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No. 871.

AN ACT Regulating Persons, Corporations and Municipalities Engaged in the Generation, Transmission, Delivery or Furnishing of Electricity for Light, Heat or Power, Prescribing the Duties of the Railroad Commission in Relation Thereto, and Prescribing Penalties for Violation of the Provisions Thereof.

Section 1. Definitions.—Be it enacted by the General Assembly of the State of South Carolina: (a) The term "Commission" when used in this Act means the Railroad Commission of the State of South Carolina:

(b) The term "commissioner" when used in this Act means one of the members of the Railroad Commission of South Carolina.

(c) The term "corporation" when used in this Act includes all bodies corporate, joint stock companies, or associations, domestic or foreign, their lessees, assignees, trustees, receivers or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but it shall not include municipalities as hereinafter defined.

(d) The term "person" when used in this Act includes all individuals, partnerships or associations other than corporations.

(e) The term "municipality" when used in this Act includes a city, town, county, township and any other public corporation existing, created or organized as a governmental unit under the Constitution or laws of the State of South Carolina.

(f) The term "public" when used in this Act means the public generally, or any limited portion of the public, including a person, corporation, or municipality.

(g) The term "electrical utility" when used in this Act includes municipalities, to the extent of their business, property, rates, transactions and operations without the corporate limits of the municipality, persons and corporations, their lessees, assignees, trustees, receivers, or other successors in interest now or hereafter owning or operating in this State equipment or facilities for generating, transmitting, delivering or furnishing electricity for street railway or other public uses or for the production of light, heat or power to or for the public for compensation, but it shall not include a person,

corporation or municipality furnishing electricity only to himself or itself, their residents, employees or tenants, when such current is not resold or used by others.

(h) The term "rate" when used in this Act means and includes every compensation, charge, toll, rental and classification, or any of them, demanded, observed, charged or collected by any electrical utility for any electric current or service offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, toll, rental or classification.

(i) The term "securities" when used in this Act means and includes stock, stock certificates, bonds, notes, debentures, or other evidences of indebtedness, and any assumption or guaranty thereof.

§ 2. Duties and Restrictions Imposed Upon Electrical Utilities.—(a) Every rate made, demanded, or received by any electrical utility, or by any two or more electrical utilities jointly, shall be just and reasonable.

(b) Every electrical utility shall furnish adequate, efficient and reasonable service.

(c) Under such rules and regulations as the Commission may prescribe, every electrical utility shall file with the Commission, within such time and in such form as the Commission may designate, schedules showing all rates established by it and collected or enforced, or to be collected or enforced within the jurisdiction of the Commission, and the electrical utility shall keep copies of such schedules open to public inspection under such rules and regulations as the Commission may prescribe.

(d) No electrical utility shall directly or indirectly, by any device whatsoever, or in any way, charge, demand, collect or receive from any person, corporation or municipality a greater or less compensation for any electric current or service rendered or supplied, or to be rendered or supplied, by such electrical utility, than that prescribed in the schedules of such electrical utility applicable thereto then filed in the manner provided in this Act, nor shall any person, corporation or municipality receive or accept any service, electric current, product or commodity from an electric utility for a compensation greater or less than that prescribed in such schedules.

(e) No electrical utility shall, as to rates, or services, make or grant any unreasonable preference or advantage to any person, cor-

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poration or municipality or subject any person, corporation or municipality to any unreasonable prejudice or disadvantage. No electrical utility shall establish or maintain any unreasonable difference as to rates or service, either as between localities or as between classes of service. Subject to the approval of the Commission, however, electrical utilities may establish classifications of rates and services, and such classifications may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of the service rendered, or any other reasonable consideration. The Commission may determine any question of fact arising under this subdivision.

(f) Unless the Commission otherwise orders, no electrical utility shall make any change in any rate now in effect or in any rate duly established under this Act, except after thirty days' notice to the Commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rate will go into effect. The electrical utility shall also give such notice of the proposed changes to other interested parties as the Commission in its discretion may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed and in force at the time and kept open to public inspection. The Commission, for good cause shown, may allow changes in rates, without requiring the thirty days' notice under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such electrical utility.

(g) Whenever there is filed with the Commission by any electrical utility any schedule stating a new rate or rates, the Commission may, either upon complaint or upon its own initiative, enter upon a hearing concerning the lawfulness or reasonableness of such rate or rates, and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the electrical utility affected thereby a statement in writing of its reasons therefor, may, at any time before they become effective, suspend the operation of such rate or rates, but not for a longer period than ninety (90) days beyond the time when such rate or rates would otherwise go into effect, unless the Commission shall find that a longer time will be required, in which case the Commission may extend the period for not to exceed one year: *Provided*, and notwithstanding any such order of suspension, the electrical utility may

put such suspended rate or rates into effect on the date when it or they would have become effective, if not so suspended, by filing with the Commission a bond in a reasonable amount approved by the Commission, with sureties approved by the Commission, conditioned upon the refund, in a manner to be prescribed by order of the Commission, to the persons, corporations or municipalities respectively entitled to the amount of the excess, if the rate or rates so put into effect are finally determined to be excessive; or there may be substituted for such bond, other arrangements satisfactory to the Commission for the protection of the parties interested. If the electrical utility fails to make refund of any excess received within thirty (30) days after such final determination, any person, corporation or municipality entitled to any refund may sue therefor in any Court of competent jurisdiction and be entitled to recover, in addition to the amount of the refund due, all court costs and reasonable attorney's fees, but no suit may be maintained for that purpose unless instituted within two (2) years after such final determination. Any number of persons, corporations or municipalities entitled to any such refund may join as plaintiffs and recover their several claims in a single action, in which action the court shall render a judgment severally for each plaintiff as his or its interest may appear. During any such period of suspension the electrical utility involved shall provide records or other evidence of payments made by its consumers or patrons under the rate or rates which the electrical utility has put into operation in excess of the rate or rates in effect immediately prior thereto. If, after such hearing, the Commission finds any such rate or rates to be unjust, unreasonable, or unjustly discriminatory, or in any way in violation of law, the Commission shall determine the just and reasonable rate or rates to be charged or applied by the electrical utility for the service in question, and shall fix the same and the date when effective by order to be served upon the electrical utility; and such rate or rates shall be observed from the effective date until changed, as provided by this Act.

