

TITLE 61
PUBLIC UTILITY REGULATION

CHAPTER 5
POWERS AND DUTIES OF PUBLIC UTILITIES COMMISSION

61-501. INVESTMENT OF AUTHORITY. The public utilities commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the provisions of this act.

[(61-501) 1913, ch. 61, sec. 29, p. 248; reen. C.L. 106:82; C.S., sec. 2450; I.C.A., sec. 59-501.]

61-502. DETERMINATION OF RATES. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find 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 excursions 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 any wise in violation of any provision 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, and shall, under such rules and regulations as the commission may prescribe, fix the reasonable maximum rates to be charged for water by any public utility coming within the provisions of this act relating to the sale of water.

[(61-502) 1913, ch. 61, sec. 30(a), p. 248; reen. C.L. 106:83; C.S., sec. 2451; I.C.A., sec. 59-502.]

61-502A. RESTRICTION ON RATES AUTHORIZING RETURN ON PROPERTY NOT PROVIDING UTILITY SERVICE. Except upon its explicit finding that the public interest will be served thereby, the commission is hereby prohibited in any order issued after the effective date of this act, from setting rates for any utility that grants a return on construction work in progress or property held for future use and which is not currently used and useful in providing utility service. Except as authorized by this section, any rates granting a return on construction work in progress or property held for future use are hereby declared to be unjust, unreasonable, unfair, unlawful and illegal. When construction work in progress is excluded from the rate base, the commission must allow a just, fair and reasonable allowance for funds used during construction or similar account to be accumulated, computed in accordance with generally accepted accounting principles. If the commission sets rates for any utility including a return on property held for future use and subsequently determines that such property is not needed to provide utility service, then the commission shall determine whether any gain or loss occurring from the sale or other disposition of the property may be included in the utility's rates.

[61-502A, added 1984, ch. 21, sec. 1, p. 24; am. 2006, ch. 107, sec. 1, p. 300.]

61-502B. ALLOCATION OF GAIN UPON SALE OF WATER RIGHT. The gain upon sale of a public utility's water right used for the generation of electricity shall accrue to the benefit of the ratepayers.

[61-502B, added 1985, ch. 16, sec. 1, p. 22.]

61-503. POWER TO INVESTIGATE AND FIX RATES AND REGULATIONS. The commission shall have power, upon a hearing, had upon its own motion or upon complaint, 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 or practices, or any thereof, of any public utility, and to establish new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices or schedule or schedules in lieu thereof.

[(61-503) 1913, ch. 61, sec. 30(b), p. 248; reen. C.L. 106:84; C.S., sec. 2452; I.C.A., sec. 59-503.]

61-504. ESTABLISHMENT OF THROUGH ROUTE AND JOINT RATE. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares or charges in force over two (2) or more common carriers, between any two (2) 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, and that the public convenience and necessity demand the establishment of a through route and joint rate, fare or charge between such points, the commission may 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 and reasonable and sufficient to be followed, charged, enforced, demanded and collected in the future and the terms and conditions under which such through route shall be operated. In case the common carriers do not agree upon the division between them of the joint rates, fares or charges established by the commission over such through routes, the commission shall, after hearing, by supplemental order, establish such division. The commission shall have the power to establish and fix through routes and joint rates, fares or charges over stage or auto lines and to fix the division of such joint rates, fares or charges.

[(61-504) 1913, ch. 61, sec. 31, p. 248; reen. C.L. 106:85; C.S., sec. 2453; I.C.A., sec. 59-504.]

61-505. JOINT HEARINGS AND INVESTIGATIONS -- RECIPROCITY -- CONTRACTS WITH REGULATORY AGENCIES OF NEIGHBORING STATES. (1) The commission shall have full power and authority to make joint investigations, hold joint hearings within or without the state of Idaho with any official, board, commission, or agency of any state or of the United States, whether in the holding of the investigations or hearings the commission shall function under agreements or compacts between states or under the concurrent power of states to regulate the interstate commerce, or as an agency of the federal government, or otherwise.

(2) The commission shall have full power and authority to contract with the regulatory agencies of neighboring states to hold hearings and set rates and charges for customers in Idaho located in or nearby border communities served by utilities principally located in states other than Idaho. These contracts may have a term that extends beyond the terms of the current commissioners.

