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defined in this section.

(4) "Correlative rights" means that each owner and producer in a common pool or source of supply of oil and gas shall have an equal opportunity to obtain and produce his just and equitable share of the oil and gas underlying such pool or source of supply.

(4.5) "Exploration and production waste" means those wastes that are generated during the drilling of and production from oil and gas wells or during primary field operations and that are exempt from regulation as hazardous wastes under subtitle c of the federal "Resource Conservation and Recovery Act of 1976", 42 U.S.C. sec. 6901 to 6934, as amended.

(5) "Gas" means all natural gases and all hydrocarbons not defined in this section as oil.

(6) "Oil" means crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

(6.5) "Oil and gas operations" means exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and gas well, underground, injection well, or gas storage well; production operations related to any such well including the installation of flowlines and gathering systems; the generation, transportation, storage, treatment, or disposal of exploration and production wastes; and any construction, site preparation, or reclamation activities associated with such operations. 145 dm

(6.8) "Operator" means any person who exercises the right to control the conduct of oil and gas operations.

(7) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, including the owner of a well capable of producing oil or gas, or both.

(7.5) "Permit" means any permit, sundry notice, notice of intention, or other approval, including any conditions of approval, which is granted, issued, or approved by the commission.

(8) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes

into a special fund for appropriation by the general assembly to state agencies, school districts, and political subdivisions of the state affected by the development and production of energy resources from oil shale lands primarily for use by such entities in planning for and providing facilities and services necessitated by such development and production and secondarily for other state purposes.

(2) All moneys earned from the investment of the oil shale special fund established by subsection (1) of this section shall be deposited by the state treasurer into a separate special fund and shall be appropriated by the general assembly primarily to state agencies, school districts, and political subdivisions of the state affected by the development and production of energy resources from oil shale lands for planning and, in the form of grants and loans, for providing facilities and services necessitated by such development and production and secondarily for other state purposes.

Source: L. 74: p. 308, § 1. L. 75: p. 1338, § 1.

Cross references: For the "Mineral Lands Leasing Act" of February 25, 1920, see 30 U.S.C.A. 181 et seq.

ARTICLE 64

Underground Storage

34-64-101.	Legislative declaration.	34-64-105.	Hearing - notice - review.
34-64-102.	Definitions.	34-64-106.	Petition to district court - procedure.
34-64-103.	Condemnation - public use.	34-64-107.	Property rights.
34-64-104.	Application to commission - order.		

34-64-101. Legislative declaration. Underground storage of natural gas is found and declared to be in the public interest because it will promote the conservation of natural gas, make natural gas more readily available to the domestic, commercial, and industrial consumers of this state, and permit the building of natural gas reserves and orderly withdrawal thereof in periods of peak demand.

Source: L. 53: p. 440, § 2. CRS 53: § 100-9-2. C.R.S. 1963: § 100-9-2.

Am. Jur.2d. See 38 Am. Jur.2d, Gas and Oil, § 151.

C.J.S. See 58 C.J.S., Mines and Minerals, § 229.

34-64-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Commission" means the oil and gas conservation commission of the state of Colorado.
- (2) "Natural gas" means gas which has been produced from the earth in its original state or such gas after the same has been processed or treated.
- (3) "Natural gas public utility" means any person, partnership, corporation, or association engaged in the business of transporting, distributing, or storing natural gas within this state for ultimate public consumption and

either authorized to do business in this state as a public utility or authorized to do business in this state as a natural gas company as defined in the federal "Natural Gas Act", and subject to regulations by the federal power commission.

(4) "Underground reservoir" means any subsurface sand, stratum, or formation suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom.

(5) "Underground storage" means the right to inject and store natural gas within and to withdraw natural gas from an underground reservoir.

Source: L. 53: p. 439, § 1. CRS 53: § 100-9-1. C.R.S. 1963: § 100-9-1. L. 73: p. 1072, § 1.

Cross references: For the "Natural Gas Act", see 15 U.S.C.A. 717.

34-64-103. Condemnation - public use. Any natural gas public utility which is engaged in the distribution, transportation, or storage of natural gas, which gas, in whole or in part, is intended for ultimate distribution to the public, has the right to enter upon, take, or use property or any interest therein which is necessary for the injection, storage, and withdrawal of natural gas in the manner provided for by this article, and by the eminent domain law of the state of Colorado, all of which property to be used is hereby recognized and declared to be devoted to public use.