(h) No contract charge to be made to any person, corporation, or municipality by any electrical utility for electricity to be furnished for light, heat or power hereafter established shall be exempt from alteration, control, regulation and establishment by the Commission, when in its judgment the public interest so requires, to the full extent of the powers in relation to charges conferred upon the Commission by this Act; nor shall any contract establishing a rate or rates, or

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any other contract affecting the use or disposition of its product or the charges to be paid therefor, hereafter be entered into by any electrical utility without prior approval by the Commission, and unless it be subject to amendment, modification, change or annulment by the Commission, if the public interest so requires, but nothing herein contained shall be construed to require Commission approval of a contract fixing a rate already approved by the Commission and then effective, if such contract rate is fixed subject to subsequent amendment, modification, change, or annulment by the Commission. Full power and authority is hereby conferred on the Commission to accomplish the purposes expressed in this subdivision.

(i) Subject to the approval of the Commission, electrical utilities may hereafter contract with each other for the sale and purchase or exchange of electricity, provided that every such contract shall contain a provision that from its date the same shall be subject to amendment, modification, change or annulment by the Commission, after due hearing, if the public interest so requires.

(j) When ordered by the Commission after due hearing any electrical utility may be required to establish, construct, maintain and operate any reasonable extension of its existing facilities. If any such extension, however, by any electrical utility of its existing facilities will interfere with the service or system of any other electrical utility, the Commission may on complaint and after hearing either order the discontinuance of such extension or prescribe such terms and conditions with respect thereto as may be just and reasonable.

(k) No electrical utility shall abandon all or any portion of its service to the public, except for ordinary discontinuance of service for non-payment of undisputed charges in the usual course of business, unless written application is first made to the Commission for the issuance of a certificate authorizing the same, and until the Commission in its discretion issues such certificate after a public hearing of all parties appearing to the Commission to be interested: *Provided, however,* That no such abandonment shall be permitted unless and until authorized by an order of the Supreme Court of this State after hearing all parties interested.

(l) No electrical utility, without the approval of the Commission after due hearing, and compliance with all other existing requirements of the laws of the State in relation thereto, shall sell, assign,

transfer, lease, consolidate or merge its property, powers, franchises or privileges or any of them.

(m) No electrical utility, except municipalities, shall issue any securities, as in this Act defined, without the approval of the Commission. Any electrical utility, except a municipality, desiring to issue any securities may apply to the Commission for approval of any proposed issue by filing with the Commission an application, together with a statement verified by its president and secretary, or other proper officers, or two (2) of its incorporators, or by its owner, or owners, if it have no such officers, setting forth: (1) The amount and character of securities proposed to be issued; (2) the purpose for which they are to be issued; (3) the consideration for which they are to be issued; (4) the description and estimated value of any property, if any, to be acquired through the proposed issue; (5) the terms and conditions of their issuance; (6) the financial condition of the electrical utility and its previous operations so far as relevant. The Commission shall thereupon make such investigation as may be necessary, at which investigation the electrical utility shall be entitled to be heard. The Commission shall determine whether the purpose of the issue is proper, it shall value the property or services, if any, to be acquired by the issue, if any, it shall find and determine the amount of such securities reasonably necessary for the purpose for which they are to be issued, and to the extent that the Commission may approve the proposed issue it shall grant to the electrical utility a certificate of authority stating: (1) The amount of such securities reasonably necessary for the purpose for which they are to be issued, and the character of the same, and (2) the value of any property or services, if any, to be acquired thereby. Such electrical utility shall not issue any securities in greater amounts than specified in such certificate and shall apply the proceeds of such issue to the purposes specified in its petition. Nothing herein contained shall apply to any issue of securities payable within one (1) year from the date thereof, except in case of issues made to refund such short time obligations, but such short time obligations may be renewed by similar obligations without the approval of the Commission for an aggregate period of not exceeding two (2) years. Nothing herein contained shall be construed to impose or imply any guaranty or obligation as to such securities on the part of the State of South Carolina, or any agency thereof, nor shall the Commission by virtue of the approval of the issuance of such securities be deemed to be re-

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quired to prescribe or approve any rate for the reason that such rate may be necessary to provide funds reasonably sufficient to retire such securities or the interest thereon.

(n) No electrical utility for rate making purposes shall capitalize, nor shall the Commission permit the same to be done, its franchises, rights, powers, privileges, or right to own and operate or enjoy any such franchises, rights, powers, or privileges, in excess of the amount paid to the State or to any political subdivision of the State as the consideration for the grant thereof; or so capitalize any lease, or contract of sale, or contract for consolidation or merger of two (2) or more electrical utilities; or issue by way of substitution any capital stock, trust certificates, bonds, notes, or other evidences of indebtedness, or other securities for any consolidated or merged company exceeding the aggregate values of the properties so consolidated or merged and any additional sum of money actually contributed in cash, and any additional property or labor actually contributed: *Provided*, That the determination of such consideration or value as aforesaid shall be subject to the approval of the Commission.

