Public Service Commission — Public Utilities — Section 3891, R.C.M. 1921.

Section 3891, R. C. M. 1921 does not give any clear answer to right of public utility entering field subsequent to passage of the Public Service Commission Act of 1913 to initiate rates; hence, construction of administrative board acquiesced in for a number of years will be adopted.

Public Service Commission of Montana, August 22, 1932.
Helena, Montana.

Gentlemen:

You have submitted to this office the question of whether "a public utility which has come into existence or operation subsequent to the passage of the public service commission act of Montana (chapter 52, laws of 1913) has the right to initiate a schedule of rates for its service or product without the approval of the public service commission.

You state that it seems reasonably clear from section 3891, R.C.M. 1921, that a public utility in existence at the time of the passage of the public service commission act was entitled to establish rates for its service or product by merely filing with the commission a schedule showing all rates, etc., which it had established, provided the rates so established did not exceed the rates in force at the time of the passage of the act.

Section 3891, R.C.M. 1921, was enacted as section 11 of chapter 52 of the laws of 1931 and provides:

> "Every Public Utility shall file with the Commission within a time fixed by the Commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time of any service performed by it within the state, or for any service in connection therewith, or performed by any public

utility controlled or operated by it. The rates, tolls and charges shown on such schedules shall not exceed the rates, tolls and charges in force at the time of the passage of this Act."

There is nothing in this section to indicate that this provision in regard to filing schedules was intended to apply to public service corporations coming into existence after the passage of the Act. Was the omission an oversight or was it deliberate and intended to manifest a legislative intent not to apply to public service corporations thereafter coming into existence?

The legislature is presumed to use language sufficient to express its intent. The omission of any reference to future corporations is significant of an intent not to include them. Evidence that the legislature deliberately intended to omit from the provisions of section 3891 language including service corporations thereafter created is the language used therein limiting the rates, tolls and charges shown in schedules to not exceeding those in effect at the time of the passage of the act.

This could not possibly apply to service charges of subsequently created corporations where the cost of the service might depend upon many factors not in existence in the locality served at the time of the passage of the act, or where the service is of a character not supplied by any public service corporation, and for which service there was no rate in existence at the time the act took effect.

On the other hand, if this section is limited in its provisions to a public utility operating at the time the act took effect then there is no authority of law for any new public service corporation to begin its service until its rates, tolls and charges have been investigated and approved by the public service commission and there is no other provision of the act requiring such preliminary investigation by the commission before being allowed to enter the field of a public utility.

The act does not give any clear answer to your question and I do not find where the attorney general or any court has been called upon to decide the matter. However, you state that "the commission has made it a practice of approving or refusing to approve initial tariffs of such public utilities," e. g., coming into existence after the passage of the act.

The act took effect in 1913. As this construction has been acquiesced in for a number of years it constitutes some evidence of legislative intent as construed by an administrative board, and, in my opinion, should be continued until such time as the legislature shall see fit to change it or until challenged by an action brought for that purpose.

Very truly yours,

L. A. FOOT,
Attorney General.