

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 938

Session of
1981

INTRODUCED BY WILSON, BROWN, TELEK, BURNS, KOWALYSHYN, KOLTER,
PRATT AND SIEMINSKI, MARCH 17, 1981

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 17, 1981

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, amending and adding definitions,
3 further providing for the determination of rates, for the
4 assessment of regulatory expenses, for the use of certain
5 Federal funds, for certain capital construction certificates,
6 for fuel and energy adjustments, for the valuation and return
7 on utility property, for a uniform system of accounts and for
8 records and audits.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 102 of Title 66, act of November 25, 1970
12 (P.L.707, No.230), known as the Pennsylvania Consolidated
13 Statutes, is amended by adding a paragraph to the definition of
14 "common carrier by motor vehicle," and adding a definition to
15 read:

16 § 102. Definitions.

17 Subject to additional definitions contained in subsequent
18 provisions of this part which are applicable to specific
19 provisions of this part, the following words and phrases when
20 used in this part shall have, unless the context clearly

1 indicates otherwise, the meanings given to them in this section:

2 * * *

3 "Common carrier by motor vehicle." Any common carrier who or
4 which holds out or undertakes the transportation of passengers
5 or property, or both, or any class of passengers or property,
6 between points within this Commonwealth by motor vehicle for
7 compensation, whether or not the owner or operator of such motor
8 vehicle, or who or which provides or furnishes any motor
9 vehicle, with or without driver, for transportation or for use
10 in transportation of persons or property as aforesaid, and shall
11 include common carriers by rail, water, or air, and express or
12 forwarding public utilities insofar as such common carriers or
13 such public utilities are engaged in such motor vehicle
14 operations, but does not include:

15 * * *

16 (10) Any person or corporation who or which uses or
17 furnishes for use motor vehicles for the transportation for
18 disposal of ashes, rubbish or sewage.

19 * * *

20 "Rate base." The value of the whole or any part of the
21 property of a public utility which is used and useful in the
22 public service.

23 * * *

24 Section 2. Section 315(e) of Title 66 is amended to read:

25 § 315. Burden of proof.

26 * * *

27 (e) Use of future test year.--

28 (1) In discharging its burden of proof the utility may
29 utilize either a future test year or an historical test year.
30 If a utility elects to utilize a future test year such test

1 year may not end later than 12 months after the proposed rate
2 change is filed with the commission. The commission shall
3 promptly adopt rules and regulations regarding the
4 information and data to be submitted when and if a future
5 test [period] year is to be utilized.

6 (2) Whenever a utility utilizes a future test year in
7 any rate proceeding and such future test year forms a
8 substantive basis for the final rate determination of the
9 commission, the utility shall provide, as specified by the
10 commission in its final order, appropriate substantiating
11 data as it becomes available evidencing the accuracy of the
12 estimates contained in the future test year, and the
13 commission may after reasonable notice and hearing, in its
14 discretion, adjust the utility's rates on the basis of such
15 data.

16 (3) Whenever a utility utilizes a future test year which
17 extends beyond the time any suspension period under this part
18 expires, the utility shall not be permitted to file for a
19 general rate increase until after the day on which such
20 future test year ends.

21 Section 3. Section 510 of Title 66, subsection (a) amended
22 December 18, 1980 (No.226), is amended to read:

23 § 510. Assessment for regulatory expenses upon public
24 utilities and contract carriers by motor vehicles.

25 (a) Determination of assessment.--Before [November 1]
26 January 15 of each year, the commission shall estimate its total
27 expenditures in the administration of this part for the fiscal
28 year beginning July of [the following year, which estimate] that
29 year and after the beginning of the fiscal year, the commission
30 may request a supplemental estimate which together with any

1 other requested supplemented estimates shall not exceed three-
2 tenths of 1% of the total gross intrastate operating revenues of
3 the public utilities and contract carriers by motor vehicle
4 under its jurisdiction for the preceding calendar year. [Such
5 estimate shall be submitted to the Governor in accordance with
6 section 610 of the act of April 9, 1929 (P.L.177, No.175), known
7 as "The Administrative Code of 1929."] The commission or its
8 designated representatives shall be afforded an opportunity to
9 appear before the Governor and the Senate and House
10 Appropriations Committees regarding their estimates or budget or
11 supplemental estimates or budgets. The commission shall subtract
12 from the final estimate:

13 (1) The estimated fees to be collected pursuant to
14 section 317 (relating to fees for services rendered by
15 commission) during such fiscal year.

