

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

* * * * *

The office of the Public Service Commission was created by the Constitution of North Dakota with the provision that the Legislature would define its powers and duties. ¹The first session of the Legislature in 1889, provided that the Commission meet at least five times annually for the purpose of hearing complaints and taking evidence; the first meeting to be held at Bismarck, the second at Minot, the third at Fargo, the fourth at Grand Forks, and the fifth at Carrington. The President of the Commission could also call special sessions if he deemed it necessary.

²The earliest duties imposed upon the Commission were those relative to the regulation of railroad rates and practices, railroad crossings, stockyards, depots, industrial sites, marketing of grain, ferries, toll bridges and river transportation.

³In 1919, the Commission was given supervision over all public utilities, and it was made a full-time position, requiring members of the Commission to reside in Bismarck.) Since that time many added duties have been given to the Commission by the Legislature.⁴ When the Commission was established in 1889, by Constitutional authority, it was known as the "Board of Railroad Commissioners", and by Initiated Referendum in 1940, the name was changed to "Public Service Commission".) The numerous added duties since the creation of the Commission now include supervision of electric, gas, steam heat, telephone and telegraph utilities, licensing, bonding, and regulation of grain and public

storage warehousemen, inspection of weights and measures, licensing and bonding of public auctioneers, and the certification, licensing and regulation of motor carriers for hire.

The Public Convenience and Necessity Law originated with the 1927 session of the Legislature, authorizing the Commission to require the extension of electric transmission lines for the purpose of rendering service within or contiguous to the territory already being served. The advent of rural electric cooperatives, who are not as yet under the jurisdiction of the Commission, brought about changes in the statute in 1965, including the deletion of the language "territory contiguous to that which is already being served." The 1967 Legislature sought to further amend the laws affecting electric cooperatives and private utilities. Although this was not accomplished, the courts, by amending part of the 1965 territorial law, and the Commission by its actions, have done much to ^{meet} ~~clean up~~ the problem.

The administration of functions is divided among departments, such as Engineering, Accounting, Traffic, Motor Carrier, Warehousing, Weights and Measures and the Office of Secretary - the Secretary being the liaison office of the Commission between all departments and the public.

The work of these various departments requires men with a high degree of technical knowledge in their particular field and with a keen sense of public duty. They must be skilled in preparing and presenting evidence from the witness stand. The Traffic Director must be a member of the Interstate Commerce Commission Bar and skilled in presentation of oral arguments before that body. An Assistant

Attorney General, on a full-time basis to the Commission, bears the title of Commerce Counsel, and must be a specialist in utility, transportation and other administrative law.

Present personnel of the Commission includes Commissioner Ben J. Wolf, President and Commissioners Bruce Hagen and Richard A. Elkin; Elmer Olson, Secretary; John C. Stewart, Commerce Counsel; John M. Agrey, Traffic Director; Wallace M. Owen, Chief Engineer; Roy Paetzke, Chief Accountant; E. W. Schuh, Director of Warehousing; Harold T. Upgren, Director of the Motor Carrier Division; and Adin Helgeson, Chief Inspector, Weights and Measures Department. Staff personnel totals 28

All Commissioners exercise equal powers under the law, although the powers are divided among the Commissioners. They share equal responsibility in each decision.

Since all orders are subject to review of the courts, the Public Service Commission is considered to be a quasi-judicial body. It is also a quasi-legislative body - since it can pass rules and regulations if approved by the Attorney General; and, it is a quasi-executive body since it exercises administrative supervision to a substantial degree over the utilities it regulates. The record is interspersed with many important decisions affecting all of the citizens of North Dakota.

The impact of the Commission's regulation of rates and services upon the individual rate payer is tremendous when one considers all shippers of freight and merchandise by rail or motor carrier, payment of monthly bills for electric, gas, and telephone service and even the correctness of any scale or measuring device. In the matter of rates the courts have generally held that those charged by public utilities must be compensatory but not greater than a fair return upon their investment.

The Commission docket embraces formal complaints and applications involving hearings on railway and motor carrier freight rates, public utility rates, and any other matters coming within the jurisdiction of the Commission that may result in investigations and public hearing. The last two year report to the Governor for the period ending June 30, 1967, shows a total of 700 cases docketed in all categories. Of this number, 267 were motor carrier cases; 247 were for other public utility cases, and the remainder were miscellaneous and informal matters handled without public hearings. While the number of cases docketed from year to year has remained fairly constant, it appears now that the next published report for the period ending June 30, 1968, will show an increase, due to the territorial act as well as increased and changing service problems of all utilities and carriers throughout the state.