(3) The commission shall have this authority under subsection (2) of this section only if it finds that:

(a) The affected Idaho residents live in or nearby a border community that is or may be served by a utility principally located in a state other than Idaho;

(b) The provision of utility service to such a community by a utility located principally in a state other than Idaho is in the public interest;

(c) It is impractical or not in the public interest to conduct proceedings for these affected Idaho residents separate from proceedings conducted by the regulatory agency of the neighboring state for rate payers of that utility located in that state;

(d) The affected Idaho residents have full rights of participation in the hearings conducted by the regulatory agency with which the commission has contracted, as well as the same rights that customers in the neighboring state have to pursue service-related issues; and

(e) The rates, charges and service regulations for Idaho customers are not less favorable than those of similarly situated customers in the neighboring state.

(4) When the commission has entered into a contract authorized in subsection (2) of this section, the findings, decisions and orders of the regulatory agency of the neighboring state are presumptively correct and will take effect according to the terms of the order of the regulatory agency of the neighboring state. Affected Idaho customers may petition the commission for a review of the contract or the rates set under the contract upon a showing that:

(a) All remedies with the neighboring state's utility have been exhausted;

(b) All remedies with the neighboring state's regulatory agency with which the commission has signed a contract have been exhausted; and

(c) Idaho customers have been discriminatorily, preferentially or otherwise unlawfully treated by the regulatory agency of the neighboring state.

The commission, upon its preliminary finding that rates set by the regulatory agency of the neighboring state are prima facie discriminatory, preferential or otherwise unlawful, and that all remedies with the neighboring state's utility and commission have been exhausted, may initiate proceedings to review the decision of the regulatory agency of the neighboring state. Any subsequent order of the commission altering the decision of the regulatory agency of the neighboring state will be of prospective effect only.

(5) The contract authorized in subsection (2) of this section, may be revoked if the commission finds that the affected Idaho residents have been unreasonably, discriminatorily, preferentially or otherwise unlawfully treated by the neighboring state's regulatory agency.

[(61-505) 1929, ch. 29, sec. 1, p. 31; I.C.A., sec. 59-505; rep. and reen. 1969, ch. 229, sec. 1, p. 737; am. 1982, ch. 258, sec. 1, p. 669; am. 1990, ch. 79, sec. 1, p. 161.]

61-506. INTERSTATE RATES. The commission shall have the power to investigate all existing or proposed interstate rates, fares, tolls, charges and classifications, and all rules and regulations and practices in relation thereto, for or in relation to the transportation of persons or prop-

erty 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 may apply by petition or otherwise to the interstate commerce commission or to any court of competent jurisdiction for relief.

[(61-506) 1913, ch. 61, sec. 32, p. 248; reen. C.L. 106:86; C.S., sec. 2454; I.C.A., sec. 59-506.]

61-507. DETERMINATION OF RULES AND REGULATIONS. The commission shall prescribe rules and regulations for the performance of any service or the furnishings 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.

[(61-607) 1913, ch. 61, sec. 33, p. 248; reen. C.L. 106:87; C.S., sec. 2455; I.C.A., sec. 59-507.]

61-508. IMPROVEMENTS MAY BE ORDERED -- COST. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to or changes in the existing plant, scales, equipment, apparatus, facilities or other physical property of any public utility or of any two (2) or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing 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 erected, requires joint action by two (2) 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 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 a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structures or structure, 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.

[(61-508) 1913, ch. 61, sec. 34, p. 248; reen. C.L. 106:88; C.S., sec. 2456; I.C.A., sec. 59-508.]

61-509. REGULATION OF TRAIN AND STREET CAR SERVICE. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall

find 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, reasonably to 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, 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.

[(61-509) 1913, ch. 61, sec. 35, p. 248; reen. C.L. 106:89; C.S., sec. 2457; I.C.A., sec. 59-509.]

61-510. RAILROAD SERVICE -- PHYSICAL CONNECTIONS. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the public convenience and necessity would be subserved by having connections made between the tracks of any two (2) or more railroad or street railroad corporations, so that the 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 (2) 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 city and county, or city or town, the commission may likewise order such physical connection, within such city and county, or city or town, between two (2) 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.