(o) The Commission shall establish a system of accounts to be kept by electrical utilities subject to its jurisdiction, and it may prescribe the manner in which the accounts shall be kept, and every electrical utility shall keep its books, papers, and records accurately and faithfully according to the system of accounts, and all regulations and directions in relation thereto, prescribed by the Commission.

(p) Every electrical utility shall keep separate accounts to show all profits or losses resulting from the sale of appliances or other merchandise, and no such profit or loss shall be taken into consideration by the Commission in arriving at any rate to be charged for service by any such electrical utility.

(q) Every electrical utility shall have the right, and may be so required, to charge annually as an operating expense a reasonable sum for depreciation and credit the same to a reserve account for such purpose, which reserve account shall be charged only with plant retirements and expenditures made to restore depreciated property, but if the reserve thus created shall at any time in the judgment of the Commission be excessive, the Commission after due hearing shall make such order as will result in the credits to such reserve thereafter conforming to actual facts and conditions as as-

certained by the Commission: *Provided*, That the Commission shall have the right and power to control or limit such depreciation reserve.

(r) When in the judgment of the Commission there is a reasonably substantial affiliation of any electrical utility engaged in business in this State with any other corporation or person, or when in the judgment of the Commission any other corporation or person either exercises, or is in position to exercise, by reason of ownership or control of securities or for any other cause, any reasonably substantial control over the business or policies of any electrical utility engaged in business in this State, the burden of proof shall be upon such electrical utility to establish to the satisfaction of the Commission the reasonableness, fairness, and absence of injurious effect upon the public interest of any charges made by such other corporation or person against such electrical utility in relation to all supervision, management, construction, or engineering fees, charges for the sale of material, supplies, equipment, or other commodities or for any other purpose, and to establish the reasonableness, fairness and absence of injurious effect upon the public interest of any such fees or charges every electrical utility is required to produce, if so ordered by the Commission, for the information of the Commission all such contracts, papers and documents relating thereto as may be required by the Commission, and unless the reasonableness, fairness and absence of injurious effect upon the public interest of such fees and charges are established to the satisfaction of the Commission the same shall not be allowed by it for rate making purposes.

(s) No electrical utility shall permit any employee to sell, offer for sale, or solicit the purchase of any security of any other person or corporation during such hours as such employee is engaged to perform any duty of such electrical utility; nor shall any electrical utility by any means or device whatsoever require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; nor shall any electrical utility require any employee to permit the deduction from his wages or salary of any sum as a payment or to be applied as a payment on any purchase or contract to purchase any security of such electrical utility or of any other person or corporation.

(t) For the purpose of encouraging economy, efficiency, and improvements in methods or service any electrical utility may participate, subject to the approval of the Commission, to such extent as may be permitted by the Commission, in the additional profits arising

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(u) Every electrical utility shall furnish to the Commission, in
such form and in such detail as the Commission may require, all
tabulations, computations, and all other information required by the
Commission to carry into effect any of the provisions of this Act,
and shall make special answer to all questions submitted by the Com-
mission. Each electrical utility receiving from the Commission any
blanks with directions to fill the same shall cause the same to be prop-
erly filled out so as to answer fully and correctly each question pro-
pounded therein, and it shall return the same to the Commission
within the time required, but in case any electrical utility is unable
to answer any question it shall so state with good and sufficient rea-
sons therefor. When required by the Commission each electrical
utility shall deliver to the Commission copies of any or all maps,
profiles, contracts, franchises, reports, books, accounts, papers and
records in its possession, or in any way relating to its property or
affecting its business, and also a complete inventory of its property
in such form as the Commission may direct. Each electrical utility
shall furnish when and in such form as the Commission may require
all such reports as it may be directed by the Commission to furnish
in relation to its operations, property, or business, and the Commis-
sion shall have authority to require either periodical or special re-
ports concerning any matter as to which it desires to inquire in
order to keep itself informed in the performance of its duties under
this Act. All reports shall be under oath by such officer or officers
of the electrical utility as may be required by the Commission.

(v) Any municipality operating its own plant or transmission sys-
tem, if granted by the Commission a certificate of convenience and
necessity as provided by subdivision (w) of this Section, may extend
its lines and electrical service into any territory adjacent to such
municipality, as well as into any nearby city or town, if there is no
electrical utility then operating in such city or town.

(w) No electrical utility, except a municipality within its corpor-
ate limits, shall hereafter begin the construction or operation of any
electrical utility plant or system, or of any extension thereof, except
those ordered by the Commission under the provisions of subdivison
(j) of this Section, without first obtaining from the Commission a
certificate that public convenience and necessity require or will re-
quire such construction or operation: *Provided, however,* That unless

