

## **CHAPTER 49-06 VALUATION OF PUBLIC UTILITY PROPERTY**

### **49-06-01. Valuation of property as basis for determining reasonableness of rates.**

The commission, for the purpose of ascertaining just and reasonable rates and charges of public utilities, or for any other purpose authorized by law, shall investigate and determine the value of the property of every public utility, except railroads and motor carriers, used and useful for the service and convenience of the public, excluding therefrom the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state as a consideration for the grant of the franchise or right, and exclusive of any value of the right by reason of a monopoly or merger. The commission shall prescribe the details of the inventory of the property of each public utility to be valued.

### **49-06-02. Value of property for ratemaking purposes - Determination.**

The value of the property of a public utility, as determined by the commission for ratemaking purposes, is the money honestly and prudently invested therein by the utility including construction work in progress for new facilities that use lignite mined in this state to generate electricity, as well as additions or modifications to existing lignite facilities, less accrued depreciation. The commission shall allow a public utility for those new or existing facilities utilizing lignite mined in this state as its primary fuel:

1. To recover its research and development costs incurred to develop lignite more cleanly, efficiently, or economically, including carbon dioxide capture and sequestration utilization and a reasonable rate of return on capital expenditures;
2. To recover its incremental costs of complying with federal environmental laws, including a reasonable rate of return on capital expenditures. The commission may allow these costs to be recovered by an environmental surcharge that may be added to existing rates;
3. To recover all costs resulting from a coal severance tax pursuant to chapter 57-61 and all costs resulting from a coal conversion tax pursuant to chapter 57-60. The commission shall allow the inclusion of these costs in the base rates and the inclusion in the automatic adjustment clause of any of these costs not in base rates; and
4. To recover costs in rates, including a financial incentive set at a reasonable rate for power purchase agreements of a dispatchable on-demand generating unit, plant, or facility deemed to protect grid reliability.

### **49-06-03. Value of goodwill not to be considered in ratemaking.**

The value of public utility property for ratemaking purposes shall not include or be affected by goodwill value, going concern value, or franchise value in excess of payments made therefor.

### **49-06-04. Fair market price to be allowed in fixing valuations.**

The commission, in determining the rates to be charged by any utility under its jurisdiction, shall ascertain whether an advanced or fictitious cost price, or a price in excess of the fair market value of any commodity, machinery, equipment, material, or service has been paid or is being paid or charged, by the public utility. If it shall appear that any such fictitious or advanced price has been or is being paid or charged, the commission shall fix and allow as a part of the valuation or rate basis only the reasonable and fair market price of such items, at the time of the purchase, eliminating all such fictitious or excessive prices or values.

### **49-06-05. When valuation or revaluation required.**

The commission, upon its own motion, may, and, upon a petition for a valuation or revaluation of the property of a public utility, including necessary audits, for the purpose of determining the rate to be charged for the service rendered, signed by twenty-five percent of the patrons or customers of such public utility, shall, endeavor to arrive at a reasonable rate through negotiations with the public utility. If within thirty days after the filing of the petition, or within

thirty days after the adoption of an order or resolution by the commission on its own motion, they are unable to agree upon a new rate which shall be not less than fifteen percent less than the rate in force at the time of the filing of said petition, or the adoption of the order or resolution, the commission shall proceed with a valuation or revaluation of the properties of the public utility involved in the manner provided by this chapter. Each person, firm, corporation, or limited liability company receiving service is to be considered a patron or customer within the purview of this chapter, regardless of the number of meters owned, rented, or used by such person, firm, corporation, or limited liability company, but a firm shall be considered a separate entity from the individual members thereof.

**49-06-06. Disagreement on new rate - Bond required.**

If no new rate shall have been agreed upon, as provided in section 49-06-05, then pending the investigation and final order of the commission, if it is of the opinion that public interest so requires, the commission immediately shall make an order that the utility shall file with the commission a bond of a corporate surety company, approved by the commission and authorized to do a surety business within this state. The bond shall be payable to the commission for the use and benefit of the customers and patrons of the utility and shall be conditioned that if the rates fixed, determined, and prescribed by the final order are less than the rates charged, received, and collected by the public utility during the period of the investigation, the public utility as principal shall remit to the several customers, patrons, or users of its service during the period between the date of the order directing a valuation or revaluation and the date of the final order fixing, determining, and prescribing the rates to be charged, received, and collected by the utility company the amount payable under this section. If the utility does not remit to its customers and patrons the differences between the amount paid by them and the new rate prescribed by the final order, the commission may maintain an action on the bond for the benefit of the customers and patrons. The amount to be paid and remitted to each of the several customers, patrons, or users shall be such sum as such customer, patron, or user has paid to the utility for the service over and above the amounts that such customer, patron, or user would have paid during that time had the rates fixed, determined, and prescribed in the final order been in effect during that period. The bond or undertaking shall be filed with the commission within thirty days after the service of the order upon such public utility. Service of the order may be made by personal service upon the public utility or by registered or certified mail, and if by registered or certified mail, service shall be deemed completed when the registered or certified mail is delivered to the public utility, as evidenced by the return receipt for the mail.

**49-06-07. Failure of utility to file bond - Temporary rates prescribed by commission.**

If, within thirty days after the service of the order, as set forth in section 49-06-06, the public utility fails, neglects, and refuses to file a bond or undertaking with the commission, then the commission immediately shall fix, determine, and prescribe temporary rates to be charged by such public utility pending the final determination of said rate proceeding. The temporary rates, so fixed, determined, and prescribed shall be sufficient to provide a return of not less than five percent per annum upon the original cost less accrued depreciation of the physical property of said public utility used and useful in the public service. If the duly verified reports of said utility to the commission do not show the original cost, less accrued depreciation, of said property, the commission may estimate said cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided. In determining the original cost or in estimating the cost as herein provided, the commission may take into consideration any report, annual or otherwise, filed with it by any utility, together with any other fact or information which the commission may acquire or receive from an investigation of the books, records, or papers of such public utility and from an inspection of its property, or from the examination of any report, annual or otherwise, made by the public utility and filed with the state tax commissioner, or any report, annual or otherwise, made by the said public utility to the federal power commission, federal communications commission, or federal securities and exchange commission.

