

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1731 Session of
1977

INTRODUCED BY MESSRS. McCALL, B. F. O'BRIEN, J. L. WRIGHT JR.,
BURNS, GOODMAN, F. TAYLOR, GATSKI, FISHER, LEHR AND WANSACZ,
OCTOBER 18, 1977

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 12, 1978

AN ACT

1 Amending the act of March 31, 1937 (P.L.160, No.43), entitled
2 "An act creating a commission to be known as the Pennsylvania
3 Public Utility Commission; defining in part the powers and
4 duties of such commission; abolishing The Public Service
5 Commission of the Commonwealth of Pennsylvania, terminating
6 the terms of the members thereof, and transferring to the
7 Pennsylvania Public Utility Commission the records, employes,
8 property, and equipment of The Public Service Commission of
9 the Commonwealth of Pennsylvania; authorizing the
10 Pennsylvania Public Utility Commission to appear in and
11 complete all pending proceedings, legal or otherwise,
12 instituted before, by or against The Public Service
13 Commission of the Commonwealth of Pennsylvania; providing
14 that all certificates of public convenience, contracts,
15 orders, and rules and regulations of the latter commission
16 shall remain effective until repealed, changed or modified by
17 the Pennsylvania Public Utility Commission, and transferring
18 and appropriating to the Pennsylvania Public Utility
19 Commission any unexpended balance of any existing
20 appropriation to The Public Service Commission of the
21 Commonwealth of Pennsylvania," providing for hearings and
22 appeals not involving rate determination matters AND FOR THE
23 ASSESSMENT OF REGULATORY EXPENSES UPON PUBLIC UTILITIES. <—

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 Section 1. The act of March 31, 1937 (P.L.160, No.43),
27 entitled "An act creating a commission to be known as the

1 Pennsylvania Public Utility Commission; defining in part the
2 powers and duties of such commission; abolishing The Public
3 Service Commission of the Commonwealth of Pennsylvania,
4 terminating the terms of the members thereof, and transferring
5 to the Pennsylvania Public Utility Commission the records,
6 employes, property, and equipment of The Public Service
7 Commission of the Commonwealth of Pennsylvania; authorizing the
8 Pennsylvania Public Utility Commission to appear in and complete
9 all pending proceedings, legal or otherwise, instituted before,
10 by or against The Public Service Commission of the Commonwealth
11 of Pennsylvania; providing that all certificates of public
12 convenience, contracts, orders, and rules and regulations of the
13 latter commission shall remain effective until repealed, changed
14 or modified by the Pennsylvania Public Utility Commission, and
15 transferring and appropriating to the Pennsylvania Public
16 Utility Commission any unexpended balance of any existing
17 appropriation to The Public Service Commission of the
18 Commonwealth of Pennsylvania," is amended by adding sections to
19 read:

20 Section 7.7. Any proceeding not involving a rate
21 determination shall be referred to an Administrative Law Judge
22 for decision.

23 Section 7.8. (a) In any proceeding not involving a rate
24 determination which is not initiated by complaint the
25 Administrative Law Judge shall render a decision within ~~thirty~~ <—
26 SIXTY days after the final hearing on the matter unless cause <—
27 can be shown for an extension.

28 (b) Any proceeding not involving a rate determination which
29 is initiated by complaint shall be heard by the Administrative
30 Law Judge within ~~thirty~~ NINETY days of the filing of the <—

1 complaint and a decision shall be rendered by him within thirty <—
2 NINETY days after said hearing unless cause can be shown for an <—
3 extension.

4 Section 7.9. Any party to a proceeding under sections 7.7 or
5 7.8 may appeal from a decision of the Administrative Law Judge
6 in a form and manner to be prescribed by the Commission. If no
7 such appeal is filed within thirty days of any such decision,
8 the decision shall become final, without further Commission
9 action.

10 SECTION 12.1. ASSESSMENT OF REGULATORY EXPENSES UPON PUBLIC <—
11 UTILITIES.--(A) BEFORE MARCH FIRST OF EACH YEAR, THE COMMISSION
12 SHALL ESTIMATE ITS TOTAL EXPENDITURES IN THE ADMINISTRATION OF
13 THE ACT OF MAY 28, 1937 (P.L.1053, NO.286), KNOWN AS THE "PUBLIC
14 UTILITY LAW," FOR THE FISCAL YEAR BEGINNING JULY OF THAT YEAR,
15 WHICH ESTIