

# **EXHIBIT B**

**C**

WEST'S TENNESSEE CODE ANNOTATED  
TITLE 65. PUBLIC UTILITIES AND CARRIERS  
CHAPTER 4. REGULATION OF PUBLIC UTILITIES BY AUTHORITY  
PART 1--GENERAL PROVISIONS  
§ 65-4-101. Definitions

As used in this chapter, unless the context otherwise requires:

- (1) "Competing telecommunications service provider" means any individual or entity that offers or provides any two-way communications service, telephone service, telegraph service, paging service, or communications service similar to such services and is certificated as a provider of such services after June 6, 1995 unless otherwise exempted from this definition by state or federal law.
- (2) "Current authorized fair rate of return" means:
  - (A) For an incumbent local exchange telephone company operating pursuant to a regulatory reform plan ordered by the former public service commission under TPSC rule 1220-4-2-.55, any return within the range contemplated by TPSC rule 1220-4-2-.55(1)(c)(1) or TPSC rule 1220-4-2-.55(d);
  - (B) For any other incumbent local exchange telephone company, the rate of return on rate base most recently used by the former public service commission in an order evaluating its rates.
- (3) "Gross domestic product-price index (GDP-PI)" used to determine limits on rate changes means the final estimate of the chain-weighted gross domestic product-price index as prepared by the United States department of commerce and published in the Survey of Current Business, or its successor.
- (4) "Incumbent local exchange telephone company" means a public utility offering and providing basic local exchange telephone service as defined by § 65-5-208 pursuant to tariffs approved by the former public service commission prior to June 6, 1995.
- (5) "Interconnection services" means telecommunications services, including intrastate switched access service, that allow a telecommunications service provider to interconnect with the networks of all other telecommunications service providers.
- (6) "Public utility" means every individual, copartnership, association, corporation, or joint stock company, its lessees, trustees, or receivers, appointed by any court whatsoever, that own, operate, manage or control, within the state, any interurban electric railway, traction company, all other common carriers, express, gas, electric light, heat, power, water, telephone, telegraph, telecommunications services, or any other like system, plant or equipment, affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision thereof. "Public utility" as defined in this section shall not be construed to include the following nonutilities:
  - (A) Any corporation owned by or any agency or instrumentality of the United States;
  - (B) Any county, municipal corporation or other subdivision of the state of Tennessee;
  - (C) Any corporation owned by or any agency or instrumentality of the state;
  - (D) Any corporation or joint stock company more than fifty percent (50%) of the voting stock or shares of which is owned by the United States, the state of Tennessee or by any nonutility referred to in subdivisions (a)(1), (2), and (3);
  - (E) Any cooperative organization, association or corporation not organized or doing business for profit;

(F) Any individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission; provided, that the real and personal property of such domestic public cellular radio telephone entities shall be assessed by the comptroller of the treasury pursuant to §§ 67-5-801(a)(1), 67-5-901(a)(1), and § 67-5-1301(a)(2); provided, however, that until at least two (2) entities, each independent of the other, are authorized by the federal communications commission to offer domestic public cellular radio telephone service in the same cellular geographical area within the state, the customer rates only of a company offering domestic public cellular radio telephone service shall be subject to review by the Tennessee regulatory authority pursuant to §§ 65-5-101--65-5-104. Upon existence in a cellular geographical area of the conditions set forth in the preceding sentence, domestic public cellular radio telephone service in such area, for all purposes, shall automatically cease to be treated as a public utility under this title. The Tennessee regulatory authority's authority over domestic public cellular radio telephone service is expressly limited to the above extent and the authority shall have no authority over resellers of domestic public cellular radio telephone service. For the purpose of this subdivision (6)(F), "authorized" means six (6) months after granting of the construction permit by the federal communications commission to the second entity or when the second entity begins offering service in the same cellular geographical area, whichever should first occur. This subdivision (6)(F) does not affect, modify or lessen the regulatory authority's authority over public utilities that are subject to regulation pursuant to chapter 5 of this title;

(G) Any county, municipal corporation or other subdivision of a state bordering Tennessee, but only to the extent that such county, municipal corporation or other subdivision distributes natural gas to retail customers within the municipal boundaries and/or urban growth boundaries of a Tennessee city or town adjoining such bordering state;

(H) Any of the foregoing nonutilities acting jointly or in combination or through a joint agency or instrumentality; and

(I) For purposes of §§ 65-5-101 and 65-5-103, "public utility" shall not include interexchange carriers. "Interexchange carriers" means companies, other than incumbent local exchange telephone companies, owning facilities in the state which consist of network elements and switches, or other communication transmission equipment used to carry voice, data, image, and video traffic across the local access and transport area (LATA) boundaries within Tennessee.

(7) "Public utility" does not mean nonprofit homeowners associations or organizations whose membership is limited to owners of lots in residential subdivisions, which associations or organizations own, construct, operate or maintain water, street light or park maintenance service systems for the exclusive use of that subdivision; provided, however, that the subdivisions are unable to obtain such services from the local utility district. None of the property, property rights or facilities owned or used by the association or organization for the rendering of such services shall be under the jurisdiction, supervision or control of the Tennessee regulatory authority.

(8) "Telecommunications service provider" means any incumbent local exchange telephone company or certificated individual or entity, or individual or entity operating pursuant to the approval by the former public service commission of a franchise within § 65-4-207(b), authorized by law to provide, and offering or providing for hire, any telecommunications service, telephone service, telegraph service, paging service, or communications service similar to such services unless otherwise exempted from this definition by state or federal law.

1919 Pub.Acts, c. 49, § 3; 1935 Pub.Acts, c. 42, § 1; 1943 Pub.Acts, c. 51, § 1; 1979 Pub.Acts, c. 195, § 1; 1984 Pub.Acts, c. 869, § 1; 1995 Pub.Acts, c. 305, § 14, eff. July 1, 1995; 1995 Pub.Acts, c. 305, § 20, eff. July 1, 1996; 1995 Pub.Acts, c. 408, §§ 2, 3, eff. June 6, 1995; 1999 Pub.Acts, c. 317, § 1, eff. May 26, 1999; 2001 Pub.Acts, c. 27, § 1, eff. March 22, 2001.

Formerly Shannon's Code Supp., § 3059a86; 1932 Code, § 5448; 1950 Code Supp., § 5448; § 65-401.

<General Materials (GM) - References, Annotations, or Tables>

#### CROSS REFERENCES

Advertising material affixed to public utility property, see § 2-19-144.

#### LIBRARY REFERENCES

## Key Numbers

Public Utilities ☞ 103.

Westlaw Key Number Search: 317ak103.

## Corpus Juris Secundum

C.J.S. Public Utilities §§ 3 to 4, 6, 11.

## NOTES OF DECISIONS

Construction and application 1

Discrimination, telecommunications 22

Electricity 6-8

Electricity - In general 6

Electricity - Rates and charges 7

Electricity - Tennessee Valley Authority 8

Fees, gas companies 12

Foreign corporations 5

Gas companies 9-16

Gas companies - In general 9

Gas companies - Fees 12

Gas companies - Inspection 15

Gas companies - Parties 16

Gas companies - Payments to municipalities 13

Gas companies - Power to control and regulate 11

Gas companies - Terms and conditions of franchise 14

Gas companies - Validity 10

Injunctions, telecommunications 21

Inspection, gas companies 15

Inventory 4.5

Legislative intent 2

Municipal corporations 18

Parties, gas companies 16

Parties, generally 24

Payments to municipalities, gas companies 13

Penalties, telecommunications 23

Policy 3

Power to control and regulate, gas companies 11

Public utility 4

Rates and charges, electricity 7

Rates and charges, generally 19

Telecommunications 20-23

Telecommunications - In general 20

Telecommunications - Discrimination 22

Telecommunications - Injunctions 21

Telecommunications - Penalties 23

Tennessee Valley Authority, electricity 8

Terms and conditions of franchise, gas companies 14

Validity, gas companies 10

Water companies 17

## 1. Construction and application

Statute is presumed divisible, where Legislature provides that invalidity of any section shall not affect validity of others. *Williams v. Standard Oil Co. of Louisiana*, 1929, 49 S.Ct. 115, 278 U.S. 235, 60 A.L.R. 596, 73 L.Ed. 287. Statutes ☞ 61