16 (2) The estimated balance of the appropriation,
17 specified in section 511 (relating to disposition,
18 appropriation and disbursement of assessments and fees), to
19 be carried over into such fiscal year from the preceding one.
20 The remainder so determined, herein called the total assessment,
21 shall be allocated to, and paid by, such public utilities and
22 contract carrier by motor vehicle in the manner prescribed. A
23 proposed budget and any proposed supplemental budget shall be
24 submitted to the General Assembly and the Governor's budget
25 office. If the General Assembly fails to approve the
26 commission's budget for the purposes of this part, by March 15,
27 the commission shall assess public utilities on the basis of the
28 last approved operating budget. No supplemental budget request
29 shall be utilized until it is approved by the General Assembly.

30 At such time as the General Assembly approved the proposed

1 budget or any supplemental budget the commission shall have the
2 authority to make an adjustment in the assessments to reflect
3 the approved budget.

4 (b) Allocation of assessment.--On or before March 31 of each
5 year, every public utility and contract carrier by motor vehicle
6 shall file with the commission a statement under oath showing
7 its gross intrastate operating revenues for the preceding
8 calendar year. If any public utility or contract carrier by
9 motor vehicle shall fail to file such statement on or before
10 March 31, the commission shall estimate such revenues, which
11 estimate shall be binding upon the public utility or contract
12 carrier by motor vehicle for the purposes of this section. For
13 each fiscal year, the allocation shall be made as follows:

14 (1) The commission shall determine for the preceding
15 calendar year the amount of its expenditures directly
16 attributable to the regulation of each group of utilities and
17 contract carrier by motor vehicle furnishing the same kind of
18 service, and debit the amount so determined to such group.

19 (2) The commission shall also determine for the
20 preceding calendar year the balance of its expenditures, not
21 debited as aforesaid, and allocate such balance to each group
22 in the proportion which the gross intrastate operating
23 revenues of such group for that year bear to the gross
24 intrastate operating revenues of all groups for that year.

25 (3) The commission shall then allocate the total
26 assessment prescribed by subsection (a) to each group in the
27 proportion which the sum of the debits made to it bears to
28 the sum of the debits made to all groups.

29 (4) Each public utility and contract carrier, by motor
30 vehicle within a group shall then be assessed for and shall

1 pay to the commission such proportion of the amount allocated
2 to its group as the gross intrastate operating revenues of
3 the public utility and contract carrier by motor vehicle for
4 the preceding calendar year bear to the total gross
5 intrastate operating revenues of its group for that year.

6 (c) Notice, hearing and payment.--The commission shall give
7 notice by registered or certified mail to each public utility
8 and contract carrier by motor vehicle of the amount lawfully
9 charged against it under the provisions of this section, which
10 amount shall be paid by the public utility and contract carrier
11 by motor vehicle within 30 days of receipt of such notice,
12 unless the commission specifies on the notices sent to all
13 public utilities and contract carriers by motor vehicle an
14 installment plan of payment, in which case each public utility
15 and contract carrier by motor vehicle shall pay each installment
16 on or before the date specified therefor by the commission.
17 Within 15 days after receipt of such notice, the public utility
18 and contract carrier by motor vehicle against which such
19 assessment has been made may file with the commission objections
20 setting out in detail the grounds upon which the objector
21 regards such assessment to be excessive, erroneous, unlawful or
22 invalid. The commission, after notice to the objector, shall
23 hold a hearing upon such objections. After such hearing, the
24 commission shall record upon its minutes its findings on the
25 objections and shall transmit to the objector, by registered or
26 certified mail, notice of the amount, if any, charged against it
27 in accordance with such findings, which amount or any
28 installment thereof then due, shall be paid by the objector
29 within ten days after receipt of notice of the findings of the
30 commission with respect to such objections. If any payment

1 prescribed by this subsection is not made as aforesaid, the
2 commission may suspend or revoke certificates of public
3 convenience, certify automobile registrations to the Department
4 of Transportation for suspension or revocation or, through the
5 [Department of Justice] Office of Attorney General, may
6 institute an appropriate action at law for the amount lawfully
7 assessed, together with any additional cost incurred by the
8 commission or the [Department of Justice] Office of Attorney
9 General by virtue of such failure to pay.

