

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3114 Session of
1994

INTRODUCED BY SCRIMENTI, BELFANTI, BELARDI, LAUB, TIGUE, CAWLEY,
GORDNER, STABACK, WAUGH, LUCYK, YOUNGBLOOD, CARN, PISTELLA
AND PETRARCA, OCTOBER 4, 1994

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, OCTOBER 4, 1994

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, further providing for rates.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Section 102 of Title 66 of the Pennsylvania
6 Consolidated Statutes is amended by adding a definition to read:

7 § 102. Definitions.

8 Subject to additional definitions contained in subsequent
9 provisions of this part which are applicable to specific
10 provisions of this part, the following words and phrases when
11 used in this part shall have, unless the context clearly
12 indicates otherwise, the meanings given to them in this section:

13 "Affordable." Allowing customers to pay their utility bills
14 while maintaining an acceptable standard of living, taking into
15 consideration the financial circumstances of customers and the
16 community as indicated by factors such as household income, age,
17 family size, climate and other factors bearing upon the cost of

1 living in that particular community.

2 * * *

3 Section 2. Sections 315(a) and (c), 508, 523(a), 529(i),
4 1103(a), 1301, 1307(f)(3), 1308(c), 1309(a), 1318 heading and
5 (a), (b) and (d), 1324(c), 1325(a), 1327(b), 1703(c), 2107,
6 2904(a), 2906(b), 2914, 3004(a), 3005(d) and 3007 of Title 66
7 are amended to read:

8 § 315. Burden of proof.

9 (a) Reasonableness of rates.--In any proceeding upon the
10 motion of the commission, involving any proposed or existing
11 rate of any public utility, or in any proceedings upon complaint
12 involving any proposed increase in rates, the burden of proof to
13 show that the rate involved is just, affordable and reasonable
14 shall be upon the public utility. The commission shall give to
15 the hearing and decision of any such proceeding preference over
16 all other proceedings, and decide the same as speedily as
17 possible.

18 * * *

19 (c) Adequacy of services and facilities.--In any proceeding
20 upon the motion of the commission, involving the service or
21 facilities of any public utility, the burden of proof to show
22 that the service and facilities involved are adequate,
23 efficient, safe, affordable and reasonable shall be upon the
24 public utility.

25 * * *

26 § 508. Power of commission to vary, reform and revise
27 contracts.

28 The commission shall have power and authority to vary,
29 reform, or revise, upon a fair, reasonable, and equitable basis,
30 any obligations, terms, or conditions of any contract heretofore

1 or hereafter entered into between any public utility and any
2 person, corporation, or municipal corporation, which embrace or
3 concern a public right, benefit, privilege, duty, or franchise,
4 or the grant thereof, or are otherwise affected or concerned
5 with the public interest and the general well-being of this
6 Commonwealth. Whenever the commission shall determine, after
7 reasonable notice and hearing, upon its own motion or upon
8 complaint, that any such obligations, terms, or conditions are
9 unjust, unreasonable, inequitable, unaffordable or otherwise
10 contrary or adverse to the public interest and the general well-
11 being of this Commonwealth, the commission shall determine and
12 prescribe, by findings and order, the just, reasonable, and
13 equitable, affordable obligations, terms, and conditions of such
14 contract. Such contract, as modified by the order of the
15 commission, shall become effective 30 days after service of such
16 order upon the parties to such contract.

17 § 523. Performance factor consideration.

18 (a) Considerations.--The commission shall consider, in
19 addition to all other relevant evidence of record, the
20 efficiency, effectiveness and adequacy of service of each
21 utility when determining just, affordable and reasonable rates
22 under this title. On the basis of the commission's consideration
23 of such evidence, it shall give effect to this section by making
24 such adjustments to specific components of the utility's claimed
25 cost of service as it may determine to be proper and
26 appropriate. Any adjustment made under this section shall be
27 made on the basis of specific findings upon evidence of record,
28 which findings shall be set forth explicitly, together with
29 their underlying rationale, in the final order of the
30 commission.

1 * * *

2 § 529. Power of commission to order acquisition of small water
3 and sewer utilities.