The 1935 act purporting to amend sections 5380-5508 of the Code and excluding from the term "public utility" non-profit co-operatives, did not amend the Motor Carrier Act as embraced in sections 5471-5501, which had been repealed in 1933, and did not affect the new Motor Carrier Act which was then enacted without reference to the Code merely because it was included in the Code by the compilers as sections 5501.1-5501.23. Pub.Acts 1933, c. 119, § 1 et seq.; Pub.Acts 1935, c. 42, § 1(e); Code, §§ 5380-5508, 5448, 5471-5501, 5501.1-5501.23. *Tiger Creek Bus Line v. Tiger Creek Transp. Ass'n*, 1948, 216 S.W.2d 348, 187 Tenn. 654. Statutes ☞ 135; Statutes ☞ 146

Under the ejusdem generis rule, the words "any co-operative organization, association or corporation not organized or doing business for profit," as used in the statute defining the term "public utility" and excluding from that term certain corporations, refer to the kind and class of organizations indicated by preceding special exemption. Pub.Acts 1935, c. 42, § 1; Code, § 5448. *Tiger Creek Bus Line v. Tiger Creek Transp. Ass'n*, 1948, 216 S.W.2d 348, 187 Tenn. 654. Statutes ☞ 194

The statute creating the Railroad and Public Utilities Commission confers upon Commission broad regulatory powers over utilities and railroads, but Commission can exercise no authority that is outside the express provisions of the statute. Code 1932, §§ 5449, 5450, as amended by Pub.Acts 1939, c. 130. *Pharr v. Nashville, C. & St. L. Ry.*, 1948, 208 S.W.2d 1013, 186 Tenn. 154. *Administrative Law And Procedure* ☞ 305; *Public Utilities* ☞ 147

## 2. Legislative intent

In absence of legislative declaration, Legislature is

presumed to intend act to be effective as entirety. *Williams v. Standard Oil Co. of Louisiana*, 1929, 49 S.Ct. 115, 278 U.S. 235, 60 A.L.R. 596, 73 L.Ed. 287. Statutes ☞61

### 3. Policy

Whether competition between public utilities shall be prohibited, regulated or forbidden is a matter of state policy which is subject to alteration at the will of the Legislature. *Tennessee Elec. Power Co. v. Tennessee Val. Authority*, 1939, 59 S.Ct. 366, 306 U.S. 118, 83 L.Ed. 543. Constitutional Law ☞101; Public Utilities ☞141

The declaration of a specific policy of the state regarding regulation of public utilities creates no vested right to its maintenance in utilities then engaged in the business or thereafter embarking in it. *Tennessee Elec. Power Co. v. Tennessee Val. Authority*, 1939, 59 S.Ct. 366, 306 U.S. 118, 83 L.Ed. 543. Constitutional Law ☞101; Public Utilities ☞141

### 4. Public utility

Telephone companies are "public utilities" within Public Utilities Commission Law. *Williams' Code* § 5447. *Breeden v. Southern Bell Tel. & Tel. Co.*, 1955, 285 S.W.2d 346, 3 *McCanless* 203, 199 *Tenn.* 203. Telecommunications ☞2.1

The terms "public use" and "public utility", in statute defining public utility for purpose of control and regulation by public utility commission as including common carriers of gas or any other like system, plant, or equipment, affected by and dedicated to the public use under privileges, franchises, licenses, or agreements granted by the state or by any political subdivision thereof, are synonyms. *Code* 1938, § 5448. *Memphis Natural Gas Co. v. McCanless*, 1946, 194 S.W.2d 476, 183 *Tenn.* 635, appeal dismissed 67 S.Ct. 99, 329 U.S. 670, 91 L.Ed. 591. Public Utilities ☞145.1

A company authorized by charter to exercise powers of water company was "affected with a public use" and hence was a "public utility" subject to taxation and regulation by the Railroad and Public Utilities, notwithstanding that it did not exercise all its charter powers, and merely maintained pipe lines through which city delivered water. *Code* 1932, §§ 1508, 4066- 4075, 5448. *Nashville Water Co. v. Dunlap*, 1940, 138 S.W.2d 424, 176 *Tenn.* 79. Taxation☞317(2); Waters And Water Courses ☞184.1

The General Assembly intended the term, 'utility system, not municipally owned,' to include privately owned companies included within the definition of a 'public utility' in § 65-4-101. Applying this definition, the term would include privately owned common carriers, traction companies, and interurban railways, and any privately owned company that operates express, gas, electric light, heat, power, water, telephone, telegraph, telecommunications services, or any other like system, plant or equipment, affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the State or by any political subdivision of the State. Therefore, any privately owned company could be a 'utility system, not municipally owned,' under the Act if it serves the public under a privilege, franchise, license, or agreement granted by the State or any political subdivision of the State. *Op.Atty.Gen. No. 98-149*, Aug. 12, 1998.

### 4.5. Inventory

Laser transmitters and optical amplifiers supplied to reseller by manufacturer of fiber optic equipment for broadband industry qualified as "industrial equipment" and "utility equipment" under Tennessee law, and thus was "inventory" under Tennessee statute defining that term for purposes of statutory protection afforded to retailers with respect to unsold inventory held following termination of contract between retailer and supplier. *Power & Telephone Supply Co., Inc. v. Harmonic, Inc.*, 2003, 268 F.Supp.2d 981. Trade Regulation ☞871(3)

### 5. Foreign corporations

Though foreign corporations must comply with conditions prescribed by state, state cannot impose conditions requiring relinquishment of constitutional rights. *Williams v. Standard Oil Co. of Louisiana*, 1929, 49 S.Ct. 115, 278 U.S. 235, 60 A.L.R. 596, 73 L.Ed. 287. Corporations ☞636

### 6. Electricity--In general

In suit to compel electric membership corporation to furnish electricity to complainant, complainant was not entitled to prevail, since if defendant were a public service corporation, there would be no duty to extend its facilities until ordered to do so by the Public Service Commission, and if defendant was a membership corporation, there would be no duty by defendant to extend facilities where complainant did not aver that he was a member of the corporation or that he had

complied with the rules and become entitled to the privilege of membership. T.C.A. §§ 65-401, 65-404, 65-422, 65-2424. *Chumbley v. Duck River Elec. Membership Corp.*, 1958, 310 S.W.2d 453, 7 McCanless 243, 203 Tenn. 243. Electricity ☞11(4)

Contracts entered into by city with the Tennessee Valley Authority for purchase of electric current, and with Public Works Administration for a loan in connection with construction and operation of municipal electric plant, did not violate constitutional provision prohibiting class legislation. Priv.Acts, 1935, c. 616, §§ 3, 7; Priv.Acts. 1935, Ex.Sess., c. 108, §§ 1, 2; Const. art. 11, § 8. *Memphis Power & Light Co. v. City of Memphis*, 1937, 112 S.W.2d 817, 172 Tenn. 346. Statutes ☞71

#### 7. --- Rates and charges, electricity

Even though contract for sale of electric power to city by Tennessee Valley Authority required that Authority approve resale rates, the regulation of rates was subject to continuing police power of state. Priv.Acts 1935, c. 616, §§ 3, 7. *Memphis Power & Light Co. v. City of Memphis*, 1937, 112 S.W.2d 817, 172 Tenn. 346. Electricity ☞11.3(1)

Original jurisdiction to determine question of which, if any, of several rates is applicable to purchaser of electricity from public utility, under particular conditions and circumstances surrounding its use by purchaser, is left with Railroad and Public Utilities Commission, since determination of such question is essentially the fixing of a rate within exclusive jurisdiction of commission. Code 1932, §§ 5448-5470. *Trent v. Tennessee Public Service Co.*, 1937, 100 S.W.2d 660, 171 Tenn. 89. Electricity ☞11.2(1)

Bill seeking decree to order electric company to desist from separately charging consumer with power, commercial lighting, and residential rates, and that company should classify whole service under power rate, on ground that current for other two purposes was comparatively inconsequential, held demurrable, since Railroad and Public Utilities Commission had exclusive jurisdiction to determine which of several rates was applicable. Code 1932, §§ 5448-5470. *Trent v. Tennessee Public Service Co.*, 1937, 100 S.W.2d 660, 171 Tenn. 89. Electricity ☞11.2(1)