[(61-510) 1913, ch. 61, sec. 36, p. 248; reen. C.L. 106:90; C.S., sec. 2458; I.C.A., sec. 59-510.]

61-511. RAILROAD SERVICE -- SPURS AND SWITCH CONNECTIONS. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that application has been made by any corporation or person to a railroad corporation for a connection or spur as provided in sections 61-324 and 61-325, 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 sections, 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 the power to prescribe. Whenever any such connection or spur has been so provided any corporation or persons 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 or persons 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 party or parties incurring such primary expense.

[(61-511) 1913, ch. 61, sec. 37a, p. 248; compiled and reen. C.L. 106:91; C.S., sec. 2459; I.C.A., sec. 59-511.]

61-512. RAILROAD SERVICE -- CARS OF CONNECTING RAILROAD. 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 reasonable terms and compensation for such service.

[(61-512) 1913, ch. 61, sec. 37b, p. 248; reen. C.L. 106:92; C.S., sec. 2460; I.C.A., sec. 59-512.]

61-513. TELEPHONE COMPANIES -- PHYSICAL CONNECTIONS. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that a physical connection can reasonably be made between the lines of two (2) or more telephone 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 or necessity will be subserved thereby, or shall find that two (2) or more 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 connections be made, and that conversations be transmitted and messages transferred over such connection under such rules and regulations as the commission may establish, and prescribe through lines and joint rates, tolls and charges to be made, and to be used, observed and in force in the future. If such telephone corporations do not agree upon the division between them of the cost of said physical connections or connections of the division of the joint rates, tolls or charges established by the commission over such through lines, the commission shall have authority after further hearing, to establish such division by supplemental order.

[(61-513) 1913, ch. 61, sec. 38, p. 248; compiled and reen. C.L. 106:93; C.S., sec. 2461; I.C.A., sec. 59-513; am. 1984, ch. 106, sec. 6, p. 249.]

61-514. JOINT USE OF PLANT AND EQUIPMENT. Whenever the commission, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one (1) 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, and 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 be 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.

[(61-514) 1913, ch. 61, sec. 39, p. 248; compiled and reen. C.L. 106:94; C.S., sec. 2462; I.C.A., sec. 59-514.]

61-515. SAFETY REGULATIONS. The commission shall have the power, after a hearing had upon its own motion or upon complaint, by general or special orders, or regulations, or otherwise, to require every public utility to maintain and operate its line, plant, system, equipment, apparatus and premises in such manner as to promote and safeguard the health and safety of its employees, customers and the public, and to this end to prescribe the installation, use, maintenance and operation of appropriate safety or other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand.

[(61-515) 1913, ch. 61, sec. 40, p. 248; reen. C.L. 106:95; C.S., sec. 2463; I.C.A., sec. 59-515; am. 1979, ch. 218, sec. 1, p. 603.]

61-515A. SAFETY AND SANITARY EQUIPMENT AND CONDITIONS. Every person operating a common carrier railroad in this state shall equip each locomotive and caboose used in train or a yard switching service and every car used in passenger service with a first aid kit of a type approved by the commission, which kit shall be plainly marked and be readily visible and accessible and be maintained in a fully equipped condition.

Each locomotive, caboose and change room shall be furnished with sanitary cups and sanitary ice-cooled or refrigerated drinking water.

Each locomotive, caboose and change room shall be maintained in a safe and sanitary condition at all times.

For the purpose of this section a "locomotive" shall include all railroad engines propelled by any form of energy and used in rail line haul or yard switching service.

[61-515A, added 1971, ch. 72, sec. 1, p. 167.]

61-516. PRIORITY DESIGNATION FOR ELECTRIC TRANSMISSION PROJECTS. (1) The legislature finds that the timely review and permitting of electric transmission facilities is critical to the well-being of the citizens and the economy of this state and the region. The legislature further finds that enactment of this section is necessary to promote the public interest. The purpose of this section is for the public utilities commission to determine whether the construction of electric transmission facilities should be designated to receive priority processing by state agencies. This section is not intended to affect a state agency's decision-making authority to approve, deny or condition an application to construct electric transmission facilities.

