

TITLE 61
PUBLIC UTILITY REGULATION

CHAPTER 6
PROCEDURE BEFORE COMMISSION AND IN COURTS

61-601. PRACTICE -- EVIDENCE. All hearings and investigations before the commission or any commissioner shall be governed by this act and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof neither the commission nor any commissioner shall be bound by the technical rules of evidence.

[(61-601) 1913, ch. 61, sec. 49, p. 248; reen. C.L. 106:110; C.S., sec. 2478; I.C.A., sec. 59-601.]

61-602. PROCESS. The commission and each commissioner shall have power to issue writs of summons and subpoenas, warrants of attachment in the like manner and to the same extent as courts of record. The process issued by the commission or any commissioner shall extend to all parts of the state and may be served by any person authorized to serve process of courts of record or by any person designated for that purpose by the commission or commissioner. The person executing any such process shall receive such compensation as may be allowed by the commission not to exceed the fees prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for payment of the fees of witnesses.

[(61-602) 1913, ch. 61, sec. 50, p. 248; reen. C.L. 106:111; C.S., sec. 2479; I.C.A., sec. 59-602.]

61-603. WITNESSES -- ATTENDANCE -- FEES -- MILEAGE. The commission and each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.

Each witness who shall appear, by order of the commission or a commissioner, shall receive for his attendance the same fees allowed by law to a witness in civil cases, in the district court, and mileage at ten cents (10¢) for every mile of travel one (1) way by the nearest generally traveled route in going to the place where the attendance of a witness is required, which amount shall be paid by the party at whose request such witness was subpoenaed.

When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commission, his fees and mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid: provided, that the commission may at its discretion refuse to allow the mileage and attendance of any witness subpoenaed before it that is in the employ of any public utility defined in this act.

Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission, may at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear and one (1) day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioner, as directed in the subpoena, unless the commission shall by order indorsed on

the subpoena require any such witness to attend, irrespective of the fact that such mileage and attendance are not paid on demand. All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable. No witness furnished with free transportation shall receive mileage for the distance he may travel on such free transportation.

[(61-603) 1913, ch. 61, sec. 51a, p. 248; reen. C.L. 106:112; C.S., sec. 2480; I.C.A., sec. 59-603.]

61-604. WITNESSES -- DISTRICT COURT MAY COMPEL ATTENDANCE -- PROCEDURE. The district court in and for the county, or city and county in which any inquiry, investigation, hearing or proceeding may be held by commission or any commissioner shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including waybills, books, accounts and documents as required by any subpoena issued by the commission or any commissioner.

The commission or the commissioner before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county, or city and county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission or commissioner, in the cause or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court compelling the witness to attend and testify or produce said papers before the commission.

The court, upon the petition of the commission or such commissioner, shall enter an order directing the witnesses to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there show cause why he has not attended and testified or produced said papers before the commission. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or a commissioner and regularly served, the court shall thereupon enter an order that said witness appear before the commission or said commissioner at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

The remedy provided in this section is cumulative and shall not be construed to impair or interfere with the power of the commission or a commissioner to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as [a] court of record.

[(61-604) 1913, ch. 61, sec. 51b, p. 248; compiled and reen. C.L. 106:113; C.S., sec. 2481; I.C.A., sec. 59-604.]

61-605. DEPOSITIONS. The commission or any commissioner or any party may in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district

courts of this state and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers and accounts.

[(61-605) 1913, ch. 61, sec. 51c, p. 248; reen. C.L. 106:114; C.S., sec. 2482; I.C.A., sec. 59-605.]

61-606. NO PRIVILEGE TO WITNESSES -- IMMUNITY FROM SELF-INCRIMINATING TESTIMONY. No person shall be excused from testifying or from producing any book, waybill, document, paper or account in any investigation or inquiry by or hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper or account, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any forfeiture or penalty for or on account of any act, transaction, matter or thing concerning which he shall, under oath have testified or produced documentary evidence: provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.

[(61-606) 1913, ch. 61, sec. 51d, p. 248; reen. C.L. 106:115; C.S., sec. 2483; I.C.A., sec. 59-606.]

61-607. CERTIFIED COPIES OF DOCUMENTS AS EVIDENCE. Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary under the official seal of the commission to be true copies of the original shall be evidence in like manner as the originals.

[(61-607) 1913, ch. 61, sec. 52a, p. 248; reen. C.L. 106:116; C.S., sec. 2484; I.C.A., sec. 59-607.]

61-608. RECORDING OF ORDERS, AUTHORIZATIONS AND CERTIFICATES. Every order, authorization or certificate issued or approved by the commission under any provision of sections 61-510 to 61-514, and 61-526 to 61-529, Idaho Code, shall be in writing and entered on the records of the commission.

Any such order, authorization or certificate, or a copy thereof, or a copy of the record of any such order, authorization or certificate, certified by a commissioner or by the secretary or assistant secretary under the official seal of the commission to be a true copy of the original order, authorization, certificate or entry, may be recorded in the office of the recorder of any county or city and county, in which is located the principal place of business of any public utility affected thereby, or in which is situated any property of any such public utility, and such record shall impart notice of its provisions to all persons. A certificate under the seal of the commission that any such order, authorization or certificate has not been modified, stayed, suspended or revoked may also be recorded in the same offices in the same manner and with like effect.

[(61-608) 1913, ch. 61, sec. 52b, p. 248; reen. C.L. 106:117, C.S., sec. 2485; I.C.A., sec. 59-608; am. 1979, ch. 218, sec. 3, p. 604.]

61-609. FEES. The commission shall charge and collect reasonable fees for copies of papers and records as established by rule or general order of the commission.

No fees shall be charged or collected for copies of papers, records or official documents, furnished to the public officers for use in their offi-

cial capacity, or for the annual reports of the commission in the ordinary course of distribution, but the commission may fix reasonable charges for publications issued under its authority.

All fees charged or collected under this section shall be paid at least once each week, accompanied by a detailed statement thereof, into the treasury of the state of Idaho to the public utilities commission account.

[(61-609) 1913, ch. 61, sec. 53, p. 248; reen. C.L. 106:118; C.S., sec. 2486; I.C.A., sec. 59-609; am. 1967, ch. 3, sec. 1, p. 6; am. 1984, ch. 109, sec. 1, p. 252.]

61-610. RIGHT TO INSPECT BOOKS AND EXAMINE EMPLOYEES. (1) The commission, each commissioner and each person employed by the commission shall have the right at any and all reasonable times to inspect the accounts, books, papers and documents of any public utility. The commission shall also have the right to inspect the records of a public utility's holding company, parent, affiliate, or subsidiary that engages directly in any transaction with the regulated utility which results in expenses being incurred, allocated or otherwise attributed to regulated services of a public utility; provided however, the commission may inspect only those records which are necessary to determine whether such expense was properly incurred and should be included, in whole or in part, in the public utility's rates.

(2) The commission, each commissioner and any employee authorized to administer oaths shall have power to examine under oath any officer, agent or employee of such public utility in relation to the business and affairs of said public utility: provided, that any person other than a commissioner demanding such inspection shall produce under the seal of the commission his authority to make such inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission.

[(61-610) 1913, ch. 61, sec. 54, p. 248; reen. C.L. 106:119; C.S., sec. 2487; I.C.A., sec. 59-610; am. 2001, ch. 385, sec. 1, p. 1348.]

61-611. PRODUCTION OF BOOKS WITHOUT STATE. The commission may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said public utility in any office or place without this state, or, at its option, verified copies in lieu thereof so that an examination thereof may be made by the commission or under its direction.

[(61-611) 1913, ch. 61, sec. 55, p. 248; compiled and reen. C.L. 106:120; C.S., sec. 2488; I.C.A., sec. 59-611.]

61-612. COMPLAINT AGAINST UTILITY. Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility including any rule, regulation or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation of any provision of law or of any order or rule of the commission: provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rate or charges of any gas, electrical, water or telephone corporation, unless the same be signed by the mayor or the president

or chairman of the board of trustees or a majority of the council, commission or other legislative body of the city or county or city or town, if any, within which the alleged violation occurred, or not less than 25 consumers or purchasers or prospective consumers or purchasers of such gas, electricity, water or telephone service.

[(61-612) 1913, ch. 61, first part of sec. 56, p. 248; reen. C.L. 106:121; C.S., sec. 2489; I.C.A., sec. 59-612.]