4 * * *

5 (i) Burden of proof.--The Law Bureau shall have the burden
6 of establishing a prima facie case that the acquisition of the
7 small water or sewer utility would be in the public interest and
8 in compliance with the provisions of this section. Once the
9 commission determines that a prima facie case has been
10 established:

11 (1) the small water or sewer utility shall have the
12 burden of proving its ability to render adequate, efficient,
13 safe and reasonable service at just, affordable and
14 reasonable rates; and

15 (2) a proximate public utility providing the same type
16 of service as the small water or sewer utility shall have the
17 opportunity and burden of proving its financial, managerial
18 or technical inability to acquire and operate the small water
19 or sewer utility.

20 * * *

21 § 1103. Procedure to obtain certificates of public convenience.

22 (a) General rule.--Every application for a certificate of
23 public convenience shall be made to the commission in writing,
24 be verified by oath or affirmation, and be in such form, and
25 contain such information, as the commission may require by its
26 regulations. A certificate of public convenience shall be
27 granted by order of the commission, only if the commission shall
28 find or determine that the granting of such certificate is
29 necessary or proper for the service, accommodation, convenience,
30 or safety of the public. The commission, in granting such

1 certificate, may impose such conditions as it may deem to be
2 just, affordable and reasonable. In every case, the commission
3 shall make a finding or determination in writing, stating
4 whether or not its approval is granted. Any holder of a
5 certificate of public convenience, exercising the authority
6 conferred by such certificate, shall be deemed to have waived
7 any and all objections to the terms and conditions of such
8 certificate.

9 * * *

10 § 1301. Rates to be just, affordable and reasonable.

11 (a) General rule.--Every rate made, demanded, or received by
12 any public utility, or by any two or more public utilities
13 jointly, shall be just, affordable and reasonable, and in
14 conformity with regulations or orders of the commission.

15 (b) Municipal corporations.--Only public utility service
16 being furnished or rendered by a municipal corporation, or by
17 the operating agencies of any municipal corporation, beyond its
18 corporate limits, shall be subject to regulation and control by
19 the commission as to rates, with the same force, and in like
20 manner, as if such service were rendered by a public utility.

21 § 1307. Sliding scale of rates; adjustments.

22 * * *

23 (f) Recovery of natural gas costs.--

24 * * *

25 (3) Within 60 days following the end of such 12-month
26 period as the commission shall designate, each public utility
27 subject to this subsection shall file with the commission a
28 statement which specifies for such period:

29 (i) The total revenues received pursuant to this
30 section.

1 (ii) The total gas expense incurred.

2 (iii) The difference between the amounts specified
3 by subparagraphs (i) and (ii).

4 (iv) Evidence explaining how actual costs incurred
5 differ from the costs allowed under paragraph (2) and why
6 such differences occurred.

7 (v) How these costs are consistent with a least cost
8 procurement policy as required by section 1318 (relating
9 to determination of just, affordable and reasonable
10 natural gas rates).

11 Such report shall be a matter of public record and copies
12 thereof shall be made available by the gas distributor to any
13 person upon request. Copies of the reports shall be filed with
14 the Office of Consumer Advocate at the same time as they are
15 filed with the commission.

16 * * *

17 § 1308. Voluntary changes in rates.

18 * * *

19 (c) Determination.--If, after such hearing, the commission
20 finds any such rate to be unjust, unaffordable or unreasonable,
21 or in anywise in violation of law, the commission shall
22 determine the just and reasonable rate to be charged or applied
23 by the public utility for the service in question, and shall fix
24 the same by order to be served upon the public utility and such
25 rate shall thereafter be observed until changed as provided by
26 this part.

27 * * *

28 § 1309. Rates fixed on complaint; investigation of costs of
29 production.

30 (a) General rule.--Whenever the commission, after reasonable

1 notice and hearing, upon its own motion or upon complaint, finds
2 that the existing rates of any public utility for any service
3 are unjust, unaffordable, unreasonable, or in anywise in
4 violation of any provision of law, the commission shall
5 determine the just and reasonable rates, including maximum or
6 minimum rates, to be thereafter observed and in force, and shall
7 fix the same by order to be served upon the public utility, and
8 such rates shall constitute the legal rates of the public
9 utility until changed as provided in this part. Whenever a
10 public utility does not itself produce or generate that which it
11 distributes, transmits, or furnishes to the public for
12 compensation, but obtains the same from another source, the
13 commission shall have the power and authority to investigate the
14 cost of such production or generation in any investigation of
15 the reasonableness of the rates of such public utility.