**49-06-08. Determination of permanent rates.**

Temporary rates fixed, determined, and prescribed under this chapter shall be effective until the rates to be charged, received, and collected by the public utility company shall have been fixed, determined, and prescribed finally. The commission, in any proceeding in which temporary rates are fixed, determined, and prescribed, shall consider the effect of such rates in fixing, determining, and prescribing rates to be charged and collected thereafter upon the final determination of the rate proceeding.

**49-06-09. Utility to remit to consumer if rate lower than temporary rate.**

If the final rates fixed, determined, and prescribed are less than the temporary rates fixed under the provisions of section 49-06-07, the public utility shall pay or remit to each of the several customers, patrons, or users such sum as such customer, patron, or user has paid to the said utility for the said service over and above the amounts that would have been paid during such time had the rates fixed, determined, and prescribed in the final order been in effect during the period that the temporary rates were in effect.

**49-06-10. Valuation - Notice - Finality - Prima facie evidence.**

The commission, whenever it shall have completed a valuation of the property of any public utility and before such valuation shall have become final, shall give notice by registered or certified mail to such public utility. If, within thirty days after such notice, no protest shall have been filed with the commission, then said valuation shall become final. If notice of protest shall have been filed by such public utility, the commission shall fix the time of hearing the same and shall consider at such hearing any matter material thereto presented by such public utility in support of its protest. If, after the hearing of any protest, the commission shall be of the opinion that its inventory is incomplete or incorrect or that its valuation is incorrect, it shall make such changes as may be necessary and shall issue an order making such corrected valuation final. The final valuation by the commission and all classifications made for the ascertainment of such valuations shall be public and shall be prima facie evidence relative to the value of the property.

**49-06-11. Hearings as to valuations - Called by commission.**

For the purpose of ascertaining the reasonableness and justice of the rates and charges of public utilities, or for any other purpose authorized by law, the commission may cause a hearing to be held in the manner prescribed in chapter 28-32 to determine the value of the property of any public utility actually used or useful for the convenience of the public, excluding therefrom the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state as a consideration of such franchise or right, and exclusive of any value of the right by reason of a monopoly or merger.

**49-06-12. Notice of hearing - Preliminary examination.**

Before any hearing is had, the commission shall give the public utility affected thereby at least twenty days' written notice, specifying the time and place of said hearing. 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.

**49-06-13. Hearing - Right of public utility - Evidence - Findings - Review.**

Any public utility affected shall be entitled to be heard and to introduce evidence at such hearing. The commission is empowered to resort to any other source of information available. 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 a bearing on the value of the property of the public utility.

**49-06-14. Findings of commission - Admissible as evidence.**

The findings of the commission, as made and filed, when properly certified by the commission, shall be admissible as evidence in any 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, municipality, or other body politic and the public utility affected thereby, may be interested, whether arising under the provisions of this chapter or otherwise. Such findings, when so introduced, shall be conclusive evidence of the facts therein stated as of the date therein stated under conditions then existing and such facts can be controverted only by showing a subsequent change in conditions bearing upon the facts therein determined.

**49-06-15. Corrections and revaluation of public utility property.**

The commission, upon the making of a valuation, shall:

1. Keep itself informed through its experts and other assistants of all extensions and improvements or other changes in the conditions and value of the property of the public utility;
2. Ascertain the value of such extensions, improvements, and changes; and
3. Revise and correct, from time to time, its valuation of such property.

**49-06-16. Additional hearings of commission.**

The commission from time to time may cause any further hearing and investigation to be had for the purpose of making a revaluation or ascertaining the value of any betterments, improvements, additions, or extensions made by a public utility subsequent to any hearing or investigation, and may examine into all matters which may change, modify, or affect any findings of fact previously made and at such time may make findings of fact supplementary to those theretofore made. Such a hearing shall be had upon the same notice and shall be conducted in the same manner as an original hearing. Any supplementary finding shall have the same force and effect as an original finding, and shall be considered in connection with the original findings and, so far as may be necessary, as a modification thereof.

**49-06-17. Limitation on number of valuation or revaluation orders.**

No order for valuation or revaluation shall be made more than once in every three years after a determination of value has become final. This limitation, however, shall not apply to proceedings to determine past excess earnings for refunding purposes.

**49-06-18. Employment of experts - Attorneys - Costs of hearing.**

Repealed by S.L. 1993, ch. 1, § 35.

**49-06-19. Additional costs to be paid - Refund.**

Repealed by S.L. 1993, ch. 1, § 35.

**49-06-20. Amount not paid to draw interest - Attorney general to collect.**

Repealed by S.L. 1993, ch. 1, § 35.

**49-06-21. Writs of attachment and garnishment summons to be issued.**

Repealed by S.L. 1993, ch. 1, § 35.

**49-06-22. Public utility valuation fund - Use.**

Repealed by S.L. 1993, ch. 1, § 35.

**49-06-23. Expenses of valuation or revaluation paid into public utility valuation revolving fund.**

Repealed by S.L. 1993, ch. 1, § 35.

**49-06-24. When electric rates not to be increased.**

The commission may not increase electric rates as a result of actions taken by other states requiring higher cost resources to be built, purchased, or otherwise acquired as a result of the application of quantified environmental externality values, as defined in section 49-02-23, as part of any resource selection process.