(2) For purposes of this section the following definitions shall apply:

(a) "Electric transmission facilities" means the construction of high voltage transmission lines with an operating level capacity of two hundred thirty thousand (230,000) volts or more and associated substations and switchyards.

(b) "State agency" means every state department, division, commission or board.

(3) Any person intending to construct eligible electric transmission facilities in Idaho may file an application with the public utilities commission seeking priority designation. An order granting priority designation shall not constitute regulatory approval or bind any state agency. If

the commission issues an order granting priority designation, state agencies subsequently involved in the permitting or siting processes for such electric transmission facilities shall be required to give the application priority or immediate attention as it relates to reviews, permits, reports, studies or comments.

(4) In reviewing an application for priority designation, the public utilities commission shall base its findings on whether the proposed construction of electric transmission facilities will:

- (a) Benefit Idaho customers and the Idaho economy;
- (b) Improve electric transmission capacity and reliability in Idaho and the region; and
- (c) Promote the public interest.

(5) Applications for priority designation filed with the public utilities commission shall be governed by the commission's rules of administrative procedure. The commission may promulgate administrative rules in compliance with chapter 52, title 67, Idaho Code, or may issue procedural orders necessary to implement this section.

[61-516, added 2009, ch. 9, sec. 1, p. 11.]

61-517. ACCIDENTS -- INVESTIGATION -- ORDER OR RECOMMENDATION OF COMMISSION -- REPORT BY UTILITY. 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 or operation, resulting in loss of life or injury to person 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 or 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.

[(61-517) 1913, ch. 61, sec. 42, p. 248; compiled and reen. C.L. 106:97; C.S., sec. 2465; I.C.A., sec. 59-517.]

61-518. RAILROAD SERVICE -- FURNISHING CARS. Every railroad company shall, upon reasonable notice, furnish to all persons or corporations who may apply therefor and offer property for transportation, sufficient and suitable cars for the transportation of such property in carload lots. In case at any time a railroad company has not sufficient cars to meet all the requirements for transportation of property in carload lots, all cars available for such purpose shall be distributed among the several applicants therefor without unjust discrimination between shippers, localities or competitive or noncompetitive points, but preference may always be given in the supplying of cars for shipment of live stock or perishable property.

[(61-518) 1913, ch. 61, sec. 43a, p. 248; reen. C.L. 106:98; C.S., sec. 2466; I.C.A., sec. 59-518.]

61-519. EXPRESS SERVICE -- DELIVERY OF TELEPHONE MESSAGES. The commission shall also have power to provide the time within which express packages shall be received, gathered, transported and delivered at destination and

the limits within which express packages shall be gathered and distributed and telephone messages delivered without extra charge.

[(61-519) 1913, ch. 61, sec. 43b, p. 248; reen. C.L. 106:99; C.S., sec. 2467; I.C.A., sec. 59-519; am. 1984, ch. 106, sec. 7, p. 249.]

61-520. SERVICE OF ELECTRIC, GAS, AND WATER CORPORATIONS -- DETERMINATION OF STANDARDS. The commission shall have power, after hearing had upon its own motion or upon complaint, 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 condition 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 product, 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.

[(61-520) 1913, ch. 61, sec. 44a, p. 248; reen. C.L. 106:100; C.S., sec. 2468; I.C.A., sec. 59-520.]

61-521. AUTHORITY TO ENTER PREMISES. The commissioners and their officers and employees 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 act, 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 examination and tests.

[(61-521) 1913, ch. 61, sec. 44b, p. 248; reen. C.L. 106:101; C.S., sec. 2469; I.C.A., sec. 59-521.]

61-522. CONSUMER MAY HAVE COMMODITY OR APPLIANCE TESTED. 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 if the appliance is found defective or incorrect to the disadvantage of the consumer or user under such rules and regulations as may be prescribed by the commission.

[(61-522) 1913, ch. 61, sec. 44c, p. 248; reen. C.L. 106:102; C.S., sec. 2470; I.C.A., sec. 59-522.]

61-523. VALUATION. 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 all new construction, extensions and additions to the property of every public utility.

[(61-523) 1913, ch. 61, sec. 45, p. 248; reen. C.L. 106:103; C.S., sec. 2471; I.C.A., sec. 59-523.]

61-524. SYSTEM OF ACCOUNTS. The commission shall have power to establish a system of accounts to be kept by the public utilities subject to its jurisdiction, or 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: provided, that the system of accounts to be kept by railroad corporations and common carriers shall conform to the rules and requirements of the interstate commerce commission in all respects. It may also in its discretion prescribe the forms of accounts, records and memoranda to be kept by such public utilities, including the accounts, records and memoranda of the movement of traffic as well as 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 act.

The systems 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 thereto, with the systems and forms from time to time established for such corporations by the interstate commerce commission.

Where the commission has prescribed the forms of accounts, records or memoranda to be kept by any public utility not subject to the provisions of the act of congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereto, 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 memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the commission.

[(61-524) 1913, ch. 61, sec. 46, p. 248; reen. C.L. 106:104; C.S., sec. 2472; I.C.A., sec. 59-524.]

61-525. DEPRECIATION ACCOUNT. The commission shall have power, after hearing, to require any or all public utilities, except such as are subject to the act of congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of accounts as the commission may prescribe. The commission may from time to time ascertain and determine and by order fix the proper and adequate rate 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 moneys so provided for out of the 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 from investments of moneys in such public fund shall likewise be carried in such fund.

[(61-525) 1913, ch. 61, sec. 47, p. 248; reen. C.L. 106:105; C.S., sec. 2473; I.C.A., sec. 59-525.]

61-526. CERTIFICATE OF CONVENIENCE AND NECESSITY. No street railroad corporation, gas corporation, electrical corporation, telephone corporation or water corporation, shall henceforth begin the construction of a street railroad, or of a line, plant, or system or of any extension of such

street railroad, or line, plant, or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction: provided, that this section shall not be construed to require such corporation to secure such certificate for an extension within any city or county, within which it shall have theretofore lawfully commenced operation, or for an extension into territory whether within or without a city or county, contiguous to its street railroad, or line, plant or system, and 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: and provided further, that if any public utility in constructing or extending its lines, 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, or if public convenience and necessity does not require or will require such construction or extension, the commission on complaint of the public utility claiming to be injuriously affected, or on the commission's own motion, may, after hearing, make such order and prescribe such terms and conditions for the locating or type of the line, plant or system affected as to it may seem just and reasonable: provided, that power companies may, without such certificate, increase the capacity of their existing generating plants.

[(61-526) 1913, ch. 61, sec. 48a, p. 248; substantially reen. 1915, ch. 62, sec. 2, subd. 48a, p. 155; reen. C.L., 106:106, C.S., sec. 2474; I.C.A., sec. 59-526; am. 1970, ch. 134, sec. 1, p. 327.]

61-527. CERTIFICATE OF CONVENIENCE AND NECESSITY -- EXERCISE OF RIGHT OR FRANCHISE. No public utility of a class specified in the foregoing section shall henceforth exercise any right or privilege, or obtain a franchise, or permit, to exercise such right or privilege, from a municipality or county, without having first obtained from the commission a certificate that the public convenience and necessity require the exercise of such right and privilege: provided, that when the commission shall find, after hearing, that the 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 to the completion of such work and may after such completion exercise such right and privilege: 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, nor impair any vested right in any franchise or permit heretofore granted.

[(61-527) 1913, ch. 61, sec. 48b, p. 248; substantially reen. 1915, ch. 62, sec. 2, subd. 48b, p. 156; reen. C.L. 106:107; C.S., sec. 2475; I.C.A., sec. 59-527.]

61-528. CERTIFICATE OF CONVENIENCE AND NECESSITY -- CONDITIONS. Before any certificate of convenience and necessity may issue[,] a certified copy of its articles of incorporation, or charter, if the applicant be a corporation, shall be filed in the office of the commission. The commission shall have power, after hearing involving the financial ability and good faith of the applicant and necessity of additional service in the community to issue said certificate as prayed for, or to refuse to issue the same, or to issue it for the construction of any portion only of the contemplated street rail-

road, line, plant or system or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate, such terms and conditions as in its judgment the public convenience and necessity may require.

[(61-528) 1913, ch. 61, sec. 48c, p. 248; am. 1915, ch. 62, sec. 2, subd. 48c, p. 156; compiled and reen. C.L. 106:108; C.S., sec. 2476; I.C.A., sec. 59-528.]

61-529. CERTIFICATE OF CONVENIENCE AND NECESSITY -- ELECTRICITY EXCLUSIVELY FOR MINES EXCEPTED. No certificate of convenience and necessity shall be required under any provision of this act where the electricity is to be used exclusively in operations incident to the working of metalliferous mines and mining claims, mills, or reduction and smelting plants, and the transmission lines and distribution systems are owned by the consumer or where several consumers severally own their individual distribution systems and jointly own, in their own names or through a trustee, the transmission lines used in connection therewith and transmit such electricity, whether generated by themselves or procured from some other source, over such transmission lines and distribution systems without profit, and to be used for their private uses for the purposes aforesaid in places outside the limits of incorporated cities, towns and villages, and not for resale or public use, sale or distribution.

[(61-529) 1913, ch. 61, sec. 48d, p. 248; as added by 1915, ch. 62, sec. 2, subd. 48d, p. 157; reen. C.L. 106:109; C.S., sec. 2477; I.C.A., sec. 59-529.]

61-530. CERTIFICATE OF CONVENIENCE AND NECESSITY -- PORT DISTRICTS AND INDUSTRIAL DEVELOPMENT DISTRICTS. No port district or industrial development district within a port district shall acquire by eminent domain any existing and operating railroad facilities, without first having secured from the commission, after hearing, a certificate that such acquisition is necessary for the public convenience and necessity.

[61-530, as added by 1970, ch. 3, sec. 2, p. 4.]

61-531. PLAN FOR CURTAILMENT OF ELECTRIC OR GAS CONSUMPTION. The Idaho public utilities commission shall forthwith direct and require all suppliers of electric power and energy, or natural or manufactured gas, including those otherwise excepted under section 61-104, Idaho Code, except agencies of the federal government, to file with the commission, within a designated time period, a plan for the curtailment of electric or gas consumption during an emergency.

[61,531, added 1975, ch. 238, sec. 2, p. 646.]

61-532. ADOPTION OR REJECTION OF PLANS -- PROCEDURE. The commission, after notice and hearing pursuant to its rules of practice and procedure, shall consider and act upon the plan or plans submitted and may adopt or reject such plan or plans, or adopt other plan or plans, for such curtailment. In acting upon such plan or plans the commission shall consider the following factors:

(a) The consistency of the plan with the public health, safety and welfare;

(b) The technical feasibility of implementation of the plan; and

(c) The effectiveness with which the plan minimizes the impact of any curtailment.

[61-532, added 1975, ch. 238, sec. 3, p. 646.]

61-533. AUTHORITY TO DECLARE EMERGENCY. The commission shall have authority to declare an emergency, with or without notice, upon finding that an inadequacy or insufficiency of electric power and energy, or natural or manufactured gas threatens the health, safety and welfare of the citizens of this state.

[61-533, added 1975, ch. 238, sec. 4, p. 646.]

61-534. CURTAILMENT OF SERVICE BY SUPPLIERS IN ACCORDANCE WITH PLANS. Upon declaration that such an emergency exists, the commission shall have authority to require all suppliers of electric power and energy, or natural or manufactured gas, except agencies of the federal government, to curtail service in accordance with the curtailment plans on file with and approved by the commission.

[61-534, added 1975, ch. 238, sec. 5, p. 646.]

61-535. ORDER FOR CURTAILMENT OF CONSUMPTION BY CONSUMERS. The commission, in addition to the powers herein granted, upon the declaration of an emergency, may order the curtailment of electric power and gas consumption by consumers as the commission finds reasonable and necessary.

[61-535, added 1975, ch. 238, sec. 6, p. 646.]

61-536. LIABILITY OF SUPPLIERS. No supplier of electric power or gas shall be liable for (a) actions taken pursuant to an order of the commission, or by reason of curtailment of such electric or gas service pursuant to such order or its curtailment plan on file with and approved by the commission; or (b) inability of a supplier to furnish adequate or sufficient supplies of electric power or gas or refusal to supply electric power or gas when such inability or refusal is due to inadequate or insufficient supplies on the supplier's system occurring as a result of the supplier's being unable to obtain from the commission an order which allows adequate time to construct necessary generating and transmission facilities.

[61-536, added 1975, ch. 238, sec. 7, p. 646; am. 1976, ch. 219, sec. 1, p. 792.]

61-537. CONTRACTS OF SUPPLIERS SUBJECT TO PROVISIONS OF LAW. All contracts of suppliers shall be subject to actions taken and the immunities provided hereunder.

[61-537, added 1975, ch. 238, sec. 8, p. 646.]

61-538. POLE ATTACHMENTS -- REGULATION. As used in this section, the term "public utility" includes any person, firm or corporation except a publicly owned utility which owns or controls poles, ducts, conduits or rights-of-way used or useful, in whole or in part, for wire communication, and which are not subject to the jurisdiction of the commission under section 61-129, Idaho Code.

The term "cable television company" means any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof, which transmits television signals for distribution to subscribers

of its services for a fee by means of wires or cables connecting its distribution facilities with the customer's television receiver or the customer's equipment connecting to the customer's receiver rather than by transmission of the television signal through the air.

The term "pole attachment" when used in this section means any wire or cable for the transmission of cable television, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telegraph corporation, telephone corporation, electrical corporation or communications right-of-way, duct, conduit or other similar facilities owned or controlled, in whole or in part, by one or more public utilities.

The legislature hereby finds that many public utilities have, through a course of conduct covering many years, made available space on and in their poles, ducts, conduits, and other support structures for use by the cable television industry for pole attachment service, and that the provision of such pole attachment service by such public utilities is and has been a public utility service.

Whenever a public utility and a cable television company are unable to agree upon the rates, terms or conditions for pole attachments or the terms, conditions or cost of production of space needed for pole attachments, then the commission shall establish and regulate the rates, terms and conditions, and cost of providing space needed for pole attachments so as to assure a public utility the recovery of not less than all the additional costs of providing and maintaining pole attachments nor more than the associated capital cost and operating expenses of the public utility attributable to that portion of the pole, duct, or conduit used for the pole attachment including a share of the required support and clearance space. In determining and fixing the rates, terms and conditions, the commission shall consider the interest of the customers of the attaching cable television company, the public utility upon which the attachment is made as well as the customers of the public utility. To the extent applicable, the procedures set forth in title 61, Idaho Code, shall apply under the provisions of this section.

[61-538, added 1982, ch. 193, sec. 1, p. 520.]

61-539. WATER RIGHTS OF AN ELECTRICAL CORPORATION -- NO COMMISSION JURISDICTION. The commission shall have no power or jurisdiction to make any determination, decision, rule, demand, requirement, or issue any order or decree involving or related to the failure or refusal of an electrical corporation to protect its hydropower water rights from depletion or loss to (1) junior priority consumptive water uses for any consumptive purpose prior to November 19, 1982, (2) junior priority consumptive water uses for irrigation where substantial investments in irrigation wells and irrigation equipment were made prior to November 19, 1982, but were not operating in 1982, and (3) junior priority consumptive water uses for domestic, nonconsumptive commercial, nonconsumptive industrial or nonconsumptive municipal uses occurring from and after November 19, 1982.

This section shall apply not only to future proceedings concerning claims the cause for which arose prior to November 19, 1982, but also to proceedings pending before the commission at the time this act becomes effective, and any claims which might be asserted against the electrical corporation for depletions from uses within (1), (2) or (3) above.

[61-539, added 1983, ch. 259, sec. 1, p. 690.]

