

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 311

Session of
1975

INTRODUCED BY WILSON, TAYLOR, M. E. MILLER, JR., BURNS,
RENNINGER AND SCHMITT, FEBRUARY 10, 1975

REFERRED TO COMMITTEE ON CONSUMER PROTECTION, FEBRUARY 10, 1975

AN ACT

1 Amending the act of May 28, 1937 (P.L.1053, No.286), entitled
2 "An act relating to the regulation of public utilities;
3 defining as public utilities certain corporations, companies,
4 associations, and persons; providing for the regulation of
5 public utilities, including, to a limited extent,
6 municipalities engaging in public utility business, by
7 prescribing, defining, and limiting their duties, powers, and
8 liabilities, and regulating the exercise, surrender or
9 abandonment of their powers, privileges, and franchises;
10 defining and regulating contract carriers by motor vehicle
11 and brokers in order to regulate effectively common carriers
12 by motor vehicle; conferring upon the Pennsylvania Public
13 Utility Commission the power and duty of supervising and
14 regulating persons, associations, companies, and
15 corporations, including, to a limited extent, municipal
16 corporations subject to this act, and administering the
17 provisions of this act; authorizing the commission to fix
18 temporary rates; placing the burden of proof on public
19 utilities to sustain their rates and certain other matters;
20 authorizing a permissive or mandatory sliding scale method of
21 regulating rates; providing for the supervision of financial
22 and contractual relations between public utilities and
23 affiliated interests, and supervision and regulation of
24 accounts and securities or obligations issued, assumed, or
25 kept by persons, associations, companies, corporations or
26 municipal corporations subject to this act; conferring upon
27 the commission power to vary, reform, or revise certain
28 contracts; conferring upon the commission the exclusive power
29 to regulate or order the construction, alteration,
30 relocation, protection, or abolition of crossings of
31 facilities of public utilities, and of such facilities by or
32 over public highways, to appropriate property for the
33 construction or improvement of such crossings, and to award
34 or apportion resultant costs and damages; authorizing owners

1 of such property to sue the Commonwealth for such damages;
2 providing for ejectment proceedings in connection with the
3 appropriation of property for crossings; conferring upon the
4 commission power to control and regulate budgets of public
5 utilities; imposing upon persons, associations, companies,
6 and corporations (except municipal corporations) subject to
7 regulation, the cost of administering this act; prescribing
8 and regulating practice and procedure before the commission
9 and procedure for review by the courts of commission action;
10 giving the court of common pleas of Dauphin County exclusive
11 original jurisdiction over certain proceedings; prescribing
12 penalties, fines, and imprisonment for violations of the
13 provisions of this act and regulations and orders of the
14 commission, and the procedure for enforcing such fines and
15 penalties; and repealing legislation supplied and superseded
16 by or inconsistent with this act," further providing for
17 rates and rate-making, certain accounting and budgetary
18 matters, regulations of contract carriers and brokers,
19 general powers of the commission, procedure before the
20 commission and penalties.

21 The General Assembly of the Commonwealth of Pennsylvania
22 hereby enacts as follows:

23 Section 1. Sections 304, 307, 308 and 310, act of May 28,
24 1937 (P.L.1053, No.286), known as the "Public Utility Law," are
25 amended to read:

26 Section 304. Discrimination in Rates.--No public utility
27 shall, as to rates, make or grant any [unreasonable] preference
28 or advantage, to any person, corporation, or municipal
29 corporation, or subject any person, corporation, or municipal
30 corporation to any [unreasonable] prejudice or disadvantage. [No
31 public utility shall establish or maintain any unreasonable
32 difference as to rates, either as between localities or as
33 between classes of service.] A public utility may establish or
34 maintain reasonable differences in rates between localities or
35 between classes of service but may not establish differences in
36 the rates or fees charged for the installation of identical
37 equipment. Unless specially authorized by the commission, no
38 public utility shall make, demand, or receive any greater rate
39 in the aggregate for the transportation of passengers or