#### 8. --- Tennessee Valley Authority, electricity

The Tennessee Valley Authority, as an agency of the United States, is a public instrumentality and holds electric energy generated at its dams in trust for the

people of the whole country. *Memphis Power & Light Co. v. City of Memphis*, 1937, 112 S.W.2d 817, 172 Tenn. 346. United States ☞53(6.1)

The Tennessee Valley Authority, an agency of the United States, had authority to dispose of its electric energy to city operating municipal light and power plant. *Memphis Power & Light Co. v. City of Memphis*, 1937, 112 S.W.2d 817, 172 Tenn. 346. United States ☞53(6.1)

#### 9. Gas companies--In general

Utility district which owned and operated natural gas distribution system had no real authority to sell its system to purchaser that was private, investor-owned corporation and not a municipality or a county. T.C.A. §§ 65-4-101, 65-4-104, 7-82-101 et seq., 7-82-301(a)(1), 7-82-304, 7-82-306, 7-82-309(a), (a)(4), 7-82-601 et seq. *United Cities Gas Co. v. Wigington*, 1991, 815 S.W.2d 506. Gas ☞6

A natural gas company whose charter gave the company the right to operate as a public utility, and which had jointly with power company a contract with city to furnish natural gas to inhabitants of city, and which enjoyed privileges and franchises from the city and seven counties and the state through the highway department, was a "public utility" subject to control of public utilities commission and subject to all Tennessee statutes having to do with public utilities, so as to be subject to inspection fees. Code 1938, §§ 5448, 5459. *Memphis Natural Gas Co. v. McCanless*, 1946, 194 S.W.2d 476, 183 Tenn. 635, appeal dismissed 67 S.Ct. 99, 329 U.S. 670, 91 L.Ed. 591. Gas ☞4.1

Legislature may empower gas company to exercise rights under franchise without permission from city. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Municipal Corporations ☞680(4)

#### 10. --- Validity, gas companies

Gas company having voluntarily agreed to pay city percentage of receipts, continued exaction of payments violated no constitutional right guaranteed by State or Federal Constitution. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Gas ☞6

No constitutional or statutory right of consumers was violated by gas company's agreement made prior to passage of rate-regulating statute to pay city percentage

of receipts. Acts 1919, c. 49. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Gas ☞6

#### 11. ---- Power to control and regulate, gas companies

State control of natural gas company engaged as a public utility in interstate operation was not precluded by Federal Natural Gas Act of 1938, where the company's operation was not exclusively interstate. Code 1938, § 5448; Natural Gas Act, § 2, 15 U.S.C.A. § 717a. *Memphis Natural Gas Co. v. McCanless*, 1946, 194 S.W.2d 476, 183 Tenn. 635, appeal dismissed 67 S.Ct. 99, 329 U.S. 670, 91 L.Ed. 591. Gas ☞1

Federal control of the natural gas industry is not exclusive of state control but concurrent with state control. Code 1938, § 5448; Natural Gas Act, § 2, 15 U.S.C.A. § 717a. *Memphis Natural Gas Co. v. McCanless*, 1946, 194 S.W.2d 476, 183 Tenn. 635, appeal dismissed 67 S.Ct. 99, 329 U.S. 670, 91 L.Ed. 591. Gas ☞1

In the reasonable exercise of its police power for protection of health and safety of the citizens, the state can supervise and control transportation and distribution of natural gas, which is a dangerous instrumentality because of its explosive and asphyxiating potential, even if operation of natural gas company is exclusively interstate. Code 1938, § 5448. *Memphis Natural Gas Co. v. McCanless*, 1946, 194 S.W.2d 476, 183 Tenn. 635, appeal dismissed 67 S.Ct. 99, 329 U.S. 670, 91 L.Ed. 591. Gas ☞1

#### 12. ---- Fees, gas companies

The validity of inspection fees imposed on natural gas company was not affected by the fact that, after imposition of such fees, the company was put under control of the Federal Power Commission. Code 1938, §§ 5448, 5459; Natural Gas Act, § 2, 15 U.S.C.A. § 717a. *Memphis Natural Gas Co. v. McCanless*, 1946, 194 S.W.2d 476, 183 Tenn. 635, appeal dismissed 67 S.Ct. 99, 329 U.S. 670, 91 L.Ed. 591. Gas ☞2

#### 13. ---- Payments to municipalities, gas companies

Gas company's agreement, incorporated in ordinance, to pay city percentage of receipts in consideration of city's consent to let company enter, held contract, not exercise of governmental power. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Gas ☞6

City's contract with gas company to receive percentage of receipts, in consideration of permitting company to enter, held not invalid or ultra vires. Acts 1875, c. 142; Acts 1887, c. 176; Acts 1889, c. 70; Acts 1883, c. 114, as amended by Acts 1899, c. 204, § 15, and Acts 1903, c. 119. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Gas ☞6

Act by which state resumed rate-regulating power did not abrogate existing contract between city and gas company, under which city received percentage of receipts as consideration for permitting exercise of franchise. Acts 1919, c. 49, § 11. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Gas ☞6

That city, from contract with gas company, obtained money it could use as revenue did not determine character of charge or make it a "tax". *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Gas ☞6

Gas company's agreement, embodied in ordinance, to pay city percentage of receipts, held not "tax," but compensation for exercising franchise conditionally granted by state. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Gas ☞6

Court has no power to annul valid contract of gas company to pay city percentage of receipts in order to reduce rates to consumers. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Gas ☞6

That, contract, whereby gas company agreed to pay city percentage of receipts, embraced receipts for gas consumed beyond city limits, would not authorize allocation of receipts as basis for payments to city. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Gas ☞6

#### 14. ---- Terms and conditions of franchise, gas companies

City's grant of franchise to gas company, reserving right to grant franchise to natural gas companies and the like, held not exclusive in sense of "monopoly." *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Gas ☞6

Legislature may make franchise of gas company dependent upon such conditions as city may impose. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Municipal Corporations ☞682(4)

Under statutes making gas company's franchise dependent upon consent of municipal government and upon terms and conditions municipality might impose, city had right to make terms and impose conditions. Acts 1875, c. 142; Acts 1887, c. 176; Acts 1889, c. 70; Acts 1883, c. 114, as amended by Acts 1899, c. 204, § 15, and Acts 1903, c. 119. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Municipal Corporations ☞682(4)

#### 15. --- Inspection, gas companies

Evidence relating to whether public utilities commission inspected operation and properties of natural gas company was insufficient to show that the inspection was a fiction so as to make inspection fees imposed on the company an illegal charge. Code 1938, §§ 5448, 5459. *Memphis Natural Gas Co. v. McCanless*, 1946, 194 S.W.2d 476, 183 Tenn. 635, appeal dismissed 67 S.Ct. 99, 329 U.S. 670, 91 L.Ed. 591. Gas ☞11

#### 16. --- Parties, gas companies

Consumers held not in position to seek relief through courts against contract between city and gas company agreeing to pay city percentage of receipts. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Gas ☞6

#### 17. Water companies

Elemental powers of public utility must be obtained from Public Service Commission and privilege of occupying streets, roads and public ways of cities or counties with its facilities must be obtained from local political subdivision in which utility operates. T.C.A. §§ 65-101 to 65-501, 65-401, 65-404, 65-406, 65-407, 65-2706. *Briley v. Cumberland Water Co.*, 1965, 389 S.W.2d 278, 19 McCanless 718, 215 Tenn. 718. Highways ☞88; Municipal Corporations☞680(3); Public Utilities ☞113

#### 18. Municipal corporations

A municipality acts in a dual capacity, in one of which capacities, considered as an agency of state, municipality exercises functions designated as public, legislative, political, or governmental, and acts as a sovereignty, and in the other capacity exercises functions designated as private, quasi-private, proprietary, business, commercial, ministerial or merely municipal, and acts as a private or quasi-private corporation. *Memphis Power & Light Co. v. City of Memphis*, 1937, 112 S.W.2d 817, 172 Tenn. 346.