61-613. COMPLAINT AGAINST UTILITY -- JOINDER. All matters upon which complaint may be founded may be joined in one (1) hearing, no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties; and in any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided.

[(61-613) 1913, ch. 61, part of sec. 56, p. 248; reen. C.L. 106:122; C.S., sec. 2490; I.C.A., sec. 59-613.]

61-614. COMPLAINT AGAINST UTILITY -- NO DISMISSAL. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

[(61-614) 1913, ch. 61, part of sec. 56, p. 248; reen. C.L. 106:123; C.S., sec. 2491; I.C.A., sec. 59-614.]

61-615. COMPLAINT AGAINST UTILITY -- SERVICE OF COPY OF COMPLAINT. Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the corporation, or person complained of. Service in all hearings, investigation and proceedings pending before the commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure of this state, and may be made personally or by mailing in a sealed envelope, registered, with postage prepaid.

[(61-615) 1913, ch. 61, part of sec. 56, p. 248; compiled and reen. C.L. 106:124; C.S., sec. 2492; I.C.A., sec. 59-615.]

61-616. COMPLAINT AGAINST UTILITY -- TIME AND PLACE OF HEARING. The commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than twenty (20) days before the time set for such hearing, unless the commission shall find that public necessity requires that such hearing be held at an earlier date.

[(61-616) 1913, ch. 61, last part of sec. 56, p. 248; reen. C.L. 106:125; C.S., sec. 2493; I.C.A., sec. 59-616.]

61-617. HEARING -- PROCESS FOR ATTENDANCE OF WITNESSES. At the time fixed for any hearing before the commission or a commissioner, or the time to which the same may have been continued, the complainant and the corporation or person complained of, and such corporations or persons as the commission may allow to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses.

[(61-617) 1913, ch. 61, first part sec. 57a, p. 248; reen. C.L. 106:126; C.S., sec. 2494; I.C.A., sec. 59-617.]

61-617A. AWARD OF COSTS OF INTERVENTION. (1) It is hereby declared the policy of this state to encourage participation at all stages of all proceedings before the commission so that all affected customers receive full and fair representation in those proceedings.

(2) The commission may order any regulated electric, gas, water or telephone utility with gross Idaho intrastate annual revenues exceeding three million five hundred thousand dollars (\$3,500,000) to pay all or a portion of the costs of one (1) or more parties for legal fees, witness fees, and reproduction costs, not to exceed a total for all intervening parties combined of forty thousand dollars (\$40,000) in any proceeding before the commission. The determination of the commission with regard to the payment of these expenses shall be based on the following considerations:

(a) A finding that the participation of the intervenor has materially contributed to the decision rendered by the commission; and

(b) A finding that the costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor; and

(c) The recommendation made by the intervenor differed materially from the testimony and exhibits of the commission staff; and

(d) The testimony and participation of the intervenor addressed issues of concern to the general body of users or consumers.

(3) Expenses awarded to qualifying intervenors shall be an allowable business expense in the pending rate case or, if the proceeding is not a rate case, in the utility's next rate case. Expenses awarded shall be chargeable to the class of customers represented by the qualifying intervenors.

(4) The commission may adopt rules for the implementation of this statute.

(5) The payment of expenses of intervenors who are in direct competition with a public utility involved in proceedings before the commission is prohibited.

[61-617A, added 1985, ch. 126, sec. 1, p. 309; am. 1993, ch. 234, sec. 1, p. 816; am. 2003, ch. 41, sec. 1, p. 162.]

61-618. DECISION -- SERVICE OF ORDER -- TIME EFFECTIVE -- EXTENSION OF TIME. After the conclusion of the hearing, the commission shall make and file its order, containing its decision. A copy of such order, certified under the seal of the commission, shall be served upon the corporation or person complained of, or its or his attorney. Said order shall, of its own force, take effect and become operative twenty (20) days after the service thereof, except as otherwise provided, and shall continue in force, either for a period which may be designated therein or until changed or abrogated by the commission. If an order cannot, in the judgment of the commission, be complied with within twenty (20) days, the commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

[(61-618) 1913, ch. 61, part of sec. 57a, p. 248; reen. C.L. 106:127; C.S., sec. 2495; I.C.A., sec. 59-618.]

61-619. RECORD. A full and complete record of all proceedings had before the commission or any commissioner on any formal hearing had, and all testimony shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney.