1 property of the same class, or for the transmission of any
2 message or conversation for a shorter than for a longer distance
3 over the same line or route in the same direction, the shorter
4 being included within the longer distance, or any greater rate
5 as a through rate than the aggregate of the intermediate rates.
6 Nothing herein contained shall be deemed to prohibit the
7 establishment of reasonable zone or group systems, or
8 classifications of rates or, in the case of common carriers, the
9 issuance of excursion, commutation, or other special tickets at
10 special rates, or the granting of nontransferable free passes,
11 or passes at a discount to any officer, employe, or pensioner of
12 such common carrier. No rate charged by a municipality for any
13 public utility service rendered or furnished beyond its
14 corporate limits shall be considered unjustly discriminatory
15 solely by reason of the fact that a different rate is charged
16 for a similar service within its corporate limits.

17 Section 307. Sliding Scale of Rates.--(a) Any] Subject to
18 the limitations expressed in section three hundred eight of this
19 act, any public utility, except a common carrier, may establish
20 a sliding scale of rates or such other method for the automatic
21 adjustment of the rates of the public utility as shall provide a
22 just and reasonable return on the fair value of the property
23 used and useful in the public service, to be determined [upon
24 such equitable or reasonable basis as shall provide such fair
25 return] by a preponderance of the substantial evidence adduced
26 and presented at a public hearing on the issue: Provided, That a
27 tariff showing the scale of rates under such arrangement is
28 first filed with the commission, and such tariff, and each rate
29 set out therein, approved by it. The commission may revoke its
30 approval at any time and fix other rates for any such public

1 utility if, after notice and hearing, the commission finds the
2 existing rates unjust or unreasonable.

3 (b) The commission, by regulation or order, upon reasonable
4 notice and after hearing, may prescribe for any class of public
5 utilities, except a common carrier, a mandatory system for the
6 automatic adjustment of their rates, by means of a sliding scale
7 of rates or other method, on the same basis as provided in
8 paragraph (a), to become effective when and in the manner
9 prescribed in such regulation or order. Every such public
10 utility shall, within such time as shall be prescribed by the
11 commission, file tariffs showing the rates established in
12 accordance with such regulation or order.

13 Section 308. Voluntary Changes in Rates.--(a) Unless the
14 commission otherwise orders, no public utility shall [make any
15 change in] raise any existing and duly established rate, except
16 after sixty days' notice to the commission [which] and to its
17 current customers. Such notice shall plainly state the changes
18 proposed to be made in the rates then in force, and the time
19 when the changed rates will go into effect. The public utility
20 shall also give such notice of the proposed changes to other
21 interested persons as the commission in its discretion may
22 direct. All proposed changes shall be shown by filing new
23 tariffs or supplements to existing tariffs filed and in force at
24 the time. The commission, for good cause shown, may allow
25 changes in rates, without requiring the sixty days' notice,
26 under such conditions as it may prescribe.

27 (b) Whenever there is filed with the commission by any
28 public utility any tariff stating a new rate, the commission
29 [may, either upon complaint or upon its own motion] shall, upon
30 reasonable notice, enter upon a hearing concerning the

1 lawfulness of such rate, and pending such hearing and the
2 decision thereon, the commission, upon filing with such tariff
3 and delivering to the public utility affected thereby a
4 statement in writing of its reasons therefor, may, at any time
5 before it becomes effective, suspend the operation of such rate
6 for a period not longer than six months from the time such rate
7 would otherwise become effective, and an additional period of
8 not more than three months pending such decision. The rate in
9 force when the tariff stating the new rate was filed shall
10 continue in force during the period of suspension, unless the
11 commission shall establish a temporary rate as authorized in
12 section three hundred ten of this act. The commission shall
13 consider the effect of such suspension in finally determining
14 and prescribing the rates to be thereafter charged and collected
15 by such public utility.

16 (c) If, after such hearing, the commission finds any such
17 rate to be unjust or unreasonable, or in anywise in violation of
18 law, the commission shall determine the just and reasonable rate
19 to be charged or applied by the public utility for the service
20 in question, and shall fix the same by order to be served upon
21 the public utility; and such rate shall thereafter be observed
22 until changed as provided by this act. Any increase in rates in
23 excess of five per centum (5%) per annum shall be presumed to be
24 unjust and unreasonable until substantial evidence to the
25 contrary is provided by the public utility.