#### Municipal Corporations ☞57

The city of Memphis in constructing and operating an electric plant functioned as a private or business corporation. Priv.Acts 1935, c. 616, §§ 3, 7. *Memphis Power & Light Co. v. City of Memphis*, 1937, 112 S.W.2d 817, 172 Tenn. 346. Municipal Corporations ☞57

The power to fix rates charged by public utilities, whether they are owned by private interests or municipal corporations, rests primarily with state, but power may be delegated to a municipality. *Memphis Power & Light Co. v. City of Memphis*, 1937, 112 S.W.2d 817, 172 Tenn. 346. Municipal Corporations ☞57

"Municipal corporations" are dual entities, possessing both corporate and limited governmental powers. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Municipal Corporations ☞57

Before resumption of rate-regulating power by state, regulation by city, however accomplished, was subject to state's power to cancel conditions permitting municipality to prescribe rates. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Municipal Corporations ☞64

#### 19. Rates and charges, generally

Railroad and Public Utilities Commission held without authority to require utility to agree to rate basis, payment of fixed charges, and recapture rights, in advance of hearing on application for certificate. *Thomp.Shan. Code*, §§ 2445 et seq., 2489a et seq.; Acts 1919, c. 49, §§ 3, 7. *Tennessee Eastern Elec. Co. v. Hannah*, 1928, 12 S.W.2d 372, 157 Tenn. 582. Public Utilities ☞119.1

Rules of Railroad and Public Utilities Commission should be amended to permit utilities to apply for certificate without previous agreement to rate basis, fixed charges, and state's recapture rights. *Thomp.Shan.Code*, §§ 2445, et seq., 2489a et seq.; Acts 1919, c. 49, §§ 3, 7. *Tennessee Eastern Elec. Co. v. Hannah*, 1928, 12 S.W.2d 372, 157 Tenn. 582. Public Utilities ☞122

#### 20. Telecommunications--In general

Statutory amendment directing Public Service Commission (PSC) to consider all relevant factors and to prove regulated utility's request to transfer part of its



authority to another entity if transfer furthers public interest did not enable PSC to approve transfer when transferee was disqualified by law from performing services sought to be transferred. T.C.A. § 65-4-101 et seq. Deaderick Paging Co., Inc. v. Tennessee Public Service Com'n, 1993, 867 S.W.2d 729, appeal denied. Telecommunications ☞461.10

A telegraph or telephone company is bound to serve the public faithfully, impartially and without discrimination, and is liable in damages for failure to exercise due diligence in performance of its duty. Breeden v. Southern Bell Tel. & Tel. Co., 1955, 285 S.W.2d 346, 3 McCanless 203, 199 Tenn. 203. Telecommunications ☞148; Telecommunications ☞221; Telecommunications ☞282.1

Before telephone company can be required to serve people of a community, Railroad and Public Utilities Commission must hear matter and grant necessary certificate, and Commission, not court, had exclusive jurisdiction of proceeding to compel company to extend service. Williams' Code, §§ 3107, 5380-5470.2, 5447, 5451; Pub.Acts 1897, c. 10; Interstate Commerce Act, § 1 et seq., 49 U.S.C.A. § 1 et seq. Breeden v. Southern Bell Tel. & Tel. Co., 1955, 285 S.W.2d 346, 3 McCanless 203, 199 Tenn. 203. Telecommunications ☞263

#### 21. ---- Injunctions, telecommunications

Bill for mandatory injunction to require telephone company to extend service to plaintiffs' community and for penalty for failure to do so was insufficient, against demurrer, for failure to allege that matter had been first submitted to Railroad and Public Utilities Commission. Breeden v. Southern Bell Tel. & Tel. Co., 1955, 285 S.W.2d 346, 3 McCanless 203, 199 Tenn. 203. Telecommunications ☞263

#### 22. ---- Discrimination, telecommunications

A telephone company must extend facilities to all people who are willing to comply therewith and must treat all patrons alike and cannot discriminate in favor of one patron against another. Breeden v. Southern Bell Tel. & Tel. Co., 1955, 285 S.W.2d 346, 3 McCanless 203, 199 Tenn. 203. Telecommunications ☞265

Telephone companies are not required to extend facilities beyond such reasonable limits as they may prescribe for themselves, and there is no discrimination

unless an applicant within a particular district is discriminated against and others served within same general area in like situation and under like conditions with themselves. Breeden v. Southern Bell Tel. & Tel. Co., 1955, 285 S.W.2d 346, 3 McCanless 203, 199 Tenn. 203. Telecommunications ☞266

#### 23. --- Penalties, telecommunications

Statute rendering a telephone company liable for a penalty in case of discrimination in service is merely declaratory of common-law obligations. Williams' Code, § 3107. Breeden v. Southern Bell Tel. & Tel. Co., 1955, 285 S.W.2d 346, 3 McCanless 203, 199 Tenn. 203. Telecommunications ☞366 ☞265;

Telephone company could not be held liable, under statute, for penalty for discrimination in service in respect to failure to extend service to a community without first having been authorized or directed to extend service by Railroad and Public Utilities Commission. Williams' Code, § 3107. Breeden v. Southern Bell Tel. & Tel. Co., 1955, 285 S.W.2d 346, 3 McCanless 203, 199 Tenn. 203. Telecommunications ☞366

#### 24. Parties, generally

☞261 Where neither charters nor local franchises of public utilities granted monopoly or rendered competition illegal, competition of Tennessee Valley Authority did not constitute an invasion of the utilities' charter or franchise rights, so as to give them a standing to challenge constitutionality of Tennessee Valley Authority Act. Tennessee Valley Authority Act of 1933, as amended in 1935, 16 U.S.C.A. § 831 et seq. Tennessee Elec. Power Co. v. Tennessee Val. Authority, 1939, 59 S.Ct. 366, 306 U.S. 118, 83 L.Ed. 543. Constitutional Law ☞42.1(2)

The doctrine that one threatened with direct and special injury by act of agent of government which but for statutory authority for its performance would be violation of his legal right, may challenge validity of statute in suit against agent, is without application unless the right invaded is a legal right. Tennessee Elec. Power Co. v. Tennessee Val. Authority, 1939, 59 S.Ct. 366, 306 U.S. 118, 83 L.Ed. 543. Constitutional Law ☞42(2); Constitutional Law ☞42.2(1); United States ☞40

Public utilities could not by suit challenge constitutionality of statutory grant of power the exercise of which by the Tennessee Valley Authority resulted in competition with the public utilities.

Tennessee Valley Authority Act of 1933, as amended in 1935, 16 U.S.C.A. § 831 et seq. Tennessee Elec. Power Co. v. Tennessee Val. Authority, 1939, 59 S.Ct. 366, 306 U.S. 118, 83 L.Ed. 543. Constitutional Law 42.1(2)

Where Tennessee Valley Authority had not acted in any way in certain states, Authority's alleged proposed entry into some or all of them did not confer a right on public utilities operating in such states to sue for an injunction against injury threatened thereby on theory that Tennessee Valley Authority Act was unconstitutional. Tennessee Valley Authority Act of 1933, as amended in 1935, 16 U.S.C.A. § 831 et seq. Tennessee Elec. Power Co. v. Tennessee Val. Authority, 1939, 59 S.Ct. 366, 306 U.S. 118, 83 L.Ed. 543. Constitutional Law 42.1(2); Injunction 12

In suit by public utilities for injunction against competition of Tennessee Valley Authority on theory that Tennessee Valley Authority Act was unconstitutional, the utilities could not raise any question of alleged discrimination forbidden by Fourteenth Amendment involved in state exemption of the Authority from regulation of state commissions. Tennessee Valley Authority Act of 1933, as amended in 1935, 16 U.S.C.A. § 831 et seq.; U.S.C.A.Const. Amend. 14. Tennessee Elec. Power Co. v. Tennessee Val. Authority, 1939, 59 S.Ct. 366, 306 U.S. 118, 83 L.Ed. 543. Constitutional Law 42.1(2); Electricity 1

Where in contracting with municipalities and nonprofit

corporations the Tennessee Valley Authority stipulated respecting the price at which the electrical energy supplied by the Authority was to be resold by its vendees, such fact did not give public utilities standing to maintain suit against the Authority on ground that Tennessee Valley Authority Act was unconstitutional and that the acts of the Authority could not be upheld without permitting federal regulation of purely local matters reserved to the state or the people by the Tenth Amendment. Tennessee Valley Authority Act of 1933, as amended in 1935, 16 U.S.C.A. § 831 et seq.; U.S.C.A.Const. Amend. 10. Tennessee Elec. Power Co. v. Tennessee Val. Authority, 1939, 59 S.Ct. 366, 306 U.S. 118, 83 L.Ed. 543. Constitutional Law 42.1(2); States 4.16(2)

Even if Tennessee Valley Authority's operation was not without objection by states, public utilities in the absence of the states or their officers had no standing to raise any question under Tenth Amendment. Tennessee Valley Authority Act of 1933, as amended in 1935, 16 U.S.C.A. § 831 et seq.; U.S.C.A.Const. Amend. 10. Tennessee Elec. Power Co. v. Tennessee Val. Authority, 1939, 59 S.Ct. 366, 306 U.S. 118, 83 L.Ed. 543. Constitutional Law 42.1(2)

T. C. A. § 65-4-101, TN ST § 65-4-101

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*WEST'S TENNESSEE CODE ANNOTATED*  
TITLE 65. PUBLIC UTILITIES AND CARRIERS  
CHAPTER 4. REGULATION OF PUBLIC UTILITIES BY AUTHORITY  
PART 1--GENERAL PROVISIONS  
§ 65-4-104. Public utilities; authority jurisdiction

The authority has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter. However, such general supervisory and regulatory power and jurisdiction and control shall not apply to street railway companies.

1919 Pub.Acts, c. 49, § 3; 1943 Pub.Acts, c. 51, § 1; impl. am. by 1955 Pub.Acts, c. 69, § 1; 1995 Pub.Acts, c. 305, § 20, eff. July 1, 1996.

Formerly Shannon's Code Supp., § 3059a85; 1932 Code, § 5447; 1950 Code Supp., § 5447; § 65-404.

<General Materials (GM) - References, Annotations, or Tables>

CROSS REFERENCES

Emergency parts and accessories, lighting regulations, see § 55-9-102.

Power districts, regulatory exemption, see § 7-83-306.

Rate regulation, see § 65-5-201 et seq.

Street and interurban railroads, municipal regulation, see § 65-16-101.

Tennessee regulatory authority jurisdiction, municipal exemption, see § 7-34-117.

Utilities regulation, municipal exemption, see § 7-34-106.

Zoning, utilities location, see § 13-24-301 et seq.

ADMINISTRATIVE CODE REFERENCES

Public utilities regulation, see Tenn. Rules and Regulations 1220-4-1-.01 et seq.

LIBRARY REFERENCES

Key Numbers

Public Utilities ☞ 111, 113, 114, 118.

Urban Railroads ☞ 20.

Westlaw Key Number Searches: 317ak111; 317ak113; 317ak114; 317ak118;  
317ak118; 396ak20.

Corpus Juris Secundum

C.J.S. Public Utilities §§ 4, 6 to 10, 12, 14, 68 to 75.

C.J.S. Street Railroads §§ 22 to 23, 130, 133 to 134, 136,

138, 151, 157, 164 to 165, 175, 177, 204 to 237.

NOTES OF DECISIONS

Construction and application 2  
 Declaratory judgment actions 12  
 Electric companies 10  
 Gas companies 9  
 Hearings 7

Intent 3  
 Municipalities 8  
 Nature and status of authority 5  
 Regulation of rates and charges 6  
 Review 13  
 Street railroads 4  
 Telecommunications 11  
 Validity 1

### 1. Validity

Act amending original act creating Railroad and Public Utilities Commission and conferring jurisdiction over rates held constitutional. Pub.Acts 1919, c. 49. *McCullum v. Southern Bell Tel. & Tel. Co.*, 1931, 43 S.W.2d 390, 163 Tenn. 277. Public Utilities ☞102

Acts 1919, c. 49, which amended Acts 1897, c. 10, entitled an act to create a Railroad Commission, defining its powers and duties to prohibit extortion, etc., is not invalid under Const. art. 2, § 17, which forbids any bill to become a law which embraces more than one subject and declares that all acts which repeal, revive or amend former laws shall recite in their caption the substance of the law repealed or revived on the theory that the original act related solely to railroads and the amending act was extended so as to embrace other public utilities as street railroads. *City of Memphis v. Enloe*, 1919, 214 S.W. 71, 141 Tenn. 618. Public Utilities ☞102; Railroads ☞9(1); Statutes ☞125(7)

Acts 1919, c. 49, extending the powers of the Railroad Commission to public utilities and allowing the commission to investigate and fix rates is not invalid as impairing the obligation of contract in violation of Const. U.S. and Const. Tenn. art. 1, § 20, as to the city of Memphis, which had previously by ordinance fixed the rate which street railroad company doing business therein might charge. *City of Memphis v. Enloe*, 1919, 214 S.W. 71, 141 Tenn. 618. Constitutional Law ☞135; Public Utilities ☞102

An act regulating public utilities, as street railroads, is invalid, both under the federal and Tennessee constitutions, if it makes an arbitrary and illegal classification. *City of Memphis v. Enloe*, 1919, 214 S.W. 71, 141 Tenn. 618. Constitutional Law ☞241

### 2. Construction and application

Elemental powers of public utility must be obtained from Public Service Commission and privilege of occupying streets, roads and public ways of cities or counties with its facilities must be obtained from local political subdivision in which utility operates. T.C.A. §§ 65-101 to 65-501, 65-401, 65-404, 65-406, 65-407, 65-2706. *Briley v. Cumberland Water Co.*, 1965, 389 S.W.2d 278, 19 *McCanless* 718, 215 Tenn. 718. Highways ☞88; Municipal Corporations ☞680(3); Public Utilities ☞113

Police powers belong to state, and can be exercised by its agencies only when expressly delegated. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Constitutional Law ☞81

The provision of Acts 1897, c. 10, creating the Railroad Commission, that no person owning stocks or bonds of any railroad or transportation company shall serve as commissioner, must be deemed incorporated in Acts 1919, c. 49, extending the powers of the commission to public utilities, as street railroads, for the two acts after amendment will be read as one. *City of Memphis v. Enloe*, 1919, 214 S.W. 71, 141 Tenn. 618. Public Utilities ☞142; Statutes ☞230

### 3. Intent

When General Assembly empowered state Public Service Commission to fix rates, it also signaled its clear intent to vest in Commission practically plenary authority over utilities within its jurisdiction, and enabling statutes require liberal rather than narrow interpretation of existence of Commission's authority; however, Commission's powers remain rooted in enabling legislation, and so its actions must be harmonious and consistent with its statutory authority. T.C.A. §§ 65-4-104, 65-4-106. *Tennessee Cable Television Ass'n v. Tennessee Public Service Com'n*, 1992, 844 S.W.2d 151, appeal denied. Public Utilities ☞146

Legislature having intended, although statute does not expressly give exclusive jurisdiction over rates to Utility Commission, courts are without jurisdiction until its determination. Pub.Acts 1919, c. 49. *McCullum v. Southern Bell Tel. & Tel. Co.*, 1931, 43 S.W.2d 390, 163 Tenn. 277. Public Utilities ☞181

### 4. Street railroads

The city of Memphis cannot attack Acts 1919, c. 49, regulating public utilities, as street railroads, and

giving the Railroad Commission jurisdiction over fares, on the ground that the requirement that the public utilities carry for the protection of stockholders a depreciation account, that they keep their books in a certain manner, and that they cannot issue stocks without first obtaining authority from the commission, etc., amounts to an arbitrary and illegal classification; the city not being entitled to complain against such classification of public utilities. *City of Memphis v. Enloe*, 1919, 214 S.W. 71, 141 Tenn. 618. Constitutional Law ¶42.3(3)

Though Acts 1897, c. 10, provided that no person owning bonds or stocks of any railroad company should serve as a member of the Railroad Commission, the city of Memphis cannot attack the constitutionality of Acts 1919, c. 49, extending the regulatory powers of the Railroad Commission to public utilities, as street railroads, on the ground that the subsequent act made no such provision; for the city is not, in a suit to enjoin the commission from hearing an application for increase in rates, interested in such provision. *City of Memphis v. Enloe*, 1919, 214 S.W. 71, 141 Tenn. 618. Constitutional Law ¶43(1)