[(61-619) 1913, ch. 61, part of sec. 57a, p. 248; reen. C.L. 106:128; C.S., sec. 2496; I.C.A., sec. 59-619.]

61-621. COMPLAINT BY UTILITY. Any public utility shall have a right to complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard ex parte by the commission or may be served upon any parties designated by the commission.

[(61-621) 1913, ch. 61, sec. 58, p. 248; reen. C.L. 106:130; C.S., sec. 2498; I.C.A., sec. 59-621.]

61-622. FINDING OF COMMISSION NECESSARY FOR INCREASE IN RATE AND APPROVAL OF A NEW TARIFF OR SCHEDULE -- SUSPENSION. (1) No public utility shall raise any existing rate, fare, toll, rental or charge or so alter any existing classification, contract, practice, rule, service or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified.

(2) Whenever there shall be filed with the commission any tariff or schedule stating a new individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation that does not increase or result in the increase of any existing rate, fare, toll, rental or charge, such tariff or schedule shall not become effective except upon a showing to and a finding by the commission that such tariff or schedule is justified.

(3) The commission shall have power and is hereby given authority to suspend the proposed effective date of any new tariff, schedule, rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities. The commission shall provide reasonable notice that it intends to conduct a hearing or other proceeding concerning the propriety of such new tariff, schedule, rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation. Pending the subsequent hearing or proceeding and decision thereon, such new tariff, schedule, rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation shall not go into effect.

(4) The period of suspension of such new tariff, schedule, rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation shall not extend beyond thirty (30) days when such new tariff, schedule, rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation would otherwise go into effect, pursuant to section 61-307, Idaho Code, unless the commission in its discretion extends the period of suspension for an initial period not exceeding five (5) months, nor unless the commission after a showing of good cause on the record grants an additional sixty (60) days. Prior to the expiration of said periods of suspension the commission may, with the consent in writing signed by the party filing such new tariff or schedule, permanently or further suspend the same.

(5) After such hearing or other proceeding during the suspension period, the commission shall issue its order approving, denying or amending the proposed tariffs, schedules, rates, fares, tolls, rentals, charges,

classifications, contracts, practices, rules, services or regulations in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable.

[(61-622) 1913, ch. 61, sec. 59a, p. 248; reen. C.L. 106:131; C.S., sec. 2499; I.C.A., sec. 59-622; am. 1975, ch. 81, sec. 1, p. 166; am. 1976, ch. 263, sec. 1, p. 887.; am. 2013, ch. 193, sec. 1, p. 476.]

61-622A. COMMISSION AUTHORITY -- COST ALLOCATION. For any telephone corporation which provides telecommunication services pursuant to both title 61, Idaho Code, and title 62, Idaho Code, the commission may, or at the request of a telephone corporation shall, establish procedures for allocation of costs between telecommunication services provided pursuant to title 61, Idaho Code, and telecommunication services provided pursuant to title 62, Idaho Code. Such allocations shall reasonably reflect how joint-use facilities are utilized, provide reasonable stability for telephone corporations to do business planning and pricing and minimize the cost of accounting and record keeping to the extent possible. In developing such allocation methods, the commission may adopt procedures which are based on gross allocation factors derived from relative changes in total intrastate telecommunication service revenues or expenses or other measures of relative change between the provision of telecommunication services subject to title 61, Idaho Code, and telecommunication services subject to title 62, Idaho Code. The commission shall have authority to establish just and reasonable rates for all telecommunication services which remain subject to title 61, Idaho Code, and for basic local service in accordance with the provisions of chapter 6, title 62, Idaho Code.

[61-622A, added 1988, ch. 195, sec. 3, p. 369; am. 1997, ch. 192, sec. 1, p. 540.]

61-624. RESCISSION OR CHANGE OF ORDERS. The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

[(61-624) 1913, ch. 61, sec. 60, p. 248; reen. C.L. 106:133; C.S., sec. 2501; I.C.A., sec. 59-624.]

61-625. ORDERS NOT SUBJECT TO COLLATERAL ATTACK. All orders and decisions of the commission which have become final and conclusive shall not be attacked collaterally.

[(61-625) 1913, ch. 61, sec. 61, p. 248; reen. C.L. 106:134; C.S., sec. 2502; I.C.A., sec. 59-625.]