26 Section 310. Temporary Rates.--(a) The commission may, in
27 any proceeding involving the rates of a public utility brought
28 either upon its own motion or upon complaint, after reasonable
29 notice and hearing, if it be of opinion that the public interest
30 so requires, immediately fix, determine, and prescribe temporary

1 rates to be charged by such public utility within the
2 limitations provided in section three hundred eight of this act,
3 pending the final determination of such rate proceeding. Such
4 temporary rates, so fixed, determined, and prescribed, shall be
5 sufficient to provide a return of not [less] more than five per
6 centum (5%) upon the original cost, less accrued depreciation,
7 of the physical property (when first devoted to public use) of
8 such public utility, used and useful in the public service, and
9 if the duly verified reports of such public utility to the
10 commission do not show such original cost, less accrued
11 depreciation, of such property, the commission may estimate such
12 cost less depreciation and fix, determine, and prescribe rates
13 as hereinbefore provided.

14 (b) If any public utility does not have continuing property
15 records, kept in the manner prescribed by the commission, under
16 the provisions of section five hundred two of this act, then the
17 commission, after reasonable notice and hearing, may establish
18 temporary rates which shall be sufficient to provide a return of
19 not less than an amount equal to the operating income for the
20 year ending December thirty-first, one thousand nine hundred
21 thirty-five, [or such other subsequent year as the commission
22 may deem proper] nor more than one hundred five per centum
23 (105%) of the operating income for the next preceding calendar
24 year, to be determined on the basis of [data appearing in the
25 annual report of such public utility to the commission for the
26 year one thousand nine hundred thirty-five, or such other
27 subsequent year as the commission may deem proper, plus or minus
28 such return as the commission may prescribe from time to time
29 upon such net changes of the physical property as are reported
30 to and approved for rate-making purposes by the commission. In

1 determining the net changes of the physical property, the
2 commission may, in its discretion, deduct from gross additions
3 to such physical property the amount charged to operating
4 expenses for depreciation or, in lieu thereof, it may determine
5 such net changes by deducting retirements from the gross
6 additions: Provided, That the commission, in determining the
7 basis for temporary rates, may make such adjustments in the
8 annual report data as may, in the judgment of the commission, be
9 necessary and proper.] the corporate net income returns filed by
10 the public utility with the Government of the United States and
11 the Commonwealth of Pennsylvania and such other substantial
12 evidence and records as the commission may deem relevant.

13 (c) The commission may, in the manner hereinbefore set
14 forth, fix, determine, and prescribe temporary rates every
15 month, or at any other interval, if it be of opinion that the
16 public interest so requires, and the existence of proceedings
17 begun for the purpose of establishing final rates shall not
18 prevent the commission from changing every month, or at any
19 other interval, such temporary rates as it has previously fixed,
20 determined, and prescribed.

21 (d) Whenever the commission, upon examination of any annual
22 or other report, or of any papers, records, books, or documents,
23 or of the property of any public utility, shall be of opinion
24 that any rates of such public utility are producing a return in
25 excess of a fair return upon the fair value of the property of
26 such public utility, used and useful in its public service as
27 determined under the provisions of sections three hundred eight
28 and three hundred ten of this act, the commission may, by order,
29 prescribe for a trial period of at least six months, which trial
30 period may be extended for one additional period of six months,

1 such temporary rates to be observed by such public utility as,
2 in [the opinion of] conformity with sections three hundred eight
3 and three hundred ten the commission determines will produce a
4 fair return upon such fair value, and the rates so prescribed
5 shall become effective upon the date specified in the order of
6 the commission. Such rates, so prescribed, shall become
7 permanent at the end of such trial period, or extension thereof,
8 unless at any time during such trial period, or extension
9 thereof, the public utility involved shall complain to the
10 commission that the rates so prescribed are unjust or
11 unreasonable. Upon such complaint, the commission, after
12 hearing, shall determine the issues involved, and pending final
13 determination the rates so prescribed shall remain in effect.