16 * * *

17 § 1318. Determination of just, affordable and reasonable
18 natural gas rates.

19 (a) General rule.--In establishing just, affordable and
20 reasonable rates for those natural gas distribution utilities
21 with gross intrastate operating revenues in excess of
22 \$40,000,000 under section 1307(f) (relating to sliding scale of
23 rates; adjustments) or 1308(d) (relating to voluntary changes in
24 rates) or any other rate proceeding, the commission shall
25 consider the materials provided by the utilities pursuant to
26 section 1317 (relating to regulation of natural gas costs). No
27 rates for a natural gas distribution utility shall be deemed
28 just, affordable and reasonable unless the commission finds that
29 the utility is pursuing a least cost fuel procurement policy,
30 consistent with the utility's obligation to provide safe,

adequate and reliable service to its customers. In making such a determination, the commission shall be required to make specific findings which shall include, but need not be limited to, findings that:

(1) The utility has fully and vigorously represented the interests of its ratepayers in proceedings before the Federal Energy Regulatory Commission.

(2) The utility has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the utility from terms in existing contracts with its gas suppliers which are or may be adverse to the interests of the utility's ratepayers.

(3) The utility has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies.

(4) The utility has not withheld from the market or caused to be withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy.

(b) Limitation on gas purchased from affiliates.--In any instance in which a gas distribution utility purchases all or part of its gas supplies from an affiliated interest, as that term is defined in section 2101 (relating to definition of affiliated interest), the commission, in addition to the determinations and findings set forth in subsection (a), shall be required to make specific findings with regard to the justness, affordability and reasonableness of all such purchases. Such findings shall include, but not be limited to

1 findings:

2 (1) That the utility has fully and vigorously attempted
3 to obtain less costly gas supplies on both short-term and
4 long-term bases from nonaffiliated interests.

5 (2) That each contract for the purchase of gas from its
6 affiliated interest is consistent with a least cost fuel
7 procurement policy.

8 (3) That neither the utility nor its affiliated interest
9 has withheld from the market any gas supplies which should
10 have been utilized as part of a least cost fuel procurement
11 policy.

12 * * *

13 (d) Other regulatory approvals.--The fact that a contract or
14 rate has been approved by a Federal regulatory agency for
15 interstate ratemaking purposes shall not, in and of itself, be
16 adequate to satisfy the utility's burden of proof that gas
17 prices and volumes associated with such contract or rate are
18 just, affordable and reasonable for purposes of this section.

19 * * *

20 § 1324. Residential telephone service rates based on duration
21 or distance of call.

22 * * *

23 (c) Rate relationship.--In addition to any other
24 requirements imposed by this title, the rates for services
25 required or permitted pursuant to subsections (a) and (b) shall
26 be maintained at just, affordable and reasonable levels in
27 comparison to one another.

28 * * *

29 § 1325. Local exchange service increases; limitation.

30 (a) General rule.--In any rate proceeding pursuant to

1 section 1308 (relating to voluntary changes in rates), no public
2 utility shall be granted a percentage increase in local exchange
3 service unless that percentage increase is just, affordable and
4 reasonable. In no event shall the public utility be granted an
5 increase in local exchange rates which is greater than the
6 overall average percentage increase in total intrastate revenues
7 authorized by the commission unless the utility proves by record
8 evidence that a greater percentage increase for local exchange
9 service is justified based upon the cost of providing that
10 service.

11 * * *

12 § 1327. Acquisition of water and sewer utilities.