61-626. RECONSIDERATION -- PROCEDURE -- ORDER NOT STAYED -- CHANGE OF ORIGINAL ORDER. (1) After an order has been made by the commission, any corporation, public utility or person interested therein shall have the right, within twenty-one (21) days after the date of said order, to petition for reconsideration in respect to any matter determined therein. Within seven (7) days after any corporation, public utility or person has petitioned for reconsideration, any other corporation, public utility, or person may cross-petition for reconsideration in response to any issues raised in any petition for reconsideration. Cross-petitions for reconsideration may be

granted if any petition for reconsideration to which they respond is granted on the issues to which the cross-petition is directed, but cross-petitions for reconsideration will be denied when the petitions for reconsideration to which they are directed are denied.

(2) Within twenty-eight (28) days after the filing of a petition for reconsideration the commission shall determine whether or not it will grant such reconsideration, and make and enter its order accordingly. If reconsideration be granted, said order shall specify how the matter will be reconsidered and whether any cross-petitions for reconsideration will be granted. The matter must be reheard, or written briefs, comments or interrogatories must be filed, within thirteen (13) weeks after the date for filing petitions for reconsideration. If reconsideration is ordered, the commission must issue its order upon reconsideration within twenty-eight (28) days after the matter is finally submitted for reconsideration.

(3) A petition for such reconsideration shall not excuse any corporation, public utility or person from complying with or obeying any order or any requirement of any order of the commission or operate in any manner, to stay or postpone the enforcement thereof, except as the commission may by order direct. If after reconsideration, including consideration of matters arising since the making of the order, the commission shall be of the opinion that the original order or any part thereof is in any respect unjust or unwarranted or should be changed, the commission may abrogate or change the same. An order made after any such reconsideration, abrogating or changing the original order, shall have the same force and effect as an original order, and shall not affect any right or the enforcement of any right arising from or by virtue of the original order.

[61-626] 1913, ch. 61, sec. 62, p. 248; reen. C.L. 106:135; C.S., sec. 2503; I.C.A., sec. 59-626; am. 1957, ch. 126, sec. 1, p. 214; am. 1984, ch. 110, sec. 1, p. 253.]

61-627. APPEAL TO SUPREME COURT -- NOTICE OF APPEAL -- MATTERS REVIEWABLE ON APPEAL -- EXTENT OF REVIEW -- RECORD ON APPEAL. After a petition for reconsideration is denied, or, if the petition is granted, then after the rendition of the decision on reconsideration, the state of Idaho or any party aggrieved may appeal to the supreme court from any order of the public utilities commission by filing a notice of appeal and serving the same in the manner provided by the rules of the supreme court. Upon the payment of the fee therefor, the secretary of the public utilities commission shall prepare, certify, and deliver to the clerk of the supreme court copies of the transcript of the testimony and the relevant documents from the commission files as required under rules adopted by the supreme court for its appeals and shall also certify and deposit with the clerk of the supreme court the original exhibits from that proceeding.

[61-627, added 1977, ch. 299, sec. 2, p. 837; am. 1984, ch. 110, sec. 2, p. 254.]

61-629. MATTERS REVIEWABLE ON APPEAL -- EXTENT OF REVIEW -- JUDGMENT. No new or additional evidence may be introduced in the Supreme Court, but the appeal shall be heard on the record of the commission as certified by it. The review on appeal shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order appealed from violates any right of the appellant under the constitution of the United States or of the state of

Idaho. Upon the hearing the Supreme Court shall enter judgment, either affirming or setting aside or setting aside in part the order of the commission. In case the order of the commission is set aside or set aside in part, the commission, upon its own motion or upon motion of any of the parties, may alter or amend the order appealed from to meet the objections of the court in the manner prescribed in section 61-624, Idaho Code.

[(61-629) 1921, ch. 72, sec. 3, p. 141; I.C.A., sec. 59-629; am. 1981, ch. 129, sec. 1, p. 217.]

61-630. RIGHT TO BE HEARD ON APPEAL. The commission and any party to the proceeding whether served with notice of appeal or not shall have the right to appear and be heard on any appeal taken hereunder.

[(61-630) 1921, ch. 72, sec. 4, p. 141; I.C.A., sec. 59-630.]