14 (e) Temporary rates so fixed, determined, and prescribed
15 under this section shall be effective until the final
16 determination of the rate proceeding, unless terminated sooner
17 by the commission. In every proceeding in which temporary rates
18 are fixed, determined, and prescribed under this section, the
19 commission shall consider the effect of such rates in fixing,
20 determining, and prescribing rates to be thereafter demanded or
21 received by such public utility on final determination of the
22 rate proceeding. If, upon final disposition of the issues
23 involved in such proceeding, the rates as finally determined,
24 are in excess of the rates prescribed in such temporary order,
25 then such public utility shall be permitted to amortize and
26 recover, by means of a temporary increase over and above the
27 rates finally determined, such sum as shall represent the
28 difference between the gross income obtained from the rates
29 prescribed in such temporary order and the gross income which
30 would have been obtained under the rates finally determined if

1 applied during the period such temporary order was in effect.

2 Section 2. Section 311 of the act, amended December 26, 1965
3 (P.L.1165, No.459), is amended to read:

4 Section 311. Valuation of Property of a Public Utility.--The
5 commission [may] shall, after reasonable notice and hearing,
6 which shall include evidence of the original cost and appraisals
7 by independent evaluators having no business relations or
8 connections with the utility, ascertain and fix the fair value
9 of the whole or any part of the property of any public utility,
10 in so far as the same is material to the exercise of the
11 jurisdiction of the commission, and may make revaluations from
12 time to time and ascertain the fair value of all new
13 construction, extensions, and additions to the property of any
14 public utility. When any public utility furnishes more than one
15 of the different types of utility service enumerated in
16 paragraph seventeen of section two of this act, the commission
17 shall segregate the property used and useful in furnishing each
18 type of such service, and shall not consider the property of
19 such public utility as a unit in determining the value of the
20 property of such public utility for the purpose of fixing rates.
21 In fixing any rate of a public utility engaged exclusively in
22 common carriage by motor vehicles, the commission may, within
23 the limitations of sections three hundred eight and three
24 hundred ten of this act, in lieu of other standards established
25 by law, fix the fair return by relating the fair and reasonable
26 operating expenses, depreciation, taxes and other costs of
27 furnishing service to carrier operating revenues.

28 Section 3. Sections 501, 502, 507, 802, 810, 901, 908, 1003
29 and 1004 of the act are amended to read:

30 Section 501. Mandatory Systems of Accounts.--[The commission

1 may, after reasonable notice and hearing, establish systems of
2 accounts (including cost finding procedures) to be kept by
3 public utilities, or may classify public utilities and establish
4 a system of accounts for each class, and prescribe the manner
5 and form in which such accounts shall be kept. Every public
6 utility shall establish such systems of accounting, and shall
7 keep such accounts in the manner and form required by the
8 commission. The accounting system of any public utility also
9 subject to the jurisdiction of a Federal regulatory body shall
10 correspond, as far as practicable, to the system prescribed by
11 such Federal regulatory body: Provided, That the commission may
12 require any such public utility to keep and maintain
13 supplemental or additional accounts to those required by any
14 such regulatory body.] (a) The commission shall have power to
15 establish a uniform system of accounts to be kept by public
16 utilities and to classify public utilities according to the type
17 of service they provide. The commission shall establish a
18 uniform system of accounts for each class and prescribe the
19 manner in which such accounts shall be kept. It may also, in its
20 discretion, prescribe the forms of accounts to be kept by public
21 utilities, including records of service, as well as accounts of
22 earnings and expenses, and any other forms, records and
23 memoranda which in the judgment of the commission may be
24 necessary to carry out any of the provisions of this act. The
25 system of accounts established by the commission and the forms
26 of accounts prescribed by it shall not be inconsistent with the
27 systems and forms from time to time established by any Federal
28 regulatory body having jurisdiction over the same class of
29 public utilities, but nothing herein contained shall prevent the
30 commission from requiring supplemental or additional information

1 and records from such public utilities.

2 (b) When the commission has prescribed the forms of accounts
3 to be kept by any public utility for any of its business, it
4 shall thereafter be unlawful for such public utility to keep any
5 accounts for such business other than those prescribed or
6 approved by the commission, or those prescribed under the
7 authority of any other state or of the United States.