#### 5. Nature and status of authority

Utility Commissions are administrative bodies and not courts. *McCullum v. Southern Bell Tel. & Tel. Co.*, 1931, 43 S.W.2d 390, 163 Tenn. 277. Public Utilities ¶141

The Railroad and Public Utilities Commission created and given power by Acts 1897, c. 10, Pub. Acts 1919, c. 49, and Pub. Acts 1921, c. 107, having primarily legislative and executive functions, the power to hear and determine controversies, being merely incidental thereto, is not a court within Const. art. 6, § 1, vesting judicial power, a court being a medium for the exercise of the judicial power of the state, and connoting the ordinary attributes of judicial tribunals, a judge or judges and the machinery necessary for the judicial administration of justice. *In re Cumberland Power Co.*, 1923, 249 S.W. 818, 147 Tenn. 504. Constitutional Law ¶56

#### 6. Regulation of rates and charges

Utility Commission's power to fix rates is legislative and not judicial. *McCullum v. Southern Bell Tel. & Tel. Co.*, 1931, 43 S.W.2d 390, 163 Tenn. 277. Public Utilities ¶120

Courts cannot directly or indirectly exercise rate-making power; that being legislative. *Lewis v.*

*Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Constitutional Law ¶70.1(7.1)

Before resumption of rate-regulating power by state, regulation by city, however accomplished, was subject to state's power to cancel conditions permitting municipality to prescribe rates. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. Municipal Corporations ¶64

Railroad and Public Utilities Commission held without authority to require utility to agree to rate basis, payment of fixed charges, and recapture rights, in advance of hearing on application for certificate. *Thomp. Shan. Code*, §§ 2445 et seq., 2489a et seq.; Acts 1919, c. 49, §§ 3, 7. *Tennessee Eastern Elec. Co. v. Hannah*, 1928, 12 S.W.2d 372, 157 Tenn. 582. Public Utilities ¶119.1

Rules of Railroad and Public Utilities Commission should be amended to permit utilities to apply for certificate without previous agreement to rate basis, fixed charges, and state's recapture rights. *Thomp. Shan. Code*, §§ 2445, et seq., 2489a et seq.; Acts 1919, c. 49, §§ 3, 7. *Tennessee Eastern Elec. Co. v. Hannah*, 1928, 12 S.W.2d 372, 157 Tenn. 582. Public Utilities ¶122

While a telephone company may petition for an increase of its rates, since the Public Service Commission has the statutory authority to fix reasonable and just rates to be imposed by public utilities, as well as to suspend an increase that has been implemented by a public utility, it may effectively deny a rate increase sought by a telephone company. The Public Service Commission has the statutory authority to force a telephone company to lower its telephone rates. In practice, the Commission either orders the utility to lower its rates or it may order them to increase certain services. *Op. Atty. Gen. No. 91-23*, March 25, 1991.

#### 7. Hearings

Permission of local political subdivision need not be obtained in advance of hearing before Public Service Commission respecting extension of public utility's services. *T.C.A.* §§ 65-101 to 65-501, 65-401, 65-404, 65-406, 65-407, 65-2706. *Briley v. Cumberland Water Co.*, 1965, 389 S.W.2d 278, 19 *McCanless* 718, 215 Tenn. 718. Public Utilities ¶161

#### 8. Municipalities

General statute providing that certain public utilities

shall have same rights as telephone and telegraph companies held not to deprive municipalities of power to grant or refuse local franchises. Acts 1903, c. 79, art. 3, § 12; Acts 1909, c. 127, § 3, and c. 151. *Franklin Light & Power Co. v. Southern Cities Power Co.*, 1932, 47 S.W.2d 86, 164 Tenn. 171. *Municipal Corporations* ☞680(5)

Public Utilities Act held not to have deprived municipalities of power to grant or refuse local franchises to public utilities. Acts 1903, c. 79, art. 3, § 12; Acts 1909, c. 127; Pub. Acts 1919, c. 49, §§ 3, 7. *Franklin Light & Power Co. v. Southern Cities Power Co.*, 1932, 47 S.W.2d 86, 164 Tenn. 171. *Municipal Corporations* ☞680(1)

"Municipal corporations" are dual entities, possessing both corporate and limited governmental powers. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Municipal Corporations* ☞57

#### 9. Gas companies

Utility district which owned and operated natural gas distribution system had no real authority to sell its system to purchaser that was private, investor-owned corporation and not a municipality or a county. T.C.A. §§ 65-4-101, 65-4-104, 7-82-101 et seq., 7-82-301(a)(1), 7-82-304, 7-82-306, 7-82-309(a), (a)(4), 7-82-601 et seq. *United Cities Gas Co. v. Wigington*, 1991, 815 S.W.2d 506. *Gas* ☞6

Gas company's agreement, incorporated in ordinance, to pay city percentage of receipts in consideration of city's consent to let company enter, held contract, not exercise of governmental power. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Gas* ☞6

City's contract with gas company to receive percentage of receipts, in consideration of permitting company to enter, held not invalid or ultra vires. Acts 1875, c. 142; Acts 1887, c. 176; Acts 1889, c. 70; Acts 1883, c. 114, as amended by Acts 1899, c. 204, § 15, and Acts 1903, c. 119. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Gas* ☞6

Act by which state resumed rate-regulating power did not abrogate existing contract between city and gas company, under which city received percentage of receipts as consideration for permitting exercise of franchise. Acts 1919, c. 49, § 11. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Gas* ☞6

That city, from contract with gas company, obtained money it could use as revenue did not determine character of charge or make it a "tax". *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Gas* ☞6

Gas company's agreement, embodied in ordinance, to pay city percentage of receipts, held not "tax," but compensation for exercising franchise conditionally granted by state. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Gas* ☞6

Gas company having voluntarily agreed to pay city percentage of receipts, continued exaction of payments violated no constitutional right guaranteed by State or Federal Constitution. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Gas* ☞6

No constitutional or statutory right of consumers was violated by gas company's agreement made prior to passage of rate-regulating statute to pay city percentage of receipts. Acts 1919, c. 49. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Gas* ☞6

Court has no power to annul valid contract of gas company to pay city percentage of receipts in order to reduce rates to consumers. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Gas* ☞6

That, contract, whereby gas company agreed to pay city percentage of receipts, embraced receipts for gas consumed beyond city limits, would not authorize allocation of receipts as basis for payments to city. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Gas* ☞6

City's grant of franchise to gas company, reserving right to grant franchise to natural gas companies and the like, held not exclusive in sense of "monopoly." *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Gas* ☞6

Consumers held not in position to seek relief through courts against contract between city and gas company agreeing to pay city percentage of receipts. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40 S.W.2d 409, 162 Tenn. 268. *Gas* ☞6

Legislature may make franchise of gas company dependent upon such conditions as city may impose. *Lewis v. Nashville Gas & Heating Co.*, 1931, 40

S.W.2d 409, 162 Tenn. 268. Municipal Corporations  
 Ⓒ682(4)

#### 10. Electric companies

In suit to compel electric membership corporation to furnish electricity to complainant, complainant was not entitled to prevail, since if defendant were a public service corporation, there would be no duty to extend its facilities until ordered to do so by the Public Service Commission, and if defendant was a membership corporation, there would be no duty by defendant to extend facilities where complainant did not aver that he was a member of the corporation or that he had complied with the rules and become entitled to the privilege of membership. T.C.A. §§ 65-401, 65-404, 65-422, 65-2424. *Chumbley v. Duck River Elec. Membership Corp.*, 1958, 310 S.W.2d 453, 7 McCanless 243, 203 Tenn. 243. Electricity Ⓒ11(4)

Where town was expressly granted power to grant right of way over streets and alleys to public service corporations, it had power to refuse to renew electric light franchise and grant franchise to another company. Acts 1903, c. 79, art. 3, § 12; Acts 1909, c. 127, § 3. *Franklin Light & Power Co. v. Southern Cities Power Co.*, 1932, 47 S.W.2d 86, 164 Tenn. 171. Municipal Corporations Ⓒ688