such construction or operation has been commenced under a limited or conditional certificate or authority as hereinafter provided this subdivision shall not be construed to require any such electrical utility to secure a certificate for an extension within any municipality or district within which it has heretofore lawfully commenced operations, or for an extension within or to territory already served by it, necessary in the ordinary course of its business, or for an extension into territory contiguous to that already occupied by it and not receiving similar service from another electrical utility; but, if any electrical utility in constructing or extending its lines, plant or system unreasonably interferes or is about to unreasonably interfere with the service or system of any other electrical utility, the Commission on complaint of the electrical utility claiming to be injuriously affected may after hearing make such order and prescribe such terms and conditions in harmony with this Act as are just and reasonable. No electrical utility, except a municipality within its corporate limits, shall hereafter exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted, the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the Commission a certificate that public convenience and necessity require the exercise of such right or privilege. Before any certificate may issue hereunder a certified copy of its articles of incorporations or charter, if the applicant be a corporation, shall be on file in the office of the Commission. Every applicant for a certificate shall give such notice of its application as the Commission may require and shall file in the office of the Commission such evidence as shall be required by the Commission to show that such applicant has received any consent of local authorities that might be required under Article VIII, Section 4, of the Constitution of this State. The Commission shall have power after hearing to issue a certificate as prayed for or to refuse to issue the same, or to issue it for the construction or operation of a portion only of the contemplated facility, line plant or system, or extension thereof, or for the partial exercise only of the rights or privileges sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions in harmony with this Act as in its judgment the public convenience and necessity may require. If such electrical utility, except a municipality within its corporate limits, desires to exercise a right or privilege under a permit, consent, or other authority which it contemplates securing, but which has not as yet been granted to it, such electrical

menced under a limited reinafter provided this ire any such electrical within any municipality ully commenced opera- y already served by it, ss, or for an extension pied by it and not real utility; but, if any its lines, plant or sys- mreasonably interfere ical utility, the Com- claiming to be inju- order and prescribe s Act as are just and ipality within its cor- it or privilege under der any franchise or i has been suspended first obtaining from nience and necessity before any certificate es of incorporations all be on file in the certificate shall give m may require and evidence as shall be plicant has received uired under Article e. The Commission cate as prayed for the construction or facility, line plant al exercise only of the exercise of the conditions in har- convenience and apt a municipality ight or privilege t contemplates such electrical

utility may apply to the Commission for an order preliminary to the issue of the certificate. The Commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe, issue the desired certificate upon such terms and conditions as it may designate after such electrical utility has obtained the contemplated permit, consent, or other authority. Upon the presentation to the Commission of evidence satisfactory to it that such permit, consent, or other authority has been secured by such electrical utility, the Commission shall thereupon issue such certificate. Whenever an electrical utility, except a municipality within its corporate limits, is engaged or is about to engage in construction or operation without having secured a certificate of public convenience and necessity as required by the provisions of this Act, any interested person, corporation or municipality may file a complaint with the Commission. The Commission may, with or without notice, make its order requiring the electrical utility complained of to cease and desist from such construction or operation until the Commission makes and files its decision on such complaint or until the further order of the Commission. The Commission may after hearing make such order and prescribe such terms and conditions in harmony with this Act as are just and reasonable. None of the conditions to be construed to prevent or hinder the construction of development hereafter of power projects, or plants, in this State.

(x) Corporations formed to acquire property, or to transact business which would be subject to the provisions of this Act, and corporations possessing franchises, powers or privileges for any of the purposes contemplated by this Act shall be deemed to be subject to the provisions of this Act, although no property may have been acquired, business transacted or franchises, powers or privileges exercised.

(y) Each electrical utility shall have an office in one of the counties of this State in which its property or some part thereof is located, and shall keep in such office all books, accounts, papers and records as shall be required by the Commission to be kept within the State. No books, accounts, papers or records required by the Commission to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Commission.

(z) Each electrical utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regu-

lation made or prescribed by the Commission in the performance of its duties under this Act, or in relation to any other matter in any way relating to or affecting the business of such electrical utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents, and employees.

§ 3. Franchises and Permits.—(a) Every permit or franchise hereafter granted to any electrical utility, either by the State or any municipality thereof, shall have the effect of an indeterminate permit which shall continue in effect until terminated as provided by this Act or by any lawful forfeiture of the right of such electrical utility to continue to conduct its business in this State. Any electrical utility operating under existing permit or franchise heretofore granted by the State or any municipality thereof prescribing a definite period of years for the existence of such permit or franchise, upon filing with the Commission a written declaration that it surrenders such permit or franchise, and only with the consent of such municipality, and upon proof of any consent that may be required by Article VIII, Section 4, of the Constitution of this State, shall receive an indeterminate permit which shall take the place of the surrendered permit or franchise and such electrical utility or its successors or assigns, shall hold such permit in accordance with the terms, conditions and limitations of this Act and any future regulatory Acts.

(b) Any electrical utility which has been furnishing electricity to a city or town or its inhabitants under a franchise that has expired, with such consent of the local authorities as may be required by Article VIII, Section 4 of the Constitution of this State, until a new permit for supplying electricity to such city or town or its inhabitants lawfully has been obtained, shall continue to furnish the same to such city or town or its inhabitants under such rates and upon such terms and conditions as may be approved by the Commission.

(c) Whenever the service rendered by any electrical utility operating under an indeterminate permit shall be found inadequate, by order of the Commission, after hearing and failure of the electrical utility to remedy the same after a reasonable opportunity to do so, the indeterminate permit enjoyed by such electrical utility in respect to the service so found to be inadequate may with the consent of such municipality be declared revoked by the Commission upon such terms as shall be reasonable and just, but no order of the Commis-

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sion revoking any such permit shall have any force and effect until final determination of any proceeding brought to review the same.

(d) Any electrical utility operating in a city or town under an indeterminate permit shall be deemed to have consented to the purchase by such city or town for just compensation, including severance damages, if any, of the property of such electrical utility operated in such city or town under such permit.

