

TITLE 37  
PUBLIC UTILITIES

CHAPTER 1  
General Provisions

**37-1-101. Definitions.**

(a) As used in chapters 1, 2, 3, 12, 17 and 18 of this title:

(i) "Commission" means public service commission of Wyoming, which is created and established by this chapter;

(ii) "Commissioner" means any one of the members of the Wyoming public service commission;

(iii) "Municipality" when used in this chapter shall mean and include any town, village, city, county or other political subdivision of this state;

(iv) "Municipal council" means and includes the city council, common council, board of aldermen, the board of selectmen, the board of trustees, the city commission or any other governing body of any political subdivision of the state;

(v) "Person" means and includes individuals, associations of individuals, firms, partnerships, companies, corporations, their lessees, trustees, or receivers, appointed by any court whatsoever in the singular number, as well as the plural;

(vi) "Public utility" means and includes every person that owns, operates, leases, controls or has power to operate, lease or control:

(A) Repealed By Laws 2012, Ch. 84, § 104.

(B) Repealed by Laws 1995, ch. 181, § 3.

(C) Any plant, property or facility for the generation, transmission, distribution, sale or furnishing to or for the public of electricity for light, heat or power, including any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

(D) Any plant, property or facility for the manufacture, distribution, sale or furnishing to or for the public of natural or manufactured gas for lights, heat or power;

(E) Any plant, property or facility for the supply, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, agriculture or domestic uses, except and excluding any such plant, property or facility owned by a municipality;

(F) Repealed By Laws 2012, Ch. 84, § 104.

(G) Any plant, property or equipment for the transportation or conveyance to or for the public of oil or gas by pipeline, or any plant, property, or equipment, used for the purpose of transporting, selling or furnishing natural gas to any consumer or consumers within the state of Wyoming for industrial, commercial or residential use, except any such plant, property or equipment used for any of the following purposes is exempted from this and all other provisions of this chapter to the extent of such use:

(I) For the transportation or sale of natural gas within or between oil and gas fields or potential oil and gas fields for residential, commercial, industrial or other use reasonably necessary in the exploration, development or operation of the field;

(II) For drilling, producing, repressuring, or other oil or gas field operations;

(III) For operation of natural gas processing plants;

(IV) For the sale of natural gas by the producer to a consumer for use in industrial or commercial plants or establishments of any kind or nature.

(H) None of the provisions of this chapter shall apply to:

(I) Interstate commerce except when a regulatory field has not been preempted by the United States government;

(II) To public utilities owned and operated by a municipality of the state of Wyoming or owned and operated by a joint powers entity formed pursuant to the Wyoming Joint Powers Act, W.S. 16-1-102 through 16-1-110, and comprised of two (2) or more municipalities, except as to that portion of a municipality owned and operated public utility or joint powers entity owned and operated public utility, if any, as may extend services outside the corporate limits of a municipality and except that if any municipal or joint powers utility owns an undivided interest in a facility for the production of electricity which is also partly owned by an agency subject to the jurisdiction of the public service commission, the sale of electricity in excess of the participating municipalities' or joint powers entities' need is subject to this act;

(III) To farmers' mutual telephone associations having no capital stock and furnishing service to members of associations only and without tolls, except as provided in W.S. 37-2-205;

(IV) To mutual water companies or associations having no capital stock and furnishing water service to members of companies or associations only, and without charges other than assessments of members to reimburse companies or associations for expenses incurred in their establishment or operation;

(V) To any person who is not otherwise affiliated with a utility, that owns, leases, controls or has power to lease or control any plant, property or facility which, in a transaction approved or authorized by the commission, is leased to one (1) or more public utilities, and is to be operated by the lessee or lessees for the generation, transmission, distribution, sale or furnishing to or for the public of electricity for light, heat, power or other utility purposes;

(VI) To the generation, transmission or distribution of electricity, or to the manufacture or distribution of gas, or to the furnishing or distribution of water, nor to the production, delivery or furnishing of steam or any other substance, by a producer or other person, for the sole use of a producer or other person, or for the use of tenants of a producer or other person and not for sale to others. Such exemptions shall not apply to metered or other direct sales of a utility commodity by a producer or other person to his tenants;

(VII) The retail sale of compressed natural gas for use as motor vehicle fuel by a company which is not otherwise regulated under this title;

(VIII) Metered and other direct sales of water by a person to his tenants when the metered or other direct sales are solely for purposes of allocating usage among tenants and includes no additional fees or charges;

(IX) Metered and other direct sales of water by a person operating a water system that:

(1) Has less than fifteen (15) potential service connections;

(2) Is not owned, controlled or otherwise affiliated with a water utility or any other utility that provides water service;

(3) Is not a centralized water supply system associated with a subdivision; and

(4) Is not located within the established service territory of a water utility or the corporate limits of a municipality.

(J) The term "public utility" shall mean and include two (2) or more public utilities rendering joint service;

(K) Any person furnishing coal, water or other raw materials to an electric power company shall not by this fact alone be designated as a public utility;

(M) The provisions of W.S. 37-6-101 through 37-6-106, relating to the issuance and sale of securities shall not apply to:

(I) Any gas pipeline corporation making direct sales to Wyoming consumers in interstate commerce and not for resale;

(II) Any cooperative electrical generation and transmission association operating in interstate commerce whose rates are not regulated by the Wyoming public service commission.

(N) The provisions of W.S. 37-18-101 and 37-18-102 shall not apply to any public utility owned or operated by a municipality or any cooperative electrical generation and transmission association operating in interstate commerce whose rates are not regulated by the Wyoming public service commission.

**37-1-102. "Rate" and "service regulation" defined.**

(a) The term "rate", when used in this act, shall mean and include, in the plural number, as well as in the singular, every individual or joint rate, classification, fare, toll, charge or other compensation for service rendered or to be rendered by any public utility, and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, fare, toll, charge or other compensation, and any schedule or tariff or part of a schedule or tariff thereof.

(b) The term "service regulation" shall mean and include every rule, regulation, practice, act or requirement in any way relating to the service or facilities of a public utility.

**37-1-103. Assessment of interstate public utilities generally.**

(a) The public service commission of Wyoming is hereby authorized and empowered to collect for the actual costs incurred by the commission for necessary and reasonable services, investigations and other actions concerning the construction, operation, maintenance, safety and environment of interstate utilities and their facilities within Wyoming. This act [section] shall not apply to motor carriers or any services, investigations or other actions authorized by the statutes for intrastate utilities.

(b) The billing by the commission shall be directed to the involved interstate utility or utilities at intervals of no less than thirty (30) days as determined by the commission and shall detail and show the basis for the charges and all direct and allocated charges. Payment shall be made by the interstate public utility no later than thirty (30) days after receipt of the billing. Only those charges which are necessary and reasonable need be paid and if charges not necessary and reasonable are paid under protest, they may be recovered in a court of competent jurisdiction in any action commenced against the public service commission of Wyoming within thirty (30) days

after payment under protest and any amount recovered shall be paid out of the public service commission account.

(c) The funds collected shall be immediately remitted to the state treasurer for deposit in the public service commission account. The commission may immediately upon deposit expend such monies for payment of its costs incurred concerning interstate utilities, subject to the warrant of the state auditor, upon submission of properly executed vouchers authorized by the commission in the same manner as other funds are disbursed subject to other provisions of law.

(d) Any interstate utility which violates or fails to comply with any provision of this act shall be subject to a penalty of not more than five thousand dollars (\$5,000.00) for each and every offense.

**37-1-104. Reorganization of public utility; definition; approval.**

(a) No reorganization of a public utility shall take place without prior approval by the public service commission. The commission shall not approve any proposed reorganization if the commission finds, after public notice and opportunity for public hearing, that the reorganization will adversely affect the utility's ability to serve the public.

(b) For purposes of this section, "reorganization" means any transaction which, regardless of the means by which it is accomplished, results in a change in the majority ownership interest or control of a public utility, or the majority ownership interest or control of any entity which owns a majority interest in or controls a public utility. "Reorganization" as used in this section shall not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge.

**37-1-105. Application for reorganization; fees; reimbursement of costs and expenses to state; expenses not to be included in rates.**

(a) Every applicant for approval of a reorganization by the public service commission under this act shall pay a filing fee of one hundred dollars (\$100.00) for each application and ten dollars (\$10.00) plus ten cents (\$.10) per page for every amendment to any application. These fees shall be deposited in

the general fund. In addition the applicant shall reimburse the state for the expenses of the state in reviewing and acting upon each application and defending any public service commission decision in case of legal appeal. The expenses of the state shall not be deemed to include the normal salary and benefits of the public service commissioners but shall include substantially all other actual expenses of the state in connection with the application. The public service commission may require the applicant to post a bond or make a prepayment to assure the required reimbursement. No charge for expenses in connection with any application under this act may be included in the rates charged to Wyoming customers. The reimbursements collected pursuant to this section shall be deposited in a separate account and may be expended by the public service commission following appropriations by the legislature.

(b) No charge for any expenses of any reorganization shall be included in the rate base of any Wyoming public utility.

#### **37-1-106. Rulemaking authority.**

The public service commission shall adopt rules and regulations to implement the provisions of W.S. 37-1-104 and 37-1-105.

#### **37-1-107. Department of transportation; appeals.**

Any party in interest or any person or party authorized under chapters 9 through 11 of title 37 to file for an original hearing before the department of transportation may appeal to a hearing panel appointed by the transportation commission in the same manner, and to the same extent, as provided in the Wyoming Administrative Procedure Act.

### **CHAPTER 2 Public Service Commission**

#### **ARTICLE 1 IN GENERAL**

**37-2-101. Creation; composition; appointment; compensation; terms and oaths of members; removal; chairman and deputy chairman; vacancies.**

(a) There is created a commission separate from the state board of equalization to which it has been joined which is known as the "public service commission of Wyoming". The commission shall consist of three (3) members appointed by the governor, by

and with the advice and consent of the senate. Not more than seventy-five percent (75%) of the members of the commission shall at any time be members of the same political party. Each member of the commission shall receive an annual salary as provided by law, to be paid in equal monthly installments in the same manner that other state salaries are paid.

(b) Biennially the members shall elect from among their number a chairman and a deputy chairman who shall serve in these offices for a period of two (2) years. The chairman shall receive an additional annual salary as provided by law during his tenure as chairman to be paid in equal monthly installments, in the same manner as other state salaries are paid.

(c) The present elected chairman and two (2) designated members now comprising the public service commission, or their successors, comprise the public service commission for purposes of this section.

(d) Upon the expiration of the term of any member he shall be reappointed or a successor shall be appointed for a term of six (6) years or except in case of a vacancy. Each member shall hold office until his successor is appointed and qualified. The governor may remove any member as provided in W.S. 9-1-202.

(e) In case of a vacancy, it shall be filled by appointment by the governor in accordance with W.S. 28-12-101.

(f) Each member, within thirty (30) days after notice of his appointment and before entering upon the discharge of his duties, shall take, subscribe and file with the secretary of state the oath of office prescribed by the constitution of this state. Effective July 1, 1979, appointments and terms under this act shall be in accordance with W.S. 28-12-101 through 28-12-103.

**37-2-102. Quorum; meetings; investigations and hearings by single commissioner.**

A majority of the commission shall constitute a quorum to transact business and for the performance of any duty or for the exercise of any powers of the commission and may hold meetings of the commission at any time or place within the state. A majority of the commission shall consist of two (2) of the three (3) members, including the chairman, that constitute the commission in the normal course of business. Any investigation, inquiry or hearing which the commission has power to hold may be



held by or before any commissioner, or an employee of the commission acting in the capacity of a hearing officer, when an order is entered in the records of the office of the commission to that effect, and such an investigation, inquiry or hearing when approved and confirmed by the commission shall be the investigation, inquiry or hearing of the commission, but no finding or order of the commission shall be effective without the concurrence of a majority of the commission.

**37-2-103. Seal; may sue and be sued.**

The commission shall have an official seal bearing the words "Public Service Commission of Wyoming", of which the courts shall take judicial notice, and may sue and be sued by its official name.

**37-2-104. Gratuities prohibited.**

No commissioner or person appointed and regularly employed and receiving a salary from the commission shall accept any gift, gratuity, emolument or employment from any public utility under the jurisdiction of the commission, or any officer, agent or employee thereof, nor shall any commissioner or person appointed or regularly employed by and receiving a salary from the commission solicit, request from, or recommend, directly or indirectly, to any such public utility or any officer or agent or employee thereof, the appointment of any person to any place or position.

**37-2-105. Offices, equipment and facilities.**

The principal office of the commission shall be at the state capitol, and the commission shall be provided by the state with such offices, equipment and facilities as may be necessary for the performance of its duties.

**37-2-106. Uniform assessment regarding telecommunications, gas, electric, water and pipeline service; disposition of revenue.**

Monies derived from a uniform assessment of persons subject to assessment under W.S. 37-2-107, except motor carriers as defined in W.S. 31-18-101(a)(x), shall be credited to the public service commission account for the purpose of defraying administrative expenses of the commission with respect to the persons assessed. At each regular session, the state legislature shall, under the budget provisions of Wyoming budget law, determine the amount to

be collected. It shall be the duty of the director of the revenue department to ascertain and collect the proportional amount of the approved biennial budget to be paid by each person assessed and to remit the funds immediately to the state treasurer for deposit in the public service commission account. All expenditures therefrom shall be subject to the warrant of the state auditor, upon submission of properly executed vouchers authorized by the commission in the same manner as other funds are disbursed.

**37-2-107. Uniform assessment regarding telecommunications, gas, electric, water and pipeline service; assessment generally.**

(a) On or before the first day of July of each year the director of revenue shall, by requiring special reports or otherwise, determine the total aggregate amount of the gross Wyoming intrastate retail revenues of all public utilities, entities utilizing public utility facilities in the state to furnish retail utility commodities or services to the public, and providers of telecommunication services, except motor carriers, and those utilities exempted under W.S. 37-2-108, for the preceding calendar year. He shall then determine the ratio that one-half ( $1/2$ ) of the total authorized budgeted amount for the biennium is to the total aggregate gross retail Wyoming intrastate operating revenues. The resulting percentage factor shall then be applied to the annual intrastate gross retail operating revenues of each of such persons for the preceding calendar year and the result shall be the assessment of each such person for the ensuing budget fiscal year. However, the assessment rate against the persons for any one (1) year shall not exceed .0030 of the gross Wyoming intrastate retail revenues of the persons. By the first day of August the director of the revenue department shall assess the persons, and one-half ( $1/2$ ) the assessed fees shall be paid to him by the persons on or before the first day of October and one-half ( $1/2$ ) of the fees shall be paid to him by the persons on or before the first day of April in the ensuing year. The director of the revenue department, in computing the percentage upon which fees for the first fiscal year of the ensuing biennium shall be based, shall deduct any unexpended balance in the commission's account, less an amount equal to the total of all properly authorized outstanding accounts payable, from one-half ( $1/2$ ) the total authorized budgeted amount for the biennium, and the resultant figure shall be used instead of the one-half ( $1/2$ ) of the total authorized budgeted amount for the biennium, as above provided. Any unexpended balance in the commission's account shall not lapse at the end of the fiscal period. "Intrastate gross retail

operating revenues" as used in this section shall mean intrastate gross revenues derived from the provision of telecommunications, gas, electric, water and pipeline service offered for final consumption and not for resale.

(b) Repealed By Laws 2012, Ch. 84, § 102.

**37-2-108. Uniform assessment regarding telecommunications, gas, electric, water and pipeline service; exempt persons.**

Any person subject to the provisions of this act shall be exempt from any payments or assessments to be made hereunder for the fiscal budget year following the calendar year in which its gross intrastate retail operating revenues, as defined in W.S. 37-2-107, total less than five thousand dollars (\$5,000.00).

**37-2-109. Uniform assessment regarding telecommunications, gas, electric, water and pipeline service; penalty for violations.**

Any person who violates or fails to comply with any provision of this act, or fails, omits, neglects, or refuses to observe or comply with any requirement, direction or decision of the director of revenue relating thereto, or to file any report as may be required by him, within the time specified, shall be subject to a penalty of not more than five thousand dollars (\$5,000.00) for each and every offense.

**37-2-110. Secretary and other employees.**

(a) The commission is authorized to employ a secretary and such other persons as may be necessary to enable it to perform the duties imposed upon it by this act and to designate the duties of such employees.

(b) Repealed By Laws 2003, Ch. 172, § 2.

**37-2-111. Attorney general to be legal adviser; duties; representation by commission attorneys.**

The attorney general shall be the legal adviser of the commission and it shall be his duty to represent the commission in all proceedings in any court, before any other agency or before any departments of the federal government. Upon the request of the commission, the attorney general may designate any duly qualified attorney employed by the commission to function as an assistant attorney general to assist the attorney

general in representing the commission in all proceedings in any court, before any agency or before any departments of the federal government. Wherever he deems it appropriate, the attorney general may authorize a commission attorney to act without his assistance.

**37-2-112. Powers.**

The commission shall have general and exclusive power to regulate and supervise every public utility within the state in accordance with the provisions of this act.

**37-2-113. Arbitration of controversies.**

Whenever any Wyoming public utility has a controversy with any other person and all the parties to such controversy agree in writing to submit such controversy to the commission as arbitrators, the commission may act as such arbitrators, and after due notice to all parties interested may proceed to hear such controversy, and their award shall be final.

**37-2-114. Authority to confer with other state and federal commissions; expenses.**

(a) The commission may confer in person, by attending conventions or otherwise, with the members of railroad or other public utility commissions of other states and with the surface transportation board on any matters relating to public utilities, and shall be allowed actual traveling expenses when engaged in such work.

(b) In regulating the transmission of electricity:

(i) The commission may meet in conjunction with public utility commissions of other states as it determines necessary or convenient to develop common sets of fact finding for regulation of the transmission of electricity in the region. Any common set of facts developed under this paragraph shall only be developed under a docketed commission proceeding with opportunity for participation by the public in compliance with the Wyoming Administrative Procedure Act and commission rules;

(ii) The commission may meet jointly with public utility commissions of other states to conduct hearings on the regulation of the transmission of electricity. The commission shall act independently in entering any order as a result of such hearings;

(iii) Subject to W.S. 37-2-122, the commission may consider regional effects of its orders upon the utility and may consider requirements imposed upon the utility by the laws of other states within the region or the orders of other commissions within the region.

(c) As used in subsection (b) of this section, "region" includes any state with a border contiguous to Wyoming and the states of Arizona, California, Nevada, New Mexico, North Dakota, Oregon and Washington.

**37-2-115. Examination of records of intrastate business of utilities; authority generally.**

The commission, or upon order of the commission, any commissioner, or any person or persons employed by the commission, shall upon demand have the right, insofar as applies to intrastate business, to inspect or examine the books, papers, accounts, documents, plant, property and facilities of any public utility operating in Wyoming, and to examine under oath any officer, agent or employee of such public utility in relation to its business and affairs; provided, that any person other than one (1) of the commissioners shall produce when so requested his authority to make inspections or examinations under the hand of a commissioner or of the secretary and under the seal of the commission.

**37-2-116. Ordering production of records.**

The commission, by order, may require any public utility or any officer or agent thereof to produce within the state at such time and place as it may designate, any accounts, records, memoranda, books or papers kept in any office or place without or within the state, or in its discretion may in lieu of originals order the production of verified copies thereof in order that an examination thereof insofar as they relate to intrastate business, may be made by the commission or by any person under its direction.

**37-2-117. Commission may initiate investigation.**

Whenever the commission shall believe that an investigation of any act or omission to act, accomplished or proposed, or an investigation of any rate, service, facility or service regulation of any public utility should be made in order to secure compliance with the provisions of this act and orders of

the commission, it may of its own motion summarily investigate the same.

**37-2-118. Who may make complaint.**

Any public utility, person, municipality or the attorney general may complain to the commission of anything, actual or proposed, done or omitted to be done in violation of W.S. 37-1 through 37-64 [ §§ 37-1-101 through 37-3-114 ] or W.S. 37-260 through 37-272 [ §§ 37-12-201 through 37-12-213 ], or of an order of the commission.

**37-2-119. Matters to be considered and determined in investigation.**

In conducting any investigation pursuant to the provisions of this act the commission may investigate, consider and determine such matters as the cost or value, or both, of the property and business of any public utility, used and useful for the convenience of the public, and all matters affecting or influencing such cost or value, the operating statistics for any public utility both as to revenues and expenses and as to the physical features of operation in such detail as the commission may deem advisable; the earnings, investment and expenditures of any such corporation as a whole within this state, and as to rates in plants of any water, electrical or gas corporations, the geographical location thereof shall be considered as well as the population of the municipality in which such plant is located.

**37-2-120. Order in case of violation; public hearing required for change in rate or service.**

Whenever, after investigation in accordance with the provisions of this act, the commission shall be of the opinion that any provisions or requirements of this act, or any order of the commission is being, has been, or is about to be violated, it may make and enter of record an order in the premises, specifying the actual or proposed acts or omissions to act which constitute such real or proposed violations, and require that such violations be discontinued or rectified, or both, or that it be prevented. No order, however, shall be made by the commission which requires the change of any rate or service, facility or service regulation except as otherwise specifically provided, unless or until all parties are afforded an opportunity for a hearing in accordance with the Wyoming Administrative Procedure Act.

**37-2-121. When rate to be changed by commission;  
nontraditional rate making.**

If upon hearing and investigation, any rate shall be found by the commission to be inadequate or unremunerative, or to be unjust, or unreasonable, or unjustly discriminatory, or unduly preferential or otherwise in any respect in violation of any provision of this act, the commission, within the time periods provided under W.S. 37-3-106(c) may fix and order substituted therefor a rate as it shall determine to be just and reasonable, and in compliance with the provisions of this act. The rate so ascertained, determined and fixed by the commission shall be charged, enforced, collected and observed by the public utility for the period of time fixed by the commission. The rates may contain provisions for incentives for improvement of the public utility's performance or efficiency, lowering of operating costs, control of expenses or improvement and upgrading or modernization of its services or facilities. Any public utility may apply to the commission for its consent to use innovative, incentive or nontraditional rate making methods. In conducting any investigation and holding any hearing in response thereto, the commission may consider and approve proposals which include any rate, service regulation, rate setting concept, economic development rate, service concept, nondiscriminatory revenue sharing or profit-sharing form of regulation and policy, including policies for the encouragement of the development of public utility infrastructure, services, facilities or plant within the state, which can be shown by substantial evidence to support and be consistent with the public interest.

**37-2-122. Matters considered in fixing rates; order  
changing services or facilities; qualifying facilities  
contracts.**

(a) In determining what are just and reasonable rates the commission may take into consideration availability or reliability of service, depreciation of plant, technological obsolescence of equipment, expense of operation, physical and other values of the plant, system, business and properties of the public utility whose rates are under consideration. In determining just and reasonable rates for electricity the commission shall consider common sets of facts developed pursuant to W.S. 37-2-114(b) (i) and regional benefits provided by the utility.

(b) If, upon hearing and investigation, any service or service regulation of any public utility shall be found by the commission to be unjustly discriminatory or unduly preferential, or any service or facility shall be found to be inadequate or unsafe, or any service regulation shall be found to be unjust or unreasonable, or any service, facility or service regulation shall be found otherwise in any respect to be in violation of any provisions of this act, the commission may prescribe and order substituted therefor such service, facility or service regulation, as it shall determine to be adequate and safe, or just and reasonable, as the case may be and otherwise in compliance with the provisions of this act, including any provisions concerning the availability or reliability of service. It shall be the duty of the public utility to comply with and conform to such determination and order of the commission.

(c) In setting rates, the commission shall allow the inclusion of purchase power cost from a qualifying facility only to the extent that the cost of energy, capacity or both in the transaction are determined by the commission to be less than or equal to the utility's avoided cost, considering the cost of energy or capacity from all other available generation sources and the incremental cost of transporting the energy from a qualifying facility to customer load. This subsection shall not be interpreted in a manner inconsistent with the requirements of applicable federal statutes and regulations.

(d) As used in this section:

(ii) "Qualifying facility" means a facility that meets the qualification standards used in federal regulations promulgated under the federal Public Utility Regulatory Policies Act.

(i) "Avoided cost" means to the extent that a distribution cooperative is an all-requirements power supply customer of a generation and transmission cooperative or other wholesale power supplier, the distribution cooperative's avoided costs are the generation and transmission cooperative's or wholesale power supplier's avoided cost;

**37-2-123. Order apportioning expenses between joint public utilities.**

Whenever any order of the commission involves expenditures of any sum or sums by public utilities rendering any joint service



or services, and the public utilities affected thereby shall fail to agree upon the division or apportionment thereof within a reasonable time after the service of such order, the commission may issue a supplemental order declaring the apportionment or division of such expense.

**37-2-124. Records open to inspection by public; exceptions.**

All reports, records and accounts in the possession of the commission shall be open to inspection by the public at all times except as otherwise provided in this act or as ordered by the commission and under rules prescribed by the commission.

**37-2-125. Collection and disposition of fees.**

(a) The public service commission is hereby authorized and empowered in the conduct of business coming before it to collect in advance the following fees:

(i) For filing application for permit, five dollars (\$5.00) and for certificate of convenience and necessity, fifteen dollars (\$15.00);

(ii) For filing applications for amendment or assignment of certificates of convenience and necessity, five dollars (\$5.00);

(iii) For filing contests, five dollars (\$5.00);

(iv) For each certificate and seal, two dollars (\$2.00);

(v) For copies of records, judgments, and orders, one dollar (\$1.00) for the first one hundred (100) words, and twenty-five cents (\$.25) per folio for each subsequent folio, and if certified under seal, one dollar (\$1.00) additional;

(vi) For issuing summons or subpoenas, one dollar (\$1.00) each;

(vii) For service of summons or subpoenas by registered mail, fifty cents (\$.50) and for personal service, by a person authorized to make such service, the same fee that sheriffs receive for such service;

(viii) In all hearings on contests or on investigations, the fees for witnesses and all other costs shall be taxed against the parties in interest as determined by the commission;

(ix) For petitions filed under W.S. 37-6-102, fifteen dollars (\$15.00) each.

(b) All fees collected by the commission shall be paid to the state treasurer as collected, and shall be credited to the general fund.

**37-2-126. Report to the governor.**

The commission shall, as required by W.S. 9-2-1014, report to the governor, including in such detail as the commission may deem expedient all proceedings and investigations of the commission during such period and shall contain abstracts of the reports of public utilities prepared by the commission. It shall also contain the recommendations of the commission for new legislation and any other matters the commission desires to call to the attention of the governor and the legislature.

**37-2-127. Implied and incidental powers; requiring information from local utilities.**

In addition to the powers herein specifically granted, the commission shall have such implied or incidental powers as may be necessary and proper, effectually to carry out, perform and execute all the powers so granted. The commission shall have the power to require public utilities whose operations are purely local in extent and use to file in the office of the commission a list of their stockholders, officers and directors, with the residence and post office address of, and the amount of stock held by each.

**37-2-128. Civil penalty for violation of federal Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011; generally.**

Where the commission has exercised authority under the provisions of the federal Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011, 49 U.S.C. § 60101, et seq., and amendments thereto, to regulate gas safety in the state of Wyoming, any person or persons as defined in that act who hereafter violate any provision of that act as made applicable to jurisdictional activities within the state of Wyoming may be

subject to a civil penalty not to exceed one hundred thousand dollars (\$100,000.00) for violation for each day that the violation persists. However, the maximum civil penalty shall not exceed one million dollars (\$1,000,000.00) for any related series of violations.

**37-2-129. Civil penalty for violation of federal Natural Gas Pipeline Safety Act of 1968; compromise and recovery thereof.**

(a) Such civil penalty may be compromised by the commission, and such determination shall be in the nature of a final order appealable by the person alleged to have committed the violation only upon his refusal to pay. In determining the amount of the penalty, or the amount agreed upon in compromise, the size of the business of the person charged, the gravity of the violation and the good faith of the person charged in attempting to achieve compliance after notification of a violation shall be considered. The amount of the penalty when finally determined, or the amount agreed upon in compromise may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

(b) Any action to recover said sums shall be commenced in the courts in and for the county or district in which the principal office of the commission is located.

**37-2-130. Right of review.**

A person adversely affected or aggrieved by any action, findings, conclusions or decision of the public service commission is entitled to judicial review thereof according to the procedures established by the Wyoming Administrative Procedure Act and the Wyoming Rules of Appellate Procedure. The standards to be applied, to judicial review proceedings, including scope of review, shall be those standards established in the Wyoming Administrative Procedure Act.

**37-2-131. Supplemental safety jurisdiction of commission.**

(a) The commission shall have regulatory safety jurisdiction over any "intrastate gas pipeline facility" as defined under the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, 49 U.S.C. § 60101, et seq., as amended, for the sole purpose of implementing the safety standards and practices of the federal act to such intrastate gas pipeline

facility. This jurisdiction shall not apply to an "intrastate gas pipeline facility" which is otherwise subject to federal regulatory jurisdiction for safety purposes. The commission is authorized under this section to implement such safety standards and practices only to the extent the secretary of transportation is so authorized under the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006. The commission's jurisdiction under this section shall only apply where the secretary of transportation has delegated, or otherwise authorized, the state of Wyoming to act on his behalf, and the state of Wyoming has formally accepted the delegation or other authorization prior to the exercise of the jurisdiction by the commission.

(b) The commission shall have safety jurisdiction over any new or existing electrical lines used by the owner to transmit electricity which is generated by the owner for resale, and which are located upon property not exclusively controlled by the owner of the line for the purpose of enforcement of the safety requirements of the National Electrical Safety Code and those safety standards adopted by the commission. This section shall not apply to any incorporated or chartered city or town established under Wyoming law or joint powers board created under the Wyoming Joint Powers Act.

**37-2-132. Determination of telephone prefixes; report to national do-not-call list.**

The public service commission may determine which prefixes or telephone numbers are used in Wyoming primarily for cellular telephone service by determining prefixes or telephone numbers or by utilizing information available from the North American numbering plan administrator, the national pooling administrator, the local number portability administrator or any suitable least cost alternative as determined by the commission. The commission shall report these prefixes and telephone numbers to the national do-not-call list.

**37-2-133. Exemption for purchase of coal fired generation facilities that would otherwise have been retired; public utility purchase requirements; conditions for exemption.**

(a) The provisions of this chapter and chapters 1 and 3 of this title shall not apply to a person who operates a coal fired electric generation facility purchased under an agreement approved by the commission under W.S. 37-3-117.

Note: Effective 7/1/2021 this section will read as:

Except as otherwise provided in this section, the provisions of this chapter and chapters 1 and 3 of this title shall not apply to a person who operates a coal fired electric generation facility purchased under an agreement approved by the commission under W.S. 37-3-117.

(b) Electric public utilities, other than cooperative electric utilities, shall be obligated to purchase electricity generated from a coal fired electric generation facility purchased under agreement approved by the commission under W.S. 37-3-117 provided that:

(i) The person purchasing the otherwise retiring coal fired electric generation facility offers to sell some or all of the electricity from the facility to an electric public utility;

(ii) The electricity is sold at a price that is no greater than the purchasing electric utility's avoided cost as may be determined by the commission;

(iii) The electricity is sold under a power purchase agreement with a specified term length and such other terms and conditions as may be approved by the commission; and

(iv) The commission approves a one hundred percent (100%) cost recovery in rates for the cost of the power purchase agreement and the agreement is one hundred percent (100%) allocated to the public utility's Wyoming customers unless otherwise agreed to by the public utility.

(c) In determining an electric public utility's avoided costs under this section, the commission may consider:

(i) The value of the electric energy and capacity generated from the facility;

(ii) The value of any reliability benefits associated with the operation of the facility; and

(iii) Any other factor deemed appropriate by the commission.

(d) The commission may elect to set the avoided cost price and other terms and conditions for the purchase of electricity from an otherwise retiring coal fired electric generation

facility in advance of the facility's proposed retirement date to permit potential purchasers to know the avoided cost price and other terms and conditions for sales from that facility prior to entering into an agreement to purchase the facility.

(e) As used in this section, "avoided cost" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the otherwise retiring coal fired electric generation facility, the utility would generate itself or incur in a purchase from another source. As may be determined by the commission, avoided costs may change over the course of an approved power purchase agreement at specified intervals set forth in the power purchase agreement.

(f) A person purchasing an otherwise retiring coal fired electric generation facility may sell electricity generated by the facility to the electric public utility selling the otherwise retiring coal fired electric generation facility, except for a cooperative or municipal public utility, for the benefit of a retail customer located in the existing service territory of that electric public utility provided that the customer has more than one (1) megawatt average demand and takes service at a primary or transmission voltage level. [NOTE: This section will be effective 7/1/2021.]

(g) If an electric utility purchases electricity from the owner of an otherwise retiring coal fired electric generation facility for the benefit of an eligible retail customer, the utility serving that eligible retail customer shall purchase the electricity at a cost and under terms and conditions that are acceptable to and negotiated between the customer and the owner of the otherwise retiring coal fired electric generation facility. The electric public utility shall pass that cost through to the customer without markup or modification except: [NOTE: This section will be effective 7/1/2021.]

(i) For the collection of applicable taxes and the appropriate uniform assessment, which shall be collected pursuant to W.S. 37-2-106 through 37-2-109; [NOTE: This paragraph will be effective 7/1/2021.]

(ii) To ensure other Wyoming customers are not negatively impacted by the arrangement provided for in this subsection and subsection (f) of this section, the commission shall also authorize the utility to impose additional charges on participating retail customers to the extent the commission

determines that a sale of electricity under this subsection and subsection (f) of this section will result in the utility experiencing incremental stranded generation capacity costs or other incremental costs except for the cost of any undepreciated investments associated with the otherwise retiring coal fired electric generation facility. [NOTE: This paragraph will be effective 7/1/2021.]

(h) An eligible retail customer under subsection (g) of this section shall only receive electricity as provided in subsection (g) of this section from the owner of an otherwise retiring coal fired electric generation facility if the customer also purchases partial requirements or equivalent service from the electric public utility under rates, terms and conditions set by the commission to compensate the public utility for its costs. [NOTE: This section will be effective 7/1/2021.]

## ARTICLE 2 REPORTS, INVESTIGATIONS AND HEARINGS

### **37-2-201. Fixing time and place of public hearing; notice and conduct.**

Whenever the commission shall determine to conduct an investigation of any matter provided for in W.S. 37-1-101 through 37-3-114 and 37-12-201 through 37-12-213, either with or without complaint as in such chapter provided for, it shall fix a time and place for a public hearing of the matters under investigation, and shall notify, by registered letter requiring receipt, the complainant, the persons complained of and such other persons, as it may deem proper, of such time and place of hearing, at least twenty (20) days in advance thereof. At the hearing held pursuant to such notice, the commission, commissioner or commission employee authorized by order of the commission to conduct such hearing, may take such testimony as may be offered, or as they may desire, and may make such other and further investigation as in its opinion, is desirable.

### **37-2-202. Service of notice.**

Service on any person of any notice or order or other matter under the provisions of this act may be made by mailing such notice, or order or other matter, or a certified copy thereof, in a registered letter requiring receipt, directed to the public utility at the principal office of such public utility in this state.

**37-2-203. Separate hearings; hearings to be open; representation by attorney; reports, investigations.**

(a) When complaint is made of more than one matter or thing the commission may order separate hearings thereon and may hear and determine the several matters complained of separately and at such times as it may prescribe. All hearings conducted by the commission or commissioner shall be open to the public. In any hearing, proceeding or investigation conducted by the commission or commissioner, any party may be heard in person or by attorney.

(b) Within a time to be fixed by the commission, every public utility under the jurisdiction of this commission shall file an annual report with the commission, verified by the oath of the president, treasurer or general manager or receiver, if any, of such public utility, or by the person required to file the same. The verification shall be made by said official holding office, at the time of the filing of said report, and, if not made upon the knowledge of the person verifying the same, shall set forth the source of his information and the grounds of his beliefs as to any matters not stated to be verified upon his knowledge. The commission shall prescribe the form of such reports and the character of the information to be contained therein, and may from time to time make such changes and such additions in regard to form and contents thereof as it may deem proper and each year shall furnish a blank form for such annual reports to every such public utility. Such report shall also cover the period, and be filed at the time prescribed by the commission. The contents of such report and the form thereof shall conform in the case of interstate public utilities as nearly as may be to that required of interstate public utilities under the act of congress entitled "An act to regulate commerce", approved February fourth, eighteen hundred and eighty-seven [1887], and the acts amendatory thereof and supplemental thereto. The originals of said reports subscribed and sworn to as prescribed by law, shall be filed in the office of the commission. The commission may require, by order of any public utility or person, specific answers to questions upon which the commission may need information. If any public utility shall fail to make and file its annual report within the time ordered, or the time extended by the commission, it shall be subject to the penalty as provided for under W.S. 37-12-204.

(c) The commission shall, within its jurisdiction, have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by all



public utilities operating within the state. It may also in its discretion prescribe by order, forms of accounts, records and memoranda to be kept by such public utilities. Notice of alterations by the commission in the required method or form of keeping a system of accounts shall be given to such public utility by the commission at least six (6) months before the same shall take effect. Any other and additional forms of accounts, records and memoranda kept by such public utility shall be subject to examination by the commission. The system of accounts, established by the commission and the forms of accounts, records and memoranda prescribed by it shall in the case of interstate public utilities conform as nearly as may be to those prescribed by the surface transportation board under the act of congress, entitled "An act to regulate commerce", and the acts amendatory thereof and supplementary thereto.

(d) Every public utility shall report to the commission, under rules and regulations prescribed by the commission and harmonizing insofar as practicable with those of the surface transportation board, and of any other department of this state, every accident occurring upon the property of any public utility or directly or indirectly arising from or connected with the maintenance or operation of the plant, equipment, appliances, apparatus, property or facilities of such public utility resulting in loss of life or injury to person or property; provided, that whenever any accident occasions the loss of life or limb to any person, such public utility shall straightway advise the commission of the fact by the speediest available means of communication.

(e) The commission shall investigate the cause of all such accidents resulting in loss of life or injury to persons or property, as in the judgment of the commission requires investigation by it, and the commission shall have power to make such order with respect thereto, as it may deem just and reasonable.

(f) Nothing in this act in relation to service regulation or in relation to reports or the methods of keeping accounts, records or books shall apply to any common carrier engaged in interstate commerce; provided, that, the department of transportation may, upon proper notice, require any common carrier to furnish to the department of transportation copies of any reports as it may designate which any common carrier may have filed with the surface transportation board.

#### **37-2-204. Rules for proceedings and investigations.**

The commission may from time to time make, publish or amend rules for the order and regulation of all proceedings and investigations which under the provisions of this act it is authorized to conduct.

**37-2-205. Certificate of convenience and necessity; hearings.**

(a) Except as provided in this subsection, no public utility shall begin construction or complete the purchase of a line or plant, or of any extension of a line or material addition to a plant, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction or purchase. This act shall not be construed to require any public utility operating outside of a city or town to secure a certificate for an extension into an area within which it has lawfully commenced operation, or for an extension into territory contiguous to its line or plant for which no certificate is in force and is not served by a public utility of like character or for any extension within or to territory already served by it, necessary in the ordinary course of its business. If any public utility, in constructing or extending its line or plant interferes or is about to interfere with the operation of the line or plant of any other public utility already authorized or constructed, the commission on complaint of the public utility claiming to be injuriously affected, may after hearing make such order and prescribe the terms and conditions for the location of the lines or plants affected, as to it are just and reasonable. The power companies may, without the certificate, increase capacity of existing plants. For purposes of this subsection, "material addition" shall not include an addition to a plant that is necessary to serve load growth, provided that the capital investment in the addition shall not exceed one percent (1%) of the total capital investment in the plant on which return is earned, that is assigned or allocated to Wyoming customers, based on the public utility's most recent rate case determination.

(b) No public utility shall henceforth exercise any right or privilege or obtain a franchise or permit to exercise such right or privilege from a municipality or county, without having first obtained from the commission a certificate that public convenience and necessity require the exercise of such right and privilege; provided, that when the commission shall find, after hearing, that a public utility has heretofore begun actual

construction work and is prosecuting such work in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed to the completion of such work, and may, after such completion exercise such right or privilege; and provided, further, that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state, nor impair any vested right in any franchise or permit heretofore granted.

(c) Before any certificate may issue, under this section, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be filed in the office of the commission. The commission shall have power, after hearing involving the financial ability and good faith of the applicant and the necessity of additional service in the community, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue to it for the construction of a portion only of the contemplated line, plant, or system, or of a portion only, of the contemplated line, plant, system or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require.

(d) Upon its own motion, or on complaint of any person the commission shall have power to investigate and determine whether the competitive rates, charges and service existing between any public utilities are fair, just and reasonable, after hearing thereon to determine, fix and order such rates, charges, regulations and remedies as will establish reasonable and just rates, between said competing public utilities, and between said public utilities and their customers and patrons.

(e) Where a certificate for the construction and operation of a high voltage electric transmission line of 230 KV or greater is required, the public service commission shall publish notice of application in a newspaper of general circulation in each county where the line will be constructed. The public service commission shall give actual notice of hearing on the application by registered mail at the applicant's expense to each landowner who may be affected. The notice of hearing shall be given at least thirty (30) days before the hearing is held and shall contain a summary of the pertinent facts about the application.