Source: L. 53: p. 440, § 3. CRS 53: § 100-9-3. C.R.S. 1963: § 100-9-3.

Cross references: For eminent domain, see articles 1 to 7 of title 38.

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34-64-104. Application to commission - order. Before the right of condemnation may be exercised for the acquisition of property or any interest therein for underground storage of natural gas, said natural gas public utility shall make application to the commission for an order approving the proposed storage project. No such order shall be issued by the commission unless it shall be based upon substantial evidence and shall contain findings that the underground storage of natural gas in the land sought to be condemned is in the public interest and welfare, and that the storage reservoir is suitable and practicable, and that the formation or formations sought to be condemned are nonproductive of oil or gas in commercial quantities under either primary or secondary recovery methods.

Source: L. 53: p. 440, § 4. CRS 53: § 100-9-4. C.R.S. 1963: § 100-9-4.

34-64-105. Hearing - notice - review. (1) Upon the filing of the application as specified in section 34-64-104, the commission shall set a date for hearing and give notice thereof as for proceedings in rem. in accordance with the Colorado rules of civil procedure, and shall conduct said hearing in the manner provided for in sections 34-60-108 to 34-60-110 and 34-60-114.

(2) Review of or relief from such order shall be as provided for in sections 34-60-111 to 34-60-113 and 34-60-115.

Source: L. 53: p. 440, § 5. CRS 53: § 100-9-5. C.R.S. 1963: § 100-9-5.

34-64-106. Petition to district court - procedure. Any natural gas public utility, having first obtained an order from the commission which has become final, desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas, shall do so in the manner provided in this article. Such natural gas public utility shall present to the district court of the county wherein the land or some portion thereof is situated a petition setting forth the purpose for which the property is sought to be acquired, a description of the property sought to be appropriated, and the names of the owners of the property as shown by the records of such county. The petitioner shall file the order of the commission as a part of its petition, and no decree or rule by the court granting said petition shall be entered without such order having been filed therewith. The court shall examine said petition and determine whether the petitioner has the power of eminent domain and whether said property is necessary for its lawful purposes, and if found in the affirmative such findings shall be entered in the record. All proceedings under this section shall follow the procedure then in force and effect pertaining to eminent domain.

Source: L. 53: p. 440, § 6. CRS 53: § 100-9-6. C.R.S. 1963: § 100-9-6.

34-64-107. Property rights. All natural gas in said underground reservoir, and the rights reasonably necessary for the injection and storage in and withdrawal from said underground reservoir of said natural gas, as defined and limited by the decree of the district court, shall be the property of said natural gas public utility. In no event shall such gas be subject to the right of the owner of the surface of said lands or of any mineral interest therein or of any person other than the public utility, its successors, or its assigns, to produce, take, reduce to possession, or otherwise interfere with or exercise any control over the gas. The right of condemnation granted by this article shall be without prejudice to the rights of the owner of said land or of other rights and interests therein to drill or bore through the underground stratum or formation so appropriated in such manner as to comply with orders, rules, and regulations of the commission issued for the purpose of protecting underground storage, strata, or formations against pollution or against the escape of natural gas therefrom, and shall be without prejudice to the rights of the owner of said lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with such regulations or orders in order to protect the storage shall be paid by the public utility.

Source: L. 53: p. 441, § 7. CRS 53: § 100-9-7. C.R.S. 1963: § 100-9-7.

Geothermal Resources

ARTICLE 70

Geothermal Resources

34-70-101 to 34-70-110. (Repealed)

Source: L. 83: Entire article repealed, p. 1424, § 5, effective June 10.

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Editor's note: (1) Provisions relating to geothermal resources, as adopted in 1983, are now contained in article 90.5 of title 37.

(2) For an historical record of this article prior to its repeal in 1983, check the cumulative table located at the front of this volume.

40-4-101. Regulations, service, and facilities prescribed. (1) Whenever the commission, after a hearing upon its own motion or upon complaint, finds that the rules, regulations, practices, equipment, facilities, or service of any public utility or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed and shall fix the same by its order, rule, or regulation.