(e) When the municipal council or other governing body of any city or town, after a public hearing of which at least thirty days' notice has been given, by ordinance or resolution, duly adopted by a majority vote, expresses a desire and declares its purpose to acquire for such city or town the property of an electrical utility so operated therein as authorized under the provisions of this Act, immediate notice by registered mail of the action of such municipal council or governing body shall be given by it to the Commission, to such electrical utility and to all of its mortgagees or other lienees appearing of record in the County in which such city or town is situated. When the Commission has thus been notified that such city or town has thus expressed its desire and purpose to purchase the property of the electrical utility operated under the indeterminate permit in such city or town, and that the parties to such purchase and sale have been unable to agree upon the amount to be paid and received therefor, after not less than thirty days' notice to such city or town and to such electrical utility as well as to all of its mortgagees and lienees appearing of record in the County in which such city or town is situated, the Commission shall hold a public hearing upon the matter of just compensation, including severance damages if any, to be paid for the taking of such property by such city or town. Within a reasonable time after such public hearing the Commission shall by order fix and determine and certify to the Clerk of such city or town, to the electrical utility, and to any bond holder, mortgagee, lienee or other interested party who has entered an appearance in the proceeding, the just compensation including such damages. The order of the Commission may be reviewed as hereinafter provided in this Act for the review of other orders of the Commission. After the amount of compensation and damages has been finally fixed the same shall be paid by the city or town and the property shall be transferred by the electrical utility within not more than ninety days, and upon such transfer the indeterminate permit of such electrical utility, to the extent that it applies to such city or town, shall be deemed cancelled :

Provided, however, That such purchase by the city or town shall not be consummated, unless approved by a majority vote of the electors in such city or town who are qualified to vote on its bonded indebtedness at an election held after the amount of the compensation and damages has been finally fixed. If such purchase is not approved by the electors, or if so approved and the city or town shall not comply or legally tender compliance with its proposed purchase within ninety days after the amount of compensation and damages has been finally fixed, the electrical utility shall be released from its obligation to convey under the proceedings had.

(f) If, for any reason, any indeterminate permit held by a public utility is held to be invalid, the public utility shall, by operation of law and without further Act, have reinstated in it the franchise or franchises surrendered by it in exchange for such indeterminate permit.

§ 4. Powers and Duties Conferred Upon the Commission.—(a) Whenever the Commission after a hearing, upon its own motion or upon complaint, finds that the existing rates in effect and collected by any electrical utility for any service, product or commodity, are unjust, unreasonable, insufficient or unreasonably discriminatory, or in any way in violation of any provision of law, the Commission shall determine the just, reasonable, and sufficient rates to be thereafter observed and in force, and shall fix the same by its order.

(b) Whenever the Commission, after a hearing had upon its own motion or upon complaint, finds that the service of any electrical utility is unreasonable, unsafe, inadequate, insufficient or unreasonably discriminatory, the Commission shall determine the reasonable, safe, adequate, and sufficient service to be observed, furnished, enforced or employed and shall fix the same by its order, rule or regulation.

(c) The Commission may, upon its own motion or upon complaint, ascertain and fix just and reasonable standards, classifications, regulations, practices or service to be furnished, imposed, observed and followed by any or all electrical utilities; ascertain and fix adequate and reasonable standards for the measurement of quality, quantity, initial voltage or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any and all electrical utilities, prescribe reasonable regulations for the

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examination and testing of such product, commodity or service and for the measurement thereof; establish or approve reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurement; and provide for the examination and testing of any and all appliances used for the measurement of the product, commodity or service of any electrical utility.

(d) The Commission may after hearing ascertain and fix the value of the whole or any part of the property of any electrical utility insofar as the same is material to the exercise of the jurisdiction of the Commission, and may make revaluations from time to time and ascertain the value of all new construction, extensions and additions to the property of every electrical utility.

(e) The Commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of electrical utilities or any particular electrical utility. In conducting such investigations the Commission may proceed either with or without a hearing as it may deem best.

(f) When complaint has been made to the Commission concerning any rate or charge for any electric current furnished or service performed by any electrical utility, and the Commission has found after hearing and investigation that the electrical utility has charged an unreasonable, excessive or discriminatory amount for such electric current or service, the Commission may order that the electrical utility make due reparation to the complainant therefor, with interest from the date of collection: *Provided*, No unreasonable discrimination will result from such reparation, and provided further, that no order for the payment of reparation upon the ground of unreasonableness shall be made by the Commission in any instance wherein the rate, or charge in question has been authorized by law; and, provided further, that no assignment of a reparation claim shall be recognized by the Commission except assignments by operation of law as in cases of death, insanity, bankruptcy, receivership or order of Court. If the electrical utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same, and upon trial of such suit a duly certified copy of the order of the Commission shall be *prima facie* evidence of the facts therein set forth. All complaints concerning unreasonable, excessive or discriminatory charges on which reparation orders may

be made shall be filed with the Commission within two years from the time the cause of action accrues, and the suit for enforcement of the order shall be commenced in the court within one year from the date of the order of the Commission. The remedy in this subdivision provided shall be cumulative and in addition to any other remedy or remedies in this Act provided in case of failure of an electrical utility to obey an order or decision of the Commission.

(g) The Commission, each commissioner, and each person employed by the Commission shall have the right at any and all times to inspect the property, plant and facilities of any electrical utility, and to inspect or audit at reasonable times the accounts, books, papers and documents of any electrical utility, and for the purposes herein mentioned the Commission, each commissioner, and each person employed by the Commission may during all reasonable hours enter upon any premises occupied by or under the control of any electrical utility. The Commission, each commissioner, and any employee of the Commission authorized to administer oaths shall have power to examine under oath any officer, agent or employee of such electrical utility in relation to the business and affairs of such electrical utility, but written record of the testimony or statement so given under oath shall be made and filed with the Commission. Any person other than a commissioner demanding the right to perform any act authorized by this subdivision shall produce written authority from the Commission authenticated by its seal.