(f) In the case of a certificate for the construction of a high voltage electric transmission line of 230 KV or greater, the issuance of the certificate shall be conditioned so that no construction of the line is authorized until all right-of-way for the line has been acquired.

(g) Any electric utility which provided service to any part of the annexed area prior to annexation and which does not receive a franchise from the annexing municipality to serve the annexed area shall receive just compensation from the public or private utility franchised to serve the annexed area. If the affected utilities cannot agree on just compensation within thirty (30) days after the franchise has been issued and become final after any challenge thereto, the affected utilities shall submit the matter to arbitration before the public service commission pursuant to W.S. 37-2-113. Upon conclusion of the arbitration proceedings and payment of the compensation determined to be just, ownership of the facilities shall be transferred to the acquiring utility.

(h) Notwithstanding subsection (f) of this section, the commission may authorize the construction of segments of a transmission line before right-of-way is acquired for an entire transmission line provided that:

(i) The public utility has satisfied all requirements for the issuance of a certificate except subsection (f) of this section;

(ii) The public utility has obtained all required right-of-way within the authorized segment;

(iii) Authorization to construct the transmission line within the authorized segment shall not exceed ten (10) miles from the advancing end of an authorized segment, provided that the commission may waive the ten (10) mile limitation if the transmission line segment is:

(A) Located entirely between substations or switching stations;

(B) Located between a substation or switching station and the state line; or

(C) Located entirely within state or federal land.

(iv) Notice has been provided to all private property owners along the entire length of the proposed transmission line;

(v) The commission provides an opportunity for private property owners who are adversely affected by the location of the segment an opportunity to be heard before the authorization of a segment concerning the location of the segment or the impact of any future extension of the transmission line.

(j) Unless otherwise determined by the commission, issuance of a certificate of convenience and necessity shall not confer the right to recover a specific amount of the costs of the construction or purchase in rates charged to Wyoming customers. Actual costs of the construction or purchase may be considered by the commission in a separate rate case determination.

**37-2-205.1. Nonsitus certificate of public convenience and necessity.**

(a) Subject to subsection (b) of this section and unless otherwise waived by the commission, no public utility shall begin construction or complete the purchase of a line or plant, or of any extension of a line or material addition to a plant, outside the state of Wyoming without having first obtained from the commission a nonsitus certificate of public convenience and necessity determining that the present or future need for the nonsitus resource is prudent and in the public interest.

(b) A certificate shall only be required under this section if:

(i) The nonsitus resource is intended by the public utility to be a capital investment in a plant on which return is earned in Wyoming; and

(ii) The capital investment in the nonsitus resource exceeds one percent (1%) of the total capital investment in the plant on which return is earned, that is assigned or allocated to Wyoming customers, based on the public utility's most recent general rate case determination.

(c) No public utility shall include a capital investment in a nonsitus resource in rates charged to Wyoming customers without having first obtained from the commission a nonsitus

certificate of public convenience and necessity pursuant to this section.

(d) Unless otherwise determined by the commission, issuance of a nonsitus certificate of public convenience and necessity shall not confer the right to recover a specific amount of the costs of the nonsitus resource in rates charged to Wyoming customers. Actual costs of the capital investment may be considered by the commission in a separate rate case determination.

(e) As used in this section:

(i) "Nonsitus resource" means construction or complete the purchase of a line or plant, or of any extension of a line or material addition to a plant, outside the state of Wyoming;

(ii) "Public utility" shall not include any cooperative electric utility as defined in W.S. 37-17-101(a) (i) that is exempt from public service commission retail rate regulation.

**37-2-206. Powers of commission; court to compel obedience to lawful orders.**

The commission, commissioner or commission employee acting in the capacity of a hearing officer for the purpose mentioned in W.S. 37-1-101 through 37-3-114, and 37-12-201 through 37-12-213, may administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony. If any person fails to comply with any lawful order of the commission, commissioner or commission employee acting in the capacity of a hearing officer, or any subpoena, or if any witness refuses to testify to any matter regarding which he may be interrogated lawfully, the district court of any county on application of the commission, a commissioner or commission employee acting in the capacity of a hearing officer, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify therein.

**37-2-207. Attendance of witnesses, production of books.**

Any party to a proceeding before the commission with the consent of the commission shall have process to enforce the attendance

of witnesses, and the production of books, papers, maps, contracts, reports and records of every description affecting the subject matter of the investigation.

**37-2-208. Witness fees.**

Witnesses who are summoned before the commission shall be paid the same fees and mileage that are paid to witnesses in the district courts of this state. Witnesses whose depositions are taken pursuant to the provisions of this act and the magistrate or officer taking the same shall be entitled severally to the same fees as are paid for like services in the district courts of the state. All such fees shall be paid in the first instance by the party requesting the process and shall be taxed the same as costs and included in the order of the commission.

**37-2-209. Plea of self-incrimination unavailable; use of testimony in criminal prosecution prohibited; exception.**

No person shall be excused from testifying or from producing books, accounts and papers in any investigation or inquiry by or hearing before the commission or any commissioner, when ordered so to do, based upon or growing out of any violation of the provisions of this act, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempt from prosecution or punishment for perjury in so testifying.

**37-2-210. Depositions; rules as to hearings and investigations.**

The commission, or with the consent of the commission, any party to the proceedings before the commission, may, in any investigation, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the courts of this state. All hearings and investigations before the commission shall be conducted under such rules as the commission may prescribe and adopt.

**37-2-211. Minutes of hearings; parties entitled to transcripts.**

The minutes of all hearings had before or by the commission shall be kept, and shall include the names of all persons who appear and witnesses who are sworn, with the identification of any documentary evidence produced. Parties to any proceeding before the commission shall be entitled to transcripts of the testimony taken in such proceedings, subject to such reasonable rulings and regulations as the commission may prescribe.

**37-2-212. Orders to be in writing; opinions to be published.**

Every order of the commission shall be in writing and in cases of importance may be accompanied by an opinion setting forth in brief the facts on which the commission has based its order. The commission shall provide for the publication from time to time and for the assembling of its opinions and orders.

**37-2-213. Orders effective within 30 days; notice to parties; amendment or annulment of order.**

Unless a different time is prescribed by the commission, every order of the commission shall be effective within thirty (30) days after the service thereof. Straightway after the entry of record of any order of the commission, notice thereof shall be given to every party required to obey the order. At any time after the entry thereof the commission in the manner provided for the making thereof may alter, amend, annul or otherwise modify any order.

**37-2-214. Rehearing.**

At any time after an order has been made by the commission any person interested therein may apply for a rehearing in respect to any matter determined therein and the commission shall grant and hold a rehearing if in its judgment sufficient reason therefor be made to appear, which rehearing shall be subject to rules as the commission may prescribe. Applications for rehearing shall stay the effect of any order or decision of the commission only as to the portion of the order addressed in the rehearing application until the commission denies the application or enters an order following rehearing, whichever last occurs, provided, however, that upon the request of any party and a showing of good cause therefor, the commission may vacate the stay and allow the order or decision to remain in effect. An order or decision made after the rehearing vacating, amending or modifying the original order or decision shall not,



as to the matter considered on rehearing, be open to a further application for rehearing, and shall have the same force and effect as the original order or decision.

**37-2-215. Prosecution of violations.**

Whenever the commission shall be of the opinion that any public utility is failing or omitting, or is about to fail or omit to do anything required of it by this act, or by any order of the commission, or is doing anything or is about to do anything or permit anything to be done contrary to or in violation of the provisions of this act, or of any order of the commission, it may begin and prosecute in any district court of this state an appropriate action in law or in equity to remedy or to prevent such real or proposed violation.

**37-2-216. Venue.**

All provisions of the law of this state relating to venue shall apply to proceedings under this act, and in addition any action at law or in equity to enforce the provisions of this act, or of any order of the commission, or to prevent any proposed violation thereof, may be commenced in the district court in and for the county in which the principal office of the commission is located or in the county where the principal office in the state of the public utility is located.

**37-2-217. Jurisdiction.**

All provisions of the laws of this state prescribing the duties and jurisdiction of the courts thereof shall apply to this act, and in addition it shall be the duty of the district court of the county in which the commission has its principal office to entertain and determine all actions commenced under the provisions of this act, or of any order of the commission by mandamus, or by injunctions, or by any other appropriate remedy.

**37-2-218. Refund of excess charges.**

Whenever any public utility shall charge, collect or receive any rate or rates in excess of the rates fixed in the schedule of charges then in force, as provided in this act, it shall be the duty of such public utility straightway to refund to the person paying such excessive rates the difference between the lawful rates fixed in such schedule and the rates so charged, collected or received.

**37-2-219. Who may appeal commission decision or action; manner and extent of appeal.**

Any party in interest or any person or party authorized under W.S. 37-2-118, to file an original complaint before the commission, may appeal from a final decision or other commission action or inaction, in the same manner, and to the same extent, as provided by the Wyoming Administrative Procedure Act.

**37-2-220. Process, evidence as in civil actions.**

In all actions and proceedings in court arising under this act, all processes shall be served and the practice and rules of evidence shall be the same as in civil actions or in suits in equity, except as otherwise herein provided. Every sheriff or other officer empowered to execute civil process shall execute any process issued under the provisions of this act and shall receive such compensation therefor, as may be prescribed by law for similar services.

**37-2-221. Injunction.**

No injunction shall issue suspending or staying any order of the commission, except upon application to the district court in and for the county in which the commission has its principal office, or the presiding judge thereof, or the federal court or judge having jurisdiction there, and upon notice to the commission and hearing.

**37-2-222. Undercharges for electricity and gas; collection permitted; restrictions.**

(a) Whenever a public utility supplying gas, natural gas or electricity has undercharged any customer as the result of a meter or metering inaccuracy or other continuing problem under its control, the utility may only bill the customer for the amount of the unmetered gas or electricity rendered in the one hundred eighty-three (183) days immediately prior to the date the utility remedies the meter inaccuracy. The maximum portion of the undercharge for unmetered gas or electricity rendered that may be recovered from the customer in any billing month shall be determined by dividing the amount of the undercharge by twelve (12) and the quotient is the maximum portion of the undercharge that the utility may, subject to subsection (c) of this section, recover from the customer in any billing month, in addition to either regular monthly charges of any type or regular level payment amounts billed in accordance with an

agreement between the customer and the utility. Subject to subsection (c) of this section, the time period over which the undercharge may be collected shall be twelve (12) consecutive months.

(b) No utility shall recover any interest charge, service charge or fee, whether or not a percentage is utilized for its computation, for billings made pursuant to this section.

(c) Nothing in this section shall be construed to prevent the customer from paying an undercharge or any portion thereof in a time shorter than that stated in this section. Nothing in this section shall be construed to prevent a gas, natural gas or electric utility from collecting an undercharge or any portion thereof in a time longer than that stated in this section.

(d) A gas, natural gas or electric utility may not collect any amount otherwise permitted to be collected under this section unless the utility, in the first bill the purpose of which is to collect the amount for unmetered gas or electric service, states the entire amount that it seeks to collect.

(e) No gas, natural gas or electric utility required to follow this section in order to collect an undercharge from a customer may shut off the service of the customer except for safety reasons, except in the event of a request by the customer and except to enforce a shut-off provision in its filed tariffs with the commission that is triggered by nonpayment by a customer of a lawfully owing past due amount.

(f) This section does not apply to any act that is an offense under W.S. 37-12-111 through 37-12-118, or where a physical act of a customer or its agent causes inaccurate or no recording of the meter reading or inaccurate or no measurement of the gas or electricity rendered.

### ARTICLE 3 TELEPHONE ASSISTANCE PROGRAM

**37-2-301. Repealed by Laws 2015, ch. 54, § 2.**

**37-2-302. Repealed by Laws 2015, ch. 54, § 2.**

**37-2-303. Repealed by Laws 2015, ch. 54, § 2.**

**37-2-304. Repealed by Laws 2015, ch. 54, § 2.**

**37-2-305. Repealed by Laws 2015, ch. 54, § 2.**

**37-2-306. Repealed by Laws 2015, ch. 54, § 2.**

ARTICLE 4  
CONSUMER ADVOCATE

**37-2-401. Office of consumer advocate created; purpose.**

The office of consumer advocate is created as a separate division within the public service commission. The office of consumer advocate shall represent the interests of Wyoming citizens and all classes of utility customers in matters involving public utilities. In the exercise of its powers the office of the consumer advocate shall consider all relevant factors, including, but not limited to, the provision of safe, efficient and reliable utility services at just and reasonable prices.

**37-2-402. Consumer advocate; powers and duties.**

(a) The consumer advocate shall have the power to:

(i) Act as a party in any proceeding before the commission, with the same rights and subject to the same obligations and requirements and limitations on ex parte communications, including confidentiality requirements, as other parties to the proceeding;

(ii) Appeal actions of the commission in accordance with W.S. 37-2-219;

(iii) Seek permission to appear as amicus curiae in any court proceeding in order to accomplish the purposes specified in this article;

(iv) Provide information and assistance to individual consumers regarding proceedings within the jurisdiction of the commission.

(b) In any commission docketed case initiated by the regulated company in which the consumer advocate is a party, the consumer advocate shall have the same access to books, maps, contracts, reports and records of every description as the commission. For all other instances, the consumer advocate shall have the same access as other parties.

(c) The consumer advocate shall not advocate for or on behalf of any individual, organization or entity.

(d) The consumer advocate may enter into stipulations with other parties in any proceeding to balance the interests of those it represents with the interests of the public utilities as means of minimizing the weaknesses of the adversarial process, improving the quality of resulting decisions in a highly technical environment and minimizing the cost of regulation.

(e) In any case where the office of consumer advocate does not intervene, the commission shall have the authority to authorize its staff to participate as a party before the commission. The commission shall exercise this authority not later than five (5) business days following the deadline for any intervention.

**37-2-403. Consumer advocate; administrator and staff.**

The administrative head of the division shall be an administrator appointed by the governor with senate confirmation. The administrator shall employ and supervise personnel as authorized by legislative appropriation. Except as provided in W.S. 37-2-404 the employees of the office of consumer advocate shall not be supervised or directed by the commission.

**37-2-404. Consumer advocate; funding and expenses.**

(a) Funding for the office of consumer advocate shall be included in the commission's budget and collected through the uniform utility assessment. Incidental administrative and clerical services for the office of consumer advocate shall be provided by the commission. The commission shall decide all matters of shared administrative and clerical personnel.

(b) This article is repealed effective July 1, 2023.

CHAPTER 3  
Rates, Interchange of Services and Safety

ARTICLE 1  
IN GENERAL

**37-3-101. Rates to be just, reasonable and uniform; exceptions.**

All rates shall be just and reasonable, and all unjust and unreasonable rates are prohibited. A rate shall not be considered unjust or unreasonable on the basis that it is innovative in form or in substance, that it takes into consideration competitive marketplace elements or that it provides for incentives to a public utility. Except as otherwise provided in W.S. 15-7-407, no public utility shall in any manner charge, demand, collect or receive from any person greater or less or different compensation for any service rendered or to be rendered by the public utility than is charged, demanded, collected or received by the public utility from any other person for a like and contemporaneous service under similar circumstances and conditions. The commission may determine that rates for the same service may vary depending on cost, the competitive marketplace, the need for universally available and affordable service, the need for contribution to the joint and common costs of the public utility, volume and other discounts, and other reasonable business practices. Nothing in this title shall prohibit any public utility from furnishing free or reduced rate service to its current or pensioned employees and dependent family members under rates approved by the commission.

**37-3-102. Only prescribed rates to be charged.**

No public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person a greater or less or different compensation for any service rendered or to be rendered by such public utility than that prescribed in the schedules of such public utility then filed and published in the manner provided in this act, nor shall any person receive or accept any service from a public utility for a compensation greater, less or in any way different from that prescribed in such schedules.

**37-3-103. Repealed by Laws 1995, ch. 192, § 3.**

**37-3-104. Repealed by Laws 1995, ch. 192, § 3.**

**37-3-105. Repealed By Laws 2012, Ch. 84, § 104.**

**37-3-106. Temporary suspension of rates; burden of proof; notice of rate changes; bonding; refunding of amounts collected in excess of final rates.**

(a) At any hearing as provided in this act involving an increase in rates or charges sought by a public utility, the

burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.

(b) Unless the commission otherwise orders, no public utility shall make any change in any rate which has been duly established except after thirty (30) 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 rates will go into effect. The utility shall also give such notice of the proposed changes to other interested persons as the commission in its discretion may direct. All proposed changes shall be shown by filing new tariffs which shall be kept open to public inspection. When the commission establishes any rate which is innovative in form or substance, takes into consideration competitive marketplace elements or provides for incentives to a public utility, the rate may contain any provision for subsequent notice or the absence thereof which is supported by the public interest.

(c) Whenever there is filed with the commission by any public utility any application or tariff proposing a new rate or rates, the commission may, either upon complaint or upon its own initiative, initiate an investigation, hearing, or both, concerning the lawfulness of such rate or rates. Pending its decision thereon, the commission may suspend such rate or rates, before they become effective but not for a longer initial period than six (6) months beyond the time when such rate or rates would otherwise go into effect. If the commission shall thereafter find that a longer time will be required, the commission may extend the period of suspension for an additional period or periods not exceeding in the aggregate, three (3) months.

(d) The public utility may file an application requesting, and the commission may order such suspended rate or rates or any portion thereof to be put into effect at any time, in which event the commission may require a bond which shall secure a refund to persons entitled thereto of the amount, if any, finally determined to be excessive. The application and the bond in terms, amount and sureties shall be subject to the commission's approval.

(e) As ordered by the commission, the utility shall promptly refund to persons entitled thereto all amounts collected by it in excess of the final rates approved by the commission plus reasonable interest at a rate to be determined by the commission, and as ordered by the commission and upon

such time and conditions as the commission shall specify, shall promptly pay all amounts not so refunded to the general fund of Wyoming.

(f) In any case involving a proposed change in rates, the commission may permit the utility to make effective without suspension only that portion of the change which the commission may determine to be proper under the circumstances.

**37-3-107. Rates for joint service by public utilities.**

When joint service is participated in by two or more public utilities the commission after hearing on complaint or on its own motion without complaint, may ascertain, determine, and fix for such services just and reasonable rates, which shall be charged, enforced, collected and observed by such public utilities.

**37-3-108. Apportionment of joint rates.**

Whenever the public utilities involved shall fail to agree among themselves upon the apportionment or division of any joint rate established by the commission or ordered by the commission substituted for any joint rate found to violate any provision of this act, the commission may issue a supplemental order declaring the apportionment or division of such joint rate.

**37-3-109. Investigation of interstate rates; application for relief.**

The commission may investigate all existing or proposed interstate rates, where any act under such rate shall or may take place within this state. When such rates are, in the opinion of the commission, unjust, unreasonable, unjustly discriminatory, unduly preferential or otherwise, or in any respect in violation of the provisions of the act to regulate commerce or of any other act of congress or in conflict with the rules and orders of the surface transportation board or any other department of the federal government, the commission may apply for relief by petition or otherwise to the surface transportation board or to any other department of the federal government or to any court of competent jurisdiction.

**37-3-110. Schedules of rates to be filed and available to public; forms prescribed to conform to federal forms.**



Within a time to be fixed by the commission, every public utility shall file with the commission, and keep open to public inspection as this commission may direct, schedules showing all rates for every service rendered or to be rendered by it. The commission may determine and prescribe the form of the schedules required by this act to be filed with the commission and kept open to public inspection and all changes therein, and change the form from time to time if it shall be found expedient; provided, however, that in respect to public utilities subject to act of congress to regulate commerce and any amendments thereof, the commission shall have such form or forms prescribed by it conform to any similar form prescribed by the surface transportation board.

**37-3-111. Contracts to be filed; statements of free or reduced rate service required.**

Every public utility shall file with the commission copies of contracts, agreements or arrangements to which it may be a party, as the commission may designate. Every public utility shall, whenever required by the commission, file with the commission statements of passes, tickets, mileage books or franks, issued by the public utility, free or at rates lower than those open to the public in general, or of other authorization of service free or at reduced rates, these statements to cover the periods of time and classes of service, and to include information connected with the issuance thereof, as the commission may prescribe.

**37-3-112. Service to be adequate and safe; regulations to be just and reasonable; unjust discrimination or undue preference as to service prohibited.**

The service and facilities of every public utility shall be adequate and safe and every service regulation shall be just and reasonable. The commission shall have the authority to investigate, consider and determine standards for availability or reliability of service that are objectively established by rule consistent with commonly accepted industry standards. It shall be unlawful for any public utility to make or permit to exist any unjust discrimination or undue preference with respect to its service, facilities or service regulations. This provision shall not be construed as prohibiting a public utility from establishing classifications which distinguish among its various services, facilities or service regulations if the classifications are not unduly discriminatory among the customers in the same class of service.

**37-3-113. Interchange and transfer of messages, service and other facilities.**

(a) Every public utility shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, property, cars loaded or empty, messages, service, or other facilities between the lines, plants or systems owned, operated, controlled or leased by it, and the lines, plants or systems of every other public utility, and shall make such interchange and transfer promptly without discrimination between shippers, passengers, carriers and all persons either as to compensation charged, service and facilities rendered or afforded. Every public utility operating within the state shall receive and transmit without delay or discrimination, any message, service, passenger or property or facility of or from every other similar public utility with whose line or plant or system a physical connection may have been made. But this act shall not be construed as requiring any public utility to give the use of its tracks or terminal facilities to another public utility engaged in like business.

(b) Nothing in this section contained shall be construed as in anywise limiting or modifying the duty of a public utility to establish joint rates, fares and charges for the transportation of passengers, property, messages, service or other facilities over the lines, plants or systems owned, operated, controlled or leased by it and the lines, plants or systems of other similar public utility, nor as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares and charges, such public utilities have failed to agree upon such use or the terms or conditions of compensation for the same, the commission may by order direct that such use may be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for such joint use. Said commission however, shall not direct or sanction such joint use except in case of clear necessity.

**37-3-114. Safety standards.**

(a) All instrumentalities, equipment, plant and facilities furnished, employed or used by any public utility, shall in all respects be adequate and efficient, and the construction, operation and use thereof, shall be such as shall prevent injury to property, and as shall promote the safety, health, comfort, and convenience of its patrons, employees and the public, and to this end, the commission may make rules and regulations

governing the construction, maintenance and operation of telephone, telegraph, trolley, electric light and power lines hereafter built within this state, and shall by rule adopt as the standard of such construction, operation and maintenance the provisions of the current edition of the National Electrical Safety Code; provided that when electric light and power lines use Y-connected circuits with neutral conductors effectively grounded throughout their length, minimum vertical clearance of wires or neutral conductors over ground or rails shall be determined by the voltage between wires and ground, if such voltage does not exceed fifteen thousand (15,000) volts. Said commission shall also have the power to direct the manner by which all utilities shall cross public highways and other utilities and by which public highways shall cross the utilities and to prescribe methods of approach and crossing that shall secure safety to the public; provided, however, that with respect to approaches and crossings of overhead lines, the provisions of the current edition of the National Electrical Safety Code above prescribed shall apply, except as provided herein with respect to Y-connected circuits with neutral conductors effectively grounded throughout their length where the voltage does not exceed fifteen thousand (15,000) volts. At every such crossing, in case the persons interested do not themselves agree, it shall be the duty of the commission to apportion between the parties, in accordance with justice, the costs and expenses of installing and maintaining such crossings. In case expense is apportioned to be paid by a public highway the portion so to be paid by such highway shall be paid by the city or town in case the crossing line is within the boundaries of a city or town, and by the county in which the crossing is situated in case the same is not within any city or town. Provided that all such equipment, plant, and facilities shall be maintained in such working condition that will provide a minimum of interference with radio and television reception to residents and highway users in the immediate area of such equipment, plant, and facilities.

(b) This section shall not be construed as creating neither prohibition nor obligation or duty of inspection or maintenance by an electric or telecommunications public utility for facilities or equipment not owned by the public utility.

**37-3-115. Rates; less expensive source of supply.**

In the case of a utility furnishing natural gas, if the utility decreases its cost of natural gas, not less than ninety percent (90%) of the decrease in the cost shall be passed on to the

consumer and in addition to other factors allowed by the commission in setting rates the commission may allow the utility to add to its rate not more than ten percent (10%) of the difference between its previous cost for natural gas and its new cost for natural gas.

**37-3-116. Electric utility service agreements.**

(a) An electric utility may enter into a service agreement as specified in subsection (d) of this section, provided that the terms and conditions of the agreement:

(i) Are expected to result in revenue to the utility in an amount that exceeds the expected cost to serve the customer's projected electric usage;

(ii) Shall not result in obligating other customers for any utility investments or any direct, indirect or reasonably assigned costs related to the utility's service to the customer under the agreement. For purposes of this paragraph, investments and costs include known or reasonably ascertainable expenses for power supply, electric transmission and distribution and administrative, general, financial and other costs related to the agreement;

(iii) Provide benefits to other customers without imposing additional current or future costs.

(b) An electric utility shall retain for its owners any profits or losses that result from entering into an agreement with a customer pursuant to this section.

(c) Regulated utilities entering into agreements under this section shall report to the commission at least once every three (3) years as to the impacts on other rate payers.

(d) This section shall only apply to service agreements:

(i) Between an electric utility and a customer with projected electric usage greater than five (5) megawatts;

(ii) For services provided under a tariff approved by the commission consistent with its authority under W.S. 37-2-121.

**37-3-117. Limitation for recovery of costs associated with electric generation built to replace retiring coal fired generation facility.**

(a) Notwithstanding any other provision of this chapter, the rates charged by an electric public utility, other than a cooperative electric utility, shall not include any recovery of or earnings on the capital costs associated with new electric generation facilities built, in whole or in part, to replace the electricity generated from one (1) or more coal fired electric generating facilities located in Wyoming and retired on or after January 1, 2022, unless the commission has determined that the public utility that owned the retired coal fired electric generation facility made a good faith effort to sell the facility to another person prior to its retirement and that the public utility did not refuse a reasonable offer to purchase the facility or the commission determines that, if a reasonable offer was received, the sale was not completed for a reason beyond the reasonable control of the public utility.

Note: Effective 7/1/2021 this section will read as:

Notwithstanding any other provision of this chapter:

(i) Any electric public utility seeking to retire a coal fired electric generation facility shall first make a good faith effort to sell the facility for continued use as a coal fired electric generation facility; [Note: Effective 7/1/2021 this paragraph will read as:]

(ii) The rates charged by an electric public utility, other than a cooperative electric utility, shall not include any recovery of or earnings on the capital costs associated with new electric generation facilities built, in whole or in part, to replace the electricity generated from one (1) or more coal fired electric generating facilities located in Wyoming and retired on or after January 1, 2022, unless the commission has determined that the public utility that owned the retired coal fired electric generation facility made a good faith effort to sell the facility to another person prior to its retirement and that the public utility did not refuse a reasonable offer to purchase the facility or the commission determines that, if a reasonable offer was received, the sale was not completed for a reason beyond the reasonable control of the public utility. [Note: Effective 7/1/2021 this paragraph will read as:]

(b) In determining whether the public utility made a good faith effort to sell the retired coal fired electric generation facility under this section the commission shall consider:

(i) Whether the public utility provided sufficient time prior to the facility's retirement for potential purchasers to evaluate purchasing the facility;

(ii) Whether the public utility used reasonable efforts to make potential purchasers aware of the opportunity to purchase the facility;

(iii) Whether the public utility reasonably evaluated any offers received by the public utility for the purchase of the facility; and

(iv) Any other factor deemed appropriate by the commission.

(c) In determining whether an offer to purchase a coal fired electric generation facility under this section was reasonable the commission shall consider:

(i) Whether accepting the offer to purchase the retired facility would have reduced costs to the public utility's customers as compared to retiring the facility;

(ii) Whether accepting the offer to purchase the retired facility would have reduced risks to the public utility's customers as compared to retiring the facility including any diminished environmental remediation risks; and

(iii) Whether accepting the offer to purchase the retired facility would have been in the public interest.

(d) Upon application by a public utility, the commission may approve procedures for the solicitation and review of offers to purchase an otherwise retiring electric generation facility in advance of a proposed retirement. If the public utility follows the procedures approved by the commission to solicit and review offers to purchase an otherwise retiring electric generation facility under this subsection, there shall be no limitation under this section for recovery of costs or earnings associated with electric generation built to replace a retired coal fired electric generation facility.

(e) Any agreement between a public utility and another person for the sale of an otherwise retiring coal fired electric generation facility shall not be effective until approved by the commission. In reviewing the agreement the commission shall consider:

(i) Whether the proposed purchaser has, or has contracted for, financial, technical and managerial abilities sufficient to reasonably operate and maintain the facility;

(ii) Whether the proposed purchaser has, or has contracted for, financial, technical and managerial abilities sufficient to reasonably decommission and retire the facility if and to the extent the facility is decommissioned and retired;

(iii) Whether the proposed purchaser has, or has contracted for, financial, technical and managerial abilities sufficient to reasonably satisfy any environmental obligations associated with the operation, maintenance or potential retirement of the facility;

(iv) If the coal fired electric generation facility is comprised of one (1) or more generation units at a larger power plant where the public utility will continue to own and operate one (1) or more generation units, whether the proposed purchaser and the public utility have made reasonable contractual arrangements for the sharing of the costs associated with any joint or common facilities at the plant;

(v) Whether the proposed purchaser has agreed to reasonable terms and conditions for environmental remediation;

(vi) Whether the proposed purchase agreement contains a provision allowing the public utility, with commission approval, to revoke the sale in the event the purchaser is unable to timely obtain all necessary local, state and federal permits;

(vii) Whether the proposed purchase agreement contains a provision to allow the public utility, with commission approval, to revoke the sale in the event the purchaser is unable to timely enter into any necessary operational and labor agreements;

(viii) Whether the proposed purchaser has agreed in the purchase agreement to obtain commission approval prior to transferring, in whole or in part, the facility to any other

person so that the commission may ensure that the proposed new purchaser and the new purchase agreement meet the requirements of this section; and

(ix) Any other factor deemed appropriate by the commission.

## ARTICLE 2 NATURAL GAS STORAGE LIMITS AND RATES

**37-3-201. Limit on natural gas storage; sale of excess; rates; removal of gas for purposes of evading article prohibited.**

(a) Except as otherwise provided in subsection (b) of this section, no natural gas utility shall include in its rates any charge for any gas maintained in storage in excess of the greater of the amount of stored gas needed to create storage conditions capable of establishing delivery of two and seventy-five hundredths (2.75) times the average annual consumption of natural gas by the tariff customers of that natural gas utility for the immediately preceding three (3) calendar years except the commission may establish a lower limit on the amount of gas in storage upon which a natural gas utility can earn a rate of return or the commission may establish a higher limit on the amount of gas in storage upon which a natural gas utility can earn a rate of return if doing so will reduce rates to customers or prevent likely natural gas shortages or enable the utility to meet peaking requirements.

(b) Any natural gas held in storage in excess of the limit specified in subsection (a) of this section shall be included in the gas sold to the utility's Wyoming tariff customers in a manner and at rates as determined by the commission. The commission may include in the gas to be sold to the tariff customers gas upon which no rate of return has been received provided that the inclusion is in the public interest and is requested by the utility. To the extent excess gas in storage on which a rate of return has been received is available, at least twenty-five percent (25%) of the gas sold to the tariff customers shall be from that excess storage unless the utility chooses to include a higher percentage. The utility shall be permitted to earn a rate of return on the excess gas in storage until the gas is sold to customers as provided by this subsection.



(c) No natural gas may be removed from storage or from the rate base for the purposes of evading the requirements of this article.

(d) No natural gas held in storage upon which the utility has earned a rate of return shall be sold outside the Wyoming service territory of the utility except by order of the commission after public hearing.

(e) Any payment made pursuant to a take or pay contract for gas not taken due to any provision of this act may not be included in any natural gas tariff approved by the public service commission.

(f) For the purposes of this article the public service commission may treat utilities which share storage facilities and are subsidiaries controlled by the same company as a single natural gas utility.

(g) No provision of this bill shall be implemented unless the public service commission determines that such implementation will not cause increased rates for Wyoming consumers resulting from adverse federal income tax consequences.

(h) No provision of this article shall be implemented unless the public service commission determines that the resulting tariff rates will be lower and more in the public interest than the tariff rates which the commission may put into effect through commission action on any pending application before the commission addressing natural gas storage.

**37-3-202. Commission duty to enforce.**

(a) The public service commission shall:

(i) Review the quantities of gas stored by natural gas utilities and included in the rate base of those utilities; and

(ii) Bring those utilities into compliance with W.S. 37-3-201.

**37-3-203. Appeals from commission orders; refunds if orders upheld; utility duties.**

(a) If any natural gas utility contests or appeals any public service commission order pursuant to this article and the order is suspended pending the prosecution of the appeal and the order is upheld in whole or in part:

(i) A refund if practical shall be paid to each customer who received gas service from the original proposed effective date of the order;

(ii) The refund shall be equal to the difference between the price of gas actually charged and the price that would have been charged under the order;

(iii) The utility shall keep accurate, detailed records of which customers are entitled to refunds; and

(iv) The refund shall be made no later than thirty (30) days after a final judgment upholding the public service commission order. Refunds shall be made pursuant to public service commission order.

**37-3-204. Repealed By Laws 2011, Ch. 52, § 1.**

**37-3-205. Prohibition against recovery of cost of stored gas.**

A natural gas utility shall not be permitted to recover from its customers any cost related to any natural gas in storage upon which the utility was not permitted by the public service commission to earn a rate of return.

### ARTICLE 3 HIGH VOLTAGE LINE SAFETY

**37-3-301. Short title.**

This act shall be known and may be cited as the "Wyoming High Voltage Power Lines and Safety Restrictions Act."

**37-3-302. Definitions.**

(a) As used in this act:

(i) "Authorized person" means:

(A) An employee of a public utility which produces, transmits or delivers electricity;

(B) An employee of a public utility which provides and whose work relates to communication services or state, county or municipal agencies which have authorized circuit construction on or near the poles or structures of a public utility;

(C) An employee of an industrial plant whose work relates to the electrical system of the industrial plant;

(D) An employee of a cable television or communication services company or an employee of a contractor of a cable television or communication services company if specifically authorized by the owner of the poles to make cable television or communication services attachments; or

(E) An employee or agent of state, county or municipal agencies which have or whose work relates to overhead electrical lines or circuit construction or conductors on poles or structures of any type.

(ii) "High voltage" means voltage in excess of six hundred (600) volts measured between conductors or between a conductor and the ground;

(iii) "Overhead line" means all bare or insulated electrical conductors installed above ground;

(iv) "Person" or "business entity" means those parties who contract to perform any function or activity upon any land, building, highway or other premises, excluding those parties providing emergency services including emergency rescue operations and fire protection services;

(v) "Public utility" means a public utility as defined in W.S. 37-1-101(a)(vi) which owns or operates a high voltage overhead line;

(vi) "This act" means W.S. 37-3-301 through 37-3-306.

**37-3-303. Activity near overhead line; safety restrictions.**

(a) Unless danger against contact with high voltage overhead lines has been effectively guarded against as provided by W.S. 37-3-304 a person or business entity, individually or

through an agent or employee or as an agent or employee, shall not:

(i) Require any other person to perform any act if at any time during the performance of the act it is possible that the actor could move or be moved closer to any high voltage overhead line or if it is possible that any part of any tool or material used by the actor could be moved closer to any high voltage overhead line during the performance of the act than the following clearances:

(A) For lines rated fifty (50) kilovolts or less, six (6) feet of clearance;

(B) For lines rated over fifty (50) kilovolts, six (6) feet plus four-tenths (.4) of an inch for each kilovolt over fifty (50) kilovolts.

(ii) Operate any mechanical equipment or hoisting equipment or any load of equipment, any part of which is capable of vertical, lateral or swinging motion closer to any high voltage overhead line than the following clearances:

(A) For lines rated fifty (50) kilovolts or less, ten (10) feet of clearance;

(B) For lines rated over fifty (50) kilovolts, ten (10) feet plus four-tenths (.4) of an inch for each kilovolt over fifty (50) kilovolts.

**37-3-304. Activity in close proximity to lines; clearance arrangements; procedure; payment; notice.**

(a) If any person or business entity desires to temporarily carry on any act in closer proximity to any high voltage overhead line than permitted by this act, the person or business entity responsible for performing the work shall promptly notify the appropriate public utility and shall ask the public utility for assistance. An agent or employee of the public utility shall prepare and sign a memorandum stating the public utility received a request for assistance. The person or business entity may perform the work only after developing satisfactory safety arrangements, including coordination of work and construction schedules, with the public utility. Arrangements may include placing temporary mechanical barriers to prevent contact between material, equipment or persons and the high voltage overhead lines or temporary shut down and

grounding or temporary relocation or raising of the high voltage overhead lines.

(b) Except where the public utility has installed lines within ten (10) feet of an existing fixture or structure the person or business entity responsible for performing the work in the vicinity of the high voltage overhead lines shall pay the public utility's actual expenses in providing safety arrangements. The public utility is not required to begin the safety arrangements until a written agreement for payment has been made.

(c) The public utility shall begin the safety arrangements according to the agreement signed pursuant to subsections (a) and (b) of this section.

### **37-3-305. Indemnification.**

If a violation of this act results in physical or electrical contact with any high voltage overhead line, the person or business entity violating this act is liable to the public utility for all damages to the facilities and all costs and expenses, including damages to third parties, incurred by the public utility as a result of the contact.

### **37-3-306. Exemptions.**

(a) This act shall not apply to:

(i) Construction, reconstruction, operation or maintenance by an authorized person of overhead electrical or communication circuits or conductors and their supporting structures or electrical generating, transmission or distribution systems or communication systems;

(ii) Any person lawfully occupying the land on which the high voltage overhead line is located and engaging in the regular and ordinary functions and activities of farming, ranching or other agricultural functions and activities.

## **CHAPTER 4**

### **Transmitting Utility Act**

### **37-4-101. Citation.**

This act shall be known, and may be cited as, the "Transmitting Utility Act."

### **37-4-102. Definitions.**

(a) When used in this act, the following words, terms and phrases shall have the meaning prescribed to them in this section:

(i) "Transmitting utility" means any corporation or other business entity primarily engaged, pursuant to rights or franchises issued by a state or federal regulatory body, in the railroad or street railway business, the telephone or telegraph business, the transmission of oil, gas or petroleum products by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water;

(ii) "Uniform Commercial Code" means chapter 219, Session Laws of Wyoming, 1961, as amended.

### **37-4-103. Filing security interests.**

(a) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility is in the office of the secretary of state.

(b) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required.

(c) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20(c) of the Interstate Commerce Act or by filing a financing statement pursuant to the Uniform Commercial Code as provided in subsection (a).

### **37-4-104. Effect on Uniform Commercial Code and other laws.**

Unless displaced by the specific provisions of this act, the Uniform Commercial Code and other applicable laws remain in full force and effect and supplement the provisions of this act.

## **CHAPTER 5**

## **WYOMING PIPELINE AUTHORITY AND WYOMING INFRASTRUCTURE AUTHORITY**

## **ARTICLE 1 IN GENERAL**

37-5-101. Repealed by Laws 2019, ch. 34, § 4.  
37-5-102. Repealed by Laws 2019, ch. 34, § 4.  
37-5-103. Repealed by Laws 2019, ch. 34, § 4.  
37-5-104. Repealed by Laws 2019, ch. 34, § 4.  
37-5-105. Repealed by Laws 2019, ch. 34, § 4.  
37-5-106. Repealed by Laws 2019, ch. 34, § 4.  
37-5-107. Repealed by Laws 2019, ch. 34, § 4.  
37-5-108. Repealed by Laws 2019, ch. 34, § 4.  
37-5-109. Repealed by Laws 2019, ch. 34, § 4.

ARTICLE 2  
BONDS

37-5-201. Repealed by Laws 2019, ch. 34, § 4.  
37-5-202. Repealed by Laws 2019, ch. 34, § 4.  
37-5-203. Repealed by Laws 2019, ch. 34, § 4.  
37-5-204. Repealed by Laws 2019, ch. 34, § 4.  
37-5-205. Repealed by Laws 2019, ch. 34, § 4.  
37-5-206. Repealed by Laws 2019, ch. 34, § 4.  
37-5-207. Repealed by Laws 2019, ch. 34, § 4.  
37-5-208. Repealed by Laws 2019, ch. 34, § 4.

ARTICLE 3  
WYOMING INFRASTRUCTURE AUTHORITY PROJECTS

37-5-301. Repealed by Laws 2019, ch. 34, § 4.  
37-5-302. Repealed by Laws 2019, ch. 34, § 4.  
37-5-303. Repealed by Laws 2019, ch. 34, § 4.

37-5-304. Repealed by Laws 2019, ch. 34, § 4.

37-5-305. Repealed by Laws 2019, ch. 34, § 4.

37-5-306. Repealed by Laws 2019, ch. 34, § 4.

37-5-307. Repealed by Laws 2019, ch. 34, § 4.

ARTICLE 4  
FINANCING OF OTHER PROJECTS

37-5-401. Repealed by Laws 2019, ch. 34, § 4.

37-5-402. Repealed by Laws 2019, ch. 34, § 4.

37-5-403. Repealed by Laws 2019, ch. 34, § 4.

37-5-404. Repealed by Laws 2019, ch. 34, § 4.

