

Public Utilities, Rates—Decrease—Competitors.

There is no provision in the Public Utility Law prohibiting one of two competing utility companies from lowering its rate, providing such are reasonable, are not to embarrass competition, and are first submitted to the Commission.

May 23, 1919.

Railroad & Public Service Commission,
Helena, Montana.

Gentlemen:

I acknowledge receipt of your communication of the 17th inst., wherein you make the following inquiry:

“Will you please advise the Commission if a city is served by two water utilities, whether or not there is any provision in the Public Service Commission Law, viz., Chapter 52, Session Laws 1913, which would prevent one utility from lowering its rates, thus affecting the rates and charges of its competitor?”

I call your attention to the following provisions of our Public Utility Law (Chapter 52, Session Laws 1913):

“Section 5. Every Public Utility is required to furnish reasonably adequate service and facilities. The charge made by any Public Utility for any heat, light, power, water, telegraph or telephone service, produced, transmitted, delivered or furnished, or for any service to be rendered as, or in connection with any Public Utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.”

“Section 11. (c) No change shall thereafter be made in any schedule, including schedules of joint rates, except upon twenty days' notice to the Commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect; provided that the Commission upon application of any Public Utility, may prescribe a less time within which a reduction of existing schedules shall be made without the concurrence of the Commission. Copies of all new or amended schedules shall be filed and posted in the stations or offices of Public Utilities as in the case of original schedules. The Commission may prescribe such changes in the form in which the schedules are issued by any Public Utility as may be found to be expedient.”

“Section 12. It shall be unlawful for any Public Utility to charge, demand, collect or receive a great or less compensation for any service performed by it within the State, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls and charges until the same are changed, as provided in this Act. It shall likewise be unlawful

for any Public Utility to grant any rebate, concession or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges or payments, and any violation of the provisions of this section shall subject the violator to the penalty prescribed in Section 8 of this Act. This, however, does not have the effect of suspending, rescinding, invalidating or in any way affecting existing contracts."

"Section 17. Upon a complaint made against any Public Utility by * * * an person * * * or corporation * * * provided such persons * * * or corporations are directly affected thereby that any of the rates, tolls, charges or schedules * * * are in any way unreasonable or unjustly discriminatory or that any regulations * * * or act whatsoever affecting or relating to the * * * furnishing of * * * water * * * or any service in connection therewith * * * is in any respect unreasonable, insufficient, or unjustly discriminatory, * * * the Commission shall proceed, with or without notice, to make such investigation as it may deem necessary * * *"

"Section 19. (a) If, upon such hearing and due investigation, the rates, tolls, charges, schedules or joint rates shall be found to be unjust, unreasonable, or unjustly discriminatory, or to be preferential or otherwise in violation of the provisions of this Act, the Commission shall have the power to fix and *order substituted therefor*, such rate or rates, tolls, charges or schedules, as shall be just and reasonable. * * *"

"Section 19. (b) * * * The Commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, regulations, practices, and service, after a full hearing, as above provided, by order, make such changes as may be just and reasonable the same as if a formal complaint had been made."

"Section 25. All rates, fares, charges, classifications and joint rates fixed by the Commission shall be enforced, and shall be prima facie lawful, from the date of the order until changed or modified by the Commission, or in pursuance of Section 26 of this Act. All regulations, practices and service, prescribed by the Commission, shall be enforced and shall be brought for that purpose, pursuant to the provisions of Section 27 of this Act, or until changed or modified by the Commission itself upon satisfactory showing made."

If there should be any objection by parties interested to the approval of the proposed new rates, or if for any reason you should deem it expedient and advisable that a hearing should be had for the purpose of making a full investigation before such approval of rates or schedules by you, you may in your discretion cause a hearing to be held.

We have no law prohibiting two water companies doing business the same municipality, and there is no law which prohibits a Public Utility from reducing the rates to its consumers. However, before new rates or

schedules are made effective, the same must be submitted to you for your approval.

If, after a due investigation and legal hearing had in such matter, you should find that the proposed rates or schedules are in any way unjust and unreasonable, you may substitute such rates and schedules as you may deem reasonable and proper in the premises. Such rates as are approved by you must be enforced and are deemed prima facie lawful, and it is within your province to say as to the reasonableness of the rates.

You are, therefore, advised that it is my opinion that there is no provision in our Public Utility Law which would, where there are two public utilities in one city, prevent one utility from lowering its rates, however the rates must be reasonable and the Commission must satisfy itself that the rates are made adequate so as to earn a fair return on the investment of the property necessarily used and employed for the operation of the plant and that it is not made unreasonably low for the purpose of embarrassing its competition, and such rates or schedules must, before made effective, be approved by the Commission.

Respectfully, .

S. C. FORD,

Attorney General.

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