions of Law.

Except in actions for divorce, findings of fact and conclusions of law may be waived by the parties on an issue of fact:

(1) By default or by failing to appear at the trial;

(2) By consent in writing, filed in the cause;

(3) By oral consent in open court, entered in minutes.

## RULE 53. MASTERS

### (a) Appointment and Compensation.

### (b) Reference.

### (c) Powers.

### (d) Proceedings.

### (e) Report.

### (f) Objections to Appointment of Master.

### (a) Appointment and Compensation.

Any or all of the issues in an action may be referred by the court to a master upon the written consent of the parties, or the court may appoint a master in an action, in accordance with the provisions of subdivision (b) of this Rule. As used in these rules the word "master" includes a referee, an auditor, and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the court as the court may direct. The master shall not retain any report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

### (b) Reference.

A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall, in the absence of the written consent of the parties, be made only upon a showing that some exceptional condition requires it.

### (c) Powers.

The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, and the production of all books, papers,