37-5-405. Repealed by Laws 2019, ch. 34, § 4.

37-5-406. Repealed by Laws 2019, ch. 34, § 4.

37-5-407. Repealed by Laws 2019, ch. 34, § 4.

37-5-408. Repealed by Laws 2019, ch. 34, § 4.

ARTICLE 5  
WYOMING ENERGY AUTHORITY

**37-5-501. Definitions.**

(a) As used in this article:

(i) "Authority" means the Wyoming energy authority created by W.S. 37-5-502;

(ii) "Board" means the board of the Wyoming energy authority;

(iii) "Bonds" means notes, warrants, bonds, temporary bonds and anticipation notes issued by the authority under this article;

(iv) "Energy project" means any project related to or involving a natural resource associated with energy or an associated natural resource;



(v) "Natural resource associated with energy" or "associated natural resource" means any technology or any substance, element or compound, either gaseous, liquid or solid, associated with the production, development, refining, processing, storage or transmission of energy;

(vi) "Pipeline" means a pipeline and related facilities, including storage facilities, and including undivided ownership interests or capacity in a pipeline and related facilities, constructed for the purpose of transporting and treating natural resources associated with energy;

(vii) "Royalty in kind" means natural resources associated with energy that are received by the federal government, the state or its agencies or political subdivisions as royalties in kind under leases or otherwise.

### **37-5-502. Wyoming energy authority.**

(a) Commencing July 1, 2020, there is created the Wyoming energy authority, which is a body politic and corporate operating as an instrumentality of the state of Wyoming, with authority to adopt an official seal and to sue and be sued.

(b) The authority shall be governed by a board composed of seven (7) voting members appointed by the governor, with the advice and consent of the senate. Except as provided in this subsection, all voting members shall be appointed for four (4) year terms. The governor shall appoint four (4) initial voting board members to a term of four (4) years and shall appoint the remaining three (3) initial voting board members to a term of two (2) years. The governor may remove any member as provided in W.S. 9-1-202. Vacancies shall be filled by appointment by the governor in accordance with W.S. 28-12-101. The members shall elect from the membership a chairman, vice-chairman and secretary. A majority of the persons appointed and serving as members shall be qualified voters of the state of Wyoming. At least two (2) members of the board shall have special knowledge, education or experience in the field of energy or natural resource development, transmission, generation, transportation, financing or marketing, or a field related to industrial or municipal energy consumption. At least two (2) other members of the board shall have special knowledge, education or experience in the field of natural gas or oil production, transportation, marketing or industrial consumption. Members of the board may receive the same per diem, expenses and travel allowance as

members of the legislature under W.S. 28-5-101 while in attendance at meetings of the board and while performing their duties as members of the board.

(c) The following persons shall serve as ex officio, nonvoting members of the board:

(i) A member of the Wyoming enhanced oil recovery institute selected by the director of the enhanced oil recovery institute;

(ii) The chief executive officer of the Wyoming business council or a designee;

(iii) The governor or a designee from his office;

(iv) The supervisor of the Wyoming oil and gas conservation commission or a designee;

(v) The director of the University of Wyoming school of energy resources or, if there is no director, a member of the school of energy resources selected by the University of Wyoming energy resources council, or a designee.

(d) The board shall meet not less than two (2) times each year with representatives of the University of Wyoming school of energy resources and the enhanced oil recovery institute to conduct its business and to consider energy related issues and the state of the energy industry in Wyoming.

(e) Any agency, board, commission, department or institution of the state and the governing authorities of political subdivisions may make surveys, reports and investigations, and may furnish records and information and other assistance and advice as the authority may require.

(f) Appointments and terms under this section shall be as provided in W.S. 28-12-101 through 28-12-103.

(g) The authority is subject to the requirements of:

(i) W.S. 16-3-101 through 16-3-105;

(ii) W.S. 16-4-201 through 16-4-205;

(iii) W.S. 16-4-401 through 16-4-408.

**37-5-503. Purposes; report.**

(a) The authority is created to:

(i) Diversify and expand the Wyoming economy through improvements in the state's electric and energy transmission infrastructure and facilitate Wyoming's production, development and transmission of energy and associated natural resources by planning, financing, constructing, developing, acquiring, maintaining and operating electric, energy export and energy transmission facilities, advanced technology facilities for natural resources associated with energy, carbon dioxide capture and transportation infrastructure, distribution facilities and related supporting infrastructure and undivided or other interests therein;

(ii) Consolidate energy staff and functions existing in the state energy program and take actions to administer the state energy program, including:

(A) Seek federal grants and loans;

(B) Seek to participate in applicable federal programs; and

(C) In accordance with applicable federal program guidelines, administer federally funded state energy programs.

(iii) Assist with obtaining financing and funding for energy projects through the use or combination of bonding authority, grants, loans and private and institutional investors, and assist with the creation of new financing products;

(iv) Provide assistance with permitting, siting and other regulatory requirements;

(v) Develop and administer programs providing education on energy resources and emerging technologies including tours, academic programs and communication plans;

(vi) Engage with international and domestic stakeholders on potential market opportunities, energy projects and technology development that will increase the value of Wyoming energy and associated natural resources;

(vii) In consultation with the joint minerals, business and economic development interim committee and the governor, develop, administer, update and communicate the Wyoming energy strategy;

(viii) Plan, finance, construct, develop, acquire, maintain and operate a pipeline or other transportation and distribution systems within or outside the state of Wyoming to facilitate the production, transportation, distribution and delivery of associated natural resources that are produced or developed in this state, including energy and associated natural resources received as royalties in kind pursuant to mineral leases by the state, its agencies and political subdivisions;

(ix) Support efforts to use natural resources associated with energy for other applications and products including the use of coal for nonfuel products.

(b) In order to provide for the financing, construction, development, maintenance and operation of energy transmission facilities, pipeline and other transportation and distribution systems, the authority may own, lease or rent facilities, structures and properties, both incidental and necessary, constructed in accordance with this article and article 6 of this chapter, to facilitate the production, development, transportation, distribution and delivery of energy and associated natural resources.

(c) Energy transmission facilities and related supporting infrastructure may include all facilities, structures and properties incidental and necessary or useful in the production, development, transportation, transmission and delivery of energy. Pipeline and other transportation or distribution systems may be inclusive of pipelines, ports, pumps, storage and all other facilities, structures and properties incidental and necessary or useful in the production, development, transportation, distribution and delivery of natural resources associated with energy to points of sale, consumption or to the points of distribution for consumption.

(d) The authority shall establish and collect fees and prepare a schedule of fees, rentals and other charges for the use of the facilities of the authority, including capacity that the authority procures, as the board may determine.

(e) The authority may borrow funds for the execution of the purposes of the authority, and mortgage and pledge any leases granted, assigned or subleased by the authority.

(f) Except as provided in this section, the authority shall not exercise any of the rights or powers granted to it in this section if private persons, firms or corporations are performing the acts, constructing or have constructed the facilities or are providing the services contemplated by the authority.

(g) Prior to exercising any rights or powers granted to it in this section except for activities related to the administration of pipeline capacity contracted with an entity operating under the jurisdiction of the federal energy regulatory commission or a successor agency, the authority shall publish in a newspaper of general circulation in Wyoming, and in a newspaper in the area where the authority contemplates providing facilities or services, in the manner prescribed by law, a notice describing the acts, facilities or services contemplated by the authority. Private persons, firms or corporations wishing to perform the acts, construct the facilities or provide the services described in the notice shall have ninety (90) days from the date of last publication of the notice within which to notify the authority of their intention to perform the acts, construct the facilities or provide the services described in the notice. A person or entity giving notice to the authority shall include an anticipated timeline for completion of the acts, construction or services. In the absence of notification by a private person, firm or corporation, or if a person, firm or corporation, having given notice of intention to perform the acts, construct the facilities or provide the services contemplated by the authority, fails to commence the same within one hundred eighty (180) days from the date of last publication, the authority may proceed to perform the acts, construct the facilities or provide the services for which notice was given. A private person, firm or corporation that has made necessary applications to acquire any federal, state, local or private permits, certificates or other authorizations necessary to perform the acts, construct the facilities or provide the services included in the authority's notice within the time required is deemed to have commenced the same. When a private person, firm or corporation has given notice of intent to perform or is performing the acts, constructing the facilities or providing the services that the authority contemplated, the authority may conduct hearings or meetings with the person, firm or corporation to assess progress

toward completion of the intended acts to be performed, the facilities to be constructed or the services to be provided. If it appears to the authority that progress or completion of any or all of the intended acts may be delayed for one (1) year or more, the authority may proceed to perform the acts, construct the facilities or provide the services originally contemplated.

(h) The authority may acquire, purchase, hold, use, lease, license, sell, transfer and dispose of an undivided or other interest in or the right to capacity in any pipeline system within or outside the state of Wyoming in order to facilitate the production, transportation, distribution or delivery of associated natural resources that are produced or developed in this state. The provisions of subsection (g) of this section shall not apply to the authority in exercising any power pursuant to this subsection.

(j) Before any appropriation is made to the authority, the authority shall submit its budget for review as provided by W.S. 9-2-1010 through 9-2-1014. Any appropriation to the authority shall be expended only for administrative purposes, which shall include planning and research.

#### **37-5-504. Powers of the authority.**

(a) The authority may:

(i) Employ officers, agents and employees as it deems necessary for the performance of its duties and prescribe the powers and duties and fix the compensation of the officers, agents and employees;

(ii) Contract, upon terms as it may agree upon, for legal, financial, engineering and other professional services necessary or expedient in the conduct of its affairs;

(iii) Utilize the services of executive agencies of the state upon mutually agreeable terms and conditions;

(iv) Plan, finance, construct, develop, acquire, own, maintain and operate within and outside the state of Wyoming, energy transmission infrastructure, energy export facilities and pipeline and other transportation or distribution systems including pumps, storage and other attendant facilities, any necessary equipment for energy transmission infrastructure and pipeline and other transportation or distribution systems and for all other property, structures, equipment, facilities and

works of public improvement necessary or useful for accomplishing the purposes for which the authority was created, including obtaining permits and acquiring rights-of-way;

(v) Acquire by condemnation any properties necessary or useful for its purposes, provided the authority shall not have the right to condemn mineral leases, gas supplies, gas reserves, oil supplies, oil reserves, oil refineries, existing energy transmission, distribution and generation facilities, minerals, water rights, other mineral rights or pipelines or other distribution systems used in connection therewith;

(vi) Receive by gift, grant, donation or otherwise, any sum of money, aid or assistance from the United States, the state of Wyoming, any political subdivision or any other public or private entity or any country in good standing with the United States subject to federal law;

(vii) Provide light, water, communications, security and other services for its facilities as it deems advisable;

(viii) After consultation with any relevant state or federal authority, establish and charge reasonable fees, rates, tariffs or other charges for the use of all facilities administered by the authority and for all services rendered by it;

(ix) In whole or in part, operate, lease, rent and dispose of facilities, structures and properties constructed under this article. The authority shall review at least every three (3) years the feasibility of disposing of facilities it holds;

(x) Investigate, plan, prioritize and establish corridors for the transmission of energy and natural resources associated with energy;

(xi) Enter into partnerships with public or private entities;

(xii) Conduct hearings and gather and develop relevant data consistent with the duties and powers of the authority;

(xiii) Work in consultation and coordination with entities including the Wyoming business council to develop,

promote and identify markets for natural resources associated with energy and facilitate supply for those markets;

(xiv) Advocate for or against or take legal action concerning any energy project before any regulatory body tasked with the oversight of the project;

(xv) Request data from any public or private entity that is necessary to ascertain the location of associated natural resources within the state;

(xvi) Conduct national and international marketing and technology research;

(xvii) Do any and all things necessary or proper for the development, regulation and accomplishment of the purposes of the authority within the limitations of authority granted by this article.

(b) The sole recourse of any party contracting with the authority shall be against the authority, and there shall be no cause of action against the state or any county, municipality or other political subdivision of the state.

### **37-5-505. Bonds.**

(a) In addition to the powers otherwise granted to the authority and in order to accomplish its purposes, the authority shall have the power to borrow money and evidence the borrowing in the issuance and sale of bonds or other obligations of the authority, the principal and interest of which shall be payable solely out of revenues authorized to be dedicated and pledged for the payment.

(b) Bonds issued under this section shall be solely the obligation of the authority and shall recite on their face that they do not constitute obligations of the state of Wyoming or any county, municipality or other political subdivision of the state. The bonds or other obligations shall be authorized and issued by resolution of the authority. The bonds shall be executed in the form and manner provided by the resolution authorizing their issuance. The resolution shall include:

(i) The series of the bond or obligation;

(ii) The date of issuance of the bond or obligation;



(iii) The date of maturity of the bond or obligation;

(iv) That the bond or obligation shall bear interest, and the interest rate;

(v) The form that the bond or obligation shall be in;

(vi) The registration and exchangeability privileges of the bond or obligation;

(vii) The medium of payment and the place of payment of the bond or obligation;

(viii) The terms of redemption and that the bond or obligation shall be subject to those terms;

(ix) That the bond or obligation shall be entitled only to a priority on the revenues of the authority as the authority's resolution provides, subject to subsection (d) of this section.

(c) The bonds or other obligations issued under this section may be sold by the authority at, above or below par value, at public or private sale, in a manner and from time to time as the authority determines.

(d) Except as provided by subsection (k) of this section, any bonds issued under this section shall be payable from and be secured by the pledge of the revenues derived from the operation of the pipeline or other transportation or distribution system or energy transmission facility as constructed, acquired, extended or improved with the proceeds of the bonds, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining the system or facility. Any holder of the bonds may by appropriate legal action compel performance of all duties required of the authority in order to enforce payment of the bonds when due. If any bond issued under this section is permitted to go into default as to principal or interest, any court of competent jurisdiction may, pursuant to the application of the holder of the bonds, appoint a receiver for the system or facility, who shall operate the same and collect and distribute the revenues thereof pursuant to the provisions and requirements of the resolution authorizing the bonds.

(e) If more than one (1) series of bonds is issued payable from the revenues of the facility or bond proceeds, priority of

lien on the revenues shall be as provided by the resolution authorizing the bonds.

(f) All bonds issued under the provisions of this section shall constitute negotiable instruments within the meaning of the Uniform Commercial Code. The bonds and income from them shall be exempt from all taxation within the state of Wyoming.

(g) No board or commission other than the authority shall fix or supervise the making of fees and charges stated in this subsection, which shall be in amounts reasonably necessary for the purposes stated in this article. When the authority has issued bonds and pledged the revenues of the pipeline or other transportation or distribution system or facility or the energy transmission facility for the payment of the bonds as provided in this article, the authority shall operate and maintain or shall contract for the operation and maintenance of the system or facility and shall impose and collect fees and charges for the services furnished by the system or facility, including those furnished to the authority itself, in the amounts and at rates as shall be fully sufficient at all times to:

(i) Pay the expenses of operating and maintaining the system or facility;

(ii) Provide a sinking fund sufficient to assure the prompt payment of principal and interest on the bonds as each falls due;

(iii) Provide a reasonable fund for contingencies as may be required by any bond underwriting or by the resolution authorizing the bonds; and

(iv) Provide an adequate depreciation fund for repairs, extensions and improvements to the system or facility necessary to assure adequate and efficient service to the public.

(h) Any resolution of the authority authorizing the issuance of bonds shall be published once in a newspaper of general circulation published in Wyoming, and in a newspaper in the area where the facility or services are contemplated. For a period of thirty (30) days from the date of the publication any person in interest may contest the legality of the resolution and of the bonds to be issued under the resolution and the provisions securing the bonds, including the validity of any lease or other contract pledged to the payment thereof. After

the expiration of thirty (30) days from the date of the publication no one shall have any right of action to contest the validity of the bonds, the validity of the security pledged to the payment thereof or the provisions of the resolution under which the bonds were issued, and all the bonds and all related proceedings shall be conclusively presumed to be legal.

(j) The authority may authorize the issuance of bonds for the purpose of refunding, extending and unifying the whole or any part of the principal, interest and redemption premiums on any outstanding bonds issued under this article, as well as bonds issued by the Wyoming pipeline authority under W.S. 37-5-101 through 37-5-109 and by the Wyoming infrastructure authority under W.S. 37-5-301 through 37-5-307, before July 1, 2020. The refunding bonds may either be sold and the proceeds applied to or deposited in escrow for the retirement of the outstanding bonds, or may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized in all respects as original bonds are herein required or were required at the time of their issuance to be authorized. The authority, in authorizing the refunding bonds, shall provide for the security of the bonds, the sources from which the bonds are to be paid and for the rights of the holders thereof in all respects as herein provided for other bonds issued under this article. The board may also provide that the refunding bonds shall have the same or different priority of lien on the revenues pledged for their payment as was enjoyed by the bonds refunded.

(k) The authority may authorize the issuance of bonds for the purpose of purchasing pipeline capacity as authorized by W.S. 37-5-503(h). Any bonds issued under this subsection shall be payable solely from and be secured solely by the pledge of the revenues derived from the subsequent sale, lease or other disposal of the capacity purchased or from bond proceeds. Bonds issued under this subsection shall be authorized in all respects as other bonds of the authority are required to be authorized. The authority, in authorizing the bonds, shall provide for the security of the bonds, the sources from which the bonds are to be paid and for the rights of the holders thereof.

### **37-5-506. Use of net revenues.**

(a) The authority, acting alone or in cooperation with any agency of the state of Wyoming, may use and employ any net revenues derived from a system or facility authorized in this article and from any other source, after providing for all costs of maintenance and operation of the system or facility and after

making the required principal and interest payments on any revenue bonds issued hereunder and any other payments provided in any resolution authorizing the issuance and sale of revenue bonds and obligations, to extend and improve the system or facility as the authority may determine to be warranted by any need for additional intrastate transportation or energy transmission facilities.

(b) Revenues derived from the issuance of bonds for the purpose of purchasing pipeline capacity as authorized under W.S. 37-5-505(k) shall be used for such purchases and to make principal and interest payments on such bonds as provided by the authority in the resolution authorizing the issuance of the revenue bonds.

(c) If the authority determines that no need for additional transportation or energy transmission facilities exists and after the administrative expenses of the authority are paid, net revenues derived under this article shall be paid to the state treasurer for credit to the state general fund.

**37-5-507. Authority not subject to the public service commission.**

Notwithstanding any other provision of law, the authority and the authority's fees, rates, rental and other charges shall not be subject to the supervision, regulation, control or jurisdiction of the public service commission.

**37-5-508. Subpoena.**

(a) For the purpose of any investigation or proceeding under this article, the authority or any officer it designates may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records that the authority deems relevant or material to the inquiry.

(b) In case of contumacy by, or refusal to obey, a subpoena issued to any person, a Wyoming district court, upon the authority's application, may issue to the person an order requiring him to appear before the authority or the officer it designates. The order may require the person to produce documentary evidence or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(c) In considering a request by the authority under subsection (b) of this section, the district court shall review the request in camera to protect the confidentiality of the information sought. The court may also restrict disclosure of any confidential information in any other proceeding, administrative or judicial, and may order that the information be sealed.

### **37-5-509. Confidential information.**

All information obtained by the authority in connection with any hearing or investigation under this article that contains or that might reveal proprietary data shall be considered as confidential for the purposes of this article. The authority shall not disclose confidential information to any person, governmental entity or agency without prior written consent from the owner of the confidential information. Any board or staff member who discloses or causes to be disclosed any confidential information is guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both.

## **ARTICLE 6 FINANCING OF OTHER PROJECTS**

### **37-5-601. Applicability.**

The definitions in W.S. 37-5-501 shall apply to this article.

### **37-5-602. Authority revenue bonds; issuance; amount.**

(a) Repealed by Laws 2020, ch. 49, § 2.

(b) The authority may issue and have outstanding bonds to finance energy transmission facilities and related infrastructure, pipeline and other transportation and distribution projects consistent with the purposes of W.S. 37-5-503(a), which may be located within or without the state of Wyoming, in an amount not to exceed three billion dollars (\$3,000,000,000.00). The financing of a pipeline or other transportation and distribution projects under this article may include or consist solely of the purchase of capacity by the authority as authorized by subsection (m) of this section.

(c) The principal amount of any bonds that have been retired, redeemed, defeased or refunded by the authority need

not be taken into account in computing compliance with the maximum amounts of bonds authorized to be issued under subsections (a) and (b) of this section.

(d) Subject to subsections (a) and (b) of this section, the authority may issue bonds in principal amounts the authority determines necessary to provide sufficient funds for achieving its purposes under this article, including the reduction of principal, the payment of interest, the establishment of reserves, the costs of administration and for the purpose of defraying all other associated costs. All bonds issued under this article are negotiable instruments under the laws of this state unless expressly provided to the contrary on the face of the bonds. The authority may enter into contracts to insure the payment of principal and interest, for interest rate exchange contracts and for financial guarantees to lower the cost of its borrowing.

(e) All bonds issued by the authority are payable solely out of special funds consisting of all or part of its revenues, receipts, monies and assets, as designated in the proceedings under which the bonds are authorized. All bonds shall bear interest at fixed or variable rates, be executed and delivered at times and in denominations, be of terms and maturities, be in registered form as to principal and interest or principal alone, and bear manual or facsimile signatures and seals as the authority determines. Bonds issued by the authority are not general obligations of this state nor of any political subdivision of this state. The bonds shall solely be the obligation of the authority and shall recite on their face that they do not constitute obligations of the state or any political subdivisions of the state.

(f) Bonds may be payable in installments and may bear maturities not exceeding forty (40) years from the date issued as the authority determines.

(g) Bonds and interest may be payable at a time or place whether within or outside the state, as the authority determines. Bonds may contain other provisions not inconsistent with this article.

(h) Any bonds that the authority issues may contain an option to redeem all or any part as may be specified. The price of redemption, the terms and conditions and the procedure of notice shall be set forth by the authority and may appear on the face of the bonds.

(j) Any bonds of the authority may be sold at, above or below par value, at public or private sale, in a manner and from time to time as determined by the authority. The authority may pay legal fees, expenses, premiums and commissions that it finds necessary or advantageous to this state in connection with the issuance and sale.

(k) The authority may provide for the issuance of bonds to refund any bonds of the authority then outstanding, including for the payment of any redemption premium and any interest or premium accrued or to accrue to, the earliest or subsequent date of redemption, purchase or maturity of the bonds. The authority may also refund bonds issued by the Wyoming pipeline authority under W.S. 37-5-201 through 37-5-208 and the Wyoming infrastructure authority under W.S. 37-5-401 through 37-5-408 before July 1, 2020. Refunding shall be accomplished in the manner prescribed by W.S. 16-5-101 through 16-5-119 to the extent it is not inconsistent with this article.

(m) The authority may acquire, purchase, make prepayments for, finance, hold, use, lease, license, sell, transfer and dispose of an undivided or other interest in or the right to capacity in any pipeline or other transportation or distribution system within or without the state of Wyoming. The authority may acquire, purchase, make prepayments for proven developed reserves, hold, use, lease, license, sell, transfer and dispose of an undivided or other interest in natural resources associated with energy, including royalties taken in kind. The powers specified in this subsection may be exercised in order to facilitate the production, transportation, distribution or delivery of associated natural resources produced or developed in this state. The authority is exempt from the provisions of W.S. 37-5-503(g) when exercising the powers granted by this article.

**37-5-603. Authority revenue bonds; security; payments after retirement.**

(a) The principal and interest on any bonds that the authority issues shall be secured by a pledge of revenues from the operation of the pipeline or other transportation or distribution system or energy transmission project financed, by a first mortgage on the facilities, by guarantees and pledges of the entity owning the project, pipeline or system, or of the parent corporation owning said entity or by any combination thereof or other security as the authority may determine to be

reasonable and prudent. The guarantees and pledges shall be no less favorable to the authority than those granted other lenders of the same class.

(b) The authority may require additional payments, as negotiated, to bondholders to be made either in a lump sum at the time of retirement of the bonds or annually from the time of retirement of the bonds until project, pipeline or system use is terminated or may require additional incentives from the owner of the project or pipeline to prospective bondholders so long as the incentives are not contrary to the Wyoming constitution.

(c) The authority may require such other security for repayment of the bonds as it deems necessary.

(d) Each pledge, agreement, mortgage or other instrument made for the benefit or security of any bonds of the authority is valid and binding from the time when made. The revenues, receipts, monies and assets pledged are immediately subject to the lien of the pledge without delivery or further act. The lien is valid and binding against persons having claims of any kind against the authority whether or not the persons have actual notice of the lien. The resolution or the indenture or other instrument by which a pledge is created need not be recorded or filed.

#### **37-5-604. Exemptions from taxation.**

The exercise of the powers granted by this article constitutes the performance of an essential governmental function. Any bonds issued under this article and the income therefrom shall be free from taxation of every kind by the state, municipalities and political subdivisions of the state.

#### **37-5-605. Bonds as legal investments.**

The bonds of the authority are legal investments that may be used as collateral for public funds of the state, insurance companies, banks, savings and loan associations, investment companies, trustees and other fiduciaries that may properly and legally invest funds in their control or belonging to them in bonds of the authority. With the written approval of the state loan and investment board and the attorney general, the state treasurer may invest monies from the permanent Wyoming mineral trust fund in bonds of the authority in an amount specified by the state loan and investment board and the attorney general but not to exceed the amount specified in W.S. 37-5-602(a) and (b).



The interest payable on the bonds shall be not less than four percent (4%), and revenue under W.S. 37-5-602(b) shall be credited as received to the general fund. The limitation on specific public purpose investments under W.S. 9-4-715(n) shall not apply to investments made under this section.

**37-5-606. State pledge not to impair bondholder's rights and remedies.**

The state pledges to the holders of any bonds issued under this article that the state will not limit or alter the rights vested in the authority to fulfill the terms of agreements made with the holders, or in any way impair the rights and remedies of the holders until the bonds together with the interest, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the holders are fully met and discharged. The authority is authorized to include this pledge of the state in any agreement with the holders of the bonds.

**37-5-607. Powers; duties; limitations.**

(a) The authority has the powers granted by W.S. 37-5-501 through 37-5-509 as necessary to carry out the purposes of this article, including the power to hire technical consultants, financial advisors and legal advisors and specifically including the powers granted by W.S. 37-5-504(a)(ii). In addition to the powers otherwise granted to the authority, the authority shall have the power to:

(i) Enter into loan or other agreements with respect to one (1) or more projects, energy transmission infrastructure, energy export facilities, pipelines or systems upon terms and conditions the authority considers advisable;

(ii) Make and execute agreements, contracts and other instruments necessary or convenient in the exercise of its powers and functions, including contracts with any individual, firm, corporation, governmental agency or other entity.

(b) The authority may assess and collect fees that are nonrefundable from applicants seeking to obtain authority financing of an energy transmission infrastructure project, energy export facility, pipeline, system or other project in total amounts not to exceed five hundred thousand dollars (\$500,000.00), which shall be credited to the state general fund.

(c) The authority shall maintain such records and accounts of revenues and expenditures as required by the director of the state department of audit. The director of the state department of audit or his designee shall conduct an annual financial and legal compliance audit of the accounts of the authority and file copies of the audit with the governor and the legislature.

(d) The authority shall require that any project owner receiving a loan under this article shall maintain records and accounts relating to the receipt and disbursements of loan proceeds, transportation costs and information on energy and associated natural resource sales and deliveries and make the records available to the state auditor for inspection.

(e) The sole recourse of any party contracting with the authority shall be against the authority, and there shall be no cause of action against the state, or any county, municipality or other political subdivision of the state.

## CHAPTER 6

### SECURITIES ISSUED BY GAS AND ELECTRIC CORPORATIONS

#### **37-6-101. Right to issue securities and create liens subject to control of commission; purposes enumerated.**

The right of every gas corporation and of every electrical corporation operating as a public utility in the state of Wyoming to issue, assume or guarantee securities and to create liens on its property situated within the state of Wyoming is a special privilege, hereby subjected to the supervision and control of the public service commission of the state of Wyoming, as hereinafter in this act set forth. Such public utility when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume or guarantee other securities payable at periods of more than eighteen (18) months after the date thereof, for the following purposes: for the acquisition of property; for the construction, completion, extension or improvement of its facilities; for the improvement or maintenance of its service; for the discharge or lawful refunding of its obligations; for the reimbursement of monies actually expended for said purposes from income or from other monies in the treasury not secured by or obtained from the issue, assumption or guarantee of securities, within five (5) years next prior to the filing of an application with the commission for the required authorization; or for any other purpose approved by the commission.

**37-6-102. Application for authorization regarding securities; approval or disapproval.**

Such public utility shall, by written petition, filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption or guarantee of securities, and the application of the proceeds therefrom for the purposes specified. The commission shall, after such hearing and upon such notice as the commission may prescribe, enter its written order approving the petition and authorizing the proposed securities transactions, unless the commission shall find: that such transactions are inconsistent with the public interest; or that the purpose or purposes thereof are not permitted by this act; or that the aggregate amount of the securities outstanding and proposed to be outstanding would exceed the fair value of the properties and business of the public utility.

**37-6-103. Securities which may be issued without approval; not to be refunded by stock without approval; securities exempted from chapter.**

(a) Such public utility may issue such securities other than stock or stock certificates, payable at periods of not more than eighteen (18) months after date of issuance of the same, and secured or unsecured, without application to or order of the commission, but no such securities so issued shall in whole or in part be refunded by any issue of stocks, stock certificates or other securities having a maturity of more than eighteen (18) months, except on application to and approval of the commission.

(b) The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any security or any class of securities for which an application is required under this chapter or any public utility or class of public utility from the provisions of this chapter if it finds that the application thereof to such security, class of securities, public utility or class of public utility is not required by the public interest.

**37-6-104. Disposal of applications.**

All applications for the issuance, assumption or guarantee of securities shall be disposed of promptly, and within thirty (30) days after petition is filed with the commission unless it is necessary, for good cause, to continue same for a longer period.

Whenever such application is continued beyond thirty (30) days after the time it is filed the commission shall enter an order making such continuance and stating fully the facts necessitating same.

**37-6-105. State not obligated to pay or guarantee securities.**

No provision of this act, or any act or deed done or performed in connection therewith shall be construed to obligate the state of Wyoming to pay or guarantee in any manner whatsoever any security authorized, issued, assumed or guaranteed under the provisions of this act.

**37-6-106. Unapproved securities void; exception.**

All securities issued, assumed or guaranteed without application to or approval of the commission, provided herein, except the securities mentioned in W.S. 37-6-103, shall be void.

**37-6-107. Identification of certificates.**

The commission shall provide by serial number or other device to be placed on the face thereof, for the proper and easy identification of such stock, stock certificates, bonds, notes and other evidence of indebtedness as may be issued by a public utility under the provisions of this act.

CHAPTER 7  
Power Districts

ARTICLE 1  
IN GENERAL

**37-7-101. Formation; petition for organization.**

(a) Whenever a majority of the freeholders on lands and entrymen upon public lands in any district who shall represent at least one-third of the area of lands within said district which desire to provide for the purchase of electric power for use in electrifying the lands within said district or to purchase, extend, operate, or maintain consecutive power lines; or to cooperate with the United States, the state of Wyoming, or any subdivision thereof, they shall procure a certificate of necessity from the public service commission of the state of Wyoming, and file in the district court of the county which

embraces the largest acreage of the district a petition hereinafter referred to as the "petition" which shall include:

- (i) The name of the proposed power district;
- (ii) The necessity of the proposed work, describing the necessity and attaching such certificate of necessity issued by the public service commission thereto;
- (iii) The object and purpose of the system to be constructed together with a general description thereof;
- (iv) The names of all freeholders holding lands and the entrymen on public lands in said district when known;
- (v) Whether or not the petitioners desire and propose to cooperate with the United States, the state of Wyoming or any subdivision thereof;
- (vi) A general prayer for the organization of the district.

(b) No petition having as many signers as are required by this section shall be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of the power district. Several similar petitions for the organization of the same district may be circulated, and when filed, shall together be regarded as one petition having as many signers as there are separate signers on the several petitions filed. All petitions for the organization of said district filed prior to the hearing on said petition shall be considered by the court, the same as if filed with the first petition placed on file, and the signatures thereon contained shall be counted in determining whether sufficient persons have signed said petition.

**37-7-102. Lands need not be contiguous; benefits to exceed damages and costs; must be cheaper as single district.**

The lands proposed to be included in any power district need not be contiguous, provided that the benefits of the proposed work in each part will exceed the damages from and costs of said proposed work in each part; and provided, further, that the court shall be satisfied that said proposed work can be more cheaply done if in a single district than otherwise.

**37-7-103. Time and place of hearing on petition; notice.**

On such petition being filed the court or judge thereof shall make an order fixing the time and place of the hearing thereon and ordering notice; thereupon the clerk of said county, for the county in which the proceedings are instituted, shall cause twenty (20) days notice of the filing of such petition to be given.

**37-7-104. Contests and objections at hearing; notices of contest or objection; court to hear and determine issues.**

(a) On the day fixed for hearing on such petitions all persons owning or entitled to the possession of lands, or any interest or easement in land, within said proposed district, or who would be affected thereby, may appear and contest or object to:

- (i) The sufficiency of the petition;
- (ii) The sufficiency of the signers of the petition;
- (iii) The sufficiency of the notice;
- (iv) The constitutionality of the law;
- (v) The inclusion or exclusion of any lands in the district, or any other material issue raised by the petition;
- (vi) The jurisdiction of the court, specifying their objections to such jurisdiction.

(b) The petitioners and contestants may, on the trial, offer any competent evidence in regard thereto. All notices of contest or objection shall be in writing and shall clearly specify the grounds of contest or objection and shall be filed in the office of the clerk of the court [prior] to the date fixed for said hearing. The court shall on the day fixed for said hearing, hear and determine all issues provided in this section and may adjourn said hearing from time to time, for good and sufficient reasons shown.

**37-7-105. Nonresident landowners to be specified on affidavit with petition; notice by mail; personal service to establish jurisdiction.**

If any of the persons owning or entitled to possession of land in said district are nonresidents of the county or counties in which the proposed district lies, the petition shall be accompanied by an affidavit giving the names and post-office address of each such nonresident, if such are known, and if unknown shall state that, upon diligent inquiry their names or post-office addresses (whichever may be the fact) cannot be ascertained. The clerk of the court shall mail a copy of the notice aforesaid to each of said nonresident owners whose post-office address is known, within six (6) days after the first publication of the same. The certificate of the clerk of the court, or other public officer, or the affidavit of any other person who knows the facts, affixed to a copy of said notice, shall be sufficient evidence of the posting, serving, mailing or publication thereof. Personal service of said notice on (or service by leaving at the last usual place of abode of) all persons owning or entitled to possession of lands or interest in lands within said district, shall give the court complete jurisdiction, without posting, publication or mailing of said notice.

**37-7-106. Affidavit of signers evidence of facts therein.**

The affidavit of any three (3) or more of the signers of said petition stating that they have examined it and are acquainted with the locality of said district and that said petition is signed by a sufficient number of corporations and adult persons owning lands in said district, to satisfy section 1 hereof, may be taken by the court or judge as sufficient evidence of the facts therein stated.

**37-7-107. Transfer of lands to establish or defeat petition; filing of petition lis pendens against lands therein.**

All deeds made for the purpose of establishing or defeating the prayer of said petition, and not made in good faith and for a valuable consideration, shall be taken and held to be a fraud, and the holders thereof shall not be considered as the owners of the lands described therein; and the filing of said petition shall constitute a lis pendens against all lands described therein, from and after the filing thereof.

**37-7-108. Petition dismissed for improper signatures; costs; court to include or exclude lands from district.**

If the court or presiding judge thereof, after hearing any and all competent evidence that may be offered for and against the

said petition, shall find that the same has not been signed as herein required, the said petition shall be dismissed at the cost of the petitioners, and judgment shall be entered against said petitioners for the amount of said costs. The court shall upon proper showing include or exclude any land from the district.

**37-7-109. Order of court upon decision for petitioners; appointment of commissioners; findings and orders final unless appealed.**

(a) If the issues at this hearing are decided in favor of the petitioners, the court shall make an order:

(i) Approving and confirming the petition;

(ii) Defining the boundaries of the district;

(iii) Establishing said district as a corporation by the name proposed with powers:

(A) To sue and be sued;

(B) To adopt and use a corporate seal;

(C) To have perpetual succession;

(D) To build or otherwise acquire power lines and the transformers and other electrical equipment necessary to connect with power lines of the United States, the state of Wyoming, or any subdivision thereof to transmit power to any and all persons deciding to use same;

(E) To exercise the power of eminent domain as provided by the laws of the state of Wyoming.

(iv) Appointing three (3) commissioners from such districts who shall be freeholders or entrymen upon public lands in said district.

(b) The commissioners appointed by the court shall at all times be under the direction of the court and may be removed from office by the court upon good cause shown; provided, however, no commissioner shall be removed until written charges specifying the grounds upon which such removal is sought are filed and an opportunity given such commissioner to be heard at a hearing provided. In case a commissioner has been removed



under this provision the court shall immediately appoint a successor.

(c) All findings and orders of the court made at the hearing herein provided for shall be final and conclusive unless appealed from to the supreme court within thirty (30) days after filing thereof.

**37-7-110. Oath and bond of commissioners; quorum; majority rule; term of office.**

Before entering upon their duties, such commissioners shall take and subscribe an oath to support the constitution of the United States and the constitution of the state of Wyoming, to faithfully and impartially discharge their duties as such commissioners and to render a true account of their doings to the court by which they are appointed whenever required by law or the order of the court, and shall execute a bond running to the clerk of said court and his successors in office as obligees, to be filed with said clerk for the benefit of the parties interested, in an amount to be fixed by the court or presiding judge, and with sureties to be approved by the court or presiding judge, conditioned for the faithful discharge of their duties as such commissioners and the faithful accounting of all moneys which shall come into their hands as such commissioners. A majority shall constitute a quorum and a concurrence of a majority in any matter within their duties shall be sufficient to its determination. The commissioners appointed shall hold their office until the first Tuesday in the second succeeding December following the date of order organizing such district and until their respective successors are qualified.

**37-7-111. Records of commissioners; annual statement; compensation and expenses; suit upon bonds.**

The commissioners shall keep an accurate record of all moneys collected on account of the work under their charge and of all payments made by them and shall take vouchers of such payments and shall keep full, accurate and true minutes of all their proceedings. On the first day of November each year they shall file in the office of the clerk of the court having jurisdiction in the matter an itemized statement of all their receipts and disbursements, and leave said report in such office for examination by parties interested at all times; and include a copy thereof in the regular call for the annual meeting hereinafter provided. They shall receive for their services such

compensation as the court or presiding judge thereof may determine. They shall also be reimbursed for their actual reasonable expenses. Suit may also be brought upon their bonds, and the amount recovered shall be applied to the construction of the work or to the party injured, as justice may require.

**37-7-112. Commissioners to constitute corporate authority; organization; powers of board.**

The commissioners appointed as aforesaid and their successors in office shall, from the entry of such order of confirmation constitute the corporate authority of said power district, and shall exercise the power conferred on them by law. They shall organize a board, elect a president from their number and appoint a secretary-treasurer. The board shall have power, and it shall be their duty to adopt bylaws, manage and conduct the affairs and business of the district, make and execute all necessary contracts, employ such agents, attorneys, officers and employees as may be required and prescribe their duties; to purchase electric current for light, heat and power purposes; to purchase, construct or otherwise acquire, power lines, transformers and other electrical equipment necessary to conduct and transmit such electric current to various people of the district who desire to use such electric current.

**37-7-113. Duties of commissioners as to proposed work; report to court.**

(a) As soon as may be after the organization of said district or within such time as the court may direct, said commissioners shall proceed to have all necessary surveys made and shall lay out said proposed work making a map thereof, and plans and other specifications thereof, and report in writing to the court:

(i) The extent and character of the proposed work;

(ii) If it be found necessary to change the boundaries of the said proposed district, previously fixed, they shall report said proposed change, and, if possible, shall report the names, the residence and post-office addresses of the owners or persons entitled to possession of all lands affected by said change in boundaries, but no such change in boundaries, shall be made as to deprive the court of jurisdiction; provided, however, that if the owners and those entitled to possession, by virtue of public land filing, of lands adjacent to the district, petition to have their lands brought into the district, such

petitioners may be considered the same as the original petitioners in making changes of boundaries;

(iii) What lands within the district, as by them reported, will be injured by the proposed work, if any, and they shall therein award to each tract, lot, easement or interest by whomsoever held the amount of damages which they shall determine will be caused to the same by the proposed work;

(iv) All lands within the district as by them reported will be benefited by the proposed work and they shall assess against such lands by whomsoever held the amount of benefits which they determine will be caused to the same by the proposed work. The benefits so assessed are herein referred to as "the assessment roll";

(v) They shall also determine and report to the court the total itemized amount as near as they can determine, that said proposed work will cost, including organization expenses and the unit cost upon which the assessments are based, which shall be designated as "cost of construction";

(vi) The cost of construction which shall be assessed to the various tracts of land within said district in proportion to the assessed valuation of each of such tracts of land as such valuation was last fixed and determined by the county assessor and county board of equalization of the county in which said lands are situated.