61-631. COSTS ON APPEAL -- ENFORCEMENT. Whenever costs are awarded to a party by the supreme court, the party claiming such costs shall file a memorandum of costs in such manner as the supreme court shall direct by its rules. Costs taxed in the supreme court shall be added to any order required by the remittitur. The payment of costs on appeal shall be enforced by the public utilities commission.

[(61-631) 1921, ch. 72, sec. 5, p. 141; I.C.A., sec. 59-631; am. 1989, ch. 37, sec. 1, p. 48.]

61-633. STAY OF ORDER -- NOTICE. No court of this state shall enjoin or restrain the enforcement of any order of the commission or stay the operation thereof, unless the applicant for such writ shall give three (3) days' notice of said application to all adverse parties and to the commission. On the hearing of such application, the applicant shall present to the court a transcript of the proceedings had before the commission, including the evidence, and such transcript shall be considered by the court in determining the applicant's right to an injunction, restraining order or other order suspending or staying the operation of the order or decision of the commission, and if an injunction, restraining order or other order suspends or stays the order of the commission as issued, such order shall contain a specific finding based upon the evidence submitted to the court and identified by reference thereto that great and irreparable damage would result to the petitioner and specifying the nature of the damage.

[(61-633) 1913, ch. 61, sec. 63d, p. 248; reen. C.L. 106:139; C.S., sec. 2507; I.C.A., sec. 59-633.]

61-634. STAY OF ORDER -- BOND. In case the order or decision of the commission is stayed or suspended, the order shall not become effective until a suspending bond has been executed and filed with and approved by the commission, or by the court of review, conditioned in manner and form as the suspending bond specified in section 61-637[, Idaho Code], and the court shall direct that all moneys involved in said proceeding shall be paid into court under the terms and conditions and subject to the disposition thereof, provided in sections 61-637 and 61-638[, Idaho Code].

[(61-634) 1913, ch. 61, sec. 63e, p. 248; compiled and reen. C.L. 106:140; C.S., sec. 2508; I.C.A., sec. 59-634.]

61-635. STAY OF ORDER ON APPEAL. The pendency of an appeal shall not of itself stay or suspend the operation of the order of the commission, but dur-

ing the pendency of such appeal, the Supreme Court may stay or suspend, in whole or in part, the operation of the commission's order.

[(61-635) 1913, ch. 61, sec. 64a, p. 248; reen. C.L. 106:141; C.S., sec. 2509; am. 1921, ch. 72, sec. 7, p. 141; I.C.A., sec. 59-635.]

61-636. STAY OF ORDER ON APPEAL -- NOTICE. No order so staying or suspending an order or decision of the commission shall be made by the court otherwise than upon a three (3) days' notice and after hearing, and if the order or decision of the commission is suspended, the order suspending the same shall contain a specific finding based upon the evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.

[(61-636) 1913, ch. 61, sec. 64b, p. 248; reen. C.L. 106:142; C.S., sec. 2510; I.C.A., sec. 59-636.]

61-637. STAY OF ORDER ON APPEAL -- BOND. In case the order or decision of the commission is stayed or suspended, the order of the court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by the commission (or approved on review by the court), payable to the people of the state of Idaho, and sufficient in amount and security to insure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission, in case said order or decision is sustained. The court, in case it stays or suspends the order or decision of the commission in any matter affecting rates, fares, tolls, rentals, charges or classifications, shall also by order direct the public utility affected to pay into court, from time to time, there to be impounded until the final decision of the case or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended.

[(61-637) 1913, ch. 61, sec. 64c, p. 248; reen. C.L. 106:143; C.S., sec. 2511; I.C.A., sec. 59-637.]