In the matter of freight rates, one of the most important decisions made by the Commission many years ago was in the Fargo Rate case. As a result of this decision, the tariff wall east of Fargo that had hampered and prevented the normal and prosperous growth of jobbing cities in North Dakota was broken down, and all North Dakota cities have since benefited from the decision in that proceeding.

Although The Fargo Case did not directly affect all of North Dakota, ^{it} did establish a principle of overhead-through rates which, in later proceedings before the Interstate Commerce Commission, was extended throughout the United States.

The Commission has always been very concerned about the freight rates on farm products, particularly grain, and has actively sought, before the Interstate Commerce Commission, freight rates that are free

from undue preference and prejudice and which are reasonable, for the transportation of grain. It has also actively prosecuted cases before the Interstate Commerce Commission seeking reasonable rates on many other items such as iron and steel, petroleum products, cement, automobiles, furniture, etc., and has had substantial success in these efforts. During the past two decades, circumstances and competitive conditions have changed to the point where the primary problem of the North Dakota Commission has not been one of seeking lower rates as much as attempting to secure for North Dakota industry and people, rates which are not higher than prevails in other states and other areas where circumstances are substantially similar.

It was not until 1931, that the Commission was provided with enabling legislation for the purpose of placing a valuation upon the properties of public utilities in order to arrive at a fair rate of return and to prescribe just and reasonable rates. As a result of this legislation, it was necessary to first obtain a detailed inventory of the properties involved. Every pole, meter and unit of wire had to be counted, including every machine in the power plants. Along with the inventory, an analysis of the property records was made jointly by the Accounting and Engineering Departments in order to determine the actual historical cost of the properties, due consideration being given for accrued depreciation. Public hearings were had upon the Commission findings and decisions rendered. This method of arriving at a fair rate of return is known as the "Historical Theory", whereas, due to amended legislation, we now have what is known as the "Prudent Investment Theory", or money honestly and prudently invested in the

public utility business. Under this theory, it is not now necessary to recount each pole, meter and unit of wire, etc. The matter is simplified by a periodic examination of continuing property records required by the Commission.

Perhaps the most significant and outstanding decision rendered by the Commission under the so called "Historical Cost Theory" was in the case of one public utility wherein it was determined that the rate of return was greatly excessive and unreasonable. Many controversial factors were involved in this case, with the result the Commission's decision was appealed to the District Court and ultimately the Supreme Court of North Dakota. After approximately eight years of litigation, the matter was finally decided in favor of the Commission and approximately \$1,000,000 returned to the rate payers.

More recent decisions in the area of electric, gas and telephone utilities include the application of Midwest Natural Gas Company for a certificate of public convenience and necessity to furnish natural gas to various cities and communities in the counties of Dickey, La-Moure, Pembina, Cavalier, Walsh, Nelson, Ramsey, Benson, Pierce, Towner, Rolette, Bottineau, McHenry, Wells, Eddy, Foster and Stutsman. The case was docketed April 15, 1966, and public hearings held at Ellendale, Jamestown, Devils Lake, Grafton and Rugby. After months of study of sworn testimony comprising some 2300 pages and dozens of exhibits and witnesses, the applicant was given conditional certificate of public convenience and necessity on April 11, 1967, with construction to commence not later than July 1, 1969. Financing, gas supply, and tariffs must still be approved by the Commission. The principle concern of the Commission in cases of this kind is reliability of the

applicant, stable financing and availability of an adequate supply of natural gas. It is interesting to note that in this case, the Commission unanimously recommended that the applicant establish its corporate offices, including management, within the State of North Dakota in order to more effectively provide the consuming public with maximum service in all areas of operations.

Another interesting problem that has faced the Commission in recent years was the question of regulation over the so-called Cable Antenna Television Systems (CATV). The issue was whether or not they were public utilities. In this instance the Commission held a general hearing inviting testimony and such other information as anyone would care to submit on record and after all of this had been gathered the Commission subsequently issued a decision.

The background of the case is that under ^a ~~the~~ CATV System a single coaxial cable or other wire distribution line runs from a central source to all of the homes in a community. After a certain payment for installation a monthly charge is assessed and those persons taking the service then get improved television service including more channels, etc. Before the question of jurisdiction was decided by the Commission most of the larger cities in North Dakota granted franchises for construction of such systems and in return the municipal governments generally were to receive a percentage of gross receipts.