13 * * *

14 (b) Procedure.--The commission, upon application by a public
15 utility, person or corporation which has agreed to acquire
16 property from another public utility, municipal corporation or
17 person, may approve an inclusion in rate base in accordance with
18 subsection (a) prior to the acquisition and prior to a
19 proceeding under this chapter to determine just, affordable and
20 reasonable rates if:

21 (1) the applicant has provided notice of the proposed
22 acquisition and any proposed increase in rates to the
23 customers served by the property to be acquired, in such form
24 and manner as the commission, by regulation, shall require;

25 (2) the applicant has provided notice to its customers,
26 in such form and manner as the commission, by regulation,
27 shall require, if the proposed acquisition would increase
28 rates to the acquiring public utility's customers;

29 (3) the applicant has provided notice of the application
30 to the Director of Trial Staff and the Consumer Advocate; and

(4) in addition to any other information required by the commission, the application includes a full description of the proposed acquisition and a plan for reasonable and prudent investments to assure that the customers served by the property to be acquired will receive adequate, efficient, safe and reasonable service.

* * *

§ 1703. Depreciation accounts; reports.

* * *

(c) Use of estimates.--The commission shall not be bound in rate proceedings to accept, as just, affordable and reasonable for rate-making purposes, estimates of annual depreciation established under the provisions of this section, but in such rate proceedings it shall give consideration to statements submitted under this section, in addition to such other factors as may be relevant.

§ 2107. Federal regulatory agencies.

The provisions of this chapter shall not be applicable to the rates and related terms and conditions for the interstate transmission of electricity, natural gas, liquified natural gas, substitute natural gas, liquified propane gas or naphtha which have been submitted to and approved by a Federal regulatory agency having jurisdiction thereof, except that the commission may regulate the volume of such purchases. This section shall not apply to any proceeding under section 1317 (relating to regulation of natural gas costs) or 1318 (relating to determination of just, affordable and reasonable natural gas rates).

§ 2904. Joint use of telephone and telegraph facilities.

(a) Through lines for continuous service.--The commission

1 may, upon complaint or upon its own motion, after reasonable
2 notice and hearing, by order, require any two or more public
3 utilities, whose lines or wires form a continuous line of
4 communication, or could be made to do so by the construction and
5 maintenance of suitable connections or the joint use of
6 facilities, or the transfer of messages at common points,
7 between different localities which cannot be communicated with,
8 or reached by, the lines of either public utility alone, where
9 such service is not already established or provided, to
10 establish and maintain through lines within this Commonwealth
11 between two or more such localities. The rate for such service
12 shall be just, affordable and reasonable and the commission
13 shall have power to establish the same, and declare the portion
14 thereof to which each company affected thereby is entitled and
15 the manner in which the same must be secured and paid. All
16 facilities necessary to establish such service shall be
17 constructed and maintained in such manner and under such rules,
18 with such division of expense and labor, as may be required by
19 the commission.

20 * * *

21 § 2906. Dissemination of telephone numbers and other
22 identifying information.

23 * * *

24 (b) Charge prohibited.--There shall be no charge to the
25 caller who requests that the caller's telephone number and other
26 identifying information be withheld on a per-call basis. The
27 commission may approve a charge to the caller who requests that
28 the caller's telephone number and other identifying information
29 be withheld on a per-line basis if the commission finds, after
30 notice to all customers and an opportunity for hearing, that the

1 charge is just, affordable and reasonable and that the charge
2 should be imposed on the caller. Tariff rates shall not apply to
3 victims of domestic violence receiving services from a domestic
4 violence program or protected by a court order nor to social
5 welfare agencies, such as women's shelters, health and
6 counseling centers, public service hotlines and their staffs. In
7 addition, the commission shall direct that the tariff rates
8 shall not apply to customers who order the per-line blocking
9 service within 60 days of its introduction or within 60 days of
10 any request for new telephone service or transfer of existing
11 telephone service. The commission shall also direct that, as
12 soon as practicable, any public utility or any other person,
13 partnership, association or corporation that makes use of the
14 facilities of a public utility which provides this service shall
15 also provide to the calling party only the ability to
16 selectively unblock at no charge on a per-call basis a blocked
17 line using a means which differs from the means to activate per-
18 call blocking. The commission, in the interest of balancing
19 respective privacy interests, shall also permit a tariffed
20 service that automatically prevents the completion of telephone
21 calls to customers who do not wish to receive calls from callers
22 that withhold their telephone number or other identifying
23 information; the terms and conditions of such a tariff shall be
24 subject to commission approval.