#### **37-7-114. Notice and hearing on report of commissioners.**

Upon the filing of said report, the court or judge thereof shall make and enter an order fixing the time and place when and where all persons interested may appear and remonstrate against the confirmation thereof, and the clerk of said court shall cause notice of the time and place of such hearing to be given to all parties interested which notice shall contain a brief description of the lands benefited and damaged, together with the net damage awarded the several tracts, parcels, easements and corporations to which damages are awarded, and the sum in each case assessed for benefits, and cost of construction against said several benefited parcels, tracts, easements and corporations, and the benefits apportioned to each parcel, tract, easement or corporation in the district. Said notice shall be published at least three (3) successive weeks, prior to the day set for the hearing in one newspaper published in each county in which said lands, or any part thereof within said

district are situate (and if no newspaper is published in said county, in some newspaper in an adjoining county), and by serving a copy of such notice on each of the persons, or corporations, by said report recommended, to be assessed, or whose lands are by said report recommended to be included in said district and who resides in any of the counties in which any lands of the proposed district are situated, at least twelve (12) days before the day of hearing in the same manner that a summons is required to be served; provided, absence from the county of such person or corporation shall excuse personal service, whereupon due publication of such notice shall be sufficient service.

**37-7-115. Notice when lands situate in more than one county.**

In case the lands are situated in more than one county the notice published in the county wherein the court having jurisdiction is situated shall contain a description of all the lands in said proposed district [with] the damages awarded to the several parcels thereof, but the notice published in any other county or counties may contain a description of only the lands situate in said county for which said publication is made, together with the damages awarded to and assessments for benefits against the several tracts, parcels, easements and interests situate in said county for which publication is made. In case of service of said notice personally, or the acceptance and waiver thereof of all the owners of the lands within the district, said service shall be sufficient and give the court jurisdiction without said publication.

**37-7-116. Modification of report by order of court.**

If the court finds that the report requires modification, the same may by order of the court be referred back to the commissioners, who may be required to modify it in any respect.

**37-7-117. Order of confirmation of report or modified report; effect of confirmation; appeal.**

If there be no remonstrance, or if the finding be in favor of the validity of the proceedings, or after the report shall have been modified to conform to the findings, the court shall confirm the report and the order of confirmation shall be final and conclusive, the proposed work shall be established and authorized, and the proposed assessments approved and confirmed unless within thirty (30) days an appeal be taken to the supreme

court, and the said order of confirmation shall also fix the commissioner's bond.

**37-7-118. Petitions regarding orders of confirmation; supplemental report from commissioners.**

Said order of confirmation may, at the same or at any subsequent term of said court be revised, modified or changed, in whole or in part, on petition of the commissioners, after such notice as the court may require to parties interested. At any time prior to making the order confirming said report or thereafter, the court may permit the commissioners to present and file a supplemental report, or amend their report, as to any matter which, pursuant to the provisions hereof, was or might have been included in the original report presented by them, and after reasonable notice given to all parties interested, in such manner as the court shall direct, the court may, upon the hearing in said matter make such order as the case may require.

**37-7-119. Assessment for construction; time of payment; interest.**

At the time of the confirmation of such assessments, it shall be competent for the court to order the assessment for construction to be paid in not more than twenty (20) installments, of such amounts and at such times as will be convenient for the accomplishment of the proposed work, or for the payment of principal and interest of such notes or bonds of said district, as the court shall grant authority to issue for the construction of said work. The court may also, by such order, fix a date on which the first installment of the assessments of construction shall become due, not more than five (5) years after the date of the order, and each of said installments shall draw interest at a rate not to exceed seven percent (7%) per annum from the date of said order.

**37-7-120. Assessments due at same time as taxes; budget to be filed and approved by court; expenditures in excess of budget; unauthorized debts void.**

(a) Assessments to meet expenses of any current year of any district shall become due, payable and delinquent at such time or times each year as may be fixed by law for state and county taxes to become due, payable and delinquent. Commissioners having charge of any power district shall on or before the first Tuesday of June of each year file with the clerk of the court having jurisdiction of such district, a

report showing an itemized estimate of the money to be raised by assessment within the district for the purpose of constructing new work, maintenance, and to meet the yearly current expenses of the district. In addition to the amount above provided, the commissioners may add a sum which in their judgment shall be sufficient to provide for possible delinquencies. Within thirty (30) days after filing such annual report, at a time and place to be fixed by the court or a judge thereof, the judge shall examine such report, hear all objections thereto, fix and determine the amount to be raised by assessments for the current year and cause such adjudication to be entered of record in said court and a certified copy thereof to be delivered to the commissioners of such district. The commissioners shall add thereto such amount as may be necessary to meet the principal and interest on lawful indebtedness of the district maturing during the current year, together with a sum which in their judgment shall be sufficient to provide for possible delinquencies. When thus completed it shall be known as "The Budget of .... District for the year (year)" and also be verified under oath by any one of the commissioners.

(b) The commissioners of any power district within the state of Wyoming are hereby forbidden to incur any indebtedness for the current expenses of the district in excess of the amount provided in the budget. Provided, however, in case a greater sum than that provided in the budget is required, the commissioners may file a petition setting forth the causes therefor, with the clerk of the court having jurisdiction of said district. Immediately upon the filing of said petition the court shall make an order fixing the time and place of hearing and directing the form and manner of notice thereof to be given if the court deem such hearing advisable. If the court shall authorize the expenditure of a greater sum of money the commissioners shall be authorized to incur indebtedness equal to the amount of the additional sum authorized by the court, and in case the expenditure occurs at a time when it is too late to place the amount upon the assessment roll for the current year such amounts may be added to the budget of ensuing years. All debts contracted in contravention of this section shall be void.

**37-7-121. Preparation of assessment roll; assessments based on county assessments; commissioners to verify; levy of assessments; assessments to extend to tax roll.**

It shall be the duty of the commissioners of each power district on or before the third Monday in July in each year to prepare an assessment roll of said district which shall contain the name of

the owner together with the description of each lot, tract and easement of land within said district and the aggregate assessment of benefits confirmed by the court against the same. Assessments to meet the current expense of a power district for any year shall be proportioned upon the assessed valuation of the several benefited lots, tracts and easements in the district as such valuation was last fixed for assessment purposes by the county assessor and county board of equalization of the county in which the same are situated. The assessment roll shall also show the amount assessed against each lot, tract, and easement of land in the district to meet the principal and interest or the indebtedness of the district for the current year. When such assessment roll is completed it shall be signed by the commissioners of said district and verified by any one of them. The county commissioners of said county upon the receipt of the assessment roll of said district and at the time of making the requisite tax levy for county purposes, shall levy and assess against each lot, tract, and easement of land the respective amounts levied and assessed against the same on said assessment roll. Thereupon the county commissioners shall certify to and deliver said assessment roll to the county assessor of such county and in case the territory embraced in such district is located in two (2) or more counties a copy of the assessment roll as certified to by the county commissioners of the county having jurisdiction of such district shall be delivered to the assessor of each county in which any of the land of the district is located. Upon receipt of the assessment roll the assessors of the counties embracing any of the lands of such district, shall extend upon the tax roll of such county the respective amounts levied and assessed against each lot, tract, and easement of land, and against each corporation as shown by said assessment roll of said district.

**37-7-122. County treasurer to collect taxes; interest coupons or bonds of district authorized for payment of district bond taxes; duty of county commissioners as to unpaid taxes.**

It shall be the duty of the county treasurer of each county in which any power district is located in whole or in part to collect and receipt for all taxes levied as herein provided in the same manner as is required in the receipt for and collection of taxes upon real estate for county purposes. The county treasurer in case of taxes heretofore or hereafter levied as herein provided shall receive in payment of the district bond taxes above mentioned for the year in which said taxes were levied, interest coupons or bonds of said power districts maturing within said year the same as so much lawful money in

the United States. Provided, however, that in the case of the nonpayment of any taxes which have heretofore or may hereafter be levied as above provided, the board of county commissioners upon application made shall have the power and it shall be their duty, upon written request of the board of such power district, to order the said treasurer to receive in full payment of the bond fund portion of said taxes the principal amount of said taxes levied, payable in bonds or bond interest coupons of said power district at their face value, and maturing within the year in which said tax levies were made, as so much lawful money of the United States.

**37-7-123. Inspection and repair of power lines.**

The commissioners and agents, servants and employees shall have the right to go upon all lands along any power line to inspect and repair the same whenever necessary, doing no unnecessary damage, and shall not be liable for trespass therefor.

**37-7-124. Necessary additional assessments authorized under court order; notice required; payment.**

If any assessment for construction, operation, maintenance or repair that the commissioners shall have reported to the court is a smaller sum than is needed to carry out the purpose for which said assessment has been made or if in any year an additional sum is necessary to pay the interest on lawful indebtedness of said power districts, further or additional assessments on the lands benefited shall be made by the commissioners of said power district under the order of the court or presiding judge thereof, upon such notice as the court or judge may direct, which further or additional assessment may be made payable in installments as specified herein and shall be treated and collected in the same manner as the original assessments confirmed by the court in said power district.

**37-7-125. Omission of assessments not to affect jurisdiction of court or render previous assessments voidable; commissioners to correct omissions and report to court.**

Omission to assess benefits, or to assess for construction, or to make additional assessment or to make assessment for operation, maintenance or repairs against any land or person which should have been assessed, or to award damages to any one or more tracts of land or assessments in a power district shall neither affect the jurisdiction of the court to confirm the report, nor to render the benefits assessed or the assessments



for construction, or additional assessments, or assessments for operation, maintenance, or repairs against other lands or assessments against any person voidable, but the commissioners of said power district shall thereafter, as soon as they discover the omission or receive notice thereof, either agree with the omitted parties upon the proper award or assessments and award the damages or make such assessments of benefits or assessments for construction, operation, maintenance or repair, and make such additional assessments against the omitted lands and corporations and award such damages as shall be just, and report the facts, together with such assessments and awards, to the court.

**37-7-126. Commissioners may borrow for unpaid construction or lawful debts; issuance of notes or bonds; interest specified.**

The commissioners may borrow money, not exceeding the amount of "assessment for construction" as herein provided, unpaid at the time of borrowing for such purposes, or for the payment of any indebtedness that may have been lawfully incurred, and may secure the same by notes or bonds bearing interest at a rate not to exceed seven percent (7%) per annum and not running beyond one (1) year after the last installment of the assessment, on the account of which the money is borrowed, shall fall due, which said notes or bonds shall not be sold at less than ninety percent (90%) of their face value, which said bonds shall be transferable by delivery to the same extent as negotiable paper of the highest character; and may deliver notes or bonds to the United States to be held and when deemed desirable or when the appraised value of the land in the district is double the bonded indebtedness, sold by it, and the net proceeds received from the notes or bonds applied to the liquidation of contract indebtedness of the district, and said notes or bonds shall be in such form, terms and denominations as may be fixed by the court, but which notes or bonds shall not be held to make the commissioners personally liable, but shall constitute a lien upon the assessments for the repayment of the principal and interest of such notes or bonds. In case any moneys derived from bonds sold to pay for the construction, as herein provided, now or hereafter, remains on hand after such work is completed and paid for, and not raised for damages unpaid for, such residue may be used in the maintenance and repair, as in this chapter provided, before making assessment for such maintenance and repair.

**37-7-127. Refunding of indebtedness.**

The court, may, upon the petition of the commissioners authorize them to refund any lawful indebtedness of the district now existing or which may hereafter be incurred by taking up and canceling all or any part of its outstanding notes and bonds, as fast as they come due or before, if the holders thereof will surrender the same and issue in lieu thereof new notes or bonds of such district, payable in such longer time as the court shall deem proper, in an amount sufficient to retire notes and bonds of the district then outstanding and the unpaid accrued interest thereon, together with such an amount as the commissioners of such district may deem necessary to provide for possible future defaults and delinquencies in the payment of assessments, and bearing interest not exceeding seven percent (7%) per annum. For the purpose of providing funds to pay such refunding bonds with interest thereon, the commissioners may levy assessments against the land in such district, but not in excess of the benefits assessed. In the alternative the commissioners may, if they deem it advisable, issue said refunding bonds in an amount sufficient only to retire all notes and bonds of the district then outstanding and the unpaid accrued interest thereon, and delinquencies in the payment of assessments levied, from year to year, assessments against the land in such district for such purposes, but not in excess of the benefits assessed against the same.

**37-7-128. Construction to be done by lowest responsible bidder; advertisement for bids; applicability of section.**

In all cases where the work to be done at any one time under the directions of the commissioners will, in their opinion, cost to exceed twenty-five hundred dollars (\$2,500.00), the same shall be let to the lowest responsible bidder, and the commissioners shall advertise for sealed bids, by notice published in some newspaper published in the county in which the petition is filed, and may advertise in one (1) or more newspapers published elsewhere. If there be no newspaper published in the county in which the petition is filed, they shall advertise in some newspaper published in an adjoining county, which said notice shall particularly set forth the time and place when and where the bids advertised will be opened, the kind of work to be let and the terms of payment. Said commissioners may continue the letting from time to time, if in their judgment the same shall be necessary, and shall reserve the right to reject any and all bids. This section shall not be construed to apply to the employment of superintendent, engineer, attorney or other employee engaged in the general work of the district.

**37-7-129. Payment, tender or deposit of damages required before start of construction; exception.**

The damages allowed to the owners of lands shall be paid or tendered before the commissioners shall be authorized to enter upon the lands for damage to which the award is made, for the construction of any power line or other work proposed thereon. If the owner is unknown or there shall be a contest in regard to the ownership of the lands, or the owner will not receive payment, or there exists a mortgage or other lien against the same, or the commissioners cannot for any other reason pay him, they may deposit the said damages with the clerk of the court, for the benefit of the owner, or parties interested, to be paid or distributed as the court shall direct, and such payment shall have the same effect as the tender to and acceptance of the damages awarded by the true owners of the land. This section shall not, however, prevent said commissioners, their agents, servants and employees, going upon said lands to do any and all work found necessary prior to making their assessment of benefits and award of damages, and the trial on their report thereof.

**37-7-130. Assessments as lien against property.**

Each and every sum assessed in any power district organized in the manner herein provided, as soon as such assessment is confirmed by the court, shall be and is declared to be a lien against the land so assessed, and unless some other method of collection is herein provided, it shall be collected in the same manner as any other money judgment, provided that whenever said assessment is a lien upon land it shall only be collected on said land on which it is a lien.

**37-7-131. Bonds not adversely affected by change in assessment.**

No bonds or other money obligations issued by any power district shall be adversely affected by any subsequent change in assessment of benefits.

**37-7-132. Commissioners declared public officers; acts presumed regular and valid; burden of proof on contestant.**

Commissioners of power districts are hereby declared to be public officers. The presumption shall be in favor of the regularity and validity of all their official acts. Whenever any report of the commissioners of any power district or any part of

any such report is contested, remonstrated against or called in question, the burden of proof shall rest upon the contestant, remonstrant or questioner.

**37-7-133. Order confirming assessments as evidence of regularity.**

The order confirming the assessments of benefits shall be conclusive as to the regularity of all proceedings relating to the assessments of benefits unless appealed from within thirty (30) days after the entry of such order.

**37-7-134. Election of commissioners; date; term of office.**

Upon the third Tuesday in November next preceding the expiration of terms of office of any power district commissioners appointed in any power district organized under the provisions of this chapter, there shall be elected three (3) commissioners for such power district, one (1) for the term of one (1) year, one (1) for the term of two (2) years, and one (1) for the term of three (3) years, and upon the third Tuesday in November of each year thereafter an election shall be held to elect a commissioner to succeed the outgoing commissioner whose term of office shall be for a period of three (3) years.

**37-7-135. Election of commissioners; hour and place; notice; voters qualified; conduct; proxies; record required.**

The commissioners of the district shall fix the hour and place within the boundaries of the district of each election and preside at the same. It shall be the duty of the commissioners at least twenty (20) days prior to the date of the election to mail to each person entitled to vote at his or her last known place of residence or business, a notice stating the time, place and purpose of such election. Every person owning or entitled by virtue of public land filing to the possession of land situated within and being a part of any district, in which an election is to be held, shall be entitled to cast one (1) vote for every one thousand dollars (\$1,000.00) of assessed valuation of real property owned by him or her within said power district, or the major portion thereof, providing, that each person owning lands or entitled by virtue of public land filing to possession of land within said district shall be entitled to at least one (1) vote. At the hour and place of such election the commissioners shall call the roll of those entitled to vote and the number of votes each is entitled to. They shall make a record of the qualified voters present, receive all proxies, and prescribe the

manner of canvassing votes. All proxies shall be in writing and signed by the person entitled to vote.

**37-7-136. Election of commissioners; votes necessary to elect; filling of vacancies; qualifications and duties of commissioners elected.**

No person shall be elected as commissioner who shall not have received a majority of all votes cast. No election shall be invalid by reason of the fact that a majority of the assessed valuation of real estate within the district was not represented at such election. Whenever the office of any elected commissioner shall become vacant by reason of death, resignation or other cause, the vacancy shall be filled by the surviving commissioners for the unexpired term. In case such vacancy is not filled within thirty (30) days the court shall fill such vacancy. All elected commissioners shall have the same qualifications and duties as herein prescribed for appointed commissioners.

ARTICLE 2  
REVENUE BOND POWER DISTRICTS

**37-7-201. Petition for organization; assessments against real estate.**

If the petition for the organization of a power district under W.S. 37-7-101, states that the bonds to be issued by such district for the purpose of raising money shall be a lien only upon the power plant, distribution system, and other property used in the manufacture or distribution of electrical energy, and upon the revenues from electrical energy so developed or distributed, the petition or petitions of fifty (50) freeholders of the area to be served shall be sufficient to give the court jurisdiction to hear such petition, and to organize a power district; provided, no district organized under a petition providing such revenue bonds only, shall have authority to make any assessments against the real estate of the district, unless it shall amend its petition and follow the procedure provided in W.S. 37-7-101.

**37-7-202. Bonds issued only when authorized by district court; hearing and notice; interest rate; conditions of sale.**

Power districts organized pursuant to petitions stating that the bonds to be issued by the district for the purpose of raising money shall be a lien only upon the power plant, distribution

system and other property used in the manufacture or distribution of electrical energy, and upon the revenues from electrical energy so developed or distributed, may issue bonds only when so authorized by the district court having jurisdiction thereof, and the bonds shall not be offered for sale to the public generally unless the court shall so provide in its order. Commissioners of a district desiring to issue bonds, shall first present to the court a full showing of the necessity and proposed conditions of the bonds, and, after giving such notice as the court may require to all parties interested, the court shall hear the petition and make orders fixing the terms and conditions of bond issue as shall to the court seem proper. Bonds shall not be sold at less than ninety percent (90%) of their par value.

**37-7-203. W.S. 37-7-201 through 37-7-212 to be cumulative authority; existing laws not repealed.**

This act shall be construed as cumulative authority for the purposes named in sections 1 and 2 hereof, and as to the manner and form of issuing revenue bonds for any such purpose or purposes, and shall not be construed to repeal any existing laws with respect thereto, it being the purpose and intention of this act to create an additional and alternate method for the purposes herein named.

**37-7-204. Payment of principal and interest to be from revenues only; not to constitute indebtedness of borrower.**

The principal of and interest upon such bonds shall be payable solely from the revenues derived from the operation of the power system or plant, electric light plant, power plant, power lines, transmission lines, or power distributing systems, for the purchase, construction, improvement, enlargement, extension, or repair of which the same are issued. No bond or coupon issued pursuant to this act shall constitute an indebtedness of such borrower within the meaning of any state constitutional provision or statutory limitation. It shall be plainly stated on the face of each such bond and coupon that the same has been issued under the provisions of this act and that it does not constitute an indebtedness of such borrower within any state constitutional provision or statutory limitation.

**37-7-205. Bonds a mortgage lien for benefit of bond and coupon holders.**

Said bonds shall be construed to and shall create a statutory mortgage lien upon any such power system, power plant, electric light plant, power lines, transmission lines, or power distributing system or systems, and the appurtenances and extensions thereto so to be purchased, constructed, improved, enlarged, extended or repaired, to and in favor of the holders of said bonds and each of them and to and in favor of the holders of the coupons of said bonds, and each of them.

**37-7-206. System to remain subject to mortgage lien; proceedings to compel performance of official duties; forced sale not authorized.**

Such system so purchased, constructed, improved, enlarged, extended or repaired shall remain subject to said statutory mortgage lien until payment in full of the principal of and interest upon said bonds. Any holder of any of said bonds or of any of the coupons representing interest accrued thereon, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce said statutory mortgage lien, and may, by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties of the officials of the borrower, including the fixing of sufficient rates, the collection of revenues, the proper segregation of the revenues of the system, and the proper application thereof. Provided, however, that said statutory mortgage lien shall not be construed to give any such bond or coupon holder authority to compel the sale of such system or any part thereof.

**37-7-207. Appointment of receiver in case of default upon bonds.**

If there be any default in the payment of the principal of or interest upon any of said bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the system so encumbered on behalf of the borrower with power to fix and charge rates and collect revenues sufficient to provide for the payment of any bonds or other obligations outstanding against said system and for the payment of the expenses of operating and maintaining the same and to apply the income and revenues of said system in conformity with this act and the order providing for the issuance of such bonds.

**37-7-208. Bonds and coupons held by governmental agencies exempt from taxes.**

The bonds and interest coupons issued hereunder are hereby exempted from any and all state, county, municipal and other taxation whatsoever under the laws of the state of Wyoming, and it shall be plainly stated on the face of each such bond as follows: "The principal of and interest on this bond are exempted from any and all state, county and municipal and other taxation whatsoever under the laws of the state of Wyoming, provided, however, that this exemption shall apply only to such bonds and coupons owned and held by the public works administration or other governmental agencies."

**37-7-209. Bonds negotiable instruments.**

Such bonds shall have all the qualities of negotiable instruments under the law merchant and the Negotiable Instruments Law.

**37-7-210. Disposition of proceeds from sale of bonds; funds to be used only on system; unexpended balance; purchase and cancellation of bonds.**

The commissioners of any such power district shall require that the proceeds of the sale of bonds issued under the provisions of this act be deposited in a special account or accounts in a bank or banks which are members of the federal reserve system, and shall require, insofar as practicable, that each such deposit be secured by the United States government securities having an aggregate market value at least equal to the sum at the time on deposit, or, in any event, the proceeds shall be deposited in some bank or other depository, either within or without the state, which will secure such deposit satisfactorily to said governing body. All moneys received from any such bonds shall be used solely for the purchase, construction, improvement, enlargement, extension or repair of the system for which issued, including any engineering, legal and other expenses incident thereto; provided, however, that such moneys may be used also to advance the payment of the interest on such bonds during the first three (3) years following the date of such bonds. Provided, that any unexpended balance of the proceeds of the sale of any such bonds remaining after the completion of the project for which issued shall be paid immediately into the bond and interest redemption fund for such bonds, and the same shall be used only for the payment of the principal of the bonds, and interest for the first three (3) years following the date of the bonds, or, in the alternative, to acquire outstanding bonds of the general issue from which the proceeds were derived, by purchase of such bonds at a price (exclusive of accrued



interest) not exceeding the face amount thereof. Any bonds so acquired by purchase shall be cancelled and shall not be reissued.

**37-7-211. Rates for services.**

Rates for services furnished by any such system shall be fixed precedent to the issuance of the bonds. Such rates shall be sufficient to provide for the payment of the interest upon and the principal of all such bonds as and when the same become due and payable, to create a bond and interest redemption fund therefor, to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the system necessary to preserve the same in good repair and working order, to build up a reserve for depreciation of the existing system, and to build up a reserve for improvements, betterments and extensions to the existing system other than those necessary to maintain the same in good repair and working order as hereinbefore in this section provided. Such rates shall be fixed and revised from time to time so as to produce these amounts, and the court in its order authorizing the issuance of said revenue bonds shall empower and direct the commissioners of such power district to agree in and by the terms of said revenue bonds, and on the face of each bond at all times to maintain such rates for services furnished by such system as shall be sufficient to provide for the foregoing.

**37-7-212. Authority of district court concerning bonds; bonds to comply with federal laws; power system; state property.**

The district court having jurisdiction over said power district shall have general, full, and complete authority to authorize the issuance of such revenue bonds, to make such order and decree from time to time as may be necessary to provide for the raising and accumulation of sufficient revenue and funds for the payment of all principal and interest on said bonds, as same becomes due and payable and after any order or decree shall have been made by any district court of this state authorizing the issuance of any revenue bonds under this act, such district court shall retain jurisdiction until all of said bonds and the principal and interest thereon shall have been paid in full, to appoint a receiver on the application or petition of the owner or owners of said bonds or any of them, to collect the rates due said power district for services furnished and to conserve the same and apply the same to the payment of said bonded indebtedness, principal and interest, under the orders of such court; and in all such matters the court shall be deemed to have

general jurisdiction to do any and all things necessary to carry out the intent and purpose of this act and to so provide that the principal and interest on bonds issued hereunder shall be paid in full out of the revenue from the system or power plant or plants. It is the intent of this act, and there is hereby granted to the district court such complete and full jurisdiction and powers over such proceedings and bond issues that the district court in authorizing the issuance of any such bonds may provide therein such terms and conditions as will fully comply with any federal law or laws of the United States of America relating thereto, and particularly with the statute or statutes relating to public works so-called and revenue bonds to be issued for such purposes as well as with any federal law or laws appertaining to the reconstruction finance corporation and its powers. Any such power system or plant, electric light plant, power plant, power lines, transmission lines, distributing system, or other property shall be the property of the state of Wyoming and under its authority and control for the benefit of the users of the electric power developed or distributed thereby.

ARTICLE 3  
BLACK HILLS JOINT POWER COMMISSION

- 37-7-301. Repealed by Laws 2009, Ch. 168, § 207.**
- 37-7-302. Repealed by Laws 2009, Ch. 168, § 207.**
- 37-7-303. Repealed by Laws 2009, Ch. 168, § 207.**
- 37-7-304. Repealed by Laws 2009, Ch. 168, § 207.**
- 37-7-305. Repealed by Laws 2009, Ch. 168, § 207.**
- 37-7-306. Repealed by Laws 2009, Ch. 168, § 207.**
- 37-7-307. Repealed by Laws 2009, Ch. 168, § 207.**
- 37-7-308. Repealed by Laws 2009, Ch. 168, § 207.**
- 37-7-309. Repealed by Laws 2009, Ch. 168, § 207.**
- 37-7-310. Repealed by Laws 2009, Ch. 168, § 207.**
- 37-7-311. Repealed By Laws 2008, Ch. 44, § 2.**

CHAPTER 8

MOTOR CARRIERS

ARTICLE 1  
GENERALLY

37-8-101. Renumbered as § 31-18-101 by Laws 1993, ch. 68,  
§ 3.

37-8-102. Renumbered as § 31-18-102 by Laws 1993, ch. 68,  
§ 4.

37-8-103. Renumbered as § 31-18-103 by Laws 1993, ch. 68,  
§ 3.

37-8-104. Renumbered as § 31-18-104 by Laws 1993, ch. 68,  
§ 3.

37-8-105. Repealed by Laws 1983, ch. 140, § 1.

37-8-106. Repealed by Laws 1983, ch. 140, § 1.

37-8-107. Repealed by Laws 1983, ch. 140, § 1.

37-8-108. Repealed by Laws 1983, ch. 140, § 1.

37-8-109. Repealed by Laws 1983, ch. 140, § 1.

37-8-110. Repealed by Laws 1983, ch. 140, § 1.

37-8-111. Repealed by Laws 1983, ch. 140, § 1.

37-8-112. Repealed by Laws 1983, ch. 140, § 1.

37-8-113. Repealed by Laws 1983, ch. 140, § 1.

37-8-114. Repealed by Laws 1983, ch. 140, § 1.

37-8-115. Repealed by Laws 1983, ch. 140, § 1.

37-8-116. Repealed by Laws 1983, ch. 140, § 1.

37-8-117. Repealed by Laws 1983, ch. 140, § 1.

37-8-118. Repealed by Laws 1983, ch. 140, § 1.

37-8-119. Repealed by Laws 1983, ch. 140, § 1.

37-8-120. Repealed by Laws 1983, ch. 140, § 1.

37-8-121. Repealed by Laws 1983, ch. 140, § 1.

37-8-122. Repealed by Laws 1983, ch. 140, § 1.

37-8-123. Repealed by Laws 1983, ch. 140, § 1.

37-8-124. Repealed by Laws 1983, ch. 140, § 1.

37-8-125. Repealed by Laws 1983, ch. 140, § 1.

ARTICLE 2  
CERTIFICATES AND PERMITS

37-8-201. Renumbered as § 31-18-209 by Laws 1993, ch. 68,  
§ 4.

37-8-202. Renumbered as § 31-18-210 by Laws 1993, ch. 68,  
§ 3.

37-8-203. Renumbered as § 31-18-211 by Laws 1993, ch. 68,  
§ 4.

37-8-204. Renumbered as § 31-18-212 by Laws 1993, ch. 68,  
§ 4.

37-8-205. Repealed by Laws 1989, ch. 129, § 3.

37-8-206. Renumbered as § 31-18-213 by Laws 1993, ch. 68,  
§ 4.

ARTICLE 3  
GENERAL REGULATORY PROVISIONS

37-8-301. Renumbered as § 31-18-301 by Laws 1993, ch. 68,  
§ 3.

37-8-302. Repealed by Laws 1989, ch. 129, § 3.

37-8-303. Renumbered as § 31-18-302 by Laws 1993, ch. 68, §  
4.

37-8-304. Renumbered as § 31-18-303 by Laws 1993, ch. 68,  
§ 4.

37-8-305. Renumbered as § 31-18-304 by Laws 1993, ch. 68,  
§ 3.

37-8-306. Repealed by Laws 1983, ch. 140, § 1.

37-8-307. Repealed by Laws 1983, ch. 140, § 1.

37-8-308. Repealed by Laws 1983, ch. 140, § 1.

37-8-309. Repealed by Laws 1983, ch. 140, § 1.

37-8-310. Repealed by Laws 1983, ch. 140, § 1.

37-8-311. Repealed by Laws 1983, ch. 140, § 1.

37-8-312. Repealed by Laws 1983, ch. 140, § 1.

37-8-313. Repealed by Laws 1983, ch. 140, § 1.

37-8-314. Repealed by Laws 1983, ch. 140, § 1.

37-8-315. Repealed by Laws 1983, ch. 140, § 1.

37-8-316. Repealed by Laws 1983, ch. 140, § 1.

37-8-317. Repealed by Laws 1983, ch. 140, § 1.

37-8-318. Repealed by Laws 1983, ch. 140, § 1.

37-8-319. Repealed by Laws 1983, ch. 140, § 1.

37-8-320. Repealed by Laws 1983, ch. 140, § 1.

37-8-321. Renumbered by Laws 1983, ch. 108, § 2.

37-8-322. Repealed by Laws 1983, ch. 140, § 1.

#### ARTICLE 4 FEES

37-8-401. Repealed by Laws 1989, ch. 129, § 3.

37-8-402. Renumbered as § 31-18-402 by Laws 1993, ch. 68,  
§ 3.

37-8-403. Renumbered as § 31-18-403 by Laws 1993, ch. 68,  
§ 4.

37-8-404. Renumbered as § 31-18-405 by Laws 1993, ch. 68,  
§ 3.

37-8-405. Repealed by Laws 1993, ch. 68, § 5.

37-8-406. Repealed by Laws 1983, ch. 140, § 1.

37-8-407. Repealed by Laws 1983, ch. 140, § 1.

37-8-408. Repealed by Laws 1983, ch. 140, § 1.

37-8-409. Repealed by Laws 1983, ch. 140, § 1.

37-8-410. Repealed by Laws 1983, ch. 140, § 1.

37-8-411. Repealed by Laws 1983, ch. 140, § 1.

37-8-412. Repealed by Laws 1983, ch. 140, § 1.

37-8-413. Repealed by Laws 1983, ch. 140, § 1.

37-8-414. Repealed by Laws 1983, ch. 140, § 1.

37-8-415. Repealed by Laws 1983, ch. 140, § 1.

37-8-416. Repealed by Laws 1983, ch. 140, § 1.

ARTICLE 5  
PENALTIES AND ENFORCEMENT

37-8-501. Renumbered as § 31-18-701 by Laws 1993, ch. 68,  
§ 3.

37-8-502. Repealed by Laws 1983, ch. 140, § 1.

37-8-503. Repealed by Laws 1983, ch. 140, § 1.

37-8-504. Repealed by Laws 1983, ch. 140, § 1.

37-8-505. Repealed by Laws 1983, ch. 140, § 1.

37-8-506. Repealed by Laws 1983, ch. 140, § 1.

37-8-507. Repealed by Laws 1983, ch. 140, § 1.

37-8-508. Repealed by Laws 1979, ch. 52, § 2.

- 37-8-509. Repealed by Laws 1979, ch. 52, § 2.
- 37-8-510. Repealed by Laws 1979, ch. 52, § 2.
- 37-8-511. Repealed by Laws 1979, ch. 52, § 2.
- 37-8-512. Repealed by Laws 1979, ch. 52, § 2.
- 37-8-513. Repealed by Laws 1979, ch. 52, § 2.
- 37-8-514. Repealed by Laws 1979, ch. 52, § 2.
- 37-8-515. Repealed by Laws 1979, ch. 52, § 2.
- 37-8-516. Repealed by Laws 1979, ch. 52, § 2.
- 37-8-517. Repealed by Laws 1983, ch. 140, § 1.
- 37-8-518. Repealed by Laws 1983, ch. 140, § 1.

CHAPTER 9  
Railroads

ARTICLE 1  
ORGANIZATION; BONDS; CONSOLIDATION

**37-9-101. Mortgages; issue of corporate bonds; provisions as to bonds.**

Every railroad company organized under the general incorporation laws of this state shall have power and is hereby authorized to mortgage or execute deeds of trust, in whole or in part, of the real and personal property and franchises, including its lands or other property granted to said company by the United States, or any state or territory, to secure money borrowed by them for the construction and equipment of their roads, and may also issue their corporate bonds in sums not less than one thousand dollars (\$1,000.00); to make all of said mortgages or deeds of trust payable to bearer or otherwise, negotiable by delivery, bearing interest at rates not to exceed ten percent (10%) per annum, convertible into stock or not, at the option of the holder, and may sell the same at such rates and prices as they may deem proper, and if said bonds shall be sold below their nominal or par value, they shall be valid and binding upon the company, and no plea of usury shall be put in or allowed by said company in any suit or proceeding upon the same. The principal

and interest of said bonds or either of them may be made payable within or without this state, at such place as may be determined upon by said company.

**37-9-102. Consolidation; mode of effecting.**

Whenever a line of railroad or any railroad company in this state, or any portion of said line, has been constructed so as to connect with any two (2) or more of such roads, said companies are hereby authorized to consolidate themselves into a single corporation in the manner following: the trustees of the said two (2) or more corporations may enter into an agreement under the corporate seal of each, for the consolidation of said two (2) or more corporations, prescribing the terms or conditions thereof; the mode of carrying the same into effect; the name of the new corporation; the number of the trustees thereof, which shall not be less than seven (7); the time and place of holding the first election of trustees; the number of shares of stock in the new corporation; the amount of each share; the manner of converting the shares of capital stock in each of said two (2) or more corporations, into shares in such new corporation; the manner of compensating stockholders in each of said two (2) or more corporations who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporation shall possess all the powers, rights and franchises conferred upon such said two (2) or more corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of the corporation laws of this state; provided, that all stockholders in either of such corporations who shall refuse to convert their stock into the stock of such new corporation, shall be paid an appraised value of said stock at the date of such consolidation.

**37-9-103. Consolidation; when consummated.**

Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate or counterpart thereof in the office of the secretary of state, the said two (2) or more corporations (mentioned or referred to in the last two (2) or more preceding sections, or any other law of the state) shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned; and the details of such agreement shall be carried into effect as provided therein.



**37-9-104. Consolidation; effects; rights of creditors.**

Upon the election of the first board of trustees of the corporation created by the agreement pursuant to W.S. 37-9-102, and by the provisions of W.S. 37-9-101 through 37-9-105, all and singular the rights and franchises of each and all of the two (2) or more corporations, parties to such agreement, and all and singular the rights and interest in and to every species of property, real, personal and mixed, and things in action shall be deemed to be transferred to and vested in the new corporation, without any other deed or transfer, and the new corporation shall hold and enjoy the same, together with right-of-way and all other rights of property in the same manner and to the same extent as if the two (2) or more corporations, parties to the agreement, should have continued to retain the title and transact the business of the corporations. And the title and the real estate acquired by either of the two (2) or more corporations shall not be deemed to revert or be impaired by means of anything in W.S. 37-9-101 through 37-9-105; provided, that all rights of creditors and all liens upon the property of either of the corporations shall be and hereby are preserved unimpaired; and the respective corporations shall continue to exist as far as may be necessary to enforce the same; provided, further, that all debts, liabilities and duties of either company shall henceforth attach to the new corporation, and be enforced to the same extent and in the same manner as if the debts, liabilities and duties had been originally incurred by it.

**37-9-105. Company may subscribe to capital stock of other railroad company.**

Any railroad company incorporated under the general laws of this state may at any time by means of subscription to the capital stock of any other company or otherwise, aid such company in the construction of its road for the purpose of forming a connection with the line of road owned by such other company.

**37-9-106. Aid to other companies; extension outside of state; sale or lease to other railroads permitted; foreign railroads; taxation.**

Any railroad company now or hereafter incorporated pursuant to the laws of this state, or of the United States, or of any state or territory of the United States, may at any time, by means of subscription to the capital stock of any other railroad company, or by the purchase of its stock or bonds, or by guaranteeing its

bonds, or otherwise, aid such company in the construction of its railroad within and without this state; and any company owning or operating a railroad within this state may extend the same into any other state or territory, and may build, buy, lease, or may consolidate with any railroad or railroads in such other state or territory, or with any other railroad in this state and may operate the same, and may own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road; or any railroad company may sell or lease the whole or any part of its railroad or branches within this state, constructed or to be constructed, together with all property and rights, privileges and franchises pertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States or of this state or of any other state or territory of the United States; or any railroad company incorporated or existing under the laws of the United States, or of any state or territory of the United States, may extend, construct, maintain and operate its railroad, or any portion or branch thereof, into and through this state, and may build branches from any point on such extension to any place or places within this state; and the railroad company of any other state or territory, or of the United States, which shall so purchase or lease a railroad or any part thereof in this state, or shall extend or construct its road or any portion or branch thereof in this state, shall possess and may exercise and enjoy, as to the control, management and operation of the said road, and as to the location, construction and operation of any extension or branch thereof, all the rights, powers, privileges and franchises possessed by any railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain. Such purchase, sale, consolidation with, or lease may be made or such aid furnished upon such terms and conditions as may be agreed upon by the directors or trustees of the respective companies; but the same shall be approved or ratified by persons holding or representing a majority in amount of the capital stock of each of such companies, respectively, at any annual stockholders' meeting or at a special meeting of the stockholders called for that purpose, or by approval in writing of a majority in interest of the stockholders of each company respectively; provided, that nothing in the foregoing provisions shall be held or construed as curtailing the right of this state or of the counties through which any such road or roads may be located to levy and collect taxes upon the same and upon the rolling stock thereof in conformity with the provisions of the laws of this state upon that subject; and all roads and branches thereof in this state, so consolidated with, purchased or

leased, or aided or extended into this state, shall be subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state; and any corporation of another state or territory, or of the United States, being the purchaser or lessee of a railroad within this state or extending its railroad or any portion thereof into or through this state, shall establish and maintain an office or offices in this state at some point or points on its line, at which legal process and notice may be served as upon railroad corporations of this state; provided, further, that before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this act [section], such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation. Any consolidation by sale or otherwise, or any lease or agreement to sell, consolidate with or lease the whole or any part of any railroad and its branch lines, organized under the laws of Wyoming with the franchises appertaining thereto, to any railroad company organized or existing under the laws of the United States or of Wyoming or any other state or territory, or any consolidation between such companies organized under the laws of the United States or of Wyoming or any other state or territory, and a corporation organized under the laws of Wyoming executed prior to February twenty-seventh, A.D. 1890, by the proper officers of the companies, parties to such sale, lease or consolidation or contract, is hereby legalized and made in all respects valid and binding from the date of its execution.

## ARTICLE 2 RIGHTS-OF-WAY

**37-9-201. Repealed by Laws 1981, ch. 174, § 3.**

**37-9-202. Renumbered as 37-9-311 by Laws 2001, Ch. 200, § 3.**

**37-9-203. Lands heretofore taken may be acquired.**

Any railroad company which may have prior to January ninth, A.D. 1891, taken any of the lands of this state for right-of-way and depot grounds shall, upon filing a plat and survey thereof, with the director, and payment for depot grounds, be entitled to a conveyance by letters patent, by the governor, conveying in fee the lands for depot grounds, and granting forever to such railroad company, its successors and assigns, the right to take,

use, occupy and enjoy for its railroad purposes, the lands so taken for right-of-way, for tracks and roadways; provided, that in addition to the filing of such survey and plat, proof, to the satisfaction of the land commissioners, shall be made of the construction of such railroad across the land, and the erection of a station on the lands claimed for depot grounds.

**37-9-204. Rights-of-way for oil and gas companies.**

W.S. 37-9-202 and 37-9-203 shall also apply to all gas and petroleum oil corporations, companies and individuals, for the right-of-way ten (10) feet wide, through the school and other lands, over which the state has control, for the purpose of carrying gas or oil through pipes, also land for pump stations, tanks, and other buildings, necessary to conduct the oil or gas product of the wells of Wyoming.