61-638. STAY OF ORDER ON APPEAL -- ACCOUNTS PENDING FINAL DECISION. In case the court stays or suspends any order or decision lowering any rate, fare, toll, rental, charge or classification, the commission, upon the execution and approval of said suspending bond, shall forthwith require the public utility affected under the penalty of the immediate enforcement of the order or decision of the commission (pending the review and notwithstanding the suspending order) to keep such accounts verified by oath, as may in the judgment of the commission suffice to show the amounts being charged or received by such public utility, pending the review, in excess of the charges allowed by the order or decision of the commission, together with the names and addresses of the corporations or persons to whom overcharges will be refundable in case the charges made by the public utility, pending the review, be not sustained by the court. The court may, from time to time, require said party petitioning for a review to give additional security

on or to increase the said suspending bond whenever in the opinion of the court the same may be necessary to insure the prompt payment of said damages and said overcharges. Upon the final decision by the court, all moneys which the public utility may have collected, pending the appeal in excess of those authorized by such final decision, together with interest in case the court ordered the deposit of such moneys in a bank or trust company, shall be promptly paid to the corporations or persons entitled thereto, in such manner and through such methods of distribution as may be prescribed by the commission. If any such moneys shall not have been claimed by the corporations or persons entitled thereto within one (1) year from the final decision of the court, the commission shall cause notice to such corporation or person to be given by publication, once a week for two (2) successive weeks, in a newspaper of general circulation, printed and published in the city of Boise, and such other newspaper or newspapers as may be designated by the commission, said notice to state the names of the corporations or persons entitled to such moneys and the amount due each corporation or person. All moneys not claimed within three (3) months after the publication of said notice shall be paid by the public utility under the direction of the commission, into the state treasury for the benefit of the general fund.

[(61-638) 1913, ch. 61, sec. 64d, p. 248; compiled and reen. C.L. 106:144; C.S., sec. 2512; I.C.A., sec. 59-638.]

61-640. HEARINGS TO DETERMINE VALUATIONS. For the purpose of ascertaining the matters and things specified in section 61-523[, Idaho Code], concerning the value of the property of public utilities, the commission may cause a hearing or hearings to be held at such time or times and place or places as the commission may designate. Before any hearing is had the commission shall give the public utility affected thereby at least thirty (30) days' written notice, specifying the time and place of such hearing and such notice shall be sufficient to authorize the commission to inquire into the matters designated in this section and in said section 61-523[, Idaho Code], but this provision shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to, or from inquiring into such matters in any other investigation or hearing.

All public utilities affected shall be entitled to be heard and to introduce evidence at such hearing or hearings. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission.

The commission shall make and file its findings of fact in writing upon all matters concerning which evidence shall have been introduced before it which in its judgment have bearing on the value of the property of the public utility affected. Such findings shall be subject to review by the court of this state in the same manner and within the same time as other orders and decisions of the commission. The findings of the commission so made and filed, when properly certified under the seal of the commission, shall be admissible in evidence in any action, proceeding or hearing before the commission or any court, in which the commission, the state or any officer, department or institution thereof or any county, city and county, municipality or other body politic and the public utility affected may be interested whether arising under the provisions of this act or otherwise, and such findings, when so introduced, shall be prima facie evidence of the facts therein stated as to the date therein stated under conditions then existing, and such facts can

only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined.

The commission may from time to time cause further hearings and investigations to be had for the purpose of making revaluations or ascertaining the value of any betterments, improvements, additions or extensions made by any public utility subsequent to any prior hearing or investigation, and may examine into all matters which may change, modify or affect any finding of fact previously made, and may at such time make findings of fact supplementary to those theretofore made. Such hearings shall be had upon the same notice and shall be conducted in the same manner, and the findings so made shall have the same force and effect as is provided herein for such original notice, hearing and findings: provided, that such findings made at such supplemental hearings or investigations shall be considered in connection with and as a part of the original findings, except in so far as such supplemental findings shall change or modify the findings made at the original hearing or investigation.

[(61-640) 1913, ch. 61, sec. 66, p. 248; reen. C.L. 106:146; C.S., sec. 2514; I.C.A., sec. 59-640.]

61-641. OVERCHARGE -- REPARATION. When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product, or commodity, furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection: provided, no discrimination will result from such reparation.

[(61-641) 1913, ch. 61, sec. 67a, p. 248; reen. C.L. 106:147; C.S., sec. 2515; I.C.A., sec. 59-641.]

61-642. OVERCHARGE -- RECOVERY OF PAYMENT. If the public utility does not comply with the order for the payment or reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the commission within three (3) years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one (1) year from the date of the order of the commission. The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey an order or decision of the commission.

[(61-642) 1913, ch. 61, sec. 67b, p. 248; reen. C.L. 106:148; C.S., sec. 2516; I.C.A., sec. 59-642; am. 1965, ch. 215, sec. 1, p. 498.]