25 * * *

26 § 2914. Establishment of just, affordable and reasonable rates.

27 The commission shall ensure that all public and semipublic
28 coin telephone service rates for local and intrastate calls are
29 just, affordable and reasonable.

30 § 3004. Commission review and approval of petition and plan.

1 (a) Authorization.--In determining just, affordable and
2 reasonable rates in accordance with section 1301 (relating to
3 rates to be just, affordable and reasonable), the commission may
4 authorize a local exchange telecommunications company to set
5 rates based on an alternative form of regulation pursuant to a
6 plan approved by the commission under this chapter.

7 * * *

8 § 3005. Competitive services.

9 * * *

10 (d) Reclassification.--The commission shall have the
11 authority to reclassify a telecommunications service or other
12 service or business activity that it has previously found to be
13 competitive if, after notice and hearing, it determines, upon
14 application of the criteria set forth in this chapter, that
15 sufficient competition is no longer present, that the local
16 exchange company has engaged in unfair competition with respect
17 to the service or that the local exchange company has failed to
18 provide nondiscriminatory access in the provision of the
19 service. If the commission finds that a reclassification is
20 necessary, the commission must determine whether the rate for
21 the telecommunications service or other service or business
22 activity is just, affordable and reasonable in accordance with
23 section 1301 (relating to rates to be just, affordable and
24 reasonable). If the telecommunications service or other service
25 or business activity subsequently becomes competitive, the local
26 exchange telecommunications company shall petition the
27 commission to make a determination of competitiveness for the
28 service under the provisions of this chapter.

29 * * *

30 § 3007. Determination of access charges.

1 Local exchange telecommunications companies serving more than
2 250,000 access lines in this Commonwealth as of the effective
3 date of this chapter shall comply with the following provisions:

4 (1) Local exchange telecommunications companies shall
5 have an effective per-minute switched-access service price
6 that shall not exceed 12¢ for the first five years from the
7 implementation date of the petition and plan, unless the
8 company can justify a higher rate based on the total cost of
9 switched-access services. The per-minute switched-access
10 service price includes both originating and terminating rates
11 and excludes nonrecurring rates. A local exchange
12 telecommunications company with an effective per-minute
13 switched-access service price greater than 12¢ on the
14 implementation date of the petition and plan shall provide
15 for a revenue-neutral phasedown to not more than 12¢ in not
16 more than three equal annual increments commencing with the
17 implementation of the petition and plan. Upon the sixth year
18 from the implementation date of the plan, the commission
19 shall review the per-minute switched-access service price
20 and, after notice and hearing, determine a just, affordable
21 and reasonable per-minute switched-access service price.

22 (2) Local exchange telecommunications companies with an
23 effective per-minute switched-access service price at or
24 below 12¢, including both originating and terminating rates
25 and excluding nonrecurring rates, may not increase switched-
26 access prices either in conjunction with the filing or
27 consideration of a petition and plan or for four years from
28 the approval date of a petition, not to extend beyond
29 December 31, 1999, unless the company can show that, absent
30 an increase, total switched-access revenues would be below

1 total switched-access cost. Revenue-neutral access tariff
2 rate changes and restructures may be proposed subject to
3 commission approval.

4 (3) Upon the commission's evaluation of the consistency
5 of tariff rates and structures with the interstate access
6 service tariff, revenue-neutral tariff rate changes and
7 restructures may be proposed by local exchange
8 telecommunications companies in order to implement the
9 results of the commission evaluation. No rate change or
10 restructure shall be approved if it constitutes or promotes
11 unfair competition. Rate changes and restructures for access
12 services submitted in accordance with this paragraph are
13 subject to commission approval, after notice and hearing.

14 (4) Any existing limits, by tariff or otherwise, on the
15 amount of revenue that a local exchange telecommunications
16 company may recover from the carrier common line rate shall
17 continue at the effective date of this chapter. At the
18 conclusion of any phasedown period provided in paragraph (1),
19 the annual revenues to be derived from carrier common line
20 rates shall be no more than the total carrier common line
21 revenues applicable to the final 12 months of any phasedown
22 period.

23 Section 3. This act shall take effect in 60 days.