8 Section 502. Continuing Property Records.--The commission
9 [may require any] shall require every public utility to
10 establish, provide, and maintain as a part of its system of
11 accounts, continuing property records, including a list or
12 inventory of all the units of tangible property used or useful
13 in the public service, showing the current location of such
14 property units by definite reference to the specific land
15 parcels upon which such units are located or stored; and the
16 commission [may require any] shall require every public utility
17 to keep accounts and records in such manner as to show,
18 currently, the original cost of such property when first devoted
19 to the public service, and the reserve accumulated to provide
20 for the depreciation thereof.

21 Section 507. Inspection of Books and Records by
22 Commission.--The commission shall at all times have access to,
23 and may designate any of its employees to inspect and examine,
24 any and all accounts, records, Federal and State tax returns,
25 books, maps, inventories, appraisals, valuations, or other
26 reports, documents, and memoranda kept by public utilities, or
27 prepared or kept for them by others; and the commission, may
28 require any public utility to file with the commission, copies
29 of any or all of such accounts, records, tax returns, books,
30 maps, inventories, appraisals, valuations, or other reports,

1 documents, and memoranda.

2 Section 802. Regulation of Contract Carriers and Brokers
3 Required.--The commission shall have the power, and its duty
4 shall be:

5 (a) To regulate contract carriers by motor vehicles as
6 provided in this article, and to that end the commission may
7 prescribe minimum rates which are just and reasonable, in
8 accordance with section three hundred eight of this act and
9 establish requirements with respect to uniform systems of
10 accounts, records, reports, preservation of records, safety of
11 service and equipment, and insurance, and

12 (b) To regulate brokers, as provided in this article, and to
13 that end the commission may prescribe requirements with respect
14 to licensing, financial responsibility, accounts, reports,
15 records, services, and practices of any such brokers.

16 Section 810. Minimum Rates Fixed and Practices Prescribed on
17 Complaint.--Whenever, after hearing upon complaint or its own
18 motion, the commission finds that any rate of any contract
19 carrier by motor vehicle, or any regulation or practice of any
20 such carrier affecting such rate for the transportation of
21 passengers or property, contravenes the policy declared in
22 section three hundred eight or section eight hundred one of this
23 act, the commission may prescribe such minimum rates or such
24 regulations or practices as in its judgment may be just and
25 reasonable to promote the policy declared in such [section]
26 sections. Such minimum rates or such regulations or practices so
27 prescribed by the commission shall not be inconsistent with the
28 policy declared in [section] sections three hundred eight and
29 eight hundred one of this act, and the commission shall give due
30 consideration to the cost of the service of such carriers, and

1 to the effect of such minimum rates or such regulations or
2 practices upon the transportation of passengers or property by
3 such carriers, and diversion of the business of any common
4 carrier by motor vehicle to other forms of transportation. All
5 complaints to the commission under this section shall state
6 fully the facts complained of and the reasons for such
7 complaints, and shall be made under oath or affirmation.

8 Section 901. Administrative Authority of Commission;
9 Regulations.--[The] In order to protect the rights and interests
10 of the general public and of those individuals who rely on the
11 services provided by public utilities, the commission shall have
12 general administrative power and authority to supervise and
13 regulate all public utilities doing business within this
14 Commonwealth. The commission may make such regulations, not
15 inconsistent with the law, as may be necessary or proper in the
16 exercise of its powers or for the performance of its duties
17 under this act.

18 Section 908. Inspection of, and Access to, Facilities and
19 Records of Public Utilities.--The commission shall have full
20 power and authority, either by or through its members, or duly
21 authorized representatives, whenever it shall deem it necessary
22 or proper in carrying out any of the provisions of this act, or
23 its duties under this act, to enter upon the premises,
24 buildings, machinery, system, plant, and equipment, and make any
25 inspection, valuation, physical examination, inquiry, or
26 investigation of any and all plant and equipment, facilities,
27 property, and pertinent records, books, papers, memoranda,
28 documents, or effects whatsoever, of any public utility, and to
29 hold any hearing for such purposes. In the performance of such
30 duties, [the] The commission shall at intervals not less than

1 three years nor greater than five years apart: (1) perform a
2 complete audit of the financial condition of every public
3 utility, (2) investigate the quality of service provided by
4 every public utility, and (3) publish a report of its findings
5 in the Pennsylvania Bulletin. The commission may have access to,
6 and use any books, records, or documents in the possession of,
7 any department, board, or commission of the Commonwealth or any
8 political subdivision thereof.

