

**REGULATION OF PUBLIC
UTILITIES: A COMPARISON OF
THE NEW YORK AND THE
WISCONSIN PUBLIC UTILITIES
BILLS**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649164745

Regulation of public utilities: a comparison of the New York and the Wisconsin public utilities bills by Allen Ripley Foote

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Cover @ 2017

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PUBLISHED BY THE
LEGISLATIVE REFERENCE DEPARTMENT OF
THE OHIO STATE LIBRARY.



COLUMBUS, O.:
THE F. J. HEER PRINTING CO.
1911

HD 2766
.F7

This comparison was originally published by the Legislative Reference Department of Wisconsin. The appendix to this reprint was prepared by the Legislative Reference Department of the Ohio State Library.

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REGULATION OF PUBLIC UTILITIES.

NEW YORK PUBLIC UTILITIES BILL.

WISCONSIN PUBLIC UTILITIES BILL.

COMPARISON OF PROVISIONS.

NOTE: This comparison was made in 1907, before either the New York or the Wisconsin bill was enacted into law. Each bill was subsequently amended before passage, and the laws have also been amended.

MOTIF.

The motif of the New York bill is arbitrary power—a club. It is destructive. It abolishes the state board of railroad commissioners; the state commission of gas and electricity; the state or city office of inspector of gas meters, and the New York board of rapid transit railroad commissioners. It gives all the powers of these boards, officers and commissions to two new commissions, one for New York City and one for all other counties of the state. The members of these commissions are appointed by the governor, with the consent of the senate, for a term of five years, after the initial term, and removable by the governor for cause.

The motif of the Wisconsin bill is the establishment of the principles of reciprocal justice between public utilities and the users of the services they render. It gives additional powers to the existing board of railroad commissioners, a board composed of three commissioners, appointed by the governor with the consent of the senate, for a term of six years, after the initial term, and removable by the governor for cause.

JURISDICTION.

The New York bill places under the jurisdiction of its commissioners all railroads; street railroads; common carriers; the manufacture and distribution of gas and electricity for light, heat and power; underground conduits or ducts for electrical conductors (section 66—1); all transportation of persons or property; and all persons, corporations and

municipalities (section 66-4; 5, 6, 7, 8, & 9) owning, leasing, operating and controlling the same. Street railroads are included in the provisions for railroads and common carriers. Telephone and water utilities are omitted.

The Wisconsin bill places under the jurisdiction of the state board of railroad commissioners the manufacture and distribution of gas and electricity for light, heat and power; telephone and water services; and all persons, corporations and municipalities owning, leasing, operating and controlling the same. The commission has complete jurisdiction of railway companies (chapter 362, laws of 1905) and is given complete jurisdiction of street railways by a bill now pending.

ORGANIZATION AND EQUIPMENT OF COMMISSIONS.

Provisions in both bills are ample for the organization and equipment of commissions to enable them to do effective work; and for all purposes of investigation and examinations to obtain information by which to guide their actions and formulate their decisions, their powers are sufficient; and the means provided for the exercise of such powers are ample.

PURPOSE OF THE COMMISSIONS.

The purpose of the commissions in both states, is declared in both bills to be the securing of adequate service and reasonable rates. To this end all rebates, discriminations, special privileges and favors to any officer, agent or employe of the commission, or to any person, firm, corporation or association are declared to be unlawful and are strictly prohibited. All equipment and methods of manufacturing, distributing, measuring and charging for services are placed under supervision and examination, and the quality, purity and pressure of the product sold are made the subject of continuous tests and observation. The publication of schedules for inspection by consumers or users is required, and it is made unlawful to charge greater or less rates than those shown on published schedules.

COMPETITION AS A MEANS OF SECURING ADEQUATE SERVICE AND REASONABLE RATES.

The New York bill prohibits the exercise of any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not actually exercised, without authority of a commission. (Section 68.) This gives the New York commission full power to prohibit competition.

The Wisconsin bill gives power to the commission to require, for a reasonable compensation, the joint use by any public utility of any con-

duits, subways, poles or other equipment on, over or under any street or highway. (Section 4—1.) It also provides that "no license or franchise shall be granted where there is in operation, under an indeterminate permit, a public utility engaged in a similar service without first securing from the commission a declaration, after hearing, of reasonable necessity," and that "any existing franchise which shall contain any terms interfering with the existence of such second public utility is hereby amended to permit municipality to grant license or permit for operation of second public utility." (Section 74.) Telephone companies are not included in these provisions since they are by law permitted to operate without franchise.

This gives the Wisconsin commission full power to prohibit competition, subject to review by the courts.

MUNICIPAL OWNERSHIP.