(2) The commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and upon proper tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

(3) The commission shall prescribe rules and regulations for the termination of gas and electric service to residential customers. Said rules and regulations shall require that the customer be given reasonable notice and an opportunity to be heard by the terminating utility company before termination of gas or electric service and that such service may not be terminated during certain periods if the customer establishes that termination of the service would be especially dangerous to the health or safety of the customer and that he is unable to pay for the service as regularly billed by the utility, or that he is able to pay but only in reasonable installments.

Source: L. 13, p. 475, § 24; C. L. § 2935; CSA, C. 137, § 25; CRS 53, § 115-4-1; C.R.S. 1963, § 115-4-1; L. 69, p. 933, § 19; entire section amended. L. 80, p. 748, § 1, effective April 13.

Am. Jur.2d. See 64 Am. Jur.2d, Public Utilities, § 240.

C.J.S. See 73B C.J.S., Public Utilities, § 68, 73.

Law reviews. For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L.J. 269 (1966).

Railroad under obligation to operate in manner contemplated by charter. The consideration for the franchise, rights, and privileges granted a railroad company by a state is the resulting benefits to the public, and the acceptance by the company, generally speaking, imposes upon it the obligation to operate, when constructed, the railroad it was incorporated to construct, and of doing so in the manner and for the purpose contemplated by its charter. *Colorado & S. Ry. v. State R. R. Comm'n*, 54 Colo. 64, 129 P. 506 (1912).

Question of loss must be considered in connection with duties of railway company to public, and the result of its corporate business, as a whole; it is not to be excused from performing its whole duty, merely because by ceasing to operate a part of its system the net returns will be increased. *Colorado & S. Ry. v.*

State R. R. Comm'n, 54 Colo. 64, 129 P. 506 (1912).

State may impose upon railroad cost of installation of safety devices at grade crossings, or such part thereof, as it deems appropriate. *Atchison, T. & S. F. Ry. v. Public Util. Comm'n*, 190 Colo. 378, 547 P.2d 234 (1976).

Not considering cost of maintenance not unfair or unreasonable. The statutory elimination, in section 40-4-106 (2)(b), of consideration of the cost of maintenance in determining allocation of cost of installation does not render the police power exercised unfair or unreasonable. *Atchison, T. & S. F. Ry. v. Public Util. Comm'n*, 190 Colo. 378, 547 P.2d 234 (1976).

Railway company may be compelled to resume operation of part of line which has been abandoned. *Colorado & S. Ry. v. State R. R. Comm'n*, 54 Colo. 64, 129 P. 506 (1912).

Commission has exclusive jurisdiction to determine whether railroad company may abandon service upon and dismantle a railroad, lying wholly within the state. *People ex rel. Hubbard v. Colorado Title & Trust Co.*, 65 Colo. 472, 178 P. 6 (1918).

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40-3-112.

Commission to provide local government with avoided cost information.

40-3-113.

Rail rates for transportation of recyclable or recycled materials.

40-3-114.

Cost allocation - effect on competitive markets.

40-3-101. Reasonable charges - adequate service. (1) All charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded, or received for such rate, fare, product or commodity, or service is prohibited and declared unlawful. Rates and charges demanded or received by any public utility for gas transportation service furnished or to be furnished shall not be deemed to be unjust or unreasonable so long as said rate or charge is no greater than a maximum rate and no lower than a minimum rate determined by the commission (or, in the case of a municipal utility, by the governing body of the municipal utility in accordance with sections 40-3-102 and 40-3.5-102) to be just and reasonable, and the provision of such gas transportation service at such rates or charges shall not constitute per se unjust discrimination or the granting of a preference. Nothing in this subsection (1) shall limit or restrict the commission's authority to regulate rates and charges, correct abuses, or prevent unjust discrimination.

(2) Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable.

Source: L. 13, p. 468, § 13; C. L. § 2924; CSA, C. 137, § 14; CRS 53, § 115-3-1; C.R.S. 1963, § 115-3-1; (1) amended, L. 91, p. 1417, § 9, effective April 19.

Cross references: For the power of public utilities commission to regulate rates, see § 40-3-102; for hearings on rate schedules, see § 40-6-111; for reparation for excessive charges, see § 40-6-119.