9 Section 1003. Fixing of Hearings.--(a) The commission shall
10 fix the time and place of hearing, which shall be within the
11 geographical area served by the utility, within [or without] the
12 Commonwealth, if any is required, and shall serve notice thereof
13 upon parties in interest. [The commission may dismiss any
14 complaint without a hearing if, in its opinion, a hearing is not
15 necessary in the public interest.]

16 (b) If any person, corporation, or municipal corporation
17 complained against, within the time specified by the commission,
18 shall satisfy the complaint, the commission by its order shall
19 dismiss the complaint, but such person, corporation, or
20 municipal corporation shall be relieved from responsibility only
21 for the specific matter complained of. If such person,
22 corporation, or municipal corporation shall not satisfy the
23 complaint within the time specified, and it shall appear to the
24 commission from a consideration of the complaint and answer, or
25 otherwise, that reasonable ground exists for investigating such
26 complaint, it shall be the duty of the commission to fix a time
27 and place for a hearing.

28 Section 1004. Meetings and Hearings to Be Public; Record of
29 Proceedings.--All meetings and hearings before the commission,
30 or its representative, shall be open to the public, and shall be

1 conducted in accordance with such regulations as the commission
2 may prescribe. A full and complete record shall be kept of all
3 proceedings had before the commission, or its representative, on
4 any formal hearing, and all testimony shall be taken down by a
5 reporter appointed by the commission, and the parties shall be
6 entitled to be heard in person or by attorney, and to introduce
7 evidence.

8 Section 4. Section 1301 of the act, amended July 3, 1941
9 (P.L.267, No.122), January 6, 1970 (1969, P.L.434, No.185) and
10 July 31, 1970 (P.L.673, No.223), is amended to read:

11 Section 1301. Civil Penalties for Violations by Public
12 Utilities.--(a) If any public utility, or any other person or
13 corporation subject to this act, shall violate any of the
14 provisions of this act, or shall do any matter or thing herein
15 prohibited; or shall fail, omit, neglect, or refuse to perform
16 any duty enjoined upon it by this act; or shall fail, omit,
17 neglect or refuse to obey, observe, and comply with any
18 regulation or final direction, requirement, determination or
19 order made by the commission, or any order of the commission
20 prescribing temporary rates in any rate proceeding; or to comply
21 with any final judgment, order or decree made by any court, such
22 public utility, person or corporation for such violation,
23 omission, failure, neglect, or refusal, shall forfeit and pay to
24 the Commonwealth of Pennsylvania the sum of [fifty dollars] one
25 thousand dollars; to be recovered by an action of assumpsit
26 instituted in the name of the Commonwealth of Pennsylvania, in
27 [the court of common pleas of Dauphin County,] Commonwealth
28 Court, which court is hereby clothed with exclusive jurisdiction
29 throughout the Commonwealth to hear and determine all such
30 actions. In construing and enforcing the provisions of this

1 section, the violation, omission, failure, neglect, or refusal
2 of any officer, agent, or employe acting for, or employed by,
3 any such public utility, person or corporation shall, in every
4 case be deemed to be the violation, omission, failure, neglect,
5 or refusal of such public utility, person or corporation.

6 (b) Each and every day's continuance in the violation of any
7 regulation or final direction, requirement, determination, or
8 order of the commission, or of any order of the commission
9 prescribing temporary rates in any rate proceeding, or of any
10 final judgment, order, or decree made by any court, shall be a
11 separate and distinct offense: Provided, however, That if any
12 interlocutory order of supersedeas, or a preliminary injunction
13 be granted, no penalties shall be incurred or collected for or
14 on account of any act, matter, or thing done in violation of
15 such final direction, requirement, determination, order, or
16 decree, so superseded or enjoined for the period of time such
17 order of supersedeas or injunction is in force.