10 (d) Suits by public utilities and contract carriers by motor
11 vehicle.--No suit or proceeding shall be maintained in any court
12 for the purpose of restraining or in anywise delaying the
13 collection or payment of any assessment made under subsections
14 (a), (b) and (c), but every public utility or contract carrier
15 by motor vehicle against which an assessment is made shall pay
16 the same as provided in subsection (c). Any public utility or
17 contract carrier by motor vehicle making any such payment may,
18 at any time within two years from the date of payment, sue the
19 Commonwealth in an action at law to recover the amount paid, or
20 any part thereof, upon the ground that the assessment was
21 excessive, erroneous, unlawful, or invalid, in whole or in part,
22 provided objections, as hereinbefore provided, were filed with
23 the commission, and payment of the assessment was made under
24 protest either as to all or part thereof. In any action for
25 recovery of any payments made under this section, the claimant
26 shall be entitled to raise every relevant issue of law, but the
27 findings of fact made by the commission, pursuant to this
28 section, shall be prima facie evidence of the facts therein
29 stated. Any records, books, data, documents, and memoranda
30 relating to the expenses of the commission shall be admissible

1 in evidence in any court and shall be prima facie evidence of
2 the truth of their contents. If it is finally determined in any
3 such action that all or any part of the assessment for which
4 payment was made under protest was excessive, erroneous,
5 unlawful, or invalid, the commission shall make a refund to the
6 claimant out of the appropriation specified in section 511 as
7 directed by the court.

8 (e) Certain provisions not applicable.--The provisions of
9 this part relating to the judicial review of orders and
10 determinations of the commission shall not be applicable to any
11 findings, determinations, or assessments made under this
12 section. The procedure in this section providing for the
13 determination of the lawfulness of assessments and the recovery
14 back of payments made pursuant to such assessment shall be
15 exclusive of all other remedies and procedures.

16 (f) Intent of section.--It is the intent and purpose of this
17 section that each public utility and contract carrier by motor
18 vehicle subject to this part shall advance to the commission its
19 reasonable share of the cost of administering this part. The
20 commission shall keep records of the costs incurred in
21 connection with the administration and enforcement of this part
22 or any other statute. The commission shall also keep a record of
23 the manner in which it shall have computed the amount assessed
24 against every public utility and contract carrier by motor
25 vehicle. Such records shall be open to inspection by all
26 interested parties. The determination of such costs and
27 assessments by the commission, and the records and data upon
28 which the same are made, shall be considered prima facie
29 correct; and in any proceeding instituted to challenge the
30 reasonableness or correctness of any assessment under this

1 section, the party challenging the same shall have the burden of
2 proof.

3 (g) Saving provision.--This section does not affect or
4 repeal any of the provisions of the act of July 31, 1968
5 (P.L.769, No.240), [known as the "Commonwealth Documents Law."]
6 referred to as the Commonwealth Documents Law.

7 Section 4. Section 1102(a) of Title 66 is amended by adding
8 a paragraph to read:

9 § 1102. Enumeration of acts requiring certificate.

10 (a) General rule.--Upon the application of any public
11 utility and the approval of such application by the commission,
12 evidenced by its certificate of public convenience first had and
13 obtained, and upon compliance with existing laws, it shall be
14 lawful:

15 * * *

16 (6) For any electric utility to undertake major capital
17 expansion or construction of its facilities resulting in
18 spending in excess of 10% of its gross annual revenues for
19 any individual project. Approval of the commission shall be
20 required prior to both the preliminary planning stage and the
21 beginning of actual construction. When the commission
22 determines that such a facility is used and useful, in the
23 public interest, the cost of the expansion or construction in
24 the amount which was approved in the certificate of public
25 convenience proceeding shall be made a part of the rate base.
26 Any costs incurred in excess of the amount approved in the
27 certificate proceeding shall be separately considered by the
28 commission before any part of such costs may be made a part
29 of the rate base as used and useful in the public interest.

30 * * *

1 Section 5. Title 66 is amended by adding a section to read:

2 Section 1102.1. Nonelectric utility capital construction
3 certificates.

4 Except for common carriers, the commission shall by
5 regulation establish classifications of public utilities and
6 types of capital projects which shall require certificates of
7 public convenience.

8 Section 6. Section 1307(a) of Title 66 is amended and a
9 subsection is added to read:

10 § 1307. Sliding scale of rates; adjustments.

11 (a) General rule.--Any public utility, except a common
12 carrier, may establish a sliding scale of rates or such other
13 method for the automatic adjustment of the rates of the public
14 utility as shall provide a just and reasonable return on the
15 [fair value of the property used and useful in the public
16 service,] rate base of such public utility, to be determined
17 upon such equitable or reasonable basis as shall provide such
18 fair return. A tariff showing the scale of rates under such
19 arrangement shall first be filed with the commission, and such
20 tariff, and each rate set out therein, approved by it. The
21 commission may revoke its approval at any time and fix other
22 rates for any such public utility if, after notice and hearing,
23 the commission finds the existing rates unjust or unreasonable.

24 * * *

25 (f) Application of section.--This section shall apply to
26 those utilities which employ a fuel adjustment no more than once
27 every 12 months.