The hearing in this case was held on July 7, 1965, and finally on October 17, 1966, the Commission by majority vote held that the North Dakota Commission did not have jurisdiction to declare CATV

Systems in North Dakota to be public utilities. The minority opinion disagreed and said CATV Systems were public utilities and that there was existing legislation under North Dakota law wherein the North Dakota Commission could declare CATV Systems to be public utilities and then could regulate them in the public interest. The minority opinion further stated that a possible result of no regulation over CATV Systems eventually could mean a complete elimination of free CATV to the consumers in a community.

This, of course, is only one case but it does illustrate the various questions of public interest which come before the Commission.

Although a 1925 statute provided for some control of motor carriers for hire, it was not until 1931, and thereafter, that the legislature recognized the importance of providing the Commission with increased jurisdiction in this field of regulation. Motor carriers are now classified as to the nature of their operation, file rates and charges prescribed by the Commission, and submit annual financial statements of their operations. In the case of Class A and Special operators, applicants must submit to public hearing and through competent witnesses, prove public convenience and necessity before a certificate can be issued.

Class A common carriers operate between fixed termini, over fixed routes, and on scheduled time; special common motor carriers operate over irregular routes, not on scheduled time and at the will and command of the shipper; contract motor carriers are defined as anyone engaged in the transportation of property or passengers for hire and not included in the term "common motor carrier of property" and/or passengers.

While cases handled in the area of service by motor carriers are now fairly routine, many knotty problems still arise, particularly with respect to the scope of authority granted by the Commission. In June of 1966, the Commission felt impelled to suspend a certain certificate on the ground the carrier had illegally leased that portion of his authority permitting the hauling of cement, to another carrier. Carrier A, the lessor, entered into an agreement with Carrier B, the lessee, whereby authority to haul cement was transferred to the lessee without having filed the agreement with the Commission as provided by law. Upon suspension of the certificate, both carriers were ordered to appear before the Commission to show cause why they should not be dealt with according to law. The matter was subsequently aired at a full hearing with all interested parties present, and in June of 1967, the Commission issued its order imposing a monetary penalty of \$500.00 upon the lessor, and \$2,000.00 upon the lessee; both penalties being paid in due course. The evidence and findings in this case revealed among other things that the lessee was engaged in the hauling of cement without proper authority which had been previously denied by the Commission; that both parties made denials of agreements knowing them to be false; that it ^{was} ~~is~~ a reasonable inference that the agreements in question were entered into with the idea and for the purpose of circumventing and negating the Commission's order denying the lessee authority to haul cement.

In the area of regulation of warehousemen, particularly grain, the Commission at one time during the late 1920's bonded and licensed some 2200 grain elevators. Due to modern methods of handling,

consolidations, erection of large grain terminals, transportation by both rail and motor carrier, and other factors, this number is now reduced to approximately 750. The capacity of elevators to receive grain, however, has nevertheless increased slightly. The present capacity of North Dakota grain elevators has been given as 129,090,518 bushels. Of significance here, is the protection afforded holders of storage tickets or cash checks in the event of insolvency. After a determination of insolvency, the Commission is required, after due appointment as trustee, to marshall certain assets including collection on surety bonds, advertise for claims and ultimately distribute payments on a pro-rate basis. During the depression years especially, many cases of insolvency were processed with the result that with very few exceptions, claimants realized 100 cents on the dollar plus 6% interest. Among these cases was the trusteeship of the Wheat Growers Warehouse Company who operated grain elevators at some 59 cities, towns and villages with a separate set of books and records for each station. The trusteeship in this case lasted approximately two years.

In the matter of law enforcement, the Commission has been given quite broad police powers. At one time there were five and six field inspectors in the Motor Carrier Division with power to arrest upon warrant issued through the local States Attorney's office. This particular policing is now handled by the Highway Patrol and upon written request of the Commission or the Patrol, the Attorney General shall prosecute or assist in the prosecution of any alleged violations or any rule laid down by the Public Service Commission.

Enforcement also includes the Commission together with its officers and employees. With respect to enforcement of Commission orders and directives outside of the area of motor carriers, the Commission would have similar powers except that these would generally be channeled through the courts.

Although this article has only touched very briefly on the problems of regulation it does point out the enormous responsibility of the North Dakota Public Service Commission. There is no other single agency under state government which so directly affects so many people--particularly their pocketbooks. Through the years North Dakota has been privileged to have some of the better regulatory law in the country. ^{It is hoped it} ~~this we hope~~ will continue ^{this way in the future,} ~~We live in one of the most rapidly changing ages in history and because we do live in that age we must keep abreast of the times. How we do this will, to a large extent, determine where we go as a state and Nation.~~

The North Dakota Public Service Commission was created primarily to serve all consumers and the ^{iR} public interest. This is certainly the goal of the present Commission.