#### 11. Telecommunications

Tennessee Regulatory Authority (TRA) had authority to require telephone directory publisher to include names and logos of competing local telephone service providers on cover of directory. *BellSouth Advertising & Publishing Corp. v. Tennessee Regulatory Authority*, 2002, 79 S.W.3d 506, certiorari denied 123 S.Ct. 1256, 537 U.S. 1189, 154 L.Ed.2d 1021. Telecommunications Ⓒ267

When state Public Service Commission determines that telephone company's earnings will be excessive if company is permitted to charge same rate for same services, Commission, exercising its regulatory discretion and expertise, may reduce rate prospectively, order refunds in cases where rates were put into effect under bond, or require that excess earnings be used to extend or improve company's service. T.C.A. §§ 65-4-104, 65-4-106, 65-5-203. *Tennessee Cable Television Ass'n v. Tennessee Public Service Com'n*, 1992, 844 S.W.2d 151, appeal denied. Telecommunications Ⓒ336; Telecommunications Ⓒ347

Public Service Commission was well within statutory

authority in regulating billing procedure of local exchange companies for telephone service. T.C.A. §§ 65-4-104, 65-4-116(1, 3), 65-5-201. *In re Billing and Collection Tariffs of South Cent. Bell*, 1989, 779 S.W.2d 375, rehearing denied. Telecommunications Ⓒ346.1

Telephone companies are "public utilities" within Public Utilities Commission Law. Williams' Code § 5447. *Breeden v. Southern Bell Tel. & Tel. Co.*, 1955, 285 S.W.2d 346, 3 McCanless 203, 199 Tenn. 203. Telecommunications Ⓒ2.1

Before telephone company can be required to serve people of a community, Railroad and Public Utilities Commission must hear matter and grant necessary certificate, and Commission, not court, had exclusive jurisdiction of proceeding to compel company to extend service. Williams' Code, §§ 3107, 5380-5470.2, 5447, 5451; Pub. Acts 1897, c. 10; Interstate Commerce Act, § 1 et seq., 49 U.S.C.A. § 1 et seq. *Breeden v. Southern Bell Tel. & Tel. Co.*, 1955, 285 S.W.2d 346, 3 McCanless 203, 199 Tenn. 203. Telecommunications Ⓒ261; Telecommunications Ⓒ263

#### 12. Declaratory judgment actions

Chancery court had jurisdiction of suit for declaratory judgment to determine validity of regulations of Railroad and Public Utilities Commission. *Tennessee Eastern Elec. Co. v. Hannah*, 1928, 12 S.W.2d 372, 157 Tenn. 582. Declaratory Judgment Ⓒ206

Suit by utility against Railroad and Public Utilities Commission to determine right to certificate without compliance with commission's rules presented proper case for declaratory judgment, where complainant contemplated development project. *Tennessee Eastern Elec. Co. v. Hannah*, 1928, 12 S.W.2d 372, 157 Tenn. 582. Declaratory Judgment Ⓒ206

#### 13. Review

The Supreme Court interprets the statutes governing the Tennessee Regulatory Authority's (TRA) authority de novo as a question of law, and construes the statutes liberally to further the legislature's intent to grant broad authority to the TRA. *BellSouth Advertising & Publishing Corp. v. Tennessee Regulatory Authority*, 2002, 79 S.W.3d 506, certiorari denied 123 S.Ct. 1256, 537 U.S. 1189, 154 L.Ed.2d 1021. Public Utilities Ⓒ194

Bill alleging that Utilities Commission established

unreasonable rates, but not alleging that complainant applied for relief, held demurrable, since rates are primarily exclusively for commission, courts merely correcting errors. Pub.Acts 1919, c. 49. McCollum v. Southern Bell Tel. & Tel. Co., 1931, 43 S.W.2d 390, 163 Tenn. 277. Public Utilities ↻181

Since the Railroad and Public Utilities Commission is not a court, Pub.Acts 1921, c. 107, § 7, providing for an appeal to the Supreme Court from the final finding, order, or judgment of the Commission is unconstitutional and invalid, and therefore no appeal

lies from such Commission to the Supreme Court, which, under Const. art. 6, § 2, has appellate jurisdiction only. In re Cumberland Power Co., 1923, 249 S.W. 818, 147 Tenn. 504. Courts ↻246

T. C. A. § 65-4-104, TN ST § 65-4-104

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WEST'S TENNESSEE CODE ANNOTATED  
TITLE 65. PUBLIC UTILITIES AND CARRIERS  
CHAPTER 4. REGULATION OF PUBLIC UTILITIES BY AUTHORITY  
PART 1--GENERAL PROVISIONS  
§ 65-4-105. Regulatory power; extent

(a) In addition to the power conferred by this chapter on the authority, it shall possess with reference to all public utilities within its jurisdiction all the other powers conferred with reference to railroads regulated by the department of transportation or transportation companies regulated by the department of safety as provided by chapters 3 and 5 of this title.

(b) Where any existing contract between any public utility and any municipality specifies that particular things, other than charging certain rates, tolls or fares, shall continue to be done by such public utility, or the nature, kind, and quality of any particular service to be rendered by the public utility to the municipality or its people, nothing in this section nor in this title shall be construed to authorize the authority to excuse such public utility from continuing to do such specified things or from continuing to render and perform the service of at least the nature, kind and quality specified in any such existing contract; but, all these things involving the cost of the service shall be taken into consideration by the authority in exercising its power to pass upon the reasonableness of any rate, fare, or charge hereafter to be made by such public utility.

(c) No provision of this section or of this title shall be construed to alter or impair any existing contract between any public utility and any municipality whereby it has been agreed that any payments of money, in addition to proper ad valorem taxes, shall be made by any such public utility to or for the benefit of any such municipality or its people, but all such things, involving the cost of the service, shall be taken into consideration by the authority in exercising its power to pass upon the reasonableness of any rate, fare or charge hereafter to be made by such public utility.

(d) When any public utility regulated by the authority supplies its services to consumers who use solar or wind-powered equipment as a source of energy, such public utility shall not discriminate against such consumers by its rates, fees or charges or by altering the availability or quality of energy. Any consumer who uses solar, wind power, or other auxiliary source of energy shall install and operate the equipment, property, or appliance for such energy source in compliance with any state or local code or regulation applicable to the safe operation of such equipment, property, or appliance.

(e) Any franchise payment or other payment for the use of public streets, alleys or other public places or any license, privilege, occupation or excise tax payment, which after February 24, 1961, may be made by a utility to a municipality or other political subdivision, except such taxes as are presently provided for under existing statutes and except such franchise payment or other payments as are presently exacted from the utility pursuant to the terms of any existing franchise or other agreement, shall, insofar as practicable, be billed pro rata to the utility customers receiving local service within the municipality or political subdivision receiving such payments, and shall not otherwise be considered by the authority in fixing the rates and charges of the utility.

(f) The authority shall further have jurisdiction over all utility districts created pursuant to Tennessee law, to the extent that the exercise of such jurisdiction is provided by title 7, chapter 82 and Acts 1951, ch. 51 as provided in this chapter or as amended.

1919 Pub.Acts, c. 49, § 11; 1961 Pub.Acts, c. 123, § 1; 1973 Pub.Acts, c. 249, § 2; 1980 Pub.Acts, c. 756, § 2; 1995 Pub.Acts, c. 305, § 15, eff. July 1, 1995; 1995 Pub.Acts, c. 305, § 20, eff. July 1, 1996.

Formerly Shannon's Code Supp., § 3059a94; 1932 Code, § 5457; § 65-405.

<General Materials (GM) - References, Annotations, or Tables>

CROSS REFERENCES

Gas districts, applicability of this section, see § 7-82-103.

Municipal utilities, unjust rates or schedules, see § 7-34-114.

Solar and wind power users, unjust rates or schedules generally, see § 65-5-204.

## UNITED STATES SUPREME COURT

### *Rates,*

Federal abstention utility challenge to state ratemaking, see *New Orleans Public Service, Inc. v. Council of City of New Orleans*, U.S.La.1989, 109 S.Ct. 2506, 491 U.S. 350, 105 L.Ed.2d 298.

Preemption, prudence review of public utility nuclear power investments, pass through of federally mandated wholesale rates, see *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, U.S.Miss.1988, 108 S.Ct. 2428, 487 U.S. 354, 101 L.Ed.2d 322.