**37-9-205. Plats of survey to be filed.**

The secretary of state is hereby authorized to transfer to the office of the director all plats of survey which may have been filed in the office of the secretary of state under the provisions of W.S. 37-9-203 and 37-9-204, and from and after the passage of this section all plats of survey required to be filed under the provisions of the sections aforesaid shall be filed with the director instead of with the secretary of state.

ARTICLE 3

FIREGUARDS; FENCES; INJURIES TO STOCK

**37-9-301. Fireguards.**

It shall be the duty of every railroad corporation operating its line of road, or any part of it, within this state, upon its right-of-way upon each side of its roadbed, to maintain annually an effective fireguard upon order of and satisfactory to specifications set forth by the department of transportation so as to prevent fire from spreading to lands adjacent to the right-of-way. The fireguards need not be maintained within the limits of any city or town, nor along that portion of the line of a railroad where the desert or mountainous character of the adjoining land would render such burning impractical or unnecessary.

**37-9-302. Fireguards; penalty.**

(a) Any railroad corporation failing to comply with the provisions of W.S. 37-9-301 shall be liable to pay a penalty of one thousand dollars (\$1,000.00) for each and every mile, or fractional mile, of any strips of land it neglects to treat as directed by the department of transportation upon either side of the line of its road in this state, in each and every year as stated, the penalty to be collected in any proper action in any court of competent jurisdiction, in the name of the state of Wyoming, and when collected it shall be paid into the school fund of the county where the cause of action accrued. The action shall be brought within one (1) year after the violation of W.S. 37-9-301 occurs.

(b) The penalty imposed under subsection (a) of this section applies to any railroad corporation failing to comply with W.S. 37-9-311.

### **37-9-303. Fireguards; liability for damages.**

(a) Every railroad corporation operating its line of road, or any part of it, within this state, shall be liable for all damages by fire resulting from or caused by operating any such line of road together with suppression costs, established by the department of transportation, and any damages and costs in any court of competent jurisdiction.

(b) Any damage and suppression cost may be recovered by the party damaged if an action is brought by the party injured within one (1) year next after said damages shall have been inflicted or caused. An injured party who recovers more than has been last offered in writing by the railroad under this section may be awarded reasonable attorney fees and other costs incurred in seeking recovery under this section if it is determined that the railroad acted unreasonably and without cause.

### **37-9-304. Fences and cattle guards; generally.**

(a) All railway corporations, owning or operating a line of railway within the state, shall construct, maintain and keep in repair on each side of the track thereof, a sufficient fence which meets or exceeds department of transportation fencing standards, so connected with suitable cattle guards at all public road crossings as to prevent stock from getting on the railroad track of the corporation. The fence shall be constructed within nine (9) months after the completion of any railroad track or any part thereof; provided, that railway

corporations shall not be required to construct and maintain a fence within the boundaries of any incorporated city or town.

(b) Any corporation failing to comply with this section is subject to a fine of not less than one hundred dollars (\$100.00) nor more than seven hundred fifty dollars (\$750.00) for each day during which a violation continues. Each county in which there is a failure to comply with this section shall constitute a separate violation. This penalty shall be prosecuted and collected pursuant to the provisions of W.S. 37-9-302.

(c) No fine shall be assessed under subsection (b) of this section against a corporation that has on file with the department of transportation an approved plan for fence construction, reconstruction and maintenance so long as the corporation is in full compliance with the terms and conditions of the approved plan.

**37-9-305. Fences and cattle guards; liability for damages.**

Any corporation operating a railway and failing to fence the same and to construct and maintain suitable cattle guards as required by W.S. 37-9-304, shall be liable to the owner or owners of any livestock killed or injured by reason of its failure to construct or keep in repair the fence or cattle guard in the manner provided in W.S. 37-9-304, for the full amount of the damage sustained by the owner on account thereof and to make a prima facie case for recovery, it shall only be necessary for the owner to prove the loss or injury to his property; provided, that no corporation operating a railroad shall be liable for any damage occasioned by the willful act of the owner or of his agent or employees or for stock killed or injured on public road crossings unless negligence on the part of the corporation, its agents, servants or employees can be shown.

**37-9-306. Injury to stock; definitions.**

For the purpose of this article the terms "livestock" and "stock" shall include all classes of horses, asses, mules, cattle, sheep, swine, buffalo, beefalo, llamas and other domesticated animals.

**37-9-307. Injury to stock; notice to owner; procedure if owner unknown.**

Any railroad corporation injuring or killing any livestock, by running any engine, car or cars, over or against the livestock,

shall immediately notify the owner or owners, a brand inspector or the department of transportation, giving a full description, including the number, classes and brands, of the livestock, naming the locality where the stock was killed or injured. It shall be the responsibility of the corporation to retrieve the animal injured or killed after identification and notification, and dispose of the animal within ten (10) days from the date of notification.

**37-9-308. Injury to stock; owner to make sworn statement of value.**

Any person owning any livestock which is killed or injured, in the manner set forth in W.S. 37-9-307, shall within thirty (30) days after the person is notified of the killing or injuring, as provided in W.S. 37-9-307, furnish the corporation having killed or injured the livestock, through its nearest agent, sworn evidence of the value of the livestock. The corporation shall then report to the department of transportation within thirty (30) days, receipt of the sworn evidence of the value of the livestock killed or injured.

**37-9-309. Payment of claims; time; interest; costs.**

(a) Any railroad corporation liable for the payment of claims for damages from fire and livestock killed or injured shall either pay or reject the claim within sixty (60) days after notice and evidence of the claim is furnished by the claimant. All claims shall include information necessary for the railroad to verify property damage, value of property damages, and propriety of claim with all supporting bills, when available. Claims shall not be deemed filed until the information has been received by the railroad. A claim which is not rejected or paid within sixty (60) days shall be deemed granted and shall constitute a lien upon the property of the railroad. Claims which are unpaid after sixty (60) days shall draw interest at the rate of eighteen percent (18%) per annum until paid, whether voluntarily or by court judgment and order.

(b) With respect to any property damage caused by a railroad, the court shall order the railroad corporation to pay the reasonable attorney fees and court costs incurred by a property owner if the court finds that the railroad corporation did not negotiate in good faith to establish the reasonable value of damages caused to the property owner by the railroad, or if the property owner was required to initiate legal

proceedings against the railroad corporation to enforce a judgment for damages.

**37-9-310. Authority of department of transportation to adopt rules and regulations; information to be provided.**

The department of transportation shall adopt rules and regulations in accordance with the Wyoming Administrative Procedure Act prescribing standards for fireguards, fences and cattle guards erected and maintained by railroad corporations. The department of transportation shall provide private property owners with information on where to file a claim in the case of damage to private property caused by railroads.

**37-9-311. Spraying weeds on rights-of-way.**

It shall further be the duty of the railroad to spray noxious weeds on rights-of-way to prevent spread to adjoining lands.

**37-9-312. Immediate or urgent fence repairs.**

(a) After notification to the railroad and the department of transportation by the landowner concerning any damaged fence or a fence in disrepair, the landowner shall have the right to be reimbursed by the railroad for the reasonable and customary costs for such repairs, provided:

(i) The landowner gives the railroad specific information concerning the location of the damage;

(ii) Following the notice by the landowner, the railroad fails to commit that it will make the repairs within three (3) business days of the initial notice by the landowner or fails to complete the repairs within five (5) business days or within a mutually agreed upon time from the date of the initial notice by the landowner; and

(iii) The need for repair is of an immediate or urgent nature as determined by the landowner and the department of transportation.

(b) Nothing in this section shall be construed as a prohibition against a railroad immediately repairing the fence, the adjacent landowner and the railroad mutually agreeing to other terms for such repairs, or to an adjacent landowner making such repairs at his own expense.



(c) Repairs made by a landowner pursuant to this section shall not be deemed to create any continuing duty or any landowner liability.

ARTICLE 4  
DEPOTS; SALE OF TICKETS; DEMURRAGE

**37-9-401. Establishment of depots; when required; deviation to avoid establishment prohibited.**

No railroad company shall construct or operate a railroad within four (4) miles of any existing town or city without providing a suitable depot or stopping place at the nearest practicable point for the convenience of said town or city, and stopping all trains doing local business at said stopping place. No railroad company shall deviate from the most direct practicable line in constructing a railroad for the purpose of avoiding the provisions of this section.

**37-9-402. Establishment of depots; prosecution; notice to railroad.**

Whenever it shall come to the knowledge of the district attorney for any county in this state, or whenever complaint shall be made to such officer by any citizen or citizens thereof, that any railroad corporation or company doing business and running trains in or through such county is neglecting or refusing to provide a suitable depot or stopping place as provided by W.S. 37-9-401, or violating any of the provisions thereof, it shall be the duty of the district attorney to make a personal examination of the conditions complained of and if he finds that such railroad corporation or company has not provided a suitable depot or stopping place for the convenience of any town or city, and is not stopping all trains doing local business thereat, he shall at once prepare and cause the sheriff of his county to serve a written notice on any officer or agent of such railroad corporation or company to be found in said county to the effect that such violation exists in the vicinity of a certain town or city, naming it, and notifying said company that unless remedied within thirty (30) days from the date of the service of said notice, and in strict compliance with W.S. 37-9-401, proceedings against said derelict company will be commenced in the district court of such county to compel such compliance, and also to enforce the penalty provided for in W.S. 37-9-403.

**37-9-403. Establishment of depots; penalty.**

If, after the expiration of thirty (30) days from the service of the notice hereinbefore specified, the said railroad corporation or company still neglects or refuses to comply with the term of such notice and with the provisions of W.S. 37-9-401, it shall, on conviction, be fined in the sum of fifty dollars (\$50.00) for each day of such delinquency after the expiration of such thirty (30) days notice, up to, and including the day and date on which judgment may be rendered, and also for costs of suit, recoverable by an action in the district court of such county to be brought by the district attorney thereof, and all fines collected under this statute shall be covered into the treasury of the county in which such action is brought. It shall also be the duty of the district attorney aforesaid to promptly institute mandamus proceedings against such derelict railroad corporation or company in the district court to enforce the provisions of W.S. 37-9-401 through 37-9-403.

**37-9-404. Sale of tickets; agent to have certificate of authority.**

It shall be the duty of the owner or owners of any railroad or other conveyance for the transportation of passengers to provide each agent who may be authorized to sell tickets or other certificates, entitling the holder to travel upon any railroad or other public conveyance, with a certificate, setting forth the authority of such agent to make such sales, which certificate shall be duly attested by the corporate seal, if such there be, of the owner of such railroad or other public conveyance and also by the signature of the owner or officer whose name is signed upon the tickets or coupons which such agent may sell.

**37-9-405. Sale of tickets; sale without certificate prohibited.**

It shall not be lawful for any person not possessed of such authority so evidenced, to sell, barter or transfer, for any consideration whatever, the whole or any part of any ticket or tickets, passes or other evidences of the holder's title to travel on any railroad or other public conveyance, whether the same be situated, operated or owned within or without the limits of this state, except as authorized by this act.

**37-9-406. Sale of tickets; penalty for violating W.S. 37-9-405.**

Any person or persons violating the provisions of the preceding section shall be deemed guilty of a misdemeanor, and shall be liable to be punished by a fine of not exceeding five hundred dollars (\$500.00) and by imprisonment not exceeding one (1) year, or either or both, in the discretion of the court in which such person or persons shall be convicted.

**37-9-407. Sale of tickets; certificate of authority to be posted; form.**

It shall be the duty of every agent who shall be authorized to sell tickets or parts of tickets, or other evidences of the holder's title to travel, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request him, the certificate of his authority thus to sell, and to keep said certificate posted in a conspicuous place in his office, for the information of travelers, in substantially the following form:

Agent's Certificate.

To whom it may concern: Notice is hereby given that .... is an agent in the employ of .... company at .... authorized to sell tickets entitling the holder to travel upon .... Witness the corporate seal of .... company, and the hand of .... General passenger and ticket agent.

**37-9-408. Sale of tickets; unused tickets redeemable; sale of unused ticket by purchaser.**

It shall be the duty of the owner or owners of railroads, or other public conveyances, to provide for the redemption of the whole or any parts, or coupons of any ticket or tickets, as they may have sold, as the purchaser for any reason has not used and does not desire to use, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the proportion of said ticket was actually used; and the sale by any person of the unused portion of any ticket otherwise than by the presentation of the same for redemption, as provided for in this section, shall be deemed to be a violation of the provisions of this act, and shall be punished as hereinbefore provided; provided, that this act shall not apply to the sale of first-class tickets; and provided, that this act shall not prohibit any person who has purchased a regular first-class ticket from any agent authorized by this act with the bona fide intention of traveling upon the same the whole distance between the points named in the said

ticket, from selling the unused part of the same to any other person, if such person travels upon the same, unless said tickets shall be special contract tickets and the local fare to the point to which said ticket may be used shall equal the price paid for such special contract ticket.

**37-9-409. Demurrage on cars.**

All railroads, shipping cars, or parts of cars of all commodities, from any point in the state of Wyoming, to consignees in any other part of this state, shall give time, free of charge, for loading and unloading said cars, or parts of cars, as follows: All loaded cars, taking track delivery, which are to be unloaded by the consignee thereof, or the party whose interest may appear, or cars set for loading which are to be loaded by consignor, shall be limited to forty-eight (48) hours of free time, computed from seven (7:00) o'clock a.m., of the day following the day legal notice of arrival is given (having been placed at an accessible point for unloading), and may be subject thereafter to a charge of one dollar (\$1.00) per car for each day, or fraction of a day, that they may remain unloaded, in possession of the railroad company after said free time; provided, however, that if after placing a car, or cars, as required in this section, the railroad company shall, during or after free time, temporarily remove all, or any of them, or in any way obstruct the unloading of same, the consignee shall not be chargeable with the delay caused thereby; provided, that when on account of delay or irregularity of transportation, cars are bunched and delivered to consignee in numbers beyond his reasonable ability to load and unload within the free time prescribed by these rules, he shall be allowed by the carrier such additional time as may be necessary to load and unload cars, so in excess, by the exercise of usual diligence on the part of the consignee.

**37-9-410. Additional charges for delay forbidden.**

Any railroad company, operating within the state of Wyoming, and transporting commodities from a consignor to a consignee, within this state, shall not charge to either the consignor, or consignee of said commodities any additional sum of money, for freight or transportation, on account of any delay in the transportation or delivery of same, not caused by the direct act or agency of the said consignor or consignee.

ARTICLE 5  
LIABILITY FOR INJURY OR DEATH

## OF EMPLOYEE

### **37-9-501. Death or injury due to negligence.**

Every person or corporation operating a railroad in the state shall be liable in damages to any person suffering injury while he is employed by the person or corporation so operating any railroad, or, in case of the death of an employee, instantaneously, or otherwise, to his or her personal representative, for the benefit of the surviving widow or husband and children of the employee; and, if none, then of the employee's parents; and, if none, then of the next of kin dependent upon the employee, for the injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of the person or corporation so operating the railroad in or about the handling, movement, or operation of any train, engine, or car, on or over the railroad, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, or other equipment.

### **37-9-502. Contributory negligence.**

In all actions hereafter brought against any such person or corporation so operating such railroad, under and by virtue of any of the provisions of this act, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such person or corporation so operating such railroad, of any statute enacted for the safety of employees contributed to the injury or death of such employee.

### **37-9-503. Assumption of risk.**

Any employee of any such person or corporation so operating such railroad shall not be deemed to have assumed any risk incident to his employment when such risk arises by reason of the negligence of his employer or of any person in the service of such employer.

### **37-9-504. Contracts restricting liability void.**

Any contract, rule, or regulation or device whatsoever, the purpose or intent of which shall be to enable any such person or corporation, so operating such railroad to exempt itself from any liability created by this act shall, to that extent, be void. Nor shall any contract of insurance, relief, benefit or indemnity in case of injury or death, entered into prior to the injury, between the person so injured and such corporation, or any person or association acting for such corporation, nor shall the acceptance of any such insurance, relief, benefit, or indemnity by the person injured, his widow, heirs, or legal representatives after the injury, from such corporation, person or association, constitute any bar or defense to any cause of action brought under the provisions of this act, but nothing herein contained shall be construed to prevent or invalidate any settlement for damages between the employer and the employees subsequent to injuries received.

**37-9-505. Two-way radios required; penalty.**

(a) When a railroad train is operated in Wyoming with a caboose, it shall be equipped with operable, two-way radios located in the lead locomotive and in the caboose. The radios shall have and be operated at the same frequency as the control operator on the railroad on which the train is operated if the control operator is equipped with radios.

(b) When a railroad train is operated in Wyoming without a caboose, the train crews shall be supplied with an operable, portable two-way radio. The radio shall have and be operated at the same frequency as the control operator on the railroad on which the train is operated if the control operator is equipped with radios.

(c) Violation of this section is a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00). Each train operating without the required radios is a separate violation.

ARTICLE 6  
RECOVERY FOR LABOR OR SUPPLIES

**37-9-601. Contractor's bond.**

Whenever any railroad company shall contract with any person, persons or corporation for the construction of its railroad or any part thereof, the company shall take from the person, persons, or corporation with whom a contract is made, a good and

sufficient bond, in some guarantee or surety company authorized to do business in this state, conditioned that the contractor or contractors shall pay or cause to be paid all laborers, mechanics, materialmen, ranchmen, farmers, merchants, and other persons who supply the contractor or contractors, or any of his or their subcontractors, with labor, work, material, ranch or farm products, provisions, goods or supplies of any kind, all just debts incurred therefor in carrying on the work, which bond shall be filed by the company in the office of the county clerk in the county where the principal work of the contractor shall be carried on; and if any railroad company shall fail to take a bond, the railroad company shall be liable to the persons herein mentioned to the full extent of all debts so contracted by the contractor, or contractors, or any of his or their subcontractors. Any contractor or contractors may take a similar bond from each of his or their subcontractors to secure the payment of all debts of the kind above mentioned, incurred by him, and file the same as above provided. All persons mentioned in this section to whom any debt of the kind above mentioned shall be due from any contractor or subcontractor shall severally have a right of action upon any bond covering the debt taken as herein provided for the recovery of the full amount of the debt, and a certified copy of the bond shall be received as evidence in any action; provided, however, that in order that the right of action upon the bonds may exist, the person or parties herein granted the right shall comply with either of the following conditions, to-wit: First, an action in a court of competent jurisdiction, in the county where the bond is filed shall be commenced within ninety (90) days after the last item of indebtedness shall have accrued; or second, an itemized statement of the indebtedness duly verified shall within ninety (90) days after the last item of the indebtedness shall have accrued be filed in the office of the county clerk of the proper county; and an action shall be brought in any court of competent jurisdiction of the county within three (3) months after the filing of the statement. In case an action is commenced upon the bond of a contractor, the contractor may give notice thereof to the subcontractor liable for the claim, and in a case the result of the action shall be binding upon the subcontractor, and his sureties, and in any case when a contractor has paid a claim for which a subcontractor is liable, the contractor shall bring action against the subcontractor and his sureties within sixty (60) days after the payment of the claim.

**37-9-602. Verified statement of account; to be delivered to company; account to be withheld out of subsequent payments.**

Every laborer, mechanic, ranchman, farmer, merchant, or other person performing any work or labor or furnishing any material, ranch or farm products, provisions, goods, or supplies to any contractor or subcontractor, in the construction of any railroad, or any part thereof, used by such contractor or subcontractor in carrying on said work of construction whose demand for work, labor, material, ranch or farm products, provisions, goods, or supplies so furnished has not been paid, may deliver to the company owning such railroad or to its agent, a verified account of the amount and value of the work, and labor so performed or the material, ranch or farm products, provisions, goods or supplies so furnished, and thereupon such company, or its agent, shall retain out of the subsequent payments to the contractor or contractors the amount of such unpaid account for the benefit of the person to whom the same is due.

**37-9-603. Verified statement of account; recovery procedure.**

Whenever any verified account mentioned in the last preceding section shall be placed in the hands of any railroad company or its agent as above stated, it shall be the duty of such company to furnish the contractor with a copy of such verified account, so that if there be any disagreement between the debtor and creditor as to the amount due the same may be amicably adjusted, and if the contractor or subcontractor, if he be the debtor, shall not, within ten (10) days after the receipt of such account, give the said railroad company or its agent, written notice that the claim is disputed, he shall be considered as assenting to its payment, and the railroad company or its agent, shall be justified in paying the same when due and charging the same to the contractor. The person or persons to whom any such debt is due and who shall deliver a verified account thereof as above provided may recover the amount thereof in an action at law, to the extent of any balance due by the railroad company to the contractor at or after the time of delivering the verified account; provided, that nothing contained in this section or in section 2 of this act shall interfere with the right of action upon the bond or bonds provided for in section 1 of this act, or against the railroad company for the full amount of any such debt in case of a failure of the company to take a bond.

ARTICLE 7  
CONDITIONAL SALES OF EQUIPMENT



**37-9-701. Contracts valid; conditions to validation against subsequent purchaser for value.**

(a) In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract, may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless:

(i) The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved;

(ii) Such instrument shall be filed for record in the office of the secretary of state;

(iii) Each locomotive engine, or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word "owner" or "lessor" or "bailor", as the case may be.

**37-9-702. Chattel mortgage laws not to apply.**

Statutes relating to the filing, recording, interpretation, or validity of chattel mortgages shall not affect the recording, interpretation, or validity of contracts of the character hereinbefore named, but the same shall be controlled by the provisions of this act alone. And the contracts hereinbefore named shall not be affected by the provisions of chapter 40, Session Laws of 1895.

**37-9-703. Contracts to be filed; provisions for release; fees.**

The contracts herein authorized, or a certified copy thereof, shall be filed by the secretary of state in a special file to be kept for that purpose. On payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the contract or certified copy thereof, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor or his or its assignee, and filed as aforesaid. The secretary of state shall collect a fee of five dollars (\$5.00), for filing each of said contracts, and a fee of two dollars (\$2.00) for filing each of said declarations, and a fee of one dollar (\$1.00) for noting such declaration on the margin of the contract or certified copy thereof.

ARTICLE 8  
RAIL TRACK MOTOR CARS

**37-9-801. Requirements as to equipment.**

It shall be unlawful for any owner or operator of a railroad running through or within the boundaries of the state of Wyoming and engaged in the business of common carrier to operate for or transport its employees in a motor car which is not equipped with a reasonably substantial top for the protection of said employees from rain, snow, sleet and hail, and equipped with a transparent windshield sufficient in width and height to reasonably protect said employees, which windshield shall be of safety glass and such car shall also be equipped with a permanently placed electric headlamp of sufficient candlepower as to render visible at a distance of three hundred (300) feet in advance of such car under ordinary atmospheric conditions, any obstruction, landmark, warning sign or grade crossing on such railroad. Said car shall also be equipped with one (1) red electric light on the rear end thereof with sufficient candlepower as to be visible at a distance of three hundred (300) feet under ordinary atmospheric conditions, and such car shall also be equipped with a windshield wiper that will remove rain, snow and sleet from the windshield on such car while such car is moving and said windshield shall be so devised that the driver of said car can start or stop said windshield wiper while he is driving the car.

### **37-9-802. Penalty; exceptions.**

Any owner or operator of a railroad running through or within this state as a common carrier of persons or property or both, for compensation, who either operates for its employees, or who furnishes to its employees for their transportation to or from the place or places where they are required to labor, a rail track motor car that has not been fully equipped as required by W.S. 37-9-801, shall be deemed guilty of a misdemeanor and fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each offense, and each day or part of a day it operates or furnishes each of the rail track motor cars not so equipped as provided in W.S. 37-9-801, to its employees for operation to or from the place or places where they are required to work shall constitute a separate offense, provided that any common carrier that has not been able to equip its rail track motor cars as required by the provisions of W.S. 37-9-801, on or before the effective date can, by applying to the department of transportation, which is authorized to, and upon good cause shown, grant by order, additional time to any owner or operator of a common carrier by railroad, in which to equip the cars, not to exceed one (1) year from the effective date of this act. When an order has been granted by the department to the carrier, the provisions of W.S. 37-9-801 and 37-9-802 penalizing rail carriers who do not equip their cars shall not be applicable to those carriers securing an order for additional time in which to equip their cars during the period granted to them only by order of the department.

## **ARTICLE 9**

### **PURCHASE OF RAILROAD PROPERTY**

#### **37-9-901. City and county authority to acquire and lease railroad lines and to receive grants and loans.**

(a) Except as otherwise provided in this article, cities, towns or counties within the state acting either singly or jointly pursuant to the Wyoming Joint Powers Act are authorized to:

(i) Purchase, own, improve, rehabilitate, maintain, repair or replace railroad lines;

(ii) Lease or let any portion of the railroad lines referred to in paragraph (a)(i) of this section to any private person, company, corporation or carrier upon terms and

conditions and for either a fixed fee or a fee based on a percentage of the revenue collected from the railroad operation as determined by the governing body or bodies; and

(iii) Apply for and accept grants, loans or loan guarantees as authorized by law to carry out the provisions of this article.

### **37-9-902. Limitations of authority.**

(a) The actions authorized in W.S. 37-9-901 may be taken only if a rail carrier has:

(i) Abandoned or filed an application to abandon railroad lines with the proper regulatory authority; or

(ii) Taken action leading to potential abandonment of railroad lines as required by the proper regulatory authority.

(b) No city, town or county acting either singly or jointly may operate a railroad or provide railroad services.

(c) Except as otherwise provided in this subsection, a city, town or county acting either singly or jointly shall not purchase railroad lines at a price greater than the net salvage value or fair market value of the railroad lines as determined by the proper regulatory authority. This subsection does not prohibit a city, town or county acting either singly or jointly from negotiating a settlement of the net salvage value or fair market value of the railroad lines.

### **37-9-903. Liability insurance; immunity.**

(a) A city, town or county acting either singly or jointly shall require a lessee of railroad lines to obtain comprehensive liability insurance covering damages resulting from the operation of a railroad leased by the city, town, county or joint powers board pursuant to W.S. 37-9-901(a)(ii).

(b) A city, town or county acting either singly or jointly is immune from liability arising out of any claim, demand, suit or judgment for any damage or injury caused by or involving the operation of a railroad. The lessee of any railroad lines leased by a city, town, county or joint powers board is liable for any injury or damage caused by or involving the operation of railroad lines and no cause of action is allowed against the

city, town, county or joint powers board for any injuries or damages caused by or involving the operation of railroad lines.

ARTICLE 10  
RAILROAD ABANDONMENT

**37-9-1001. Policy to prevent abandonment.**

It is the policy of this state to prevent the loss of railroad service and competition in the provision of railroad service by preventing abandonment of railroad lines.

**37-9-1002. Department of transportation authority to take action; when action may be taken; attorney general and department of transportation responsibility.**

(a) To fulfill the policy stated in W.S. 37-9-1001 the department of transportation shall, subject to subsections (b) and (c) of this section, take the following actions:

(i) Protest applications filed or other actions taken by a rail carrier to abandon railroad lines;

(ii) Protest, challenge by legal action or intervene in rail carrier actions leading to potential abandonment of railroad lines;

(iii) Investigate the evidence offered by a rail carrier supporting the subsidy amount or minimum sale or salvage price of railroad lines to be abandoned and intervene in abandonment proceedings to challenge unjustified subsidy amounts and minimum sale or salvage prices;

(iv) Provide technical assistance to prospective rail carriers and to counties and municipalities seeking to purchase and operate railroad lines which other rail carriers are seeking to abandon or are likely to seek to abandon and provide assistance in preparing any filings with federal agencies necessary for them to purchase the railroad lines at the minimum sale or salvage price or to begin operations;

(v) Bring a legal action or intervene in a legal action or regulatory action to reduce the costs of trackage rights established in an agreement where the costs or conditions of the agreement appear to be contributing to potential abandonment of railroad lines or discouraging discovery of a prospective replacement rail carrier.

(b) The department shall take the actions authorized in subsection (a) of this section if:

(i) A danger of potential abandonment of a railroad line exists which will cause an adverse impact on rural and community development;

(ii) The county commissioners of any county or the governing body of any municipality in which any part of a railroad line subject to potential abandonment is located requests action;

(iii) The governor directs action to be taken; or

(iv) The department determines action is necessary to protect the public interest.

(c) The department may decide not to take any action authorized in subsection (a) of this section if it determines the action does not have a reasonable chance of fulfilling the policy stated in W.S. 37-9-1001.

(d) The attorney general shall assist and represent the department in any action taken as authorized in this section.

(e) The department is responsible for state rail planning and shall assist the attorney general in any action taken as authorized in subsection (a) of this section and shall provide technical advice and assistance to counties, municipalities and prospective rail carriers seeking to purchase and operate railroad lines which are abandoned or subject to potential abandonment.

ARTICLE 11  
LIABILITY FOR INJURY OR DEATH OF PERSONS  
UNLAWFULLY RIDING ON RAILROAD

**37-9-1101. Injury or death of persons unlawfully riding on railroads; immunities.**

Except in cases of attractive nuisance, no person owning, operating, loading or unloading a railroad car or train shall be liable for any damages for the accidental death or injury of a person occurring while the person was riding the railroad car or train in violation of W.S. 37-12-104, or while the person was boarding or unboarding from the railroad car or train without

the consent of the owner or operator of the railroad car or train.

ARTICLE 12  
EMERGENCIES

**37-9-1201. Emergency preparedness plan.**

(a) Each rail common carrier having annual carrier operating revenues in excess of ten million dollars (\$10,000,000.00), which transports a hazardous material or hazardous waste (as defined by Title 49 of the Code of Federal Regulations, Section 171.8, as may be revised and amended), shall adopt an emergency preparedness plan within sixty (60) days of the effective date of this act or the date of the rail common carrier's first transport of such materials within the state of Wyoming. The plan shall include as a minimum, the following:

(i) Notification procedures for advising the appropriate fire department or district or other public agency having the responsibility for responding to any emergency occurring in the area of any condition involving a release or threatened release of a hazardous material or hazardous waste where there is a reasonable belief that the actual or threatened release poses a significant present or potential harm to persons, property or the environment;

(ii) Procedures for mitigation of any such release or threatened release to minimize any potential harm or damage to persons, property or the environment; and

(iii) Training procedures to instruct railroad personnel on the actions to take in the event of any condition involving a release or threatened release of a hazardous material or hazardous waste where there is a reasonable belief that the actual or threatened release poses a significant present or potential harm to persons, property or the environment.

(b) The plan required in subsection (a) of this section shall be filed with the Wyoming department of transportation within fifteen (15) days of the rail carrier's adoption of such emergency preparedness plan.

(c) Any rail common carrier which violates any provision of this section or its emergency preparedness plan shall be

liable for a penalty of up to ten thousand dollars (\$10,000.00) per day for each violation, to be assessed in a civil action.

ARTICLE 13  
ENVIRONMENTAL INVENTORY AND CLEANUP

**37-9-1301. Environmental inventory and cleanup after cessation of rail service.**

(a) Any rail common carrier having annual carrier operating revenues in excess of ten million dollars (\$10,000,000.00), which ceases service on any railroad operating right-of-way in the state of Wyoming, shall comply with the requirements of this section. Within sixty (60) days of the date a rail common carrier ceases service, the carrier shall file with the Wyoming department of environmental quality a report certifying that the operating rights-of-way over which service is ceasing are in compliance with the Wyoming environmental quality laws or providing a plan to bring the operating rights-of-way into compliance. The report shall:

(i) Identify any release, leak, discharge or spill required to be reported under the Wyoming environmental quality laws which the rail carrier knew or should have known occurred on the operating rights-of-way over which service is ceasing;

(ii) Describe remedial action, if any, taken in regard to any such release, leak, discharge or spill reported pursuant to paragraph (a) (i) of this section by the rail carrier and whether such action resulted in the operating rights-of-way complying with the Wyoming environmental quality laws;

(iii) Include, if a release, leak, discharge or spill has occurred on an operating right-of-way, a sufficient number of samples and an analysis of the samples to determine whether or not all such operating rights-of-way are in compliance with the Wyoming environmental quality laws and shall indicate whether materials from any leak, discharge or spill could have entered surface or groundwater. The report shall include an analysis of the actions required to remediate any impact of a leak, discharge or spill and to bring the property into compliance with the Wyoming environmental quality laws.

(iv) Repealed by Laws 1995, ch. 54, § 2.

(b) Within one hundred eighty (180) days of the Wyoming department of environmental quality's receipt of the report



required by subsection (a) of this section, the Wyoming department of environmental quality shall review the information contained in the report and may require additional sampling and analysis by the rail common carrier of the operating rights-of-way subject of the report and shall notify the carrier in writing if the report is acceptable or if additional sampling or remediation is needed.

(c) Any rail carrier that is required to perform remediation shall file a progress report with the Wyoming department of environmental quality within one (1) year of the date of notification by the department of environmental quality that the report filed pursuant to subsection (a) of this section, is acceptable. The progress report shall be filed with the department annually thereafter until completion. Should new information be discovered during the period between reports, that information shall be disclosed in the annual report along with appropriate proposed modifications. Such modifications shall be reviewed and approved as provided in subsection (b) of this section.

(d) Repealed by Laws 1995, ch. 54, § 2.

(e) Repealed by Laws 1995, ch. 54, § 2.

(f) Copies of all reports and documentation required by this section shall be filed with the Wyoming department of environmental quality and shall be available to the Wyoming department of transportation, the Wyoming game and fish commission, the Wyoming legislative service office, the offices of the clerks of all counties and the clerks of all municipalities in which service is ceasing.

(g) Any rail carrier which violates any provision of this section shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per day for each violation, to be assessed in a civil action.

(h) For purposes of this section:

(i) A rail common carrier "ceases service" when the United States surface transportation board, or any successor agency, finds or has found that the rail common carrier may abandon any part of its railroad lines or discontinue the operation of all rail transportation over any part of its railroad lines, or when the railroad line is actually abandoned or service actually discontinued, if the abandonment or

discontinuance is exempt from such a finding under the rules of the surface transportation board, or any successor agency;

(ii) "Operating right-of-way" includes all property and facilities directly relating to the carrier's operation as a rail common carrier;

(iii) "Wyoming environmental quality laws" means the Wyoming Environmental Quality Act (W.S. 35-11-101 through 35-11-1428, as may be amended) and all rules and regulations issued thereunder.

## CHAPTER 10 Railroad and Public Highway Crossings

**37-10-101. Highway crossing protection account established; purposes of account; use in connection with federal funds.**

(a) In order to promote the public safety and to provide for the payment of part of the costs of installing, reconstructing and improving automatic and other safety appliance signals or devices at crossings at grade of public highways, as defined in this act, roads or streets over the track or tracks of any railroad corporation or street railway corporation in the state, there is created an account known as the highway crossing protection account within the highway fund. Before any funds of the highway crossing protection account shall be used to pay any part of the cost of the installation, reconstruction, or improvement of any signals or devices at any crossing, the commission shall first determine that all federal sources of funding have been exhausted. When federal funds are being utilized, federal guidelines as indicated in 23 C.F.R. [part] 646 shall be followed. For purposes of this section, "commission" means the Wyoming transportation commission.

(b) As used in this act:

(i) "Public highways" means as specified in W.S. 24-1-101, but shall not include private roads;

(ii) "This act" means W.S. 37-10-101 through 37-10-105.

**37-10-102. Power to close or establish crossings; establishing priority for hazardous crossing locations.**

(a) The transportation commission shall have the power and authority to close or establish crossings at grade of public highways as specified, or separations over or under the track or tracks of any railroad corporation or street railway corporation in the state of Wyoming.

(b) Upon application to the commission from the duly authorized agents of the cities, counties or other governmental entities or the affected railroad for participation under the terms of this act or upon its own motion when the public interest clearly indicates action should be taken, the commission shall consider the need from the evidence presented, availed or adduced and shall establish a priority rating from the applications or evidence before the commission, assigning priority first to the most hazardous railroad crossing locations, giving proper weight to increased rail traffic and to the traffic volume over such crossing with due consideration being given for school buses and dangerous commodities. If the commission determines there is a need for grade crossing protection, then they shall determine the type of crossing protection required, including whether the crossing is to be made at grade or a grade separation structure. If the crossing be at grade, the commission shall determine the kind and type of grade crossing protection signals and devices required. If the crossing is to be a grade separation structure, the commission shall determine the kind and type of grade separation structure.

**37-10-103. Apportionment of cost of grade crossing devices and grade separation structures; between railroad and state, county and city government.**

(a) With respect to the installation of safety devices or safety equipment at railroad-highway crossings, under the direction of the affected railroad, it shall be the duty of the transportation commission to apportion the costs and expenses of installing or reconstructing the crossings and safety devices between the railroads and the department of transportation or the county, city or other governmental entity involved in proportion to the respective benefits to be derived, and to make the apportionment of the costs in accordance with state and federal rules and regulations.

(b) With respect to the initial installation of grade separation structures at railroad public highway crossings, a grade separation structure shall be installed by the railroad at all new railroad crossings of public roads or state highways, after notifying the department of transportation of its intent

to cross the public road or highway, and if deemed appropriate after evaluation by the transportation commission. All installations shall be in accordance with state and federal rules and regulations.

(c) With respect to separation structures for roads over or under railroads, the commission shall first determine that all federal sources of funding have been exhausted, and then apportion the remaining costs and expenses of the initial installation of the grade separation structures between the railroad and the department of transportation or the county, city or other governmental entity involved, the apportionment to be based upon the causes resulting in the need for grade separation structures in accordance with state and federal rules and regulations. None of the money in the highway crossing protection account shall be used for payment of grade separation structures.

**37-10-104. Apportionment of cost of grade crossing devices and grade separation structures; administration of highway crossing protection account.**

(a) The transportation commission is charged with the administration of the highway crossing protection program. In order to compensate for the use of crossings by the public generally, the commission shall also order that one-half (1/2) of the cost of installing, reconstructing or improving signals or devices will be paid by the railroad corporation, and the balance of the costs will be divided between the state highway crossing protection account and the department of transportation or the city, town, county or other political entity in which the crossing is located in accordance with state and federal rules and regulations. The commission shall fix in each case the amount to be paid from the crossing protection account and the amount to be paid by the department or by the city, town, county or other political entity.

(b) The railroads shall bear all costs of maintaining in good operating condition all crossing surfaces and warning devices.

(c) The governmental agency or city, town, county or other political entity having jurisdiction over the highway and the separation structures which crosses over or under the railroad track or tracks, shall bear all cost of maintenance of its own separation structures. The railroad corporation shall bear all costs of maintenance of its own structures over or under a

public highway. Maintenance of joint use structures shall be by agreement between the parties involved.

**37-10-105. Transfer and credit of monies to account.**

For the purpose of building up sufficient money to be used to defray the expenses of installation and reconstruction of automatic and other safety appliance signals and devices at railroad grade crossings, for the construction or the improvement of existing highway-railroad grade crossings to render them safe and consistent with modern highway construction practice, the custodian of the state highway fund shall reserve to the highway crossing protection account to be used to administer the program up to a maximum of ten thousand dollars (\$10,000.00) per month. Monthly contributions shall continue until the unused balance in the account reaches the sum of two hundred forty thousand dollars (\$240,000.00), and no further credits or transfers shall be made except during such time that the balance in the account is less than two hundred forty thousand dollars (\$240,000.00).

CHAPTER 11  
Common Carriers by Air

**37-11-101. Definitions.**

(a) As used in W.S. 37-11-101 through 37-11-103, unless the context otherwise requires, the term "person" means any individual, firm, co-partnership, corporation, company, association, joint-stock association or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

(b) "Common carriers by air" as used in this act means any person or persons engaged in regularly scheduled air transportation of persons or property for compensation or hire within the state of Wyoming concerning those activities where the United States has not excluded the states from regulating.

**37-11-102. Conditions precedent to issuance of certificate.**

No certificate of public convenience and necessity shall be issued by the department of transportation to any person authorizing operation, as a common carrier by aircraft in Wyoming intrastate commerce, unless and until the applicant shall have submitted to the department a certificate, signed by

the director of the Wyoming aeronautics commission, to the effect that the applicant has complied with the laws of the United States, the laws of the state of Wyoming, and the lawful rules, regulations and orders, respecting safety of operations; and the provisions of the "Uniform State Law for Aeronautics", with respect to the right to use airports, airplanes and aircraft as necessary in order to properly conduct the proposed operations and observe proper standards of safety in the operation or navigation of aircraft. The Wyoming aeronautics commission shall require all applicants for a certificate of public convenience and necessity to furnish to it such evidence as it may require showing that they have complied in all respects with the laws, rules, regulations and orders.

**37-11-103. Hearings; right of aeronautics commission or director to intervene.**

Whenever a hearing is scheduled before the department of transportation in any proceeding for authority to conduct common aircraft operations in Wyoming intrastate commerce, it shall be the duty of the director of the department to notify the administrator of the Wyoming aeronautics commission; and the Wyoming aeronautics commission or its administrator may intervene in the proceedings for the purpose of setting up the interests of the Wyoming aeronautics commission.