61-540. AUTHORIZING NEGOTIATION AND EXECUTION OF CONTRACTS BY THE STATE OF IDAHO WITH ELECTRICAL CORPORATIONS REGARDING CERTAIN WATER RIGHTS IDENTIFIED IN SECTION 61-539, IDAHO CODE. The governor of the state of Idaho or his designee is hereby empowered to negotiate and the governor to execute a contract on behalf of the state of Idaho with any electrical corporation which has filed or may file suit against water users or possible water users, said electrical corporation seeking to stop junior prior consumptive water uses as a result of Idaho Supreme Court Opinion No. 13794 in "Idaho Power Company vs. State of Idaho, et al," filed November 19, 1982. Each contract shall provide, among other things, that (1) all consumptive water users who have beneficially used water for any consumptive purpose prior to November 19, 1982, or any person or persons who have previously made substantial investments in irrigation wells and irrigation equipment and have pending a water permit or application, even though such irrigation wells and irrigation equipment were not in operation prior to November 19, 1982, may continue the water licensing process, (2) persons included within the provisions of (1) above are third party beneficiaries of said contract, (3) the electrical corporation shall, where any suit is pending in which a person is within the class of consumptive users identified in (1) above, move the court for the dismissal from the suit of such person or persons, (4) said contract shall be conditional upon the passage and approval of this act but shall terminate if section 61-539 or 61-540 [this section], Idaho Code, be subsequently amended or repealed, and (5) in the event this act be amended or repealed, the defenses of statute of limitations, abandonment, adverse possession, statutory forfeiture, laches [laches], waiver, estoppel and other applicable common law defenses shall not be available against said electrical corporation following said contract termination for a period of two (2) years, unless the parties mutually consent to keep said contract in effect by addendum.

[61-540, added 1983, ch. 259, sec. 2, p. 690.]

61-541. BINDING RATEMAKING TREATMENTS APPLICABLE WHEN COSTS OF A NEW ELECTRIC GENERATION FACILITY ARE INCLUDED IN RATES. (1) As used in this section, "certificate" means a certificate of convenience and necessity issued under section 61-526, Idaho Code.

(2) A public utility that proposes to construct, lease or purchase an electric generation facility or transmission facility, or make major additions to an electric generation or transmission facility, may file an application with the commission for an order specifying in advance the ratemaking treatments that shall apply when the costs of the proposed facility are included in the public utility's revenue requirements for ratemaking purposes. For purposes of this section, the requested ratemaking treatments may include nontraditional ratemaking treatments or nontraditional cost recovery mechanisms.

(a) In its application for an order under this section, a public utility shall describe the need for the proposed facility, how the public utility addresses the risks associated with the proposed facility, the proposed date of the lease or purchase or commencement of construction, the public utility's proposal for cost recovery, and any proposed ratemaking treatments to be applied to the proposed facility.

(b) For purposes of this section, ratemaking treatments for a proposed facility include but are not limited to:

- (i) The return on common equity investment or method of determining the return on common equity investment;
- (ii) The depreciation life or schedule;
- (iii) The maximum amount of costs that the commission will include in rates at the time determined by the commission without the public utility having the burden of moving forward with additional evidence of the prudence and reasonableness of such costs;
- (iv) The method of handling any variances between cost estimates and actual costs; and
- (v) The treatment of revenues received from wholesale purchasers of service from the proposed facility.

(3) The commission shall hold a public hearing on the application submitted by the public utility under this section. The commission may hold its hearing in conjunction with an application for a certificate.

(4) Based upon the hearing record, the commission shall issue an order that addresses the proposed ratemaking treatments. The commission may accept, deny or modify a proposed ratemaking treatment requested by the utility. In determining the proposed ratemaking treatments, the commission shall maintain a fair, just and reasonable balance of interests between the requesting utility and the utility's ratepayers.

(a) In reviewing the application, the commission shall also determine whether:

- (i) The public utility has in effect a commission-accepted integrated resource plan;
- (ii) The services and operations resulting from the facility are in the public interest and will not be detrimental to the provision of adequate and reliable electric service;
- (iii) The public utility has demonstrated that it has considered other sources for long-term electric supply or transmission;
- (iv) The addition of the facility is reasonable when compared to energy efficiency, demand-side management and other feasible alternative sources of supply or transmission; and
- (v) The public utility participates in a regional transmission planning process.

(b) The commission shall use its best efforts to issue the order setting forth the applicable ratemaking treatments prior to the date of the proposed lease, acquisition or commencement of construction of the facility.

(c) The ratemaking treatments specified in the order issued under this section shall be binding in any subsequent commission proceedings regarding the proposed facility that is the subject of the order, except as may otherwise be established by law.

(5) The commission may not require a public utility to apply for an order under this section.

(6) The commission may promulgate rules or issue procedural orders for the purpose of administering this section.

[61-541, added 2009, ch. 145, sec. 1, p. 436.]