Preemption, public utilities retail ratemaking, passing through FERC approved interstate wholesale rates and allocation of entitlement power, see *Nantahala Power and Light Co. v. Thornburg*, U.S.N.C.1986, 106 S.Ct. 2349, 476 U.S. 953, 90 L.Ed.2d 943, on remand 318 N.C. 277, 347 S.E.2d 460.

Takings clause, public utilities, cost of construction as part of rate base, see *Duquesne Light Co. v. Barasch*, U.S.Pa.1989, 109 S.Ct. 609, 488 U.S. 299, 102 L.Ed.2d 646.

## NOTES OF DECISIONS

Franchise payments 2

Powers of administrative agencies 3

Validity 1

### 1. Validity

Tennessee amendment providing that any franchise payment made by utility to a municipality for use of public streets or alleys may be billed pro rata to utility customers receiving local service within municipality or political subdivision does not violate either federal or state constitution. *City of Memphis, Tenn. v. Southern Bell Tel. & Tel. Co.*, 1963, 316 F.2d 535. Telecommunications ☞301

### 2. Franchise payments

1961 Tennessee amendment providing that any franchise payment by utility to municipality for use of public streets or alleys, except such franchise payments as are presently exacted from utility pursuant to terms of existing franchise, shall be billed pro rata to utility customers receiving local service within municipality was not restricted to passing on to customers only additional franchise payments not previously imposed

upon utility nor was amendment applicable only to cities which prior to 1961 did not charge franchise payments to a utility, and it applied prospectively to any franchise entered into after effective date of amendment, and telephone company was entitled to bill its customers in city, pro rata, for franchise payments made under new franchise ordinance which took effect after the amendment. T.C.A. § 65-405. *City of Memphis, Tenn. v. Southern Bell Tel. & Tel. Co.*, 1963, 316 F.2d 535. Telecommunications ☞312

### 3. Powers of administrative agencies

Public Service Commission was well within statutory authority in regulating billing procedure of local exchange companies for telephone service. T.C.A. §§ 65-4-104, 65-4-116(1, 3), 65-5-201. *In re Billing and Collection Tariffs of South Cent. Bell*, 1989, 779 S.W.2d 375, rehearing denied. Telecommunications ☞346.1

The statute creating the Railroad and Public Utilities Commission confers upon Commission broad regulatory powers over utilities and railroads, but Commission can exercise no authority that is outside

the express provisions of the statute. Code 1932, §§ 5449, 5450, as amended by Pub.Acts 1939, c. 130. Pharr v. Nashville, C. & St. L. Ry., 1948, 208 S.W.2d 1013, 186 Tenn. 154. Administrative Law And Procedure ↻305; Public Utilities ↻147

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T. C. A. § 65-4-105, TN ST § 65-4-105

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WEST'S TENNESSEE CODE ANNOTATED  
TITLE 65. PUBLIC UTILITIES AND CARRIERS  
CHAPTER 4. REGULATION OF PUBLIC UTILITIES BY AUTHORITY  
PART 1--GENERAL PROVISIONS  
§ 65-4-106. Construction

This chapter shall not be construed as being in derogation of the common law, but shall be given a liberal construction, and any doubt as to the existence or extent of a power conferred on the authority by this chapter or chapters 1, 3 and 5 of this title shall be resolved in favor of the existence of the power, to the end that the authority may effectively govern and control the public utilities placed under its jurisdiction by this chapter.

1919 Pub.Acts, c. 49, § 12; 1995 Pub.Acts, c. 305, § 20, eff. July 1, 1996.

Formerly Shannon's Code Supp., § 3059a95; 1932 Code, § 5458; § 65-406.

<General Materials (GM) - References, Annotations, or Tables>

LAW REVIEW AND JOURNAL COMMENTARIES

The Battle for the Book: First-in-the-Nation Ruling Gives Competitors Access to cover of BellSouth Directory. Melvin J. Malone and T. Harold Pinkley, 39 Tenn. B.J. 18 (July 2003).

LIBRARY REFERENCES

Key Numbers

Public Utilities ☞ 102.

Westlaw Key Number Search: 317ak102.

Corpus Juris Secundum

C.J.S. Public Utilities §§ 3, 13, 61 to 62.

NOTES OF DECISIONS

Construction and application 1  
Hearings 2  
Telecommunications 4  
Water companies 3

1. Construction and application

While Public Service Commission's enabling statutes are remedial and should be interpreted liberally, they should not be construed so broadly as to permit the Commission to exercise authority not specifically granted by law. T.C.A. § 65-4-106. *BellSouth Telecommunications, Inc. v. Greer*, 1997, 972 S.W.2d 663, rehearing denied, appeal denied, on remand 1998 WL 1013493. Public Utilities ☞ 147

When General Assembly empowered state Public Service Commission to fix rates, it also signaled its clear intent to vest in Commission practically plenary authority over utilities within its jurisdiction, and

enabling statutes require liberal rather than narrow interpretation of existence of Commission's authority; however, Commission's powers remain rooted in enabling legislation, and so its actions must be harmonious and consistent with its statutory authority. T.C.A. §§ 65-4-104, 65-4-106. *Tennessee Cable Television Ass'n v. Tennessee Public Service Com'n*, 1992, 844 S.W.2d 151, appeal denied. Public Utilities ☞ 146

2. Hearings

Permission of local political subdivision need not be obtained in advance of hearing before Public Service Commission respecting extension of public utility's services. T.C.A. §§ 65-101 to 65-501, 65-401, 65-404, 65-406, 65-407, 65-2706. *Briley v. Cumberland Water Co.*, 1965, 389 S.W.2d 278, 19 McCannless 718, 215 Tenn. 718. Public Utilities ☞ 161

## 3. Water companies

Elemental powers of public utility must be obtained from Public Service Commission and privilege of occupying streets, roads and public ways of cities or counties with its facilities must be obtained from local political subdivision in which utility operates. T.C.A. §§ 65-101 to 65-501, 65-401, 65-404, 65-406, 65-407, 65-2706. *Briley v. Cumberland Water Co.*, 1965, 389 S.W.2d 278, 19 *McCanless* 718, 215 Tenn. 718. Highways ☞88; Municipal Corporations☞680(3); Public Utilities ☞113.

Public Service Commission could not grant to water company privilege of using streets and public ways of political subdivision without permission of the governing authorities thereof, nor could a municipality grant valid franchise to utility without approval of Commission, given after hearing in which Commission determined whether franchise was necessary and proper for public convenience and properly conserved public interest. T.C.A. §§ 65-406, 65-407, 65-2706. *Briley v. Cumberland Water Co.*, 1965, 389 S.W.2d 278, 19 *McCanless* 718, 215 Tenn. 718. Municipal Corporations ☞285; Municipal Corporations☞680(4)

## 4. Telecommunications

Tennessee Regulatory Authority (TRA) had authority to require telephone directory publisher to include names and logos of competing local telephone service providers on cover of directory. *BellSouth Advertising & Publishing Corp. v. Tennessee Regulatory Authority*, 2002, 79 S.W.3d 506, certiorari denied 123 S.Ct. 1256,

537 U.S. 1189, 154 L.Ed.2d 1021. Telecommunications ☞267

When state Public Service Commission determines that telephone company's earnings will be excessive if company is permitted to charge same rate for same services, Commission, exercising its regulatory discretion and expertise, may reduce rate prospectively, order refunds in cases where rates were put into effect under bond, or require that excess earnings be used to extend or improve company's service. T.C.A. §§ 65-4-104, 65-4-106, 65-5-203. *Tennessee Cable Television Ass'n v. Tennessee Public Service Com'n.*, 1992, 844 S.W.2d 151, appeal denied. Telecommunications ☞336; Telecommunications ☞347

Telephone company could not be held liable, under statute, for penalty for discrimination in service in respect to failure to extend service to a community without first having been authorized or directed to extend service by Railroad and Public Utilities Commission. *Williams' Code*, § 3107. *Breeden v. Southern Bell Tel. & Tel. Co.*, 1955, 285 S.W.2d 346, 3 *McCanless* 203, 199 Tenn. 203. Telecommunications ☞366

T. C. A. § 65-4-106, TN ST § 65-4-106

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