CHAPTER 12  
Crimes, Offenses and Civil Liabilities

ARTICLE 1  
CRIMES AND OFFENSES  
AGAINST PUBLIC UTILITIES

**37-12-101. Stealing railroad equipment.**

If any person shall willfully and wrongfully take or remove the waste or packing or brass or brasses from any journal or boxes, of any locomotive, engine, tender, carriage, coach, car, caboose, or truck, used or operated, or capable of being used or operated upon any railroad, whether the same be operated by steam or electricity, the person so offending shall be guilty of a felony, and on conviction shall be sentenced to pay a fine of five hundred dollars (\$500.00), or imprisonment in the penitentiary for not more than five (5) years, or both.

**37-12-102. Repealed by Laws 1982, ch. 75, § 5; 1983, ch. 171, § 3.**

**37-12-103. Destruction, obstruction or removal of railroad track or fixtures generally; penalty if death results.**

Whoever shall willfully and maliciously remove, break, displace, throw down, destroy or in any manner injure any rail or rails or any part of the tracks or any bridge, viaduct, culvert, trestlework, embankment, parapet or other fixture or any part thereof, attached to or connected with such tracks of any railroad in this state, in operation, or shall willfully and maliciously place any obstructions upon the rail or rails, track or tracks of any such railroad, or shall willfully and maliciously meddle, tamper, or interfere with the signals or mechanism controlling the signal devices of any such railroad, shall be punished by imprisonment in the penitentiary not less than one (1) year nor more than twenty (20) years; provided, however, if any person shall, by commission of either of the aforesaid offenses occasion the death of any person, or persons, the person or persons so offending shall be deemed guilty of murder in the first or second degree, or manslaughter, according to the nature of the offense, and, on conviction thereof, shall be punished as by law provided.

**37-12-104. Unlawful riding on railroad trains.**

It shall be unlawful for any person, without the consent of those operating the same, to ride on any part of any railroad car or train.

**37-12-105. Unlawful riding on railroad trains; penalty.**

Every person violating the provisions of 32-818 [§ 37-12-104] shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than five dollars (\$5.00), nor more than one hundred dollars (\$100.00), or by imprisonment in the county jail for a period not less than ten (10) days, nor more than six (6) months, or by both such fine and imprisonment.

**37-12-106. Unlawful riding on railroad trains; power of conductor as special constable.**

The conductor in charge of any car or train who finds any person on his car or train, violating the provisions of this act, is hereby made a special constable, authorized to arrest any such person and deliver him free of all transportation expense to the first sheriff or deputy sheriff that may be available in the progress of such car or train. Such special constable shall

deliver to the sheriff or deputy sheriff with his prisoner a statement in writing showing in a brief and general but not technical way, the offense charged against the prisoner.

**37-12-107. Unlawful riding on railroad trains; prosecution of offender.**

Any sheriff or deputy sheriff receiving any person from any special constable, as in this act provided, shall forthwith deliver the person, with the charge made against him to the sheriff of the county wherein the offense may be charged to have been committed. It shall be the duty of the sheriff receiving the prisoner forthwith to deliver to the district attorney for the county, the written charge made against the prisoner by the special constable, and the district attorney shall file with the proper circuit court the proper affidavit charging the prisoner with the offense, and shall diligently prosecute the same.

**37-12-108. Repealed by Laws 1982, ch. 75, § 5; 1983, ch. 171, § 3.**

**37-12-109. Repealed by Laws 1982, ch. 75, § 5, 1983, ch. 171, § 3.**

**37-12-110. Repealed by Laws 1982, ch. 75, § 5, 1983, ch. 171, § 3.**

**37-12-111. Gas; interference with pipes.**

Any person who connects any pipe or other conduit, device or contrivance with any gas main or lateral supply pipe, supplying or intended to supply gas to any house, store or other building, without the knowledge and consent of any person or corporation owning said gas main or lateral supply pipe, in such manner that any portion of such gas may be transmitted or supplied to any lamp burner, heating apparatus, engine or other instrument or thing by or at which gas is consumed or used, shall be deemed guilty of a misdemeanor and punished as provided in section 4 hereof.

**37-12-112. Gas; piping gas around meter.**

Any person who connects or changes any pipe or other conduit, device or contrivance with any gas main or lateral supply pipe, supplying or intended to supply gas to any house, store or other building, without the knowledge and consent of any person or corporation owning said gas main, or lateral supply pipe, in



such manner that any portion of such gas may be transmitted or supplied to any lamp burner, heating apparatus, engine or other instrument or thing by or at which gas is consumed or used, around or without passing through the meter provided for measuring or registering the amount or quantity of gas passing through it, shall be deemed guilty of a misdemeanor and punished as provided in section 4 hereof.

**37-12-113. Gas; alteration or destruction of meter.**

Any person who willfully injures, alters, or by any instrument, device or contrivance in any manner interferes with or destroys the action or operation of any meter for measuring gas, or of the amount or quantity of gas passing through it without the knowledge or consent of the person or corporation owning the same shall be deemed guilty of a misdemeanor and punished as provided in section 4 hereof.

**37-12-114. Gas; penalty.**

Any person convicted of a violation of any of the provisions of this act shall be punished for each offense by a fine of not less than fifty (\$50.00) dollars nor more than three hundred dollars (\$300.00), or by imprisonment in the county jail for a period of not less than thirty (30) days or more than ninety (90) days, or by both such fine and imprisonment.

**37-12-115. Electricity; interference with wires.**

Any person who connects or changes any wire, cord, socket, motor or other instrument, device or contrivance, with any wire transmitting or supplying, or intended to transmit or supply electricity to any house, store or other building, without the knowledge and consent of the person or corporation owning said wire, in such manner that any portion of such electricity may be transmitted or supplied to any globe, lamp, heating apparatus or other instrument by or at which electricity is consumed, shall be deemed guilty of a misdemeanor and punished as provided in section 4 hereof.

**37-12-116. Electricity; wiring around electric meter.**

Any person who connects or changes any wire, cord, socket, motor or other instrument, device, or contrivance with any wire, transmitting or supplying or intended to transmit or supply electricity to any house, store, or other building, without the knowledge and consent of the person or corporation owning said

wire, in such manner as to transmit or supply any such electricity to any globe, lamp, heating apparatus or other instrument by or at which electricity is consumed, around or without passing through the meter provided for measuring or registering the amount or quantity of electricity passing through it, shall be deemed guilty of a misdemeanor and punished as provided in section 4 hereof.

**37-12-117. Electricity; alteration or destruction of electric meter.**

Any person who willfully injures, alters or by any instrument, device or contrivance in any manner interferes with or obstructs the action or operation of any meter for measuring electricity or the amount or quantity of electricity passing through it without the knowledge and consent of the person or corporation owning said meter, shall be deemed guilty of a misdemeanor and punished as provided in section 4 hereof.

**37-12-118. Electricity; penalty.**

Any person convicted of a violation of any of the provisions of this act, shall be punished for each offense by a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00), or by imprisonment in the county jail for a period of not less than thirty (30) days or more than ninety (90) days, or by both such fine and imprisonment.

**37-12-119. Interfering or tampering with petroleum pipeline.**

It shall be unlawful for any person, intentionally, knowingly and without lawful right so to do, to tap, tamper with, alter, interfere with or injure any oil well, drip, pipeline, or any other facility used in the production, handling, refining, or transportation of gas, natural gasoline, casinghead gasoline, petroleum, or derivatives or by-products of any of them. Any person found guilty of violating the provisions of this act [section] shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000.00), or by imprisonment in the state penitentiary for more than five (5) years, or by both such fine and imprisonment.

**37-12-120. Interference with or injury to electric utility poles or wires; affixing posters to telegraph, telephone and electric utility poles prohibited; penalties.**

(a) Whoever maliciously or mischievously takes down, removes, interferes with, obstructs or injures any electric utility pole or wire, or any part thereof, or any appurtenance or apparatus connected therewith, or severs or breaks or obstructs any such wire or apparatus or appurtenance is guilty of a malicious trespass.

(b) Whoever affixes any poster, placard, sign, or notice of any kind, to any telegraph, telephone or electric utility pole or wire, or any part thereof, or any appurtenance or apparatus connected thereto is guilty of malicious trespass.

(c) Any person convicted of a malicious trespass as defined in this section shall be fined not more than one hundred dollars (\$100.00), to which may be added imprisonment in the county jail for not more than six (6) months.

**37-12-121. Damaging public telephones or equipment or telegraph or telephone lines or poles.**

Any person who willfully displaces, removes, injures or destroys any public telephone instrument or any part thereof or any equipment or facilities associated therewith or who enters or breaks into any coin box associated therewith or who willfully displaces, removes, injures or destroys any telegraph or telephone line, wire, cable, pole or conduit belonging to another or the material or property appurtenant thereto is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state penitentiary for not more than five (5) years, to which may be added a fine not exceeding the sum of one thousand dollars (\$1,000.00).

**37-12-122. Repealed by Laws 1985, ch. 121, § 2.**

**37-12-123. Renumbered by Laws 1983, ch. 171, § 5.**

**37-12-124. Sale of equipment designed to conceal source or avoid charges for telecommunication service; prohibited.**

(a) Any individual, corporation or other person who under circumstances evincing an intent to defraud, makes, possesses, sells, gives, or otherwise transfers to another, or who offers or advertises for sale, any instrument, apparatus, equipment or device, or any plans or instructions for making or assembling the same, and which is designed or adapted, or which can be used:

(i) To fraudulently avoid the lawful charge for any telecommunication service in violation of section 1, chapter 126, Session Laws of Wyoming 1961; or,

(ii) To conceal, or to assist another to conceal, from any supplier of telecommunication service or from any lawful authority, the existence or place of origin or of destination of any telecommunication, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than one (1) year or by a fine of not more than one thousand dollars (\$1,000.00), or by both such fine and imprisonment.

**37-12-125. Sale of equipment designed to conceal source or avoid charges for telecommunication service; exemption.**

Nothing herein shall apply to holders of valid federal communications commission licenses when the licensee is acting within the scope of his license; provided that nothing herein shall excuse any person from compliance with lawful tariffs of any telecommunications company.

**37-12-126. Failure to yield telephone for reporting emergencies; definitions.**

(a) In W.S. 37-12-126 through 37-12-130 unless the context otherwise requires:

(i) "Party line" means a subscriber's line telephone circuit, consisting of two (2) or more main telephone stations connected therewith, each station with a distinctive ring or telephone number;

(ii) "Emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.

**37-12-127. Failure to yield telephone for reporting emergencies; misdemeanor; exception.**

Any person who willfully refuses to yield or surrender the use of a party line or a public pay telephone to another person for the purpose of permitting such other person to report a fire or summon police, medical or other aid in case of emergency, is guilty of a misdemeanor. This section shall not apply to persons using a party line for such an emergency call.

**37-12-128. Failure to yield telephone for reporting emergencies; pretext that emergency exists.**

Any person who asks for or requests the use of a party line or a public pay telephone on the pretext that an emergency exists, knowing that no emergency in fact exists, is guilty of a misdemeanor.

**37-12-129. Failure to yield telephone for reporting emergencies; defense.**

It is a defense to prosecution under this act that the accused did not know or did not have reason to know of the emergency in question, or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

**37-12-130. Failure to yield telephone for reporting emergencies; notice in telephone directories.**

Every telephone directory published after the effective date of this act and which is distributed to the members of the general public of this state shall contain, in a prominent place, a notice which explains the offenses provided in this act. The provisions of this section shall not apply to those directories distributed solely for public advertising purposes, commonly known as classified directories.

ARTICLE 2  
CRIMES, OFFENSES AND CIVIL  
LIABILITIES OF PUBLIC UTILITIES, OFFICERS AND  
EMPLOYEES

**37-12-201. Failure to obey orders of commission, provisions of statutes.**

Every public utility and all officers, agents and employees of any public utility, and every person shall obey, observe and comply with every lawful order made by the commission under authority of this act so long as the same shall be and remain in force. Any public utility, or any officer, agent or employee thereof, or any person who shall violate any provision of this act, or shall fail, omit or neglect to obey, observe or comply with any lawful order or any direction or any requirement of the commission shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100.00), or more than one thousand dollars (\$1,000.00) for each and every offense; every violation of any such order or

requirement of this act shall be a separate and distinct offense and in case of a continuing violation, every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

**37-12-202. Public utility personnel violating or aiding or abetting in violations.**

(a) Every officer, agent or employee of any public utility, who shall violate, or who shall procure, aid or abet any violation by any public utility of any provision of this act, or who shall fail to obey, observe and comply with any lawful order of the commission, or any provision of any lawful order of the commission, or who shall procure, aid, or abet any public utility in its failure to obey, observe and comply with any such order or provision, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) for each offense.

(b) Every officer, agent or employee of any public utility who violates or fails to comply with, or procures, aids or abets any violation by any public utility of any provision of this act, or who fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement, or any part or provision thereof, of the commission, or who procures, aids or abets any public utility in its failure to obey, observe and comply with any such order, decision, rule, direction, demand or requirement, or any part or provision thereof, in a case in which a penalty has not hereinbefore been provided for, such officer, agent or employee is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment in a county jail not exceeding one (1) year, or both such fine and imprisonment.

**37-12-203. Giving or receiving preferences.**

Any natural person who knowingly authorizes, gives or affords any benefit, preference or advantage, or who knowingly receives or participates directly or indirectly in any benefit, preference or advantage from such offense, shall be guilty of a misdemeanor, and on conviction shall be fined not less than one hundred dollars (\$100.00), or more than five hundred dollars (\$500.00) for each offense.

**37-12-204. Refusal to file report or answer questions.**

Any public utility which refuses to make and file any report called for by the commission within the time specified, or within the time extended, as the case may be, or willfully refuses to answer to any question propounded by the commissioner shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than five hundred dollars (\$500.00), or more than one thousand dollars (\$1,000.00) for each offense.

**37-12-205. Making false returns.**

Any person who willfully makes any false return or report to the commission, or to any member, agent or employee thereof, and any person who aids or abets such person, is guilty of a felony, and upon conviction thereof shall be imprisoned as the court may direct for a term not exceeding five (5) years for each offense.

**37-12-206. Hindering investigation.**

Any person who willfully obstructs or hinders the commission or a member thereof, or an authorized agent or examiner in making an inspection, examination or investigation of the accounts, records, memoranda, books or papers of any public utility, or of the property or facilities thereof is guilty of a felony, and upon conviction thereof shall be fined not more than one thousand dollars (\$1,000.00), or imprisoned as the court may direct for a term not exceeding five (5) years.

**37-12-207. Divulging information; exception.**

Any regular or special employee of the commission who divulges any facts or information coming to his knowledge respecting an inspection, examination or investigation of any account, record, memoranda, book or paper or of the property and facilities of a public utility, except insofar as he may be authorized by the commission or by a court of competent jurisdiction, or the judge thereof, is guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

**37-12-208. Utility liable for loss or damage.**

In case any public utility shall do, cause to be done, or permit to be done, any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by this act, or by any lawful order of the commission, such public utility shall be liable to the

persons affected thereby for the amount of all loss, damage or injury caused thereby or resulting therefrom. An action to recover for such loss, damage or injury may be brought in any district court in this state by any person.

**37-12-209. Accepting rebates.**

Any person receiving service from any public utility subject to the provisions of this act, who shall knowingly by an employee, agent, officer or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such public utility any sum of money or other valuable consideration as rebate or offset against the regular charge for such service as fixed by the schedule of rates provided for in this act, shall in addition to any penalty provided for by this act, forfeit to the state a sum of money three (3) times the amount of money so received or accepted and three (3) times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the attorney general of the state, or the attorney of the commission under its direction shall institute in the name of the state in the district court of the county in which the commission has its principal offices a civil action to collect the said sum or sums so forfeited as aforesaid; in the trial of the said action, all such rebate or other consideration so received or accepted subsequent to the passage of this act for a period of three (3) years prior to the commencement of the action may be included therein; the amount of the recovery shall be three (3) times the total amount of money or three (3) times the total value of such consideration received or accepted, or both, as the case may be.

**37-12-210. Perjury.**

Any person who knowingly makes any false statement of fact under oath, whether oral or in writing, as required by this act, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

**37-12-211. Penalty for violations by utility; other offenses.**

Any public utility which violates or fails to comply with any provision of this act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission, in a case in which a penalty has not hereinbefore been provided for, such public utility is subject



to a penalty of not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00) for each and every offense.

### **37-12-212. Additional penalties.**

Every public utility, all officers and agents of any public utility, and every person shall obey, observe and comply with every provision of this act and with every order made by the commission under authority of this act and duly served in accordance with its provisions so long as the same shall be and remain in force. Any public utility or its officers or agents, and any other persons, who shall knowingly and willfully violate any of the provisions of this act is punishable as a misdemeanor or felony, or who fails, omits or neglects to obey, observe or comply with any order or any direction or requirement of the commission, shall (in addition to liability to the party aggrieved for all damages sustained by reason of such violation) forfeit to the state not to exceed the sum of one thousand dollars (\$1,000.00) for each and every violation, or in case of a violation which is punishable as a misdemeanor or felony, not to exceed the maximum sum fixed as a fine therefor, which shall be recovered in an action at law to the use of the state upon the complaint of the commission appearing by its attorney or the attorney general; but no such action shall be maintained unless brought within two (2) years after the date of such violation; nor shall such an action be maintained in the case of a person who has already been convicted for the same violation of this act, and recovery by civil action brought in accordance with this section shall not be a bar to any criminal prosecution for the same violation of this act.

### **37-12-213. Disposition of fines.**

All fines, forfeitures and penalties collected under the provisions of this act shall be paid to the state treasurer and credited as provided in W.S. 8-1-109; and all penalties accruing under this act shall be cumulative of each other, and the suit for the recovery of one (1) penalty shall not be a bar to or affect the recovery of another penalty or forfeiture or be a bar to any criminal prosecution against any such public utility or any officer, director, agent or employee thereof.

## **ARTICLE 3 DAMAGE TO UNDERGROUND PUBLIC UTILITY FACILITIES**

**37-12-301. Short title; definitions.**

(a) This act may be known and shall be cited as the "Wyoming Underground Facilities Notification Act."

(b) As used in this act:

(i) "Business day" means any twenty-four (24) hour period other than Saturday, Sunday or legal holiday;

(ii) "Emergency" means a sudden, unforeseen occurrence, including a loss of communications, which demands immediate action to protect the health, safety and welfare of the public and to prevent loss of life, health, property or essential public services and advance notice to the notification center prior to excavation is impracticable under the circumstances. "Emergency" shall include ruptures and leakage of pipelines, explosions, fires and similar instances where immediate action is necessary to prevent loss of life or significant damage to underground facilities or the environment;

(iii) "Excavation" or "excavates" means any operation in which earth, rock or other materials on or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment or explosives or other means, and includes grading, trenching, digging, ditching, drilling, augering, tunneling, boring, plowing-in, pulling-in, ripping, scraping and cable or pipe installing, except tilling of soil and gardening or agricultural purposes;

(iv) "Excavator" means any person or entity that excavates or conducts excavation activities;

(v) "Impoundment" means a closed basin formed naturally, or artificially built, which is dammed or excavated for the retention of water, slurry or other liquid or semi-liquid material;

(vi) "Notification center" means a center that receives notice from excavators of planned excavation or other requests for location and transmits this notice to participating operators;

(vii) "Operator" means any person, including public utilities, municipal corporations, political subdivisions or other persons having the legal authority to bury, operate, maintain, repair and replace underground facilities;

(viii) "Person" means an individual, partnership, municipality, state, county, political subdivision, utility, joint venture, corporation, limited liability company, statutory trust or other business entity and includes the employer of an individual;

(ix) "Secured facility" means a parcel of land used for commercial or industrial purposes that is surrounded entirely by a fence or other means of preventing access, including a fence with one (1) or more gates that are locked at all times or monitored by a person who can prevent unauthorized access;

(x) "Sump" means a surface pit into which drilling mud flows on reaching the surface of the well after being pumped through the drill pipe and bit, then up through the annular opening between the walls of the hole and the drill pipe, carrying with it cuttings from the well, which settle out of the mud in the sump pits;

(xi) "Underground facility" means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or other form of electronic communications, cable television, electric energy, oil, gas, hazardous liquids or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes and attachments;

(xii) "Government entity" means any agency, department, board, commission, authority, institution or instrumentality of the state and any county, municipality or other political subdivision of the state;

(xiii) "Public right-of-way" means any public street, road, highway or sidewalk;

(xiv) "Soft digging" means any excavation using tools or equipment that utilize air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation;

(xv) "Area of risk" means an area not to exceed fifty (50) feet from each side of an underground facility that is located under or near a county road and that:

(A) Contains hazardous materials that present an extreme risk to the health and safety of persons; or

(B) Is buried at a depth of less than twenty-four (24) inches.

(xvi) "County road" means a road that is:

(A) Established pursuant to W.S. 24-3-101 through 24-3-127, identified pursuant to W.S. 24-3-201 through 24-3-206 or for which the county is responsible for improvements and maintenance as designated by resolution of a board of county commissioners;

(B) Open to the public;

(C) Depicted on county road maps; and

(D) Identified with county road signage.

(xvii) "Routine county road maintenance" means the regular grading of a county road for the purpose of maintaining the surface condition of the road or a roadside drainage ditch, that does not extend more than four (4) inches below the surface and does not result in alteration of the original grade, width or flow line;

(xviii) "This act" means W.S. 37-12-301 through 37-12-307.

**37-12-302. Notices; exceptions; penalty.**

(a) Every operator shall file with the notification center a general description of the area served together with the name, address and telephone number of the person from whom necessary information may be obtained concerning the location of underground facilities.

(b) Any person preparing or designing architectural or engineering design drawings that call for excavation shall comply with W.S. 37-12-307.

(c) Except as hereafter provided, no excavator shall make or begin excavation without first notifying the notification center of the proposed excavation. Notice shall be given by telephone, e-mail, fax or other electronic medium approved by the notification center at least two (2) full business days, but

not more than fourteen (14) business days prior to any excavation to the notification center pursuant to W.S. 37-12-304. If an excavation on a single project lasts more than fourteen (14) business days, the excavator shall give notice at least once each succeeding fourteen (14) business day period. Notice to the notification center is notice to each member thereof in the area. Notification of the following information to the notification center shall be required and shall include the following:

(i) Name of the person notifying the notification center;

(ii) Name, address and telephone number of the excavator;

(iii) Specific location by legal description or other reliable method that allows for current and accurate means of identifying geographic locations, and starting date and description of the intended activity.

(d) An operator shall at its expense, upon receipt of the notice provided for in subsection (c) of this section, use reasonable care to mark the location of the underground facilities with stakes, flags, paint or by other clearly identifiable marking within twenty-four (24) inches horizontally from the exterior sides of the operator's underground facilities. The location shall be marked using American Public Works Association uniform color standards. If requested by the excavator, the operator receiving the notice shall advise the excavator of the nature, location, size, function and depth if known, of underground facilities in the proposed excavation area. The operator shall respond no later than two (2) full business days after receipt of the notice from the notification center or at a time otherwise mutually agreed to by the operator and excavator.

(e) Emergency excavations are exempt from the time constraints of the provisions of subsections (c) and (d) of this section.

(f) If information required pursuant to subsection (d) of this section is not provided within the time specified therein, or if the information provided fails to identify the location of the underground facilities in accordance with subsection (d) of this section, then any excavator damaging or injuring underground facilities shall not be liable for such damage or

injury except when failing to utilize reasonable care. However, if information required pursuant to subsection (d) of this section is provided within the time specified therein, and if the information provided sufficiently identifies the location of the underground facilities in accordance with subsection (d) of this section, then any excavator damaging or injuring underground facilities shall be liable for all damage or injury to persons or property.

(g) Compliance with this section does not excuse an excavator from exercising reasonable care in complying with this act nor does compliance with this section excuse an excavator from liability for damage or injury for failure to so act. When excavating, reasonable care shall require hand digging or soft digging, as necessary, to protect the underground facility.

(h) When any contact with or damage to any underground facility occurs, the excavator shall first immediately call a 911 emergency reporting system as defined by W.S. 16-9-102(a)(iv) and request emergency services if the contacted or damaged underground facility releases gas or a hazardous liquid. In all cases the excavator shall immediately notify the operator of the facility and the notification center, of the location of and extent of damage to the underground facility and shall cooperate with the operator of the damaged underground facility to mitigate the damages incurred to the extent reasonably possible, including the provision of in-kind work where technical or special skills are not required according to the nature of the underground facility. An excavator shall not conceal or attempt to conceal any dislocation, disturbance or damage to an underground facility and shall not repair or attempt to repair the underground facility unless authorized by the operator of the underground facility. Upon notification of damage to an underground facility from an excavator, the operator of the underground facility shall respond to the notification in a manner reasonably appropriate to the circumstances. The operator shall file a report with the notification center describing the response within seventy-two (72) hours of the initial notification. This requirement of notification shall not relieve the excavator and the operator from compliance with any other state or federal notification obligation. In any dispute concerning the liability for damages to any underground facility, the excavator shall bear the burden of proof concerning its use of reasonable care in conducting the excavation.

(j) Repealed By Laws 2010, Ch. 62, § 3.

(k) Repealed By Laws 2010, Ch. 62, § 3.

(m) Unless an exception in this subsection is applicable, an excavator shall mark the location of the area or path of excavation before the arrival of an operator or agent of an operator to locate their underground facility. The obligations of an operator specified by W.S. 37-12-302(d) shall not apply until an excavator has complied with the requirements of this subsection. Markings may include stakes, flags, marking whisksers, white paint, signage, electronic white lining on digital mapping or any other identifiable marking that clearly marks the location of the area or path of excavation, provided that any marking used cannot be confused with the accepted American National Standards Institute Standard Z535.1 safety color code. An excavator need not premark the location as required by this section if any of the following apply:

(i) There is only one (1) operator with underground facilities in the proposed excavation area and the operator or the operator's agent can determine the location of the area or path of excavation by street address, lot number, global positioning system, latitude and longitude coordinates, mapping or other method agreed to by the excavator and operator;

(ii) The excavator and operator had a meeting at the proposed excavation area before beginning the proposed excavation and exchanged the information on the location of the area or path of excavation as specified in paragraph (i) of this subsection;

(iii) The proposed excavation is of an emergency nature;

(iv) A different method of locating or defining the area or path of excavation has been agreed to by the excavator and all operators within the proposed excavation area.

(n) An operator of an underground facility that the operator determines to be within an area of risk may provide to the county in which the underground facility is located written notice that includes a description of the underground facility and the specific location of the underground facility by map, legal description or other reliable method that allows for a current and accurate means of identifying the geographic location of the underground facility. Any notice under this subsection shall be provided:

(i) Except as specified in paragraph (ii) of this subsection, not later than June 1, 2020 and then January 31 of each year thereafter;

(ii) For an operator of a newly installed underground facility, within sixty (60) days of installation of the underground facility.

**37-12-303. Repealed by Laws 1996, ch. 113, § 3.**

**37-12-304. Notification centers; formation; duties.**

(a) All operators shall join the notification center and shall participate in the notification center providing for mutual receipt of notification of excavation activities in a specified area and pay their share of the cost for the service provided.

(b) The notification center shall:

(i) File with the county clerk the statewide toll-free telephone number;

(ii) Repealed by Laws 2003, Ch. 59, § 2.

(iii) Maintain adequate records documenting compliance with the requirements of this act, including the following:

(A) Records of all telephone calls and other notifications received electronically;

(B) Records of all location requests which shall be retained for fifty (50) months and can be printed through use of a unique file numbering system developed by the notification center;

(C) Written records related to all complaints and responses alleging noncompliance with this act.

(iv) Provide the service at a minimum during normal business hours, Monday through Friday, excluding legal holidays;

(v) For calls received after normal business hours for the notification center, provide a recording for callers which explains emergency notification and excavation procedures;



(vi) Provide a timely method for notifying participating members of the information received regarding proposed excavation activities. The method of notification shall be determined by each notification system;

(vii) Upon request, provide to excavators giving notice of an intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be transmitted;

(viii) Repealed By Laws 2003, Ch. 59, § 2.

(ix) Offer an excavation safety training program;

(x) Upon request, provide to any person preparing or designing architectural or engineering design drawings that call for excavation the names and contact information of operators of underground facilities within the proposed excavation area;

(xi) Provide a monthly report to the Wyoming attorney general on recent complaints alleging noncompliance with this act, including the contact information of any person or entity alleged to be in noncompliance with this act.

(c) Repealed by Laws 2003, Ch. 59, § 2.

### **37-12-305. Exemptions.**

(a) The following oil and gas production facilities are not subject to this act:

(i) Aboveground or underground storage tanks, sumps, impoundments or piping connected to aboveground or underground storage tanks, sumps or impoundments located in the same tract of land as the storage tanks, sumps or impoundments;

(ii) Underground production facilities operated by the owner of a secured facility which are located entirely within the secured facility;

(iii) Piping within a well bore;

(iv) Underground facilities which are located on a production lease or unit and which are operated by a person:

(A) Who owns, in whole or in part, the mineral lease rights to that production lease or unit; and

(B) Who operates the underground facility only for their own use.

(b) An underground facility which extends beyond the boundaries of a production lease or unit is exempt only for that portion of the facility which is located within the boundaries of the lease or unit.

(c) An underground facility which contains gas or hazardous liquid shall not be exempted under the provisions of this act as provided by paragraph (a)(iv) of this section if the facility is located within the boundaries of, or within one-eighth (1/8) of a mile of, an incorporated or unincorporated city or town, or any residential or commercial area, subdivision, business or shopping area, community development or any similarly populated area, or on an established surface or underground easement, or if it contains more than one hundred (100) parts per million of hydrogen sulfide.

(d) Underground facilities located on private property owned by and existing for the exclusive use of that private property owner are exempt from the provisions of this act.

(e) Private domestic water and sewer lines located outside any incorporated area and serving nine (9) or fewer service hook-ups, private irrigation and drainage lines and ditches, irrigation district and drainage district lines and ditches, and private livestock water pipelines and facilities are exempt from the provisions of this act.

(f) Nothing in this section shall prohibit an operator of an underground facility which is exempted under this section to voluntarily register that facility under this act.

(g) Underground facilities operated by the owner of a secured facility which are located entirely within the secured facility are exempt from the provisions of this act.

(h) The following routine maintenance activities in a government entity's public right-of-way are exempt from the provisions of this act:

(i) Snowplowing;

- (ii) Adding of granular material to unpaved roads;
  - (iii) Removal and application of patches to the surface of pavement;
  - (iv) Cleaning and sealing of road or pavement cracks or joints.
- (j) Routine county road maintenance is exempt from the provisions of this act, provided that the maintenance is not within an area of risk as specified in a notice provided under W.S. 37-12-302(n).

### **37-12-306. Civil penalties; applicability.**

(a) An action to recover a civil penalty under this section may be brought by an operator, excavator, aggrieved party, the notification center, county attorney, district attorney or the attorney general. Venue for an action shall be in the district court for the county in which the operator, excavator, aggrieved party or the notification center resides or maintains a principal place of business in this state or in the county in which the conduct giving rise to a civil penalty occurred. The action provided in this subsection may be by jury trial if a jury is demanded by either party.

(b) In determining the liability for or the amount of any damages or civil penalty pursuant to this section, a court shall consider the nature, circumstances and gravity of the alleged violation, the alleged violator's degree of culpability and the alleged violator's history of prior violations.

(c) The penalties provided in this section are in addition to any other remedy available at law or equity.

(d) No civil penalty shall be imposed under this section against an excavator or operator who violates any of the provisions of this article if the violation occurred while the excavator or operator was responding to a service outage or other emergency, except that such penalty shall be imposed if such violation was willful or malicious.

(e) This section shall not apply to any governmental entity as defined by W.S. 1-39-103(a)(i), which participates in the notification center as provided by this act. Nothing in this article shall affect any provision of the Wyoming Governmental Claims Act, W.S. 1-39-101 through 1-39-120.

(f) Any civil penalty received under subsection (g) or (h) of this section shall be deposited into the county public school fund of the county in which the violation occurred.

(g) With respect to operators:

(i) Every operator in Wyoming shall join and participate in the notification center pursuant to W.S. 37-12-304(a). Any operator who does not join or participate in the notification center shall be liable for a fine of five thousand dollars (\$5,000.00) each year it is not in compliance with this subsection;

(ii) If any underground facility located in the service area of an operator is damaged as a result of the operator's failure to join or participate in the notification center pursuant to W.S. 37-12-304(a), the court shall impose upon such operator a civil penalty up to the amount of five thousand dollars (\$5,000.00) for the first offense and up to twenty-five thousand dollars (\$25,000.00) for a second offense within a twelve (12) month period after the first offense. If any underground facility located in the service area of an operator is damaged as a result of the operator's failure to join or participate in the notification center pursuant to W.S. 37-12-304(a) on more than two (2) separate occasions within a twelve (12) month period from the date of the first failure to comply with W.S. 37-12-304(a), then the civil penalty shall be up to seventy-five thousand dollars (\$75,000.00). Upon a first offense, the operator may be required by the court to complete an excavation safety training program with the notification center;

(iii) If any underground facility is damaged as a result of the operator's failure to comply with W.S. 37-12-304(a), the operator's failure to use reasonable care in the marking of the damaged underground facility or the operator's failure to mark the location of its underground facilities within the time period specified in W.S. 37-12-302(d) unless that failure is due to circumstances beyond the operator's control, the operator shall be liable for:

(A) Any cost or damage incurred by the excavator as a result of any delay in the excavation project while the underground facility is restored, repaired or replaced, together with reasonable costs and expenses of suit, including reasonable attorney fees; and

(B) Any injury or damage to persons or property resulting from the damage to the underground facility. The operator shall also indemnify and defend the affected excavator against any and all claims or actions, if any, for personal injury, death, property damage or service interruption resulting from the damage to the underground facility.

(iv) If an operator, after receipt of a notice from an excavator or notification center pursuant to W.S. 37-12-302(c), fails to mark the location of its underground facilities within the time period specified in W.S. 37-12-302(d), and unless the failure resulted from circumstances beyond the operator's control, the operator shall be liable for a civil penalty of up to five thousand dollars (\$5,000.00).

(h) With respect to excavators:

(i) Every excavator shall notify the notification center pursuant to W.S. 37-12-302(c) prior to commencing any excavation activity. Any excavator who fails to notify the notification center pursuant to W.S. 37-12-302(c) shall be liable for a civil penalty in the amount of five thousand dollars (\$5,000.00);

(ii) If an excavator fails to comply with W.S. 37-12-302(c), (g) or (h) and damages an underground facility during excavation, the excavator shall be liable for a civil penalty up to the amount of five thousand dollars (\$5,000.00) for the first offense and up to twenty-five thousand dollars (\$25,000.00) for a second offense within a twelve (12) month period after the date of the first offense. If an excavator fails to comply with W.S. 37-12-302(c), (g) or (h) on more than two (2) separate occasions within a twelve (12) month period from the date of the first failure to comply with the appropriate subsection, then the civil penalty shall be up to seventy-five thousand dollars (\$75,000.00). Upon a first offense, the excavator may be required to complete an excavation safety training program with the notification center;

(iii) If an excavator requests a facilities locate on an expedited basis (less than two (2) full business days) for an emergency excavation and the excavation at issue was not an emergency and did not require a locate on an expedited basis, the excavator shall be liable for a civil penalty of up to five thousand dollars (\$5,000.00) for each false emergency locate incident;

(iv) If an excavator fails to comply with W.S. 37-12-302(c), (g) or (h) and damages an underground facility during an excavation, or fails to exercise reasonable care in excavating and damages a located underground facility during an excavation, the excavator shall be liable for:

(A) Any cost or damage incurred by the operator in restoring, repairing or replacing its damaged underground facility, together with reasonable costs and expenses of suit, including reasonable attorney fees; and

(B) Any injury or damage to persons or property resulting from the damage to the underground facility. The excavator shall also indemnify and defend the operator against any and all claims or actions, if any, for personal injury, death, property damage or service interruption resulting from the damage to the underground facility.

(v) Subparagraph (iv)(A) of this subsection shall not apply to an excavator if the operator of the underground facility has failed to comply with W.S. 37-12-302(d) or 37-12-304(a).

(j) Any provision of an agreement or release that requires an excavator or an operator who has suffered damage or loss due to a violation of this act to indemnify the violator for penalties is unenforceable with respect to any obligation to indemnify the violator for the penalties.

**37-12-307. Architectural or engineering design drawings notice.**

(a) Any person preparing or designing architectural or engineering design drawings that call for excavation shall make reasonable efforts to determine at no expense to the operator the nature, location, and depth if known, of underground facilities. If the location of an operator's underground facilities within the proposed excavation area are restricted as classified by the federal or state government, a contacted operator shall disclose to the person the potential presence of the underground facilities in the proposed excavation area and any known disclosable information about the nature and location of the underground facilities, as well as the contact information, if known, of the federal or state government official who may be able to provide further information. Any person preparing or designing architectural or engineering

design drawings that call for excavation shall make the information and location under this subsection a part of the plan by which the excavators operate.

(b) Any person preparing or designing architectural or engineering design drawings that call for excavation for a government entity in a public right-of-way with a project cost greater than seven hundred fifty thousand dollars (\$750,000.00) may schedule one (1) or more predesign meetings. The person shall notify the notification center at least thirty (30) calendar days before the first predesign meeting and provide the person's contact information, the name of the government entity, the scheduled predesign meeting dates, the location of the proposed excavation area and the project's scope of work. The notification center shall provide this information to operators with underground facilities in the proposed excavation area. Any operator or the operator's agent receiving notice pursuant to this subsection shall do any one (1) of the following:

(i) Attend the predesign meeting and provide information on the location of the operator's underground facilities within the proposed excavation area;

(ii) Notify the person that the operator has already or will, within fourteen (14) business days of receipt of the notice, mark the location of the operator's underground facilities within the proposed excavation area in accordance with the standards set forth in W.S. 37-12-302(d);

(iii) Contact the person for conceptual drawings and then mark the location of the operator's underground facilities on the drawings. The operator shall return the marked drawings to the person within thirty (30) calendar days of receipt of the drawings.

#### ARTICLE 4 CIVIL REMEDIES FOR WRONGFUL USE OF UTILITY FACILITIES

##### **37-12-401. Definitions.**

(a) As used in this article:

(i) "Bypassing" means the act of attaching, connecting or in any manner affixing any wire, cord, socket, motor, pipe or other instrument, device or contrivance to the utility supply system or any part thereof in such a manner as to

transmit, supply or use any utility service without passing through an authorized meter or other device provided for measuring, registering, determining or limiting the amount of electricity, gas, steam or water consumed;

(ii) "Customer" means the person responsible for payment for utility services and includes employees and agents of the customer;

(iii) "Tampering" means the act of damaging, altering, adjusting or in any manner interfering with or obstructing the action or operation of any meter or other device provided for measuring, registering, determining or limiting the amount of electricity, gas, steam or water consumed;

(iv) "Unauthorized metering" means the act of removing, moving, installing, connecting, reconnecting or disconnecting any meter or metering device for utility service by a person other than an authorized contractor, employee or agent of the utility;

(v) "Utility" means any pipeline corporation, gas corporation, electrical corporation, water corporation, irrigation system, cooperative association, nonprofit corporation, nonprofit association, municipality or person operating in whole or in part for the purpose of supplying electricity, gas, steam or nonagricultural water, or any combination thereof, to the public or to any person;

(vi) "Utility service" means the provision of electricity, gas, steam, water or any other service or commodity furnished by the utility for compensation;

(vii) "Utility supply system" means all wires, conduits, pipes, cords, sockets, motors, meters, instruments, pumps and any other material and equipment the utility uses to provide utility services;

(viii) Repealed by Laws 2019, ch. 186, § 2.

### **37-12-402. Civil action allowed.**

(a) In addition to any applicable criminal penalties, a utility may bring a civil action for damages against any person who:



(i) Commits, authorizes, solicits, aids, abets or attempts any act of bypassing, tampering, or unauthorized metering resulting in damages to the utility;

(ii) Knowingly receives utility service through bypassing, tampering or unauthorized metering.

(b) Any action brought under this section shall be commenced within three (3) years after the cause of action accrues.

(c) In any civil action brought under this section, the utility, upon proof of willful or intentional bypassing, tampering or unauthorized metering, may recover as damages two (2) times the amount of its actual damages plus all reasonable expenses incurred because of the bypassing, tampering or unauthorized metering, including expenses for investigation, disconnection, reconnection, service calls, employees and equipment, expert witnesses, costs of the suit and reasonable attorney fees.

#### **37-12-403. Remedies cumulative.**

This article is intended to provide additional remedies to avoid the wrongful use of the facilities of utilities and nothing in this article abridges or alters other rights of action or remedies existing before or after the effective date of this act.

### **CHAPTER 13**

#### **Local Improvement Districts**

#### **37-13-101. Short title.**

This act shall be known and cited as the "Wyoming Underground Conversion of Utilities Law".

#### **37-13-102. Legislative purpose.**

The legislature finds that in many areas of the state, landowners, cities, towns, counties and public utilities desire to convert existing overhead electric and communication facilities to underground locations by means of improvement district proceedings. The legislature hereby declares that a public purpose will be served by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion by proceedings taken pursuant to

this chapter whether such areas be within the limits of a city or town or within a county.