(h) In the performance of its duties under this Act the Commission, any commissioner, or any agent or employee of the Commission with written authority from the Commission authenticated by its seal, is hereby authorized to inspect or make copies of all income, property, or other tax returns, reports or other information filed by electrical utilities with or otherwise obtained by any other department, Commission, Board or Agency of the State Government, and all such other departments, Commissions, Boards or Agencies of the State Government are required to permit the same to be done.

(i) The Commission shall have full power and authority to make joint investigations, hold joint hearings, and issue joint or concurrent orders in conjunction or concurrence with any official Board or Commission of any State or of the United States, whether in the holding of such investigations or hearings, or in the making of such orders, the Commission shall function under agreements or compacts

within two years from the suit for enforcement or within one year from the remedy in this subsection in addition to any other case of failure of an act of the Commission.

; and each person employed at any and all times of any electrical utility, accounts, books, papers for the purposes herein, and each person employed reasonable hours enter control of any electrical and any employee of the shall have power to employ of such electrical of such electrical utility, not so given under oath. Any person other than in any act authorized authority from the Com-

this Act the Commission of the Commission authenticated by its seal, of all income, property information filed by any other department of the State Government, and the Boards or Agencies of the Commission to be done.

and authority to make sue joint or concurrent with any official Board or Commission, whether in the making of such agreements or compacts

between States, or under the concurrent power of States to regulate interstate commerce, or as an agency of the Federal Government or otherwise.

(j) Whenever it shall appear that any electrical utility is failing or omitting, or about to fail or omit, to do anything required of it by law or by order of the Commission, or is doing anything, or about to do anything, or permitting anything, or about to permit anything, to be done contrary to or in violation of law or of any order of the Commission an action or proceeding shall be prosecuted in any Court of competent jurisdiction in the name of the Commission or the State for the purpose of having such violation or threatened violation discontinued or prevented, either by mandamus, injunction, or other appropriate relief, and in such action or proceeding it shall be permissible to join such other persons, corporations or municipalities as parties thereto as may be reasonably necessary to make the order of the Court in all respects effective.

(k) Any investigation, inquiry, or hearing which the Commission has power to undertake or hold may be undertaken or held by or before any one or more of the Commissioners, upon condition, however, that such commissioner or commissioners shall have been authorized by the Commission to undertake or hold such investigation, inquiry, or hearing, and each investigation, inquiry or hearing, before or by any such commissioner or commissioners shall be deemed to be the investigation, inquiry, and hearing of the Commission. Any determination, ruling, or order of a commissioner or commissioners, upon any such investigation, inquiry, or hearing undertaken or held by him or them, shall not become effective until due notice has been given to the Commission and the same has been approved and confirmed by at least a quorum of the Commission and ordered to be filed in its office. Upon such confirmation and order, such determination, ruling, or order shall be the determination, ruling or order of the Commission. In any investigation, inquiry, or hearing now pending, or which may hereafter be instituted, the Commission is hereby authorized to employ a special agent or examiner, who shall have power to administer oaths, examine witnesses, and receive evidence in any locality which the Commission, having regard to the public convenience and the proper discharge of its functions and duties, may designate. The testimony and evidence so taken or received shall have the same force and effect as if taken or received by the

Commission, or any one or more of the commissioners as above provided.

(l) The Commission may make such rules and regulations not inconsistent with law as may be proper in the exercise of its powers or for the performance of its duties under this Act, all of which shall have the force of law.

(m) In addition to the foregoing expressly enumerated powers the Commission shall have full power and authority, and it shall be its duty to enforce, execute, administer, and carry out by its order, ruling, regulation, or otherwise, all the provisions of this Act relating to the powers, duties, limitations, and restrictions imposed upon electrical utilities by this Act or any other provisions of the law of this State regulating electrical utilities.

(n) The Commission shall have power to employ such technical administrative and clerical staff as it may deem necessary to carry out the provisions of this Act and to perform the duties and exercise the powers conferred upon it by law in relation to electrical utilities. The Attorney General is hereby empowered and authorized to employ additional legal counsel upon the recommendation of the Commission, for a period of one year, at a salary of not exceeding Four Thousand (\$4,000.00) Dollars; and this shall be for the period of one year only. And the Attorney General shall be the legal head of suits or actions arising under this Act; the said salary to be paid out of funds of the Commission.

(o) The enumeration of the powers of the Commission as herein set forth shall not be construed to exclude the exercise of any power which the Commission would otherwise have under the provisions of law.

(p) Nothing contained in this Act shall be construed to divest the Commission of any power now possessed by it to regulate electrical utilities, and the duties and powers hereby devolved upon the Commission are in addition to those now imposed by law.

(q) All expenses and charges incurred by the commission in the administration of this Act and in the performance of its duties thereunder, shall be defrayed by assessments made by the Comptroller General against the electrical utilities regulated thereunder and based upon the gross revenues collected by the said electrical utilities from their business done wholly within the State of South Carolina; in

the manner as it set out in Sections 6076, 6118, and 6359, of the Code of Laws of South Carolina, 1932, for other corporations: *Provided*, That the Commission shall not expend a greater sum than \$35,000.00 yearly, if so much be necessary, to meet the obligations arising out of the administration of this Act.

(r) As a separate section or division of the annual report which it is now required by law to make, the Commission annually shall file a report containing a full and complete account of its transactions and proceedings under this Act for the preceding calendar year, together with such other pertinent facts, suggestions and recommendations as it may deem of value to the people of the State.