28 Section 7. Title 66 is amended by adding a section to read:
29 Section 1307.1. Fuel and energy adjustment.

30 (a) General rule.--Any public utility, except a common

1 carrier, which appeals for an adjustment more than once in any
2 12-month period may petition the commission for approval of a
3 rate adjustment no more often than every six months. Such
4 adjustment shall be for the purpose of allowing for changes in
5 fuel costs and energy purchases, but shall not include fuel
6 products purchased by a utility for resale. The commission shall
7 make a decision on each petition within 30 days. The commission
8 may revoke its approval at any time and fix other rates for any
9 such public utility if, after notice and hearing, the commission
10 finds the existing rates unjust and unreasonable.

11 (b) Readjustment procedure.--Rate adjustments shall be
12 computed considering the average fuel and energy purchase cost
13 over the prior six months and the anticipated costs for the same
14 over the next 12 months.

15 (c) Adjustment limit.--The commission shall not approve a
16 rate adjustment in excess of one-half of the percentage
17 differential of any annual increase or decrease in the Fuels and
18 Related Products and Power Index (code 05) of the Producers
19 Price Index as computed and published by the United States
20 Department of Labor for the immediately preceding 12-month
21 period for which such figures are immediately available.

22 (d) Refunds and surcharges.--Absent good reason being shown
23 to the contrary, the commission shall within 60 days following
24 such adjustment, by order direct each such public utility to,
25 over an appropriate 12-month period, refund to its patrons an
26 amount equal to that by which its revenues received pursuant to
27 such adjustment exceeded the amount of such expense or class of
28 expenses, or recover from its patrons an amount equal to that by
29 which such expense or class of expenses exceeded the revenues
30 received pursuant to such adjustment.

1 (e) Adjustment audits.--The commission shall conduct or
2 cause to be conducted at such times as it may order, an audit of
3 each public utility which, by the method described in this
4 section, adjusts its rates to reflect changes in its fuel costs
5 which audit shall enable the commission to determine the
6 propriety and correctness of amounts billed and collected under
7 this section. Whoever performs the audit shall be a person
8 knowledgeable in the subject matter encompassed within the
9 operation of the adjustment. The auditor's report shall be in a
10 form and manner directed by the commission.

11 (f) Application of section.--This section shall apply to
12 those utilities which employ a fuel adjustment more than once
13 every 12 months.

14 Section 8. Sections 1310(d), 1311, 1702 and 1704 of Title 66
15 are amended and sections are added to read:

16 § 1310. Temporary rates.

17 * * *

18 (d) Excessive rates.--Whenever the commission, upon
19 examination of any annual or other report, or of any papers,
20 records, books, or documents, or of the property of any public
21 utility, shall be of opinion that any rates of such public
22 utility are producing a return in excess of a fair return upon
23 the [fair value of the property] rate base of such public
24 utility, [used and useful in its public service,] the commission
25 may, by order, prescribe for a trial period of at least six
26 months, which trial period may be extended for one additional
27 period of six months, such temporary rates to be observed by
28 such public utility as, in the opinion of the commission, will
29 produce a fair return upon such [fair value] rate base, and the
30 rates so prescribed shall become effective upon the date

1 specified in the order of the commission. Such rates, so
2 prescribed, shall become permanent at the end of such trial
3 period, or extension thereof, unless at any time during such
4 trial period, or extension thereof, the public utility involved
5 shall complain to the commission that the rates so prescribed
6 are unjust or unreasonable. Upon such complaint, the commission,
7 after hearing, shall determine the issues involved, and pending
8 final determination the rates so prescribed shall remain in
9 effect.

10 * * *

11 § 1311. Valuation of property of and return on the property of
12 a public utility.

13 (a) Valuation generally.--The commission may, after
14 reasonable notice and hearing, ascertain and fix the [fair]
15 value of the whole or any part of the property of any public
16 utility, insofar as the same is material to the exercise of the
17 jurisdiction of the commission, and may make revaluations from
18 time to time [and ascertain the fair value] in the value of the
19 rate base of a public utility on account of all new
20 construction, extensions, [and] additions and retirements to the
21 property of any public utility.

22 (b) Method of valuation.--In determining the value of the
23 rate base of a public utility, the commission shall ascertain
24 and fix the original cost of the property of the public utility
25 when first devoted to the public service less the applicable
26 accrued depreciation.

27 (c) Segregation of property.--When any public utility
28 furnishes more than one of the different types of utility
29 service, the commission shall segregate the property used and
30 useful in furnishing each type of such service, and shall not

1 consider the property of such public utility as a unit in
2 determining the value of the [property] rate base of such public
3 utility for the purpose of fixing rates.