### **37-13-103. Definitions.**

(a) As used in this chapter the following words and phrases and any variations thereof shall have the following meaning:

(i) "Communication service" means the transmission of intelligence by electrical means, including, but not limited to telephone, telegraph, messenger-call, clock, police, fire alarm and traffic control circuits or the transmission of standard television or radio signals;

(ii) "Electric service" means the distribution of electricity for heat, light or power;

(iii) "Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations;

(iv) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including, but not limited to, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, protective devices, meters, communication circuits, appliances, attachments, and appurtenances. "Electric facilities" shall not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of twenty-three thousand (23,000) volts. "Communication facilities" shall not include facilities used for the transmission of intelligence by microwave or radio, apparatus cabinets or outdoor public telephones;

(v) "Overhead electric or communication facilities" means electric or communication facilities located, in whole or in part, above the surface of the ground;

(vi) "Underground electric or communication facilities" means electric or communication facilities located, in whole or in part, beneath the surface of the ground or facilities within the confines of a power substation.

"Communication facilities" shall not include facilities used or intended to be used for the transmission of intelligence by microwave or radio or outdoor public telephones. "Underground facilities" shall include certain facilities which remain above the surface in accordance with standard underground practices, such as transformers, pull boxes, service terminals, meters, pedestal terminals, splice closures, apparatus cabinets and similar facilities;

(vii) "Public utility" means any one (1) or more public or private persons or corporations that provide electric or communication service to the public by means of electric or communication facilities and includes any city, county, special district, or public corporation that provides electric or communication service to the public by means of electric or communication facilities; and as used herein this definition shall include legal entities that are not otherwise classified as public utilities and the inclusion of such other entities herein shall not affect their status under any other law or laws;

(viii) "Governing body" means the board of commissioners or city council or board of trustees as may be appropriate depending on whether the improvement district is located in a county or within a city or town;

(ix) "Resolution" shall be construed to mean ordinance where the governing body properly acts by ordinance, and resolution where the governing body properly acts by resolution.

#### **37-13-104. Powers conferred.**

The governing body is authorized and empowered to create local improvement districts within its territorial limits to provide for the conversion of existing overhead electric and communication facilities to underground locations and the construction, reconstruction or relocation of any other electric or communication facilities which may be incidental thereto, pursuant to the provisions of this chapter.

#### **37-13-105. Basis of assessments.**

(a) Whenever any improvement authorized to be made by any governing body by the terms of this chapter is ordered, the governing body shall apportion the cost and expenses thereof as in their judgment is fair and equitable in consideration of the

benefits accruing to the lots and land included within the improvement district. Each lot or parcel of land shall be separately assessed for the cost and expenses in proportion to the number of square feet of such lot or parcel compared to the total number of square feet included in the improvement district, or assessed upon a frontage, zone or other equitable basis in accordance with the benefits accruing to the property by the improvements, as the same may be determined by the governing body. The entire cost of the improvement shall be assessed against the benefited property. If money for paying part of the costs is available from any other source, in which [that] event the money so available may be applied to reduce the assessment.

(b) The cost and expenses to be assessed shall include:

(i) The conversion costs as determined by W.S. 37-13-129 or as estimated by the public utility, whichever is less;

(ii) Engineering services;

(iii) Clerical services;

(iv) Advertising expenses;

(v) Costs of inspection;

(vi) Costs of collecting assessments;

(vii) Interest upon bonds if issued;

(viii) Costs for legal services for preparing proceedings and advising in regard thereto; and

(ix) For any other necessary or reasonable expense related to the intent of this act and determined by the governing body to be appropriate for the favorable execution of the improvement district.

(c) Fee lands of public entities, such as the federal government, state of Wyoming, or any county, city or town, shall not be subject to assessment for the payment of any of the cost or expense of the improvement unless the public entity owning lands within the boundaries of the improvement district files its consent in writing with the governing body before the

governing body adopts a resolution declaring its intent to create a local improvement district.

**37-13-106. Resolution for cost and feasibility study.**

(a) Any governing body may upon a petition signed by at least sixty percent (60%) of the resident owners of property subject to assessment owning at least sixty percent (60%) of the assessable land of any proposed district, adopt a resolution at any regular or special meeting declaring that it finds that the improvement district is in the public interest. It must be determined that the formation of the local improvement district will promote the public convenience, necessity, and welfare. The resolution must state that the costs and expenses will be levied and assessed upon the property benefited and request that each public utility serving the proposed district by overhead electric or communication facilities shall, within one hundred twenty (120) days after receipt of the resolution, make a study of the cost of conversion of its facilities in the area to underground service. The results of the study shall be provided to the governing body and made available in its office to all owners of land within the proposed district. The resolution of the governing body shall require that the public utilities be provided with the name and address of the owner of each parcel or lot within the proposed district, if known, and if not known the description of the property and other matters as may be required by the public utility in order to perform the work involved in the cost study. Each public utility serving the proposed district by overhead electric or communication facilities shall, within one hundred twenty (120) days after receipt of the resolution, make a study of the costs of conversion of its facilities in the district to underground service, and shall together provide the governing body and make available at its office a joint report as to the results of the study.

(b) At any time prior to the hearing provided for in W.S. 37-13-111 of the statutes, if requested by the governing body or public utility, a bond shall be filed, with security approved by the governing body or cash deposit made sufficient to pay all expenses of the governing body connected with the proceedings and of the public utilities for actual time and expenses incurred in regard to the cost and feasibility study in case the organization of the district is not effected. If at any time during the organization proceedings the governing body shall be satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it on its own initiative or

at the request of a public utility may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten (10) days distant, and upon failure of the petitioners to file or deposit the same, the petition shall be dismissed.

**37-13-107. Costs and feasibility report.**

The public utility or utilities report shall set forth an estimate of the total underground conversion costs for the district and shall also indicate the cost of underground conversion of facilities of the public utility located within the boundaries of the various parcels or lots within the district. The report shall also contain the public utility's recommendations concerning the engineering feasibility of the project for the district proposed insofar as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district. The governing body shall consider the public utility's recommendations concerning feasibility and may amend the boundaries of the proposed improvement district provided the costs and feasibility report of the public utilities contains a cost figure on the district as amended, or it may request a new costs and feasibility report from the public utilities concerned on the basis of the amended district. The cost estimate contained in the report shall not be considered binding on the public utility if construction is not commenced within six (6) months of the submission of the estimate for reasons not within the control of the public utility. Should such a delay result in a significant increase in the conversion cost, new hearings shall be held on the creation of the district. In the event that a ten percent (10%) or less increase results, only the hearing on the assessments need be held again.

**37-13-108. Resolution declaring intention to create district.**

(a) On the filing with the clerk of any governing body of the cost and feasibility report by the public utility, and after considering the same, the governing body may, at any regular or special meeting, pass a resolution declaring its intention to create a local improvement district. The resolution shall state:

(i) That the costs and expenses of the proposed district will be levied and assessed upon the abutting,

adjoining, and adjacent lots and land along or upon which improvements are to be made, and upon lots and land benefited by the improvements and included in the improvement district created;

(ii) The contribution of the governing body, if any;

(iii) That it is the intention of the governing body to make the improvement which will promote public convenience, necessity and welfare;

(iv) The area and boundaries of the proposed improvement district;

(v) The character of the proposed improvement;

(vi) The estimated total cost of the improvement; and

(vii) That the governing body will hold a hearing on the proposed improvements at which time it will consider protests filed with the governing body against the proposed improvements.

**37-13-109. Notice of public hearing on proposed improvement; contents.**

(a) The governing body shall cause notice of a public hearing on the proposed improvement to be given in the manner provided in W.S. 37-13-110. Such notice shall:

(i) Declare that the governing body has passed a resolution of intention to create an improvement district;

(ii) Describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district;

(iii) Describe in a general way the proposed improvement, specifying the streets or property along which it will be made and the nature of the benefits to the property within the district;

(iv) State the estimated cost to the property owners, governing body and public utility;

(v) State that it is proposed to assess the real property in the district to pay as provided in W.S. 37-13-129 the cost of the improvement according to the proportionate square footage, front footage, or other equitable basis, as specified, based upon the benefits to be derived by each tract, lot or parcel of land within the district;

(vi) State the time and place at which the governing body will hear and pass upon all protests that may be made against the making of the improvement, the creation of the district, or the benefits to be derived by the real property in the district;

(vii) State that all interested persons will be heard and that any property owner will be heard on the question of whether his property will be benefited by the proposed improvement.

**37-13-110. Notice of public hearing on proposed improvement; manner of giving.**

The notice shall be published in full one (1) time in a newspaper of general circulation in the county, city, or town in which the proposed district is located and by posting in not less than three (3) public places in the district. A copy of the notice shall be mailed to each owner of land within the proposed district whose property will be assessed for the cost of the improvement, at the address last appearing on the real property assessment rolls of the county wherein the property is located. In addition, a copy of the notice shall be addressed to "owner" and mailed to the street number of each piece of property to be affected by the assessment. Mailed notices and the published notice shall state where a copy of the resolution creating the district is available for inspection.

**37-13-111. Public hearing; changes in proposed improvements or in area of improvement district.**

(a) At the time and place specified in the notice, the governing body shall meet and proceed to hear and pass upon all objections and protests to the creation of the proposed district, the making of the proposed improvements, and the benefits accruing to any tract, lot or parcel of land therein. The hearing may be adjourned from time to time to a fixed future time and place. If at any time during the hearings, it appears to the governing body that changes in the proposed improvements or the proposed district should be made, which, after



consultation with the public utilities concerned, appear to affect either the cost or feasibility of the improvements, the hearing shall be adjourned to a fixed future time and place and a new cost and feasibility report prepared on the basis of the contemplated changes.

(b) If at any time during the public hearing the governing body is presented with a petition signed by more than fifty percent (50%) of the property owners of the proposed district protesting the proposed improvement and the petition is still outstanding at the close of the public hearing the district and project shall be abandoned.

(c) After the hearing has been concluded and after all protests and objections have been considered, the governing body may make changes in the proposed improvements or in the area to be included in the district as it may consider necessary or desirable, provided the changes are not substantial. Notice and an opportunity to protest shall be given if substantial changes are desired by the governing body. The governing body shall either abandon the district and project or adopt a resolution establishing the district and authorizing the project, either as described in the notice or with changes made as above authorized. The resolution shall be published in the manner provided in W.S. 37-13-110 but need not be mailed.

(d) If a resolution is adopted establishing the district, the resolution shall conclusively establish the regular organization of the district against all persons, unless an action contesting the validity of the organization is commenced in a court of competent jurisdiction within thirty (30) days after the adoption of the resolution. Thereafter, any action is barred and the organization of the district shall not be directly or collaterally questioned in any suit, action or proceeding.

### **37-13-112. Waiver of objections.**

Any person who has real property within the boundaries of the proposed district who fails to appear before the governing body at the hearing and make any objection he may have to the creation of the district, the making of the improvements and the inclusion of his real property in the district, shall be deemed to have waived every objection. However, the waiver shall not preclude his right to object to the amount of the assessment at the hearing provided for that purpose.

**37-13-113. Proposed assessment list.**

After the resolution creating the district is adopted, the governing body shall cause an assessment list to be prepared detailing the total cost to be assessed, the specific properties assessed, and the amount of assessment on each piece of property. The total cost of the improvement shall include the cost of construction as determined from the costs and feasibility report, legal and fiscal fees and costs, the cost of publication of notices and all other costs properly incident to the construction of the improvement and the financing thereof.

**37-13-114. Proposed assessment resolution.**

After the preparation of the proposed assessment list, the governing body shall cause to be prepared for adoption at the assessment hearing a resolution incorporating the proposed assessment list and declaring what share, if any, of the total cost is payable from voluntary contributions or governmental sources other than the imposition of assessments.

**37-13-115. Board of equalization and review.**

Before the governing body shall propose to levy any tax under any provision of this chapter, it shall sit as a board of equalization and review for the purpose of making corrections in the proposed assessments. After concluding the assessment hearings the governing body shall prepare a report of any changes or corrections made by it in the assessment list together with its finding that each piece of property within the improvement district will be benefited in amounts not less than the assessment to be levied against the property.

**37-13-116. Notice of public hearing on proposed assessments.**

Notice of a public hearing on the proposed assessment resolution shall be given. At least twenty (20) days before the date fixed for the hearing, the notice shall be published one (1) time in a newspaper in which the first notice of hearing was published. Notice shall also be mailed to each owner of real property whose property will be assessed for part of the cost of the improvement at the last known address of the owner as shown on the last completed real property assessment rolls of the county wherein the affected property is located. In addition, a copy of the notice shall be addressed and mailed to "owner" at the street number of each piece of property affected by the

assessment. Each notice shall state that at the specified time and place the governing body will hold a hearing upon the proposed assessments and that the owner of any property to be assessed pursuant to the resolution will be heard on the question of whether his property will be benefited by the proposed improvement to the amount of the proposed assessment against his property and whether the amount assessed against his property constitutes more than his proper proportional share of the total cost of the improvement. The notice shall further state that the owner or owners of any property assessed must file a written objection pursuant to section 37-303 [§ 37-13-131] of the statutes if the owner or owners wish to do the trenching and backfilling on their own property outside of utility easements and thereby not be obligated to pay the public utility therefor, if such is permitted by the district and public utility tariff. The notice shall further state where a copy of the proposed resolution levying the assessments against all real property in the district is on file for public inspection, and that subject to such changes and corrections as may be made by the governing body, it is proposed to adopt the resolution at the conclusion of the hearing. The published notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed. In the absence of fraud, the failure to mail any notice does not invalidate any assessment or any proceeding under this chapter.

**37-13-117. Public hearing on proposed assessment resolution; corrections.**

(a) At the time and place specified in the assessment hearing notice, the governing body shall hear all arguments relating to the benefits accruing to any tract, lot or parcel of land therein and the amounts proposed to be assessed against any tract, lot or parcel. The hearing may be adjourned from time to time to a fixed future time and place. After the hearing has been concluded and all persons desiring to be heard have been heard, the governing body shall consider the arguments presented and shall make the corrections in the assessment list as may be considered just and equitable. The corrections may eliminate, increase, or decrease the amount of the assessment proposed to be levied against any piece of property. However, no increase of

any proposed assessment shall be valid unless the owner of the property is given notice and an opportunity to be heard.

(b) After the corrections have been made, the governing body shall make a specific finding that no proposed assessment on the corrected assessment list exceeds the benefit to be derived from the improvement by the piece of property to be assessed and that no piece of property listed will bear more than its proper proportionate share of the cost of the improvement.

**37-13-118. Adoption of the assessment resolution; civil action; statute of limitations.**

After the public hearing has been concluded and all corrections made to the assessment list, the governing body shall proceed to adopt the assessment resolution. The resolution and supporting findings shall be conclusive against all persons unless an action contesting the validity of this law or the acts contemplated by this law shall be commenced in a court of competent jurisdiction within thirty (30) days after the adoption of the assessment ordinance. Thereafter, any such action shall be barred and the organization of the district, the assessment levied pursuant thereto, or any other act authorized by this statute shall not be directly or collaterally questioned in any suit, action, or proceeding. The statute of limitations provided herein shall be an additional limitation to and supplement any requirements of the Wyoming Administrative Procedure Act or any rules issued thereunder. If the contest is unsuccessful, the court may order the plaintiff to pay the costs thereof, and, in its discretion, may require a bond in a sufficient amount to cover the costs at the commencement of the action. The burden of proof to show that the special assessment or part thereof is invalid, inequitable or unjust shall rest upon the party who brings the suit.

**37-13-119. Payment of assessment.**

The amount of the assessment is due and collectible without demand within thirty (30) days after the final publication of the assessment resolution and if it is not paid within such time it shall commence to bear interest at a rate fixed by the governing body. The published resolution shall specify the date when interest will commence, the rate of interest, and the period of years over which installment payments may be made. If not paid within the thirty (30) days allowed, it will be conclusively presumed that the owner exercises the right to pay

the amount due in equal annual installments bearing interest at the rate specified in the resolution and extending over the period of years not exceeding ten (10) specified in the resolution. The first installment shall become due one (1) year from the date when interest commenced and one (1) installment shall become due on the same day of the same month annually thereafter.

**37-13-120. Failure to pay installments; sale of property; return of sale; certificate of sale.**

(a) The failure to pay any installment including interest when due shall cause all other installments and the interest thereon to become due and payable and the governing body shall, within thirty (30) days from the date of default, by general ordinance providing for the sale of the property, proceed against the property for the collection of the total amount due including interest plus five percent (5%) additional on unpaid principal and interest as penalties and costs of collection.

(b) The governing body shall cause notice of sales for delinquent assessments and make the sales thereof in the same manner as is provided for sales of property by a treasurer of a city or town for delinquent assessments as provided in W.S. 15-6-410.

(c) The governing body shall make a return of sale in the same manner as is provided in W.S. 15-6-411.

(d) The governing body shall make out such a certificate and deliver the same as provided in W.S. 15-6-412 and said certificate and the lien thereof shall have the same validity and effect as provided therein.

(e) The governing body shall be custodian of such certificates, may sell and transfer any such certificate and generally may act with the same powers and authority as provided in W.S. 15-6-412(b).

**37-13-121. Redemption of property sold for assessment; deed.**

Any property sold for an assessment as provided in W.S. 37-13-120 shall be subject to redemption from the governing body and a redemption deed shall be executed after two (2) years from the date of the sale in the same manner as is provided for redemption in W.S. 15-6-418.

**37-13-122. Assessment lien.**

Special assessments levied hereunder are equal with taxes levied against the property by the state, the county and all other taxing districts, and are superior to any other lien or encumbrance created before or after. No sale of property for the nonpayment of taxes or other special assessments shall extinguish any lien other than the taxes or special assessments for the nonpayment of which sale is had.

**37-13-123. Proceeds of sale.**

The proceeds of the sale of any property for nonpayment of special assessments shall be applied in the discharge of the assessments, the interest, costs and penalties thereon. If there are outstanding any special improvement bonds issued pursuant to the improvement in question, proceeds of the sale shall, after the payment therefrom of the costs of collection, be applied to the cost of redemption prior to maturity of as many of the outstanding special improvement bonds as can be retired with the amount available.

**37-13-124. Property bid in by city, town or county to be held in trust; trust discharged by payment of assessment.**

When any property is bid in by or stricken off to any city, town or county the property shall be held in trust by the city, town or county for the fund of the improvement district for which the assessment was levied to the extent of the unpaid assessment for which the property was sold, with penalty, and all accrued interest and interest owed in the future. However, the city, town or county may after receiving a deed pay the fund the amount of the delinquent assessment for which the property was sold, any penalties owed, and all accrued interest and interest to the time of the next call for bonds issued against the assessment fund at the rate provided, and thereupon take and hold the property discharged of the trust.

**37-13-125. Sale of property held in trust; notice.**

(a) After the period of redemption has expired and a deed has been issued to a city, town or county, it may sell the property at public auction to the highest bidder for cash. No bid may be accepted for less than the amount set forth in the deed plus accrued interest to date of sale computed on the assessment for which the property was sold from the date of the

execution of the deed and all delinquent assessments and taxes against the property with accrued interest, penalties, costs and other charges. The city, town or county shall pay into the fund for which the property was held in trust an amount necessary to fully discharge the assessment for which the property was sold, together with all interest and penalties.

(b) Any sale shall be conducted only after notice has been given, describing the property and stating that the treasurer will on the day specified sell the property at the front door of the building in which the governing body holds its sessions, between the hours of 10:00 a.m. and 4:00 p.m. The notice shall be published at least five (5) times in a daily newspaper published within the district or if there is none, at least twice in a newspaper of general circulation in the district. The sale cannot be less than fifteen (15) days after the date of the last publication of the notice.

#### **37-13-126. Advance payment of assessment installations.**

The governing body, in the resolution levying the assessments, may provide that all unpaid installment assessments levied against any property may be paid, but only in their entirety, prior to the dates on which they become due if the person paying the installments pays all interest which would accrue thereon to the next succeeding date on which interest is payable on the bonds issued in anticipation of the collection of the assessments. In addition, the person must pay the additional amount of interest as in the opinion of the governing body is necessary to assure the availability of money fully sufficient to pay interest on the bonds as interest becomes due, and any redemption premiums which may become payable on the bonds in order to retire, in advance of maturity, bonds in a sufficient amount to utilize the assessments thus paid in advance. If no bonds have been issued then all unpaid installments of assessments levied against any piece of property may be paid in their entirety prior to the date upon which they become due by paying the principal amount due and the interest accrued thereon to the date of payment.

#### **37-13-127. Issuance of bonds.**

After the expiration of thirty (30) days from the date of the adoption of the resolution levying the assessments, the governing body may issue negotiable interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. The bonds shall bear interest payable

semiannually or annually and shall mature serially over a period not exceeding twenty (20) years, but in no event shall the bonds extend over a longer period of time than the period of time over which the installments of special assessments are due and payable and ninety (90) days thereafter. The bonds shall be of a form and denomination and shall be payable in principal and interest at times and places and shall be sold, authorized and issued in a manner, as the governing body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest and shall be secured by and payable from the irrevocable pledge of the funds derived from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Any premium received on the sale of the bonds shall be placed in the fund for the payment of principal and interest on the bonds. The bonds shall be callable for redemption from the proceeds of the sale of property sold for the nonpayment of special assessments but not otherwise unless the bonds on the face thereof provide for redemption prior to maturity. The governing body may provide that the bonds shall be redeemable on interest payment date or dates prior to maturity pursuant to notice and at premiums as it deems advisable. The bonds shall be signed by a member of the governing body designated by the governing body and shall be countersigned by the city recorder or the clerk of the board of the town trustees or the clerk of the board of the county commissioners, whichever is applicable, and one (1) of the signatures may be a facsimile signature. Interest may be evidenced by interest coupons attached to the bonds and signed by a facsimile signature of one (1) of the individuals who signed the bond.

**37-13-128. Errors or irregularities not to void assessment; civil action to adjudicate grievance; action to test validity of resolution authorizing bond issue.**

No special assessment shall be declared void or set aside in consequence of any error or irregularity permitted or appearing in any of the proceedings under this chapter, but any party feeling aggrieved by any special assessment or proceeding may bring a civil action to adjudicate the grievance if the action is commenced prior to the expiration of thirty (30) days after adoption of the assessment ordinance. Every person whose property is subject to the special assessment and who fails to appear during the public hearings on assessments to raise his objection to the tax shall be deemed to have waived all objection to the assessment except the objection that the governing body lacks jurisdiction to levy the tax, which



objection must be raised within thirty (30) days after adoption of the assessment ordinance. Whenever any enactment authorizing the issuance of any bonds pursuant to the improvement contemplated is adopted, the resolution shall be published once in a newspaper in which the original notice of hearing was published. For twenty (20) days thereafter, any person whose property has been assessed and any taxpayer in the district may institute litigation for the purpose of questioning or attacking the legality of such bonds. After the expiration of twenty (20) days, all proceedings by the governing body, the bonds to be issued pursuant thereto, and the special assessments from which the bonds are to be paid, shall be final and no suit challenging the legality thereof may be instituted in this state, and no court shall have the authority to inquire into such matters.

### **37-13-129. Conversion costs.**

(a) In determining the conversion costs included in the costs and feasibility report, the public utility shall be entitled to amounts sufficient to repay the following, as computed and reflected by the uniform system of accounts approved by the Wyoming public service commission, federal power commission or federal communications commission, or in the event the public utility is not subject to regulation by any of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of the public utility:

(i) The recorded original costs less depreciation taken as of the date of the assessment resolution of the existing overhead electric and communication facilities to be removed;

(ii) The estimated costs of removing the overhead electric and communication facilities, less the salvage value of the facilities removed;

(iii) If the estimated cost of constructing underground facilities exceeds the recorded original cost of constructing aerial facilities, then the cost difference between the two; and

(iv) The cost of obtaining new easements, including all reasonable acquisition costs, when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for the

aboveground facilities, or where the preexisting easements are insufficient for underground facilities.

(b) If provision for payment of all or a portion of conversion cost by the affected public utility are included in tariffs, rules or regulations filed with or promulgated by the Wyoming public service commission, such conversion costs shall be the costs included in the costs and feasibility report and the rates and conditions of such tariff, rule or regulation shall also be applicable and binding on customers in the district.

**37-13-130. Construction of and title to converted facilities.**

The public utility concerned is responsible for all construction work involving its facilities and may contract out such of this construction work as it deems desirable. There shall be no competitive bidding as to the construction of the converted facilities since existing facilities are owned and operated by the public utility and the continuity of service of the public utility is essential. Title to the converted facilities is solely in the public utility involved. The public is only purchasing the intangible benefits which come from removal of the overhead facilities and replacement by underground facilities.

**37-13-131. Conversion costs and service connections.**

(a) The public utility performing the conversion shall, at the expense of the property owner, convert to underground all electric and communication service facilities located upon any lot or parcel of land within the improvement district and not within the easement for distribution, sometimes referred to as "service drops" or "drop wires." This shall include the digging and backfilling of a trench upon the lot or parcel unless the owner executes and files a written objection with the clerk of the governing body not later than the date set for hearing objections to the improvement district assessment as provided by law. Failure to file the written objection shall be taken as a consent and grant of easement to the utility and shall be construed as express authority to the public utility and their respective officers, agents and employees to enter upon the lot or parcel for such purpose, and through failure to object, any right of protest or objection in respect of the doing of such work shall be waived. If an owner does file the written objection, he shall be responsible for providing a trench in

accordance with applicable rules, regulations or tariffs from the owner's service entrance to a point designated by the public utility and for backfilling the trench following installation of the underground service by the public utility involved.

(b) If conversion costs for the service facilities located upon any lot or parcel of land and not within the easement for distribution are included in tariffs, rules or regulations filed with or promulgated by the public service commission, the conversion costs shall be the costs included in the costs and feasibility report, and the property owner shall be obligated for that amount.

(c) In any event the cost of any work done by the public utility shall be included in the assessment to be levied upon the lot or parcel. If a written objection is filed as above provided, the owner involved is obligated for and the public utility involved is entitled to payment for the actual cost for the work accomplished upon the owner's property by the public utility.

(d) The owner shall, at his expense, make all necessary changes in the service entrance equipment to accept underground service.

#### **37-13-132. Notice of disconnection.**

If the owner of any lot or parcel of land fails to make necessary changes in the service entrance equipment or fails to provide the trench in a timely manner, at the time the converted facilities are ready for connection to his property, the electric or communication service may be disconnected and removed and all overhead electric or communication facilities providing service to any building, structure or improvement located upon the lot or parcel may be disconnected. Written notice of disconnection shall be given at least ten (10) days prior to disconnection by leaving a copy of the notice at the principal building, structure or improvement located upon the lot or parcel.

#### **37-13-133. Payment of public utility.**

Upon completion of the conversion the public utility corporation shall present the governing body with its verified bill for conversion costs as computed pursuant to W.S. 37-13-129 or 37-13-131 of the statutes, but based upon the actual cost of constructing the underground facility rather than the estimated

cost of the facility. In no event shall the bill for conversion cost presented by the public utility corporation exceed the amount of estimated conversion costs by the public utility corporation. If the conversion costs are less than the estimated conversion costs, each owner within the improvement district shall receive the benefit, prorated in such form and at such time or times as the governing body may determine to be fair and equitable. The bill of the public utility corporation shall be paid within thirty (30) days by the governing body from the improvement district funds or such other source as is properly designated by the governing body. In determining the actual cost of constructing the underground facility the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the federal communications commission, federal power commission or Wyoming public service commission in use at the time of the conversion.

**37-13-134. Reinstallation of overhead facilities not permitted.**

Once removed, no overhead electric or communication facilities shall be installed in a local improvement district for conversion of overhead electric and communication facilities.

**37-13-135. No limitation of public service commission's jurisdiction.**

Nothing contained in this chapter shall vest any jurisdiction over public utilities in the governing bodies. The public service commission of Wyoming shall retain all jurisdiction now or hereafter conferred upon it by law and no new jurisdiction shall be conferred upon this commission by virtue of this law.

**37-13-136. Nonseverability.**

If any provision of this chapter is held invalid, such invalidity shall invalidate this chapter in its entirety, and to this end the provisions of this chapter are declared to be nonseverable.

**37-13-137. Commencement of conversion.**

If an improvement district is established pursuant to this chapter, the public utility corporations involved shall not be required to commence conversion until the ordinance, the assessment roll and issuance of bonds have become final and no civil action has been filed or if civil action has been filed,

until the decision of the court upon the action has become final and is not subject to further appeal.

CHAPTER 14  
RADIOACTIVE MATERIALS TRANSPORTATION MANAGEMENT

ARTICLE 1  
POLICY AND PURPOSE

**37-14-101. Repealed by Laws 1996, ch. 90, § 2.**

**37-14-102. Repealed by Laws 1996, ch. 90, § 2.**

**37-14-103. Emergency response fee.**

(a) In addition to any other fees and taxes provided by law, an emergency response fee of two hundred dollars (\$200.00) shall apply to each package of radioactive materials transported through this state. The department of transportation shall collect this fee based on a permit issued by the department which is not inconsistent with federal law. The department shall promulgate rules on issuing and revoking permits which are not inconsistent with federal law. The department shall promulgate rules on quarterly reporting and payment of fees, retention of records and audit requirements. All emergency response fees shall be deposited in a separate account to be used for the payment of costs associated with training for and conducting emergency response procedures related to the transportation of radioactive materials.

(b) As used in this section:

(i) "Radioactive materials" means:

(A) Highway route controlled quantities of radioactive materials as defined in 49 C.F.R. 173.403(1) as amended as of January 1, 1989; and

(B) Nuclear waste being transported to the waste isolation pilot plant in New Mexico, to any facility established pursuant to section 135 of the federal "Nuclear Waste Policy Act of 1982" as amended, 42 U.S.C. 10101 et seq., to any repository licensed for the permanent deep geological disposal of high-level radioactive waste and spent nuclear fuel, or to any monitored retrievable storage facility established pursuant to section 141 of the federal "Nuclear Waste Policy Act of 1982" as amended.

(ii) "Package" means a container plus its contents that are assembled to assure compliance with the minimum federal packaging requirements for radioactive materials;

(iii) "Shipper" means the party or carrier responsible for shipments of radioactive materials under this section.

## ARTICLE II DEFINITIONS

## ARTICLE III REGULATORY PRACTICES

## ARTICLE IV PACIFIC STATES RADIOACTIVE MATERIALS TRANSPORTATION COMMITTEE

## ARTICLE V ELIGIBLE PARTIES AND EFFECTIVE DATE

## ARTICLE VI SEVERABILITY

## CHAPTER 15 TELECOMMUNICATIONS

## ARTICLE 1 GENERAL PROVISIONS

### **37-15-101. Short title; sunset.**

(a) This chapter shall be known as the "Wyoming Telecommunications Act."

(b) This chapter is repealed effective July 1, 2023.

### **37-15-102. Repealed By Laws 2007, Ch. 142, § 2.**

### **37-15-103. Definitions.**

(a) As used in this chapter:

(i) "Affiliated telecommunications companies" means telecommunications companies:

(A) In which five percent (5%) or more of the voting stock is controlled or owned, directly or indirectly, by a common principal; or

(B) Whose management and policies are found by the commission, after notice and opportunity for hearing, to be controlled by a common principal.

(ii) "Commission" means the public service commission of Wyoming;

(iii) "Competitive telecommunications services" means those services found by the legislature or the commission to be competitive in accordance with W.S. 37-15-202;

(iv) "Essential telecommunications service" means a customer's access to service that is necessary for the origination or termination, or both, of two-way, switched telecommunications for both residential and business service within a local exchange area. Essential telecommunications services are limited to:

(A) Access to interexchange services provided by interexchange telecommunications companies;

(B) Single line flat-rate or single line measured residence or business voice service;

(C) Transmission service and facilities necessary for the connection between the end user's or customer's premises and local network switching facility including the necessary signaling service used by customers to access essential telecommunications services;

(D) Services necessary to connect 911 emergency services to the local network;

(E) Switched access, which for the purposes of this chapter shall mean the switching and transport necessary to connect an interexchange telecommunications company with the local exchange central office for the purpose of originating or terminating, or both, the interexchange telecommunications company's switched telecommunications service.

(v) "Interexchange telecommunications company" means a person providing telecommunications service to connect end users located in different local exchange areas, but excluding

companies which also provide noncompetitive local exchange services;

(vi) Repealed By Laws 2007, Ch. 142, § 2.

(vii) "Local exchange area" means a geographic territorial unit established by the commission for providing telecommunications services;

(viii) "Local exchange service" means the provision of essential telecommunications service within a local exchange area;

(ix) "Noncompetitive telecommunications services" means those services which have not been found by the legislature or the commission to be competitive in accordance with W.S. 37-15-202;

(x) "Price" means any rate or charge set and published in accordance with this chapter and collected by the telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies;

(xi) "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state;

(xii) "Telecommunications service" means the offering or transmitting for hire of telecommunications by means of telecommunications facilities using wire, radio, lightwave or other means;

(xiii) Repealed by Laws 2015, ch. 96, § 2.

(xiv) "Universal service" means the general availability of essential telecommunications service at an affordable and reasonable price;

(xv) Repealed by Laws 2015, ch. 96, § 2.

(xvi) "Supported services" means the services or functionalities which shall be supported by the state universal service fund pursuant to W.S. 37-15-502, as described in subparagraphs (A) and (B) of this paragraph:

(A) The services designated for support are:



(I) Voice grade access to the public switched network. "Voice grade access" is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call;

(II) Local usage. "Local usage" means an amount of minutes of use of exchange service, prescribed by the commission, provided free of charge to end users;

(III) Dual tone multi-frequency signaling or its functional equivalent. "Dual tone multi-frequency" is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time;

(IV) Single-party service or its functional equivalent. "Single-party service" is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;

(V) Access to emergency services. "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a public safety answering point operated by the local government. "Enhanced 911" is defined as 911 service that includes the ability to provide automatic numbering information, which enables the public safety answering point to call back if the call is disconnected, and automatic location information, which permits emergency service providers to identify the geographic location of the calling party. "Access to emergency services" includes access to 911 and enhanced 911 services in accordance with applicable governing authority;

(VI) Access to operator services. "Access to operator services" is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call;

(VII) Access to interexchange service.

"Access to interexchange service" is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;

(VIII) Access to directory assistance.

"Access to directory assistance" is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and

(IX) Toll limitation for qualifying low-income consumers.

(B) The commission may grant a company additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation. If such petition is granted, the otherwise eligible company will be permitted to receive universal service support for the duration of the period designated by the commission. The commission shall grant such a request only upon a finding that exceptional circumstances prevent an otherwise eligible company from providing single-party service, access to enhanced 911 service or toll limitation. The period should extend only as long as the commission finds that exceptional circumstances exist and shall not extend beyond the time that the commission deems necessary for that company to complete network upgrades. An otherwise eligible company that is incapable of offering one (1) or more of these three (3) specific supported services must demonstrate to the commission that exceptional circumstances exist with respect to each service for which the carrier desires a grant of additional time to complete network upgrades.

(xvii) "Landline carrier" means a telecommunications company providing local exchange service, or its functional equivalent, to retail end users by means primarily of its own fiber, copper, electric lines or coaxial cable facilities.

(b) Repealed By Laws 2007, Ch. 142, § 2.

**37-15-104. Services not regulated by this title.**

(a) Except for contributions to the universal service fund required pursuant to W.S. 37-15-501 and the assessment levied

pursuant to W.S. 37-2-106 through 37-2-109, telecommunications service does not include, and the provisions of this title do not apply to:

(i) One-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming by a cable television or other system as well as subscriber interaction which is required for the selection of video programming;

(ii) Home and business and coinless, or coin operated public or semipublic telephone terminal equipment, and the use, location and charges for the use of such equipment;

(iii) Any billing and collection services;

(iv) Any inside wire and premise cable installation and maintenance;

(v) Directory services, except as provided in W.S. 37-12-130;

(vi) Telecommunications services using radio spectrum, cellular, or other wireless technology except as set forth in subparagraphs (A), (B) and (C) of this paragraph:

(A) Repealed by Laws 2015, ch. 96, § 2.

(B) To the extent permitted in accordance with the requirements set forth in federal law, consideration and determination of an application for designation as a federal eligible telecommunications carrier;

(C) Determinations of eligibility for and amount of distribution of state universal service funds by the commission for supported services in accordance with W.S. 37-15-502.

(vii) Video dial tone and multimedia services;

(viii) Private telecommunications networks, which for the purposes of this act shall mean a system for the provision of telecommunications service by a person or entity for the sole and exclusive use of the person or entity and not for resale directly or indirectly;

(ix) Nonvoice data services not operated by a company providing local exchange service;

(x) Networks established by a person other than the local exchange company providing essential telecommunications services within the local exchange area to provide access to interexchange carrier services;

(xi) Except as provided in this paragraph, direct inward dial services and other services needed by answering services and paging services. To the extent not preempted by federal law or regulation the commission shall regulate direct inward dial services and other services needed by answering services and paging services as noncompetitive services in any local exchange area until there are at least two (2) telecommunications companies effectively offering direct inward dial and other needed services to the answering services and paging services serving that local exchange area;

(xii) Remote meter reading; and

(xiii) Any other telecommunications service that is not regulated by this title.

(b) In addition to subsection (a) of this section, telecommunications service does not include, and the provisions of this title do not apply to telecommunications services provided by the department of enterprise technology to private health care providers under W.S. 9-2-2906(j).

### **37-15-105. VoIP and internet protocol enabled services.**

(a) As used in this section:

(i) "Internet protocol enabled service" or "IP enabled service" means any service, capability, functionality or application, other than "voice over internet protocol service," (VoIP) using existing internet protocol, or any successor internet protocol, that enables an end user to send or receive a communication in existing internet protocol format, or any successor internet protocol format, utilizing a broadband connection at the end user's location, regardless of whether the communication is voice, data or video;

(ii) "Voice over internet protocol service" means any service that:

(A) Enables real time, two-way voice communication originating from or terminating at the user's location in internet protocol or a successor protocol;

(B) Utilizes a broadband connection at the user's location; and

(C) Permits a user to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

(b) The commission shall not regulate IP enabled service or voice over internet protocol service. Nothing in this section affects or modifies:

(i) Any applicable wholesale tariff or any commission authority to implement or enforce any rights, duties or obligations of any party related to wholesale services;

(ii) Any entity's obligations or rights or commission authority under sections 251 and 252 of the Federal Communications Act of 1934, 47 U.S.C. §§ 251 and 252;

(iii) Any commission jurisdiction over intrastate switched access rates, terms and conditions, including the implementation of federal law with respect to intercarrier compensation;

(iv) Any obligation for the provision of video or cable service by any entity under applicable law;

(v) Any commission jurisdiction or authority pursuant to W.S. 37-15-401(a)(vii), including but not limited to commission jurisdiction or authority to address federal high cost fund or federal universal service fund issues;

(vi) Any obligation to offer essential telecommunications service as regulated by the commission in other sections of this chapter.

(c) If a service provider voluntarily chooses to receive Wyoming universal service funds to support voice over internet protocol service that otherwise qualifies for support pursuant to W.S. 37-15-501 or 37-15-502, then that supported voice over internet protocol service shall be subject to all laws and rules governing the receipt of such funds, and the support provided to those services shall not exceed the support that would be

provided to eligible noncompetitive essential local exchange services on a per-access-line basis.

(d) Voice over internet protocol service shall be subject to the following:

(i) Any required assessments under W.S. 37-15-501 and 37-15-502;

(ii) Any required assessment of 911 or E911 emergency service taxes under W.S. 16-9-101 through 16-9-105;

(iii) Any required special fee under W.S. 16-9-209;  
or

(iv) Any required assessment levied under W.S. 37-2-106 through 37-2-109.

## ARTICLE 2

### REGULATION OF COMPETITIVE AND NONCOMPETITIVE MARKETS

**37-15-201. Regulation of local exchange services; certificates of public convenience and necessity; concurrent certificates.**

(a) Except for those telecommunications companies that as of July 1, 2015, have a valid certificate of public convenience and necessity previously issued by the commission to provide local exchange services in the state, all telecommunications companies seeking to offer and provide local exchange service shall obtain a certificate of public convenience and necessity from the commission prior to providing that service in this state.

(b) The commission shall grant a certificate or certificates of public convenience and necessity to provide local exchange service if it finds, after notice and opportunity for hearing, that the applicant possesses sufficient technical, financial and managerial resources to provide safe, adequate and reliable local exchange services within the identified geographic area.

(c) Repealed By Laws 2007, Ch. 142, § 2.

(d) Repealed By Laws 2007, Ch. 142, § 2.

(e) Repealed By Laws 2007, Ch. 142, § 2.

(f) Repealed By Laws 2007, Ch. 142, § 2.

(g) Repealed By Laws 2007, Ch. 142, § 2.

(h) Repealed By Laws 2007, Ch. 142, § 2.

**37-15-202. Determination of competitive services.**

(a) Upon petition by any telecommunications company or pursuant to the commission's own motion, the commission may, after notice and opportunity for hearing, find and conclude that a telecommunications service is subject to competition. Any service found to be effectively competitive pursuant to this section shall not be subject to regulation by the commission. The commission shall consider only the following factors in determining whether a telecommunications service is subject to effective competition:

(i) The extent to which telecommunications services are available from alternative providers including, but not limited to, wireless providers, satellite providers, cable providers offering voice services, voice over internet protocol or any other providers utilizing telephone numbers to provide voice services in the relevant market;

(ii) The extent to which telecommunications services of alternative providers are functionally equivalent, for equivalent service or in combination with other services, and may be substituted at reasonably comparable prices, terms and conditions;

(iii) Existing economic, regulatory or technological barriers to entry.