The New York bill provides (section 68) that no municipality shall build, maintain and operate for other than municipal purposes any works or system for the manufacture and supplying of gas or electricity for lighting purposes without a certificate of authority granted by the commission.

This gives the New York commission full power to prohibit municipal ownership.

The Wisconsin bill provides (section 76) that "every license, permit or franchise hereafter granted to any public utility shall be subject to the provision that the municipality in which it is situate may purchase the property of such utility within said municipality actually used and useful for the convenience of the public, at any time as provided herein, paying therefor the then value of such property as determined by the commission. Any such municipality is *authorized to purchase* such property, and every public utility operating under such indeterminate franchise is *required to sell* such property at the value and according to the terms and conditions determined by the commission, subject to appeal as herein provided."

Section 77 provides that a public utility operating under an existing franchise may by filing a written surrender thereof, receive by operation of law an indeterminate permit, and that the filing of such surrender constitutes a waiver of the right to insist upon the fulfillment of any contract relating to rate, charge or service regulated by the act.

Section 78 provides that the acceptance of an indeterminate franchise shall be deemed a consent to a future purchase of the property by the municipality in which the major part of it is situated at the value and under the terms and conditions fixed by the commission and shall be deemed a waiver of the constitutional right arising under a provision

of the state constitution requiring the necessity of the taking to be established by the verdict of a jury.

Section 79 gives the municipality power: (1) to construct and operate a plant; (2) to purchase by agreement with any public utility any part of any plant on terms approved by the commission after hearing; (3) to acquire by condemnation any plant operated under a franchise existing at the time the act takes effect; (4) to acquire property of a public utility operating under an indeterminate permit.

Section 80 provides for an action to condemn the property of the public utility operating under a franchise granted prior to the time this act takes effect.

Section 81 provides that if the municipality shall have determined to acquire a plant and the public utility has consented to the taking over of such plant by the acceptance of an indeterminate permit, or in case the public utility shall not have consented to such taking by such acceptance, if a jury shall have found that a necessity exists for the taking of such plant, then the municipality shall give notice of such determination and of such consent or such verdict to the public utility and to the commission.

Section 82 provides that the commission shall thereupon, after public hearing and within three months, fix and determine the then value of the property and all terms and conditions of sale and purchase. This value and the terms and conditions shall constitute the compensation and terms and conditions of sale.

Section 83 provides that the public utility of the municipality may prosecute an action to alter or amend the determination of the commission.

VALUATION OF UTILITIES.

The New York bill contains no provision for the valuation of utilities.

The Wisconsin bill provides in sections 5 to 7 inclusive, for the valuation of the property of public utilities, public hearings on the subject of valuation, final determination of value and re-valuations. Section 19 provides for full publication of values. Section 86 provides for a re-hearing and re-valuation if the value for the purposes of municipal purchase fixed by the previous order of the commission be adjudged to be unlawful.

CONTROL OF CAPITALIZATION.

The New York bill in sections 54, 55, 69 & 70 gives power to the commission to control the issue and transfer of stocks, bonds and other evidences of indebtedness as a means of controlling the capitalization of public utilities.

The *Wisconsin bill* has no provision to prevent stock-watering. Under its provisions rates are to be computed on true value and it was regarded better to permit capitalization to be regulated by other measures now pending before the legislature.

UNIFORM SYSTEM OF ACCOUNTING.

The *New York bill* provides in section 52 that "each commission may, whenever it deems advisable, establish a uniform system of accounts to be used by railroad and street railroad corporations or other common carriers, and may prescribe the manner in which such accounts shall be kept."

It provides in section 66—4 that each commission shall "have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by the persons, corporations and municipalities engaged in the manufacture, sale and distribution of gas and electricity for light and power."

It will be observed that these provisions are *permissive*, not mandatory.

The *Wisconsin bill* provides:

Section 8. 1. "Every public utility shall keep and render to the commission in the manner and form prescribed by the commission uniform accounts of all business transacted."

2. Every public utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of heat, light, water or power or the conveyance of telephone messages shall, if required by the commission, keep and render separately to the commission in like manner and form the accounts of all such other business, in which case all the provisions of this act shall apply with like force and effect to the books, accounts, papers and records of such other business.

Section 9. "The commission shall prescribe the form of all books, accounts, papers and records to be kept for this purpose, and every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission and to comply with all directions of the commission relating to such books, accounts, papers and records.

Section 10. The commission shall cause to be prepared suitable blanks for carrying out the purposes of this act, and shall when necessary, furnish such blanks to each public utility.

Section 11. No public utility shall keep any other books, accounts, papers or records of the business transacted than those prescribed or approved by the commission.

It will be observed that all of these sections are *mandatory*. Their enforcement will make intelligent regulation possible.