- I. General Consideration.
- II. Reasonable Charges.
- III. Adequate Services.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 64 Am. Jur.2d, Public Utilities, § 79, 88.

C.J.S. See 73B C.J.S., Public Utilities, § 34-42.

Law reviews. For article, "Trying to Get the P.U.C. to Let You Run a Truck", see 7 Dicta 4 (Oct. 1930). For article, "Coal Mining a Public Utility", see 12 Dicta 267 (1935). For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L.J. 269 (1966). For article, "A Price Squeeze Theory for Implementation of Federal Power Commission v. Conway Corp.", see 50 U. Colo. L. Rev. 459 (1979). For comment, "A Price Squeeze Theory for Implementation of Federal Power Comm'n v.

Conway Corp., 426 U.S. 271, 96 S. Ct. 1999, 48 L. Ed.2d 626 (1976)", see 50 U. Colo. L. Rev. 459 (1979). For article, "May Regulated Utilities Monopolize the Sun?", see 56 Den. L.J. 31 (1979). For article, "Retail Competition in the Electric Utility Industry", see 60 Den. L.J. 1 (1982). For comment, "Municipal Utilities in Colorado — Can They Charge Their Nonresident Customers More Than They Charge Their Resident Customers Just Because the Nonresident Lives on the Wrong Side of the Boundary?", see 60 U. Colo. L. Rev. 357 (1989).

Applied in *Colorado & S. Ry. v. State R.R. Comm'n*, 54 Colo. 64, 129 P. 506 (1912); *Consumers' League v. Colorado & S. Ry.*, 64 Colo. 502, 172 P. 1064 (1918); *Denver & Salt Lake Ry. v. St. Clair*, 94 Colo. 67, 28 P.2d 340 (1933); *Colorado Mun. League v. Public Util. Comm'n*, 198 Colo. 217, 597 P.2d 586 (1979); *City of Montrose v. Public Utils. Comm'n*, 629 P.2d 619 (Colo. 1981). Colorado Municipi-

40-7-112.	Carriers subject to civil penalties.	40-7-115.	Each day a separate offense.
40-7-113.	Civil penalties - fines.	40-7-116.	Enforcement of civil penalties against carriers.
40-7-114.	Applicability of civil penalties to owners, employers, or other persons.	40-7-117.	Gas pipeline safety rules - civil penalty for violations - compromise - other remedies.

40-7-101. Enforcement of laws. It is the duty of the commission to see that the provisions of the constitution and statutes of this state affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected, and to this end it may sue in the name of the people of the state of Colorado. Upon the request of the commission, it is the duty of the attorney general or the district attorney acting for the proper county or city and county to aid in any investigation, hearing, or trial had under the provisions of articles 1 to 7 of this title and to institute and prosecute actions or proceedings for the enforcement of the provisions of the constitution and statutes of this state affecting public utilities and for the punishment of all violations thereof.

Source: L. 13, p. 503, § 57; C. L. § 2966; CSA, C. 137, § 57; CRS 53, § 115-7-1; C.R.S. 1963, § 115-7-1.

Am. Jur.2d. See 64 Am. Jur.2d, Public Utilities, § § 232, 275.

C.J.S. See 73B C.J.S., Public Utilities, § 138.

Law reviews. For article, "Trying to Get the P.U.C. to Let You Run a Truck", see 7 Dicta 4 (Oct. 1930).

Commission is empowered to fashion remedy to correct a statutory violation of the requirement that a utility receive commission approval prior to the transfer of utility's assets. *Mountain States Telephone & Telegraph v. P.U.C.*, 763 P.2d 1020 (Colo. 1988).

Order directing utility to reacquire assets transferred without required commission approval was appropriate and will be given great deference in light of the commission's special expertise in regulation of utilities. *Mountain States Telephone & Telegraph v. P.U.C.*, 763 P.2d 1020 (Colo. 1988).

Broad powers under color of state law. Public utilities, even though privately financed and owned, operating pursuant to the regulation of the commission, are granted existence by

virtue of state law, and thereafter carry on business under color of state law. *Denver Welfare Rights Organization v. Public Util. Comm'n*, 190 Colo. 329, 547 P.2d 239 (1976).