4 (d) Common carriers.--In fixing any rate of a public utility
5 engaged exclusively as a common carrier by motor vehicle, the
6 commission may, in lieu of other standards established by law,
7 fix the fair return by relating the fair and reasonable
8 operating expenses, depreciation, taxes and other costs of
9 furnishing service to operating revenues.

10 § 1701.1. Uniform system of accounts.

11 (a) Commission authorization to establish.--For all public
12 utilities with gross annual operating revenues in excess of
13 \$100,000, or in the case of telephone utilities, \$200,000 and
14 such other utilities as the commission may designate by order or
15 regulation, the commission shall establish a uniform system of
16 accounts to be kept by public utilities and to classify public
17 utilities according to the type of service they provide. The
18 commission shall establish a uniform system of accounts for each
19 class and prescribe the manner in which such accounts shall be
20 kept. It may also, in its discretion prescribe the forms of
21 accounts to be kept by public utilities, including records of
22 service, as well as accounts of earnings and expenses, and any
23 other forms, records and memoranda which in the judgment of the
24 commission may be necessary to carry out any of the provisions
25 of this part. The system of accounts established by the
26 commission and the forms of accounts prescribed by it shall not
27 be inconsistent with the systems and forms from time to time
28 established by any Federal regulatory body having jurisdiction
29 over the same class of public utilities, but nothing herein
30 contained shall prevent the commission from requiring

1 supplemental or additional information accounts and records from
2 such public utilities.

3 (b) Conformity required.--The commission shall not hear any
4 rate request unless the public utility in question is in
5 conformity with the uniform system of accounts.

6 § 1702. Continuing property records.

7 The commission [may] shall require [any] every public utility
8 to establish, provide, and maintain as a part of its system of
9 accounts, continuing property records, including a list or
10 inventory of all the units of tangible property used or useful
11 in the public service, showing the current location of such
12 property units by definite reference to the specific land
13 parcels upon which such units are located or stored. The
14 commission [may] shall require [any] every public utility to
15 keep accounts and records in such manner as to show, currently,
16 the original cost of such property when first devoted to the
17 public service, and the reserve accumulated to provide for the
18 depreciation thereof.

19 § 1704. Records and accounts to be kept in Commonwealth.

20 (a) General rule.--Every public utility shall keep such
21 books, accounts, papers, records, Federal and State tax returns
22 and memoranda, as shall be required by the commission, in an
23 office within this Commonwealth, and shall not remove the same,
24 or any of them, from this Commonwealth, except upon such terms
25 and conditions as may be prescribed by the commission.

26 (b) Exceptions.--This section does not apply to a public
27 utility of another state, engaged in interstate commerce, whose
28 accounts are kept at its principal place of business without
29 this Commonwealth, in the manner prescribed by any Federal
30 regulatory body. Nor does it apply to a Pennsylvania public

1 utility which is a member of any affiliated group whose accounts
2 are kept at the accounting headquarters of the affiliated group
3 without this Commonwealth, in the manner prescribed by the
4 commission. Such public utility, when required by the
5 commission, shall furnish to the commission, within such
6 reasonable time as it shall fix, certified copies of its books,
7 accounts, papers, records, Federal and State tax returns and
8 memoranda relating to the business done by such public utility
9 within this Commonwealth.

10 § 1707. Management audits.

11 (a) Audits mandated.--For any public utility with assets of
12 \$1,000,000 or more, the commission shall at intervals not less
13 than eight years or greater than ten years apart:

14 (1) Make a complete performance audit of every public
15 utility except common carriers.

16 (2) Investigate the quality of service provided by every
17 public utility.

18 (3) Ensure, as a result of the performance audit, that
19 the utility is operating at maximum efficiency in providing
20 service to the public.

21 (4) Publish a statement in the Pennsylvania Bulletin,
22 after the utility in question has had an opportunity to
23 review and respond to the audit report that the management
24 audit has been completed and is available at the commission
25 and at the utility's local office for public inspection.

26 (b) Outside audit authorized.--In lieu of performing the
27 audits mandated by subsection (a) itself, the commission may,
28 after competitive bidding contract with one or more independent
29 accounting or management consulting firms for the performance of
30 the required audits. Any firm performing any such audit shall,

1 as a condition of the contract, refrain from any affiliation or
2 employment with the audited public utility for a period of two
3 years following the completion of the audit unless authorized by
4 the commission.

5 (c) Audit power not limited.--This section shall in no way
6 limit the commission's power to audit or investigate any public
7 utility by its discretion.

8 Section 9. This act shall take effect in 60 days.