§ 5. Procedure.—(a) The Commission may, in addition to the hearings specifically provided for by this Act, conduct such other hearings as may be required in the administration of the powers and duties conferred upon it by this Act and by other Acts relating to electrical utilities. Notice of all such hearings shall be given those interested therein.

(b) All hearings, investigations and proceedings shall be governed by law and by rules of practice and procedure adopted, or to be adopted by the Commission.

(c) The Commission and each Commissioner may issue subpoenas, subpoenas *duces tecum*, and all other necessary processes in proceeding pending before it, and such processes shall extend to all parts of the State and may be served by any person authorized by law to serve processes.

(d) The Commission and each of the Commissioners, for the purposes mentioned in this Act, may administer oaths, examine witnesses and certify official acts. In case of failure on the part of any person or persons to comply with any lawful order of the Commission, or of any commissioner, or with any subpoena or subpoena *duces tecum*, or in the case of the refusal of any witness to testify concerning any matter on which he may be interrogated lawfully, any court of record of general jurisdiction, or a judge thereof, may on application of the Commission or of a Commissioner compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court of a refusal to testify therein.

(e) The Commission or any Commissioner or any party to the proceedings may, in any investigation or hearing before the Commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for taking depositions in civil actions in the courts of this State.

(f) No person shall be excused from testifying or from producing any book, document, paper or account in any investigation, or inquiry by, or hearing before the Commission or any Commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account, required of him may tend to incriminate him or subject him to penalty of forfeiture; but no person shall be prosecuted, punished or subjected to any forfeiture or penalty for or on account of any act, transaction, matter or thing concerning which he shall have been compelled under oath to testify or produce documentary evidence: *Provided*, That no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

(g) Copies of official documents and orders filed or deposited according to law in the office of the Commission, certified by a Commissioner or by the Secretary of the Commission under its official seal to be true copies of the original, shall be evidence in like manner as the originals in all matters before the Commission and in the courts of this State. The Commission by rule may prescribe reasonable charges to be paid for furnishing authenticated copies of such documents and orders.

(h) Witnesses who are summoned before the Commission shall be paid by the party or parties at whose instance they are summoned the same fees and mileage as are paid to witnesses in the Courts of Common Pleas of this State, and witnesses whose depositions are taken pursuant to the provisions of this Act, and the officer taking the same shall be entitled to be paid by the party or parties at whose instance the deposition is taken the same fees as are paid for like services in the Courts of Common Pleas of this State.

(i) The Commission may require, by order served in any electrical utility in the manner provided in subdivision (k) of this Section, the production within this State at such time and place as it may designate, of any books, accounts, papers or records of the electrical utility relating to its business or affairs within the State, pertinent to any lawful inquiry and kept by said electrical utility in

other parties to the proceedings or their attorneys. The order shall take effect and become operative twenty days after the service thereof, unless otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or revoked by the Commission. If an order cannot, in the judgment of the Commission, be complied with within twenty days, the Commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

(o) The Commission may at any time, except in those cases provided for in subdivision q, after notice and after opportunity to be heard as provided in the case of complaints, rescind, or amend, any order or decision made by it. Any order rescinding or amending a prior order or decision, after notice thereof, either personal or by registered mail, is given to the electrical utility affected and to the other parties to the proceedings, shall have the same effect as is herein provided for original orders or decisions, but no such order shall affect the legality or validity of any acts done pursuant to the original order before service of notice of such change.

(p) A full and complete record shall be kept of all proceedings had before the Commission or any Commissioner on any formal hearing, and all testimony shall be taken down by a reporter appointed by the Commission.

(q) After an order or decision has been made by the Commission, any party to the proceedings may within ten days after service of notice of the entry of the order or decision apply for a rehearing in respect to any matter determined in such proceedings and specified in the application for rehearing, and the Commission shall have power, in case it appears to it to be proper, to grant and hold such rehearing. The Commission shall either grant or refuse an application for rehearing within twenty days, and a failure by the Commission to act upon such application within that period shall be deemed a refusal thereof. If the application be granted, the Commission's order shall be deemed vacated, and the Commission shall enter a new order after the rehearing has been concluded.

(r) The Commission is authorized to prescribe rules governing pleadings, practice, and procedure before it not inconsistent with the provisions of this Act or any other provisions of law.

§ 6. Review of Orders of the Commission.—

(a) Any party in interest being dissatisfied with an order of the Commission may commence an action in any Court of competent jurisdiction against the Commission and other interested parties as defendants to vacate or set aside, either in whole or in part, any such order on the ground that the order is unlawful or unreasonable, but no cause of action shall accrue to vacate or set aside, either in whole or in part, any order of the Commission, except an order on a rehearing, unless a petition to the Commission for a rehearing has been filed and refused, or deemed refused because of the Commission's failure to act thereon within twenty days. Any action brought hereunder must be commenced within thirty days from the date of service of notice of the order of the Commission on a rehearing, or of its refusal of a petition for rehearing, either by order or failure to act thereon within twenty days.

(b) The pendency of proceedings to review shall not of itself stay or suspend the operation of the order of the Commission, but during the pendency of such proceedings the Court, upon reasonable notice and after hearing in its discretion may stay or suspend, either in whole or in part, the operation of the commission's order on such terms as it deems just, and in accordance with the practice of the Court. Any party shall have the right to secure from the Court in which a review of the order of the Commission is in good faith sought, an order suspending or staying the operation of the order of the commission, pending a review of such order, by adequately securing all persons, corporations and municipalities, who will be affected by such suspension or stay against loss due to the delay in the enforcement of the order, in case the order under review is affirmed, the security to be approved and to be in such form and amount as shall be directed by the Court granting the stay or suspension.