(b) Upon the commission's own motion or the petition of any person, the commission may, after notice and the opportunity for a hearing in accordance with the Wyoming Administrative Procedure Act, find and conclude that a telecommunications service found to be competitive under subsection (a) of this section is no longer subject to competition, and therefore not subject to treatment as a competitive service under this chapter. All hearings conducted pursuant to this subsection shall place the burden of proof upon the commission or the petitioner of establishing that a telecommunications service is no longer subject to competition.

(c) Telecommunications service provided by new entrants, local exchange services provided by resale, telecommunications services provided by interexchange telecommunications companies, interexchange telecommunications services and telecommunications services other than local exchange service and switched access provided by a local exchange company shall be considered subject to competition for purpose of regulation under this title. Notwithstanding the foregoing, local exchange service may be determined to be competitive pursuant to subsection (a) of this section.

(d) Notwithstanding subsection (a) of this section the commission shall, in an area defined by an applicant, find retail telecommunications services other than switched access are competitive provided:

(i) At least seventy-five percent (75%) of the class of customers in the area have access to at least one (1) landline carrier unaffiliated with the applicant providing local voice service. The local voice service may be provided in combination with other services. If a company does not differentiate between residential and business classes of service in its application, the requirement shall be that at least sixty percent (60%), considering residential and business customers as one (1) class of customers, have access to at least one (1) landline carrier unaffiliated with the applicant;

(ii) At least seventy-five percent (75%) of the class of customers in the area have access to at least one (1) wireless provider unaffiliated with the applicant. If a company does not differentiate between residential and business classes of service in its application, the requirement shall be that at least sixty percent (60%), considering residential and business customers as one (1) class of customers, have access to at least one (1) wireless provider unaffiliated with the applicant;

(iii) The applicant specifies in the application whether or not the class of customers whose service is to be determined competitive are residential, business or both;

(iv) The applicant agrees to provide throughout the area prices which do not vary by geographic location or access to competitors;

(v) The applicant agrees, if residential services are involved and subject to the provisions of subsections (e) and (f) of this section, to continue to provide stand alone basic



residential local exchange service at a price less than the price for the stand alone basic residential local exchange service bundled with any other service; and

(vi) The applicant agrees for a transition period ending July 1, 2009 to provide stand alone basic residential service at a price that does not exceed the price in effect July 1, 2006 and agrees after July 1, 2009 that it will not increase the price for the stand alone basic residential local exchange service by an amount that exceeds the price in effect July 1, 2008, by more than the cumulative increase in the federal gross domestic product price index since July 1, 2008. For the purpose of this subsection the prices in effect July 1, 2006 and July 1, 2009 shall be modified only to reflect changes in access charges as approved by the commission pursuant to W.S. 37-15-203(f)(ii) and (j) to the extent those changes are not reflected in the rates.

(e) If the price for stand alone basic residential local exchange service is restricted pursuant to subsection (d) of this section, the commission may, upon application and after notice and opportunity for hearing, authorize an increase in the price for the service if the applicant demonstrates that the maximum price allowed pursuant to subsection (d) of this section would not allow the applicant a reasonable opportunity to recover its prudently incurred costs related to the proportion of the property used in providing the essential telecommunications service.

(f) If a company is required to continue to offer stand alone basic residential local exchange service pursuant to subsection (d) of this section, it may apply to the commission for permission to stop offering the service. The commission shall, after notice and opportunity for hearing approve the application if:

(i) A successor agrees to continue the obligation; or

(ii) The company establishes to the satisfaction of the commission that the service has become obsolete due to a lack of customers subscribing to the service.

(g) The commission may, on its own motion or upon application by the office of consumer advocate or by any interested party, find retail telecommunications services are not competitive in any area where it has previously found them

to be competitive pursuant to subsection (d) of this section if, after notice and opportunity for hearing, it finds that:

(i) Due to merger, acquisition, predatory pricing or marketing practices or withdrawal of offerings, the degree of competition required by subsection (d) of this section no longer exists; or

(ii) The local exchange telecommunications provider has not complied with the conditions it agreed to pursuant to subsection (d) of this section.

(h) Nothing in this section affects or modifies:

(i) Any applicable wholesale tariff or any commission authority to implement or enforce any rights, duties or obligations of any party related to wholesale services;

(ii) Any entity's obligations or rights or commission authority under the Federal Communications Act of 1934, 47 U.S.C. 251 and 252;

(iii) Any commission jurisdiction over intrastate switched access rates, terms and conditions, including the implementation of federal law with respect to intercarrier compensation;

(iv) Any commission jurisdiction or authority pursuant to W.S. 37-15-401(a)(vii), including commission jurisdiction or authority to address federal high cost fund or federal universal service fund issues.

(j) Services found to be competitive under subsection (a), (c) or (d) of this section shall be subject to the following:

(i) Any required assessments under W.S. 37-15-501 and 37-15-502;

(ii) Any required assessment of 911 or E911 emergency service taxes as provided in title 16, chapter 9, article 1 of the Wyoming statutes;

(iii) Any required special fee under W.S. 16-9-209;

(iv) Any required assessment levied under W.S. 37-2-106 through 37-2-109;

(v) Certification as applicable under W.S. 37-15-201.

**37-15-203. Price regulation of noncompetitive essential services.**

(a) Prices for telecommunications services which have been determined by the legislature or the commission to be noncompetitive essential telecommunications services shall be regulated by the commission in accordance with this section. The prices for noncompetitive essential telecommunications services of any local exchange company may be adjusted downward at the company's discretion. Except as provided in subsections (e), (f), (h) and (j) of this section, prices for noncompetitive essential telecommunications services shall be subject to a maximum determined by the commission. The initial maximum shall be the local exchange company's price of noncompetitive essential telecommunications services as of July 1, 2006. A local exchange carrier may increase its price for noncompetitive essential telecommunications services to the level of the maximum set under this subsection without approval of the commission as required under subsections (f) and (g) of this section.

(b) Repealed By Laws 2007, Ch. 142, § 2.

(c) Repealed By Laws 2007, Ch. 142, § 2.

(d) Repealed By Laws 2007, Ch. 142, § 2.

(e) A local exchange company may seek approval to make revenue neutral adjustments, considering only revenue from noncompetitive essential telecommunications services, to the price of noncompetitive essential telecommunications services to reduce or eliminate differences in the price of noncompetitive essential telecommunications services in different portions of its service area. A local exchange company shall not use adjustments under this section to increase receipt of state universal service funds or increase switched access prices. This subsection shall not apply retroactively.

(f) A local exchange company may seek approval to increase the price of noncompetitive essential telecommunications services, including switched access charges, based on:

(i) Changes in the local calling area as approved by the commission;

(ii) Changes in access charges as approved by the commission;

(iii) Other changes affecting noncompetitive essential telecommunications services; or

(iv) Increases in the cost of providing telecommunications services. The increases shall be judged on the overall federal gross domestic product price index published by the United States department of commerce, bureau of economic analysis unless the applicant demonstrates that specific cost increases are disproportionably affecting the cost of providing their noncompetitive essential services.

(g) Any requested price change under subsections (b) through (f) of this section, including revenue neutral changes, that may result in an increase in the price of noncompetitive essential telecommunications services is subject to review and determination by the commission, after notice and opportunity for hearing.

(h) The prices of any local exchange company may contain provisions for incentives for improvement of the company's performance or efficiency, lowering of operating costs, control of expenses or improvement and upgrading or modernization of its services or facilities. Any local exchange company may apply to the commission for incentives and innovative or nontraditional price regulation, including price indexing. The commission shall issue a final order approving, modifying or rejecting any application made under this subsection within one hundred eighty (180) days of the filing date of the application with the commission. If no order is issued by the commission within the one hundred eighty (180) day period, the application shall be deemed approved as filed. If during consideration of an application for regulation under this subsection, the commission materially alters the plan as filed in the application, the applying local exchange company may notify the commission in writing, at any time, but not later than sixty (60) days after any final commission order on the application, that it elects not to be price regulated as approved by the order. The local exchange company's prices shall then be regulated as they were prior to the application until such time as a new application is filed, approved and accepted.

(j) Unless as otherwise directed under federal law, noncompetitive switched access shall not be priced above three cents (\$.03) per minute after January 1, 2010.

**37-15-204. Price schedules.**

(a) A local exchange company shall file with the commission, in such form and detail as the commission may require, schedules showing all noncompetitive telecommunications services terms, conditions and prices currently in effect and charged to customers by the company in this state. All prices for new noncompetitive telecommunications services, and any increase in prices for noncompetitive telecommunications services as authorized by the commission pursuant to W.S. 37-15-203, shall be filed thirty (30) days prior to the proposed effective date. No price increase for a noncompetitive service shall be effective unless the customer has been given notice by the provider at least one (1) full billing cycle prior to the proposed increase and the increase has been approved by the commission as required by W.S. 37-15-203. No price or price change is effective until filed in accordance with this section. For purposes of this subsection, the rules, regulations, policies, practices and other requirements relating to services shall be filed with the commission in such form and detail as the commission may require. Rules, regulations, policies, practices and other requirements relating to noncompetitive services shall be subject to the same requirements under this chapter as the prices of noncompetitive services.

(b) Repealed By Laws 2007, Ch. 142, § 2.

(c) Repealed By Laws 2007, Ch. 142, § 2.

(d) Repealed by Laws 2015, ch. 96, § 2.

ARTICLE 3  
INTEREXCHANGE COMPANIES

**37-15-301. Regulation of interexchange companies.**

(a) An interexchange company not authorized to provide intrastate telecommunications service in this state on or before January 1, 1995, shall not provide intrastate interexchange telecommunications services unless it first registers with the commission. An interexchange company authorized by the commission to provide intrastate telecommunications service as of January 1, 1995, is not required to register. The form for registration shall be specified by the commission.

(b) Any interexchange company registered with the commission to provide intrastate telecommunications services shall be authorized to provide statewide services.

(c) Repealed By Laws 2007, Ch. 142, § 2.

(d) Repealed By Laws 2007, Ch. 142, § 2.

(e) Repealed By Laws 2007, Ch. 142, § 2.

ARTICLE 4  
REGULATION OF TELECOMMUNICATIONS SERVICES GENERALLY

**37-15-401. Commission powers.**

(a) In addition to the powers exercised pursuant to the provisions of W.S. 37-15-408, the commission has the power to:

(i) Investigate the methods and practices of any telecommunications company;

(ii) Require any telecommunications company to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law;

(iii) Make any rules and regulations, in accordance with the Wyoming Administrative Procedure Act, necessary for the commission to carry out its powers in this chapter, including rules objectively established and consistent with commonly accepted industry standards, where applicable standards exist;

(iv) Require reports and studies as to prices and terms and conditions of service, necessary and relevant for the commission's exercise of its authority, including those protected as trade secret or confidential based on legitimate competitive or other operational concerns;

(v) Hold hearings on complaints, or for good cause, upon notice and subject to the provisions of the Wyoming Administrative Procedure Act;

(vi) Regulate telecommunications companies only as provided for in this chapter; and

(vii) Exercise authority as expressly delegated under the Federal Communications Act of 1934, as amended.

**37-15-402. Repealed By Laws 2007, Ch. 142, § 2.**

**37-15-403. Repealed By Laws 2007, Ch. 142, § 2.**

**37-15-404. Protection of telecommunications consumers.**

(a) No telecommunications company shall unreasonably discriminate as to customers in prices, terms or conditions of service, or in connection to or with other telecommunications companies. Nothing in this chapter shall be construed to prohibit any telecommunications company from:

(i) Providing volume or other price discounts based on reasonable, nonpredatory business practices;

(ii) Passing through any state, municipal or local taxes to the customers in the area where the tax is levied; or

(iii) Furnishing free or reduced price service to its current or pensioned employees and dependent members of their families, as defined in the applicable price schedules on file with the commission.

(b) The commission shall not give unreasonably discriminatory or preferential treatment in its regulation of any telecommunications company.

(c) A telecommunications company providing a noncompetitive telecommunications service shall not discontinue providing the service without the commission's approval.

(d) A telecommunications company shall not:

(i) Fail to disclose in a timely and uniform manner information necessary for the design of equipment and services that will meet the specifications of interconnection;

(ii) Fail or refuse to provide a service or product in accordance with the telecommunications company's tariffs, price lists or contracts and within the commission's applicable rules and orders.

(e) The commission may adopt rules and regulations to provide for:

(i) The interconnection of telecommunications companies' networks at nondiscriminatory and reasonable rates, terms and conditions;

(ii) The effective and efficient interoperability of telecommunications companies' networks;

(iii) The unbundling of services into reasonable basic network features;

(iv) The administration and allocation of phone numbers to the extent technically and economically feasible;

(v) Telephone number portability to the full extent technically feasible; and

(vi) The resale and sharing of services and functions at reasonable and nondiscriminatory rates.

(f) No telecommunications company shall engage in anti-competitive behavior, including, but not limited to, discrimination in favor of its affiliates.

#### **37-15-405. Complaint against prices.**

Any person, and the commission on its own motion, may complain to the commission concerning the reasonableness of the price of any noncompetitive telecommunications service or any violation of W.S. 37-15-404. Any notice and hearing of any complaint shall be in accordance with the Wyoming Administrative Procedure Act and this chapter. The commission shall only set aside any price it finds after notice and hearing to be unreasonable or unreasonably discriminatory. If the commission sets aside a price as unreasonable or unreasonably discriminatory, the telecommunications company shall have sixty (60) days to file a new price which is reasonable. The company shall refund any charges found to be unreasonable as ordered by the commission. Rates or prices for noncompetitive essential services in effect as of July 1, 2006, are deemed to be fair and reasonable.

#### **37-15-406. Quality of service.**

(a) Repealed By Laws 2007, Ch. 142, § 2.

(b) Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company. A complaint shall be noticed and



heard as provided for in the Wyoming Administrative Procedure Act. The commission, after notice and hearing, may direct the telecommunications company to take whatever remedial action is technically feasible and economically reasonable to provide reasonably adequate service. The commission shall authorize a telecommunications provider to recover the cost of compliance as reasonably determined by any commission order under this section.

**37-15-407. Annual report.**

(a) The commission shall with the input and participation of the telecommunications industry and other relevant state departments, boards and agencies prepare and issue an annual report on the status of the telecommunications industry. The report shall be based on information provided to the commission and shall include:

(i) Repealed By Laws 2007, Ch. 142, § 2.

(ii) Repealed By Laws 2007, Ch. 142, § 2.

(iii) Repealed By Laws 2007, Ch. 142, § 2.

(iv) Repealed By Laws 2007, Ch. 142, § 2.

(v) Any recommendations for legislative change which are adopted by the commission and which the commission believes are in the interest of Wyoming telecommunications customers; and

(vi) Any other information or analysis which the commission is required to provide by this title or deems necessary to provide.

(b) The commission's report shall be filed with the legislature and the governor.

**37-15-408. Applicability of existing law.**

W.S. 37-2-102, 37-2-104, 37-2-106 through 37-2-109, 37-2-113, 37-2-115 through 37-2-118, 37-2-124, 37-2-125, 37-2-130, 37-2-203, 37-2-205(a), 37-2-209, 37-2-214 through 37-2-216, 37-2-218, 37-3-114, 37-4-101 through 37-4-104, 37-12-120 through 37-12-130, 37-12-201, 37-12-202, 37-12-204 through 37-12-213, 37-12-301 through 37-12-304 and 37-13-101 through 37-13-137, inclusive, unless in conflict with other provisions of this chapter, are applicable to telecommunications companies and

telecommunication companies shall be considered public utilities for the purposes of those provisions.

**37-15-409. Construction with other laws.**

If the provisions of this chapter conflict with any other statutes, the provisions of this chapter shall control.

**37-15-410. Repealed By Laws 2007, Ch. 142, § 2.**

**37-15-411. Repealed By Laws 2007, Ch. 142, § 2.**

**37-15-412. Unauthorized change of telecommunications company; unauthorized services; prohibited practices; penalties.**

(a) No person shall engage in any practice which has the effect of changing any Wyoming consumer's telecommunications company if the change is willfully made without the knowledge and consent of that consumer. No person shall willfully charge or attempt to collect charges from any Wyoming consumer for any product or service not provided to the consumer or not authorized by the consumer. The public service commission shall provide upon request of a Wyoming consumer, information or technical assistance regarding appropriate action for the consumer to take in order not to receive telecommunication companies solicitations.

(b) Any change in a Wyoming consumer's telecommunications company shall be effective only if it is in compliance with any method of authorization permitted under federal law, rule or regulation, except that no negative option marketing technique shall be permitted to be used.

(c) If the chosen method is a letter of agency it shall be maintained by the new service provider. No letter of agency under subsection (b) of this section shall be effective if it is physically attached to or part of any inducement, premium, coupon or other promotional material. No letter of agency shall be effective until it is in the actual possession of the new service provider.

(d) Any consumer whose telecommunications company has been willfully changed in violation of subsection (a) of this section is not liable for payment of any unauthorized charge unless the commission determines, after conducting a public hearing on any complaint brought on the matter, that the consumer engaged in any fraudulent or deceptive practice which avoids payment for

telecommunications services in connection with the unauthorized charge.

(e) A consumer is not liable for an amount charged for any unauthorized product provided or service initiated by a telecommunications company or its billing agent without the consent of the consumer. No consumer shall be liable to pay for any product not delivered or service not furnished.

(f) Restitution for violation of this section shall be as follows:

(i) The unauthorized telecommunications company shall pay all recurring and nonrecurring fees and charges necessary for the consumer to promptly reinstate service from the original telecommunications company and shall pay that company an amount equal to that which would have been due had the consumer remained with the original telecommunications company;

(ii) In addition to paragraph (f)(i) of this section, the unauthorized telecommunications company shall pay to any consumer any amount the consumer has paid to the unauthorized company for which the consumer is not liable under subsection (d) of this section.

(g) If the commission shall determine by a preponderance of the evidence in a hearing that any person willfully has engaged in any practice which has the effect of changing any Wyoming consumer's telecommunications company without complying with the applicable provisions of this section, has charged or attempted to collect a charge for unauthorized service, or has solicited a Wyoming consumer in violation of this section:

(i) The commission may impose for each change or charge made in violation of this section an administrative penalty not to exceed one thousand dollars (\$1,000.00); and

(ii) If the commission finds that the person has violated this section with such frequency as to indicate a general business practice it may also permanently revoke the authority of the company involved to provide intrastate interexchange or other telecommunications services in this state.

(h) The following are not subject to the provisions of this section:

(i) Changes in a consumer's telecommunications company or other services effected through a consolidation or merger of the consumer's current telecommunications company;

(ii) Services and corresponding charges required by law or order of the commission.

**37-15-413. Limitation on authority of political subdivision to enter exclusive agreement for provision of telecommunications service.**

(a) Except as provided in subsections (b) through (d) of this section, before the governing body of any city or town or other political subdivision of this state shall provide for the construction, maintenance or operation of any telecommunications service by entering into an exclusive franchise, partnership, joint venture, contract, resale agreement or any other exclusive agreement with any party regarding telecommunications service, the city, town or other political subdivision shall:

(i) Determine, after notice and opportunity for a public hearing, that no private provider of telecommunications services is currently providing substantially the same or similar service anywhere within the boundaries of the city, town or political subdivision;

(ii) Have submitted a written request to all private providers of telecommunications services within the boundaries of the city, town or political subdivision for provision of the same quality and grade of telecommunications service within the same time frame and at the same consumer prices proposed under the exclusive contract;

(iii) Determine, after notice and opportunity for a public hearing that the private telecommunications service providers have not agreed within ninety (90) days of the receipt of the request submitted pursuant to paragraph (ii) of this subsection to provide the same quality and grade of service within the same time frame and at the same consumer prices as proposed under the exclusive contract, or if the provider has agreed, that the provider has not commenced providing or constructing facilities to provide the service in the manner agreed upon; and

(iv) Limit the term of any exclusive agreement under this section to not more than six (6) years.

(b) The governing body of a city or town or other political subdivision shall allow the nondiscriminatory, nonexclusive and competitively neutral use of its rights-of-way including its poles, conduits, ducts or similar support structures by any telecommunications company and nothing in this section shall be construed to the contrary.

(c) Nothing in this section shall restrict the governing body of a city or town, or other political subdivision, from providing a telecommunications service or facility:

- (i) For its own use;
- (ii) For 911, E-911 or other emergency services;
- (iii) For medical or educational purposes; or
- (iv) To students by an educational institution.

(d) Nothing in this section shall be construed to restrict the governing body of a city or town or other political subdivision, from providing a telecommunications service to a party within the geographic area in which the city, town or political subdivision operates as a telecommunications utility. Any city, town or political subdivision providing a telecommunications service under this subsection shall:

(i) Provide the telecommunications service on a nondiscriminatory, nonexclusive and competitively neutral basis; and

(ii) Provide the telecommunications service at a price which covers cost, including imputed costs that the city, town or political subdivision would incur if it were a for-profit telecommunications company.

(e) Any person may complain to the commission, and the commission may on its own motion initiate an investigation, concerning any alleged violation of this section by a city, town or political subdivision, subject to the following:

(i) If the commission finds that a city, town or political subdivision has violated this section, or finds that any rule, action or order of a city, town or political subdivision is anticompetitive or otherwise violates this section, the commission shall notify the city, town or political subdivision of the violation. The city, town or political

subdivision shall cure the anticompetitive behavior within ninety (90) days following mailing of notice by the commission; and

(ii) If the city, town or political subdivision does not cure the anticompetitive behavior within ninety (90) days, the commission shall commence a contested case hearing on the complaint, governed by the Wyoming Administrative Procedure Act, W.S. 16-3-101 et seq. If, following the hearing, the commission finds that the city, town or political subdivision has violated this section, the commission shall prohibit the city, town or political subdivision from providing any telecommunications service until the violation of this section is remedied.

(f) This section does not apply to any contract entered into prior to July 1, 2007.

## ARTICLE 5 UNIVERSAL SERVICE FUND

### **37-15-501. Universal service fund created; contributions; administration.**

(a) There is hereby established the universal service fund to be administered in accordance with this section. The fund shall be administered by the commission. All telecommunications companies shall contribute to the universal service fund. The dates for contributions to the fund and disbursements from the fund shall be set by the commission, after notice and opportunity for hearing, as necessary to accomplish the objectives of the fund as specified in subsections (c) and (d) of this section. The costs of administering the fund may be included in determining required contributions.

(b) The commission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed. The commission shall authorize a monthly charge to customers, in the amount specified by the commission, to recover each contributor's required payment to the universal service fund. Any charge related to mobile telecommunications service shall only apply if the customer's place of primary use is in this state as provided by the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 to 126. The provisions of the Mobile Telecommunications Sourcing Act shall apply to this subsection.

(c) The commission shall administer the monies in the universal service fund to assist only those customers of telecommunications companies located in areas of this state with relatively high rates for noncompetitive essential local exchange services. Services deemed competitive under W.S. 37-15-202(a), (c) or (d) shall not be eligible for universal service fund support under this article. The commission, after notice and opportunity for hearing, shall determine a reasonable amount and a fair method of distributing monies. The commission may authorize a credit to customer bills, in the amount specified by the commission, to reflect distributions received by the local exchange company from the universal service fund. The commission shall ensure that the method shall promote the emergence of competition in providing local exchange service.

(d) In accordance with the method of distribution determined by the commission, a telecommunications company shall, unless it elects to receive Wyoming universal service funds pursuant to the method set forth in subsection (g) of this section, receive funds under this section to the extent that its noncompetitive essential local exchange service prices, after consideration of any contributions from the federal universal service fund, exceed the price benchmark established in subsection (h) of this section.

(e) The following limitations shall be applied to operation of the universal service fund:

(i) The operation of the universal service fund may be suspended by the commission, based upon a public interest finding, after notice and an opportunity for a hearing, that the fund is not then serving its intended purpose;

(ii) In the event that distributions made pursuant to subsection (g) of this section cause total distributions from the universal service fund in any fiscal year to exceed one hundred twenty-five percent (125%) of the amount distributed in fiscal year 2013-2014, the commission shall reduce payments among those electing distributions under subsection (g) of this section, pro rata, so as to reduce the total distribution to one hundred twenty-five (125%) of the fiscal year 2013-2014 distribution amount.

(f) The commission's decisions under this section shall be subject to the provisions of the Wyoming Administrative Procedure Act.

(g) A telecommunications company that undertakes the requirements set forth in this subsection may make a one-time, irrevocable before July 1, 2023, election in writing to the commission to receive Wyoming universal service funds pursuant to this subsection rather than pursuant to subsection (d) of this section. In order to receive funds pursuant to this subsection, the company shall provide essential local exchange service, or its functional equivalent, upon reasonable request throughout the local exchange area of a rural incumbent local exchange carrier, as defined by the federal communications commission on January 1, 2015, at a price not exceeding the price benchmark established in subsection (h) of this section. A telecommunications company which elects to receive Wyoming universal service funds pursuant to this subsection shall receive funds to the extent that its loop costs, as reflected in the company's most recent annual filing of unseparated loop costs filed with the Universal Service Administration Company, exceed the company's most recent annual federal universal service funds receipts and annual local revenues. In calculating annual local revenues the commission shall utilize the imputed price benchmark established in subsection (h) of this section. If an otherwise qualified company elects to receive Wyoming universal service funds pursuant to this subsection, but does not file an annual unseparated loop cost report with the Universal Service Administration Company, it shall file the equivalent information with the commission.

(h) The price benchmark shall be thirty dollars (\$30.00) until July 1, 2023 unless otherwise adjusted by the commission pursuant to this subsection. On and after July 1, 2019, the commission shall review the price benchmark one (1) time every four (4) years and, after review, shall adjust the benchmark as necessary to assure that it approximates one hundred thirty percent (130%) of the weighted statewide average essential local exchange service price. The commission may change the price benchmark at any time if, after notice and opportunity for a hearing, the commission determines that the price benchmark does not approximate one hundred thirty percent (130%) of the weighted statewide average essential local exchange service price and that the price benchmark should be adjusted by ten percent (10%) or more.

**37-15-502. Universal service fund eligibility and distribution to carriers.**

(a) Telecommunications companies which use cellular, radio spectrum or other wireless technology to provide supported



services to customers who are otherwise eligible to receive universal service support pursuant to W.S. 37-15-501, may establish eligibility to receive universal service fund distributions in an amount to be determined by the commission, provided that:

(i) The telecommunications company will offer and advertise all universal service fund supported services throughout the entire local exchange area;

(ii) The telecommunications company will provide unlimited local calling throughout an entire local exchange area for a flat fee;

(iii) The telecommunications company's bill to the customer reflects a credit for the amount of distribution the company receives from the state universal service fund for providing universal service fund supported services to that customer; and

(iv) The company and services meet such additional criteria, if any, the commission, after notice and opportunity for hearing, determines are necessary. During its consideration and determination, the commission shall consider technological and competitive neutrality.

## CHAPTER 16 ELECTRIC UTILITIES

### ARTICLE 1 NET METERING

#### **37-16-101. Definitions.**

(a) As used in this chapter unless the context or a specific article otherwise requires:

(i) "Commission" means public service commission of Wyoming;

(ii) "Customer-generator" means a user of a net metering system;

(iii) "Electrical company" means any person, corporation or governmental subdivision, excluding municipalities, authorized and operating under the constitution

and laws of the state of Wyoming which is primarily engaged in the generation or sale of electric energy;

(iv) "Electric cooperative" means any nonprofit, member-owned cooperative organized under the laws of the state of Wyoming and engaged in the business of distributing electric energy in the state of Wyoming;

(v) "Electric utility" means any electrical company, irrigation district or electric cooperative that is engaged in the business of distributing electricity to retail electric customers in the state;

(vi) "Irrigation district" means an irrigation district under W.S. 41-7-201;

(vii) "Net metering" means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator that is fed back to the electric utility over the applicable billing period;

(viii) "Net metering system" means a facility for the production of electrical energy that:

(A) Uses as its fuel either solar, wind, biomass or hydropower;

(B) Has a generating capacity of not more than twenty-five (25) kilowatts;

(C) Is located on the customer-generator's premises;

(D) Operates in parallel with the electric utility's transmission and distribution facilities; and

(E) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(b) A person acting as a customer-generator under this act shall not be considered a "public utility" as defined by W.S. 37-1-101.

### **37-16-102. Electric utility requirements.**

(a) An electric utility:

(i) Shall offer to make available to each of its eligible customer-generators that has installed a net metering system an energy meter that is capable of registering the flow of electricity in two (2) directions;

(ii) May, at its own expense and with the written consent of the customer-generator, install one (1) or more additional meters to monitor the flow of electricity in each direction;

(iii) Shall not charge a customer-generator any fee or charge that would increase the customer-generator's minimum monthly charge to an amount greater than that of other customers of the electric utility in the same rate class as the customer-generator.

### **37-16-103. Calculation requirements.**

(a) Consistent with other provisions of this chapter, the net energy measurement shall be calculated in the following manner:

(i) The electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices;

(ii) If the electricity supplied by the electric utility exceeds the electricity generated by the customer generator, the customer-generator shall be billed for the appropriate customer charges for that month, in accordance with W.S. 37-16-102;

(iii) If the electricity supplied by the customer-generator exceeds that supplied by the electric utility, the customer-generator shall be credited or compensated for the excess kilowatt-hours generated during the month with the kilowatt-hour credit or compensation appearing on the bill for the following month for all metered locations of customer-generators supplied by the electric utility.

(b) At the beginning of each calendar year, any remaining unused kilowatt-hour credit accumulated during the previous year shall be sold to the electric utility, at the electric utility's filed avoided cost.

### **37-16-104. Safety and performance requirements.**

(a) A net metering system used by a customer-generator shall meet all applicable safety and performance standards established by the national electrical code, the institute of electrical and electronics engineers and underwriters laboratories.

(b) The customer-generator shall at its expense provide lockable, switching equipment capable of isolating the net metering facility from the electric utility's system. Such equipment shall be approved by the electric utility and shall be accessible by the electric utility at all times.

(c) The electric utility shall not be liable directly or indirectly for permitting or continuing to allow an attachment of a net metering facility, or for acts or omissions of the customer-generator that cause loss or injury, including death, to any third party.

(d) The customer-generator is responsible for all costs associated with its facility and is also responsible for all costs related to any modifications to the facility that may be required by the electric utility for purposes of safety and reliability.

(e) The commission, after appropriate notice and opportunity for comment, may adopt by regulation additional control and testing requirements for customer-generators that the commission determines are necessary to protect public safety and system reliability.

## ARTICLE 2 OUTDOOR LIGHTING

### **37-16-201. Definitions.**

(a) As used in this article:

(i) "Electric utility" means any electrical company or electric cooperative that is engaged in the business of distributing electricity to retail electric customers in the state;

(ii) "Lighting apparatus" means any shield, cover or other device used with or on a lamp.

### **37-16-202. Tariffs for outdoor lighting.**

All electric utilities shall offer tariffs for utility provided outdoor lighting that provide an option for all electric customers to choose lighting apparatus designed to minimize light illuminating unintended areas and maintain dark skies. Rates for these lighting apparatus shall not be subsidized by revenue from other utility provided services. The commission shall have jurisdiction over the tariffs.

CHAPTER 17  
RATE REGULATION OF COOPERATIVE ELECTRIC UTILITIES

**37-17-101. Definitions.**

(a) As used in this article:

(i) "Cooperative electric utility" means any nonprofit, member-owned cooperative engaged in the business of distributing energy, including any energy related commodity currently approved under rules and regulations of the public service commission and any future energy related commodities approved by the public service commission, in the state of Wyoming;

(ii) "Member owner" means any cooperative electric utility owner that uses and pays retail rates for energy distributed by the cooperative electric utility;

(iii) "Notification" or "written notice" means publication in a newspaper of general circulation within the area served by the cooperative electric utility, or in a newsletter distributed by the cooperative electric utility, or sent with a billing statement by the utility;

(iv) "Retail rates" means the monthly facilities charge and the rates charged for any energy related commodity.

**37-17-102. Retail rate regulation; exemption.**

(a) Any cooperative electric utility exempt from public service commission retail rate regulation shall remain subject to this article, all other provisions of Wyoming public utility law and the authority of the commission.

(b) Nothing in this article shall be construed to alter the certificated service territory of a cooperative electric utility.

**37-17-103. Procedures for exemption; exclusion from exemption provisions.**

(a) The board of directors of any cooperative electric utility may adopt a resolution for exemption from public service commission retail rate regulation and submit the resolution to the member owners for a vote.

(b) A vote on exemption shall take place only during a cooperative electric utility's annual meeting or by mail ballots returned prior to and counted at the annual meeting. Notification of a vote on the resolution shall be provided to the member owners at least thirty (30) days prior to the annual meeting.

(c) Upon an affirmative vote of a majority of the member owners voting on the resolution in person or by mail ballot, the election results shall be filed with the commission. On the date of filing, the exemption shall become effective.

(d) No cooperative electric utility that has net annual sales greater than two billion (2,000,000,000) kilowatt hours, in the previous calendar year shall be eligible for the exemption provided under this article. Any cooperative electric utility exempt under this article which exceeds the limit specified in this subsection shall return to retail rate regulation in the next calendar year.

**37-17-104. Adjustment of retail rates; complaint; investigation; resolution.**

(a) A cooperative electric utility exempted under W.S. 37-17-103 shall give written notice to all member owners, at least thirty (30) days prior to the effective date of any retail rate increase, including procedures for member consumers to comment on proposed rates.

(b) If within thirty (30) days following the date of mailing or publication of the notice a complaint signed by not less than five percent (5%) of the member owners in a rate class is filed with the cooperative electric utility, then a hearing shall be conducted by the utility's board of directors, to attempt to resolve the complaint. On request by a member owner, for the exclusive purpose of preparing a complaint pursuant to this subsection, and in compliance with the cooperative's by-laws, the cooperative electric utility shall provide a list to the member owner which includes the names and contact

information of all member owners included in the rate class of the requesting member owner.

(c) All retail rates adopted in accordance with this article shall be filed with the commission.

(d) If within two (2) months of final implementation of a retail rate a complaint signed by not less than five percent (5%) of the member owners in any rate class, is filed with the cooperative electric utility's board of directors, the board shall have two (2) months from the date of filing to attempt to resolve the complaint. The complaint may be filed with the commission after the expiration of this two (2) month period.

(e) Upon filing of the complaint with the commission, the commission shall investigate the rate adjustment. A complaint filed with the commission shall be resolved pursuant to commission hearing and enforcement procedures. The commission is authorized to require the utility to revise its rates if the commission finds, after investigation, that the rates are inadequate or unremunerative, or unjust, or unreasonable, or unjustly discriminatory, or unduly preferential or otherwise in any respect in violation of any provision of this article. The commission may order the revised rates to include provisions for refunds. The revised rates of the utility shall remain in effect while the rates are under appeal pending commission order.

(f) Any cooperative exempted under W.S. 37-17-103 shall apply energy retail rates equally to all member owners in the same rate class. In the event a cooperative does not apply energy retail rates equally, regardless of state boundaries, the cooperative will immediately be subject to rate regulation by the Wyoming public service commission.

**37-17-105. Return to public service commission rate regulation.**

(a) The board of directors of a cooperative electric utility shall hold an election on the question of returning to retail rate regulation at the next annual meeting after receiving a petition requesting the same, signed by at least five percent (5%) of the total member owners, or upon the board's own motion.

(b) A vote on returning to rate regulation shall take place only during a cooperative electric utility's annual

meeting or by mail ballots returned prior to and counted at the annual meeting. Notification of a vote on the resolution shall be provided to the member owners at least thirty (30) days prior to the annual meeting.

(c) Upon an affirmative vote of a majority of the member owners voting on the resolution in person or by mail ballot, the election results shall be filed with the commission. On the date of filing, the cooperative shall return to retail rate regulation by the commission.

## CHAPTER 18

### RELIABLE AND DISPATCHABLE LOW-CARBON ENERGY STANDARDS

#### **37-18-101. Definitions.**

(a) As used in this article:

(i) "Carbon capture, utilization and storage technology" means technology that has the principal purpose of capturing, reusing, storing, sequestering or using carbon dioxide emissions to prevent carbon dioxide from entering the atmosphere whether constructed integral or adjacent to a coal fired generation facility;

(ii) "Dispatchable" means a source of electricity that is available for use on demand and that can be dispatched upon request of a power grid operator or that can have its power output adjusted, according to market needs;

(iii) "Low-carbon" means electricity that is generated while using carbon capture, utilization and storage technology that produces carbon emissions not greater than six hundred fifty (650) pounds of carbon dioxide per megawatt hour of generated electricity averaged over one (1) calendar year;

(iv) "Reliable" means generated electricity that is not subject to intermittent availability.

#### **37-18-102. Energy generation portfolio standards; reporting requirements; rate recovery and limitations.**

(a) Consistent with the objective of ensuring Wyoming electric utilities maintain access to reliable and cost effective electric generation resources, the public service commission shall establish by rule energy portfolio standards



that will maximize the use of dispatchable and reliable low-carbon electricity. In establishing standards, the commission:

(i) Shall require a public utility to generate a specified percentage of electricity generated to be dispatchable and reliable low-carbon electricity;

(ii) Shall establish a date not later than July 1, 2030 for requiring a percentage of electricity generated by a public utility to be dispatchable and reliable low-carbon electricity taking into consideration any potentially expiring federal tax credits;

(iii) Shall establish intermediate standards and requirements for dispatchable and reliable low-carbon electricity that public utilities must generate before the electricity generation standard established in paragraphs (i) and (ii) of this subsection;

(iv) Shall require each public utility to demonstrate in each integrated resource plan submitted to the commission the steps the public utility is taking to achieve the electricity generation standard established in paragraphs (i) through (iii) of this subsection;

(v) Shall for each public utility:

(A) Establish baseline standards for electric reliability to ensure that new or expanded intermittent generation resources do not unreasonably diminish power quality or increase momentary outages across a utility's service territory or in any particular location;

(B) Require the utility to monitor and report electric reliability and power quality outcomes in integrated resource plan submissions or as otherwise directed by the commission; and

(C) Require the utility to take any steps the commission deems reasonably necessary to maintain reasonable levels of electric reliability and power quality.

(b) In addition to W.S. 37-3-117(a), the rates charged by an electric public utility shall not include any recovery of or earnings on the capital costs associated with new electric generation facilities built, in whole or in part, to replace the electricity generated from one (1) or more coal fired electric

generation facilities located in Wyoming and retired on or after January 1, 2024, unless the commission determines that the public utility that owned the retired coal fired electric generation facility:

(i) Has satisfied the requirements of W.S. 37-3-117(a); and

(ii) Is achieving or has taken steps to the commission's satisfaction to achieve the electricity generation standards established under subsection (a) of this section.

(c) Subject to W.S. 37-3-117(a) and the limitation in subsection (b) of this section, the commission shall consider the following when establishing reasonable rates for a public utility working toward and achieving the electricity generation standards established under subsection (a) of this section:

(i) A public utility that generates dispatchable and reliable low-carbon electricity may apply to the commission for rate recovery of the cost of any carbon capture, utilization and storage technology used to achieve the electricity generation standards established under subsection (a) of this section, including a higher return on equity, provided that the carbon capture, utilization and storage technology is integral or adjacent to a coal fired generation facility in Wyoming;

(ii) A public utility may apply to the commission for authorization to allow a portion of any revenues from the sale of carbon dioxide captured, stored or utilized as a result of generating dispatchable and reliable low-carbon electricity to be returned to the shareholders of the public utility;

(iii) To the extent a public utility can demonstrate that it will incur incremental costs to comply with the reliable and dispatchable low-carbon energy standard, the commission shall authorize the public utility to implement a rate recovery mechanism that collects a surcharge from customers not to exceed two percent (2%) of each customer's total electric bill to provide for the recovery of the prudently incurred incremental costs to comply with the reliable and dispatchable low-carbon energy standard. A rate recovery mechanism may be authorized and established prior to the public utility incurring incremental costs to comply with the reliable and dispatchable low-carbon energy standard and the public utility may retain funds collected through a mechanism in a regulatory account approved by the commission to offset future costs. To the extent the rate

recovery mechanism is insufficient to compensate the public utility for its prudently incurred incremental costs to comply with the reliable and dispatchable low-carbon energy standard, the commission shall take such actions as necessary notwithstanding any other provision of this section to ensure the public utility is able to recover its prudently incurred incremental costs and customers are not charged for those incremental costs other than through the rate recovery mechanism.

(d) The commission shall promulgate rules to ensure that public utilities are satisfactorily progressing toward achieving the dispatchable and reliable low-carbon electricity generation standard that the commission establishes as required in subsection (a) of this section and achieving reasonable electric reliability and power quality outcomes as required by subsection (a) of this section.

(e) Beginning in 2023, and occurring every second year thereafter, the commission shall report to the legislature regarding whether implementation of the electricity portfolio standards is meeting the legislative declaration and findings and recommend whether it should be continued, modified or repealed. To the extent the electricity portfolio standards is modified or discontinued, nothing shall impair the ability of a public utility that has incurred costs to comply with the electricity portfolio standard to recover its prudently incurred costs as authorized by the commission.