The right of a utility customer to receive service is not an absolute right, but is a qualified right. The right is dependent upon payment for the service and product provided. The continuation of service during a dispute is dependent upon either the posting of what is, in effect, an indemnity bond or the assertion of a well-founded claim that would justify the customer's refusal to pay for the service which was rendered. *Denver Welfare Rights Organization v. Public Util. Comm'n*, 190 Colo. 329, 547 P.2d 239 (1976).

Situation in which commission may not interfere with enforcement. This section does not give the commission the right to interfere with the enforcement of public utility regulations when such powers are specifically vested in some other officer or tribunal. *City of Englewood v. City & County of Denver*, 123 Colo. 290, 229 P.2d 667 (1951).

40-7-102. Liability for violations - punitive damages. (1) In case any public utility does, causes to be done, or permits to be done any act, matter, or thing prohibited, forbidden, or declared to be unlawful, or omits to do any act, matter, or thing required to be done, either by the state constitution, any law of this state, or any order or decision of the commission, such public utility shall be liable to the persons or corporations affected thereby for all

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loss, damage, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was willful, the court, in addition to the actual damages, may award exemplary damages. An action to recover such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

(2) No recovery as provided in this section shall in any manner affect the recovery by the state of the penalties provided in articles 1 to 7 of this title.

Source: L. 13, p. 503, § 58; C. L. § 2967; CSA, C. 137, § 58; CRS 53, § 115-7-2; C.R.S. 1963, § 115-7-2.

Liability of public utility. In case any public utility shall do any act, prohibited, such public utility shall be liable to the persons affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. Miller v. Bussard, 132 Colo. 478, 289 P.2d 913 (1955).

Although the rule is that damages based upon mere speculation and conjecture are not allowable, where it has been definitely established that damages are traceable to and the direct result of a wrong, the uncertainty as to the amount thereof is a question for determination by the trier of the facts. Any other rule would result in rewarding a wrongdoer. Donahue v. Pikes Peak Auto Co., 150 Colo. 281, 372 P.2d 443 (1962).

Where the cause of the damage is established that the amount or extent of damages is uncer-

tain is no objection. Donahue v. Pikes Peak Auto Co., 150 Colo. 281, 372 P.2d 443 (1962).

Statute imposes no requirement that an affected person or corporation also have standing to pursue the underlying administrative remedy, and therefore a former landowner had standing to bring suit against utility for failure to provide service to purchaser of land. Fawn Lake Ranch Co. v. K.C. Elec. Ass'n, 700 P.2d 564 (Colo. App. 1985).

By the enactment of this section and section 40-10-115 the state has exercised legislative jurisdiction as to certain conduct in the state. Hansemen v. Hamilton, 176 F. Supp. 371 (D. Colo. 1959).

Applied in Shoemaker v. Mountain States Tel. & Tel. Co., 38 Colo. App. 321, 559 P.2d 721 (1976).

40-7-103. Not to affect other rights - penalties cumulative. (1) The provisions of articles 1 to 7 of this title shall not have the effect of releasing or waiving any right of action by the state, the commission, or any person or corporation for any right, penalty, or forfeiture which may have arisen or accrued under any law of this state.

(2) All penalties accruing under articles 1 to 7 of this title shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to nor affect the recovery of any other penalty or forfeiture nor be a bar to any criminal prosecution against any public utility, or any officer, director, agent, or employee thereof, or any other corporation or person.

Source: L. 13, p. 503, § 59; C. L. § 2968; CSA, C. 137, § 59; CRS 53, § 115-7-3; C.R.S. 1963, § 115-7-3.

40-7-104. Actions to restrain violations. (1) Whenever the commission is of the opinion that any public utility is failing or omitting to do anything required of it by law or by any order, decision, rule, direction, or requirement of the commission or is doing anything or about to do anything or permitting anything or about to permit anything to be done contrary to or in violation of law or of any order, decision, rule, direction, or requirement of the commission, it shall direct the attorney general to commence an action or proceeding in the district court in and for the county or city and county in

which the cause or some part thereof arose, or in which the corporation or person complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides, in the name of the people of the state of Colorado, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction.

(2) The attorney general shall begin such action or proceeding by petition to such district court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction. It is the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public utility complained of must answer the petition, and in the meantime said public utility may be restrained. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances of the case.

(3) Such corporations or persons as the court may deem necessary or proper to be joined as parties, in order to make its judgment or order effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that an order in the nature of mandamus or injunction issue or be made permanent as prayed for in the petition or in such modified or other form as will afford appropriate relief. An appeal may be taken to the supreme court from such final judgment in the same manner and with the same effect, subject to the provisions of articles 1 to 7 of this title as appeals are taken from judgments of the district court in other actions for mandamus or injunction.

Source: L. 13, p. 504, § 60; C. L. § 2969; CSA, C. 137, § 60; CRS 53. § 115-7-4; C.R.S. 1963, § 115-7-4.

Am. Jur.2d. See 64 Am. Jur.2d, Public Utilities, § 275.

C.J.S. See 73B C.J.S., Public Utilities, § § 129, 132, 136-138.

This section relates to and concerns the enforcement of orders, decisions, and rules of the commission when the commission seeks enforcement of its pronouncements. *Eveready Freight Serv., Inc. v. Public Util. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955).

Section applies when enforcement of commission order becomes matter of judicial deter-

mination. Certainly the general assembly did not by this section contemplate that every alleged violation of the terms of a certificate of public convenience and necessity had to be heard in a court of record. The commission has inherent power to investigate alleged violations and to make its orders subject to review as provided by law. Enforcement of its orders may become a matter for judicial determination in which event this section applies. *Eveready Freight Serv., Inc. v. Public Util. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955).

40-7-105. Violations - penalty - separate offenses. (1) Any public utility which violates or fails to comply with any provision of the state constitution or of articles 1 to 7 of this title or which fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, in a case in which a penalty has not been provided for such public utility, is subject to a penalty of not more than two thousand dollars for each offense.

(2) Every violation of the provisions of articles 1 to 7 of this title or of any order, decision, decree, rule, direction, demand, or requirement of the commission or any part or portion thereof, except an order for the payment of money, by any corporation or person is a separate and distinct

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offense, and, in case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct offense.

(3) In construing and enforcing the provisions of articles 1 to 7 of this title relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, in every case shall be deemed the act, omission, or failure of such public utility.

Source: L. 13, p. 505, § 61; C. L. § 2970; CSA, C. 137, § 61; CRS 53, § 115-7-5; C.R.S. 1963, § 115-7-5.

Law reviews. For article, "Coal Mining a Public Utility", see 12 Dicta 267 (1935).

Function of commission. The public utilities commission is not a court. It is charged with the performance of certain executive and administrative duties. In the performance thereof, and as incidental thereto, it hears evidence, ascertains facts, and exercises judg-

ment and discretion, but this is the exercise of merely a quasi-judicial function, not the exercise of judicial power within the meaning of the constitution. *People ex rel. Hubbard v. Colorado Title & Trust Co.*, 65 Colo. 472, 178 P. 6 (1918); *Clark v. Denver & I. R. R.*, 78 Colo. 48, 239 P. 20 (1925); *People v. Swena*, 88 Colo. 337, 296 P. 271 (1931).

40-7-106. Violations by agents - penalty. Every officer, agent, or employee of any public utility who violates or fails to comply with or who procures, aids, or abets any violation by any public utility of any provision of the constitution of this state or of articles 1 to 7 of this title, or who fails to obey, observe, or comply with any order, decision, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, 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 been provided for such officer, agent, or employee commits a class 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

Source: L. 13, p. 505, § 62; C. L. § 2971; CSA, C. 137, § 62; CRS 53, § 115-7-6; C.R.S. 1963, § 115-7-6; entire section amended, L. 93, p. 2068, § 25, effective July 1.

Editor's note: Section 56 of chapter 335, Session Laws of Colorado 1993, provides that the act amending this section is effective July 1, 1993, and applies to acts committed or events occurring on or after said date.

40-7-107. Violations by corporations not public utilities - penalty. Every corporation other than a public utility which violates any provision of articles 1 to 7 of this title or which fails to obey, observe, or comply with any order, decision, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, in a case in which a penalty has not been provided for such corporation is subject to a penalty of not more than two thousand dollars for each offense.

Source: L. 13, p. 506, § 63; C. L. § 2972; CSA, C. 137, § 63; CRS 53, § 115-7-7; C.R.S. 1963, § 115-7-7.