(c) All actions and proceedings for review under this Act, and all actions or proceedings to which the Commission or the State of South Carolina, or any of its governmental agencies, may be parties, and in which any question arises under this Act, or under or concerning any order or decision of the Commission thereunder, shall be given priority of hearing in all Courts over all other civil causes except election cases irrespective of position on the calendar.

(d) In all actions and proceedings arising under this Act or growing out of the exercises of the powers herein granted to the

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Commission, the burden of proof shall be on the party attacking any order of the Commission to show that the same is unlawful or unreasonable.

§ 7. Penalties for Violations.—(a) Any person or corporation violating any provision of this Act, or failing, omitting, or neglecting to obey, observe or comply with any lawful order of the Commission, or any part or provision thereof, shall be subject to a penalty of not less than One Hundred Dollars nor more than Five Thousand Dollars for each offense and reasonable expenses including Attorney's fees.

(b) In construing and enforcing the provisions of this Act relating to penalties, the act, omission or failure of any officer, agent or employee, of any corporation or person acting within the scope of his official duties or employment, shall in every case be deemed to be also the act, omission or failure of such corporation or person.

(c) Every violation of the provisions of this Act or of any lawful order of the Commission, or any part thereof, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be deemed to be a separate and distinct offense.

(d) All penalties accruing under this Act shall be cumulative, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any electrical utility or any officer, director, agent or employee thereof, or any other corporation or person.

(e) Actions to recover penalties under this Act shall be brought in the name of the State of South Carolina in any Court of competent jurisdiction.

(f) The penalties herein prescribed shall not be deemed to apply to municipalities, but the act, omission or failure of an officer, agent or employee of a municipality constituting a violation of this Act or of any lawful order of the Commission, or any part thereof, although acting for the municipality, shall subject him personally to the penalties herein prescribed.

§ 8. General Provisions.—(a) All charges for electricity for light, heat or power heretofore established by any franchise granted to or contract made with any person or corporation by any municipality, pursuant to and under the authority of the laws of this

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State, are to be deemed excepted from the regulatory powers of the Commission and to be unaffected by the provisions of this Act, it being the purpose of this Act to regulate such charges only to the extent that it may be done consistently with the Constitution of this State and of the United States.

(b) Nothing contained in this Act shall be so construed as to modify, abridge, or impair any of the rights or powers granted to cities and towns under the provisions of Article VIII, Sections 4 and 5, or any other provisions of the Constitution of this State and every right, power or privilege conferred upon any city or town by the Constitution of this State, otherwise appearing to be modified, abridged or impaired by any provision of this Act, is to be deemed excepted from the operation thereof, it being the intention of this Act to control and regulate the acts of cities and towns only to the extent that it may be done consistently with the Constitution of this State.

(c) Nothing contained in this Act shall be so construed as to limit or restrict the right of cities and towns to adopt and enforce reasonable police regulations and ordinances affecting electrical utilities, not inconsistent with the provisions of this Act, in the interest of public safety, morals, convenience, health and good order.

(d) Neither this Act nor any provision thereof shall apply or be construed to apply to commence with foreign nations or commence among the several States of the United States, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.

(e) If any part of this Act is decided to be unconstitutional and void such decision shall not affect the validity of the remaining parts of this Act, unless the part held void is indispensable to the operation of the remaining parts. The General Assembly hereby declares that it would have passed those parts of this Act which are valid and omitted any parts which may be unconstitutional, if it had been advised of such unconstitutionality at the time of the passage of this Act.

(f) Neither anything contained in this Act, nor any duty thereby imposed, nor any right, power or privilege thereby granted, nor the exercise, receipt or acceptance of any right, privilege or permit under the authority of this Act, nor any act done under the authority of this act, shall be so construed, or given such effect, as to abrogate,

modify or in any way affect the duties and obligations of electrical or other public utilities, or any of them, as declared by the Supreme Court of South Carolina in the case of *State ex rel. Daniel, Attorney General, vs Broad River Power Company et al.*, 157 S. C., 1, nor shall any electrical or other public utility now or hereafter be released to any extent whatever from any obligation or duty now imposed by the law of the State of South Carolina as therein declared.

§ 9. **Extent of Repeal.**—All Acts or parts of Acts inconsistent with this Act are hereby repealed, but all statutes of this State, as well as all parts thereof, insofar as they may relate to public utilities, other than electrical utilities and the regulation thereof, are not repealed, modified or impaired in any way by this Act.

§ 10. This Act shall take effect immediately upon its approval by the Governor.

Approved the 8th day of April, 1932.

1044

No. 872.

AN ACT to Reduce the Amount Payable as Teachers Salaries Under the 6-0-1 Law by Twelve and One-half Per Cent; to Provide for the Payment of Deficits in School Appropriations for the School Years 1930-31 and 1931-32 and Amounts Due in Building Aid; and to Provide for the Issuance of Notes of the State to Pay Said Deficits.

Whereas, the State will be unable to balance its budget for the year 1932, if the full amount due to the schools under the 6-0-1 law is paid; and

Whereas, it is the sense of the General Assembly that the schedule of salaries payable under the 6-0-1 law should be reduced by 12½ per cent, effective on July 1st, 1932; and

Whereas, such reduction will enable the General Assembly of 1932 to appropriate a smaller sum of money than is now necessary under the 6-0-1 law; and

Whereas, there now exists a deficit in the funds available for the payment of teachers' salaries for the school year of 1930-31, which obligation is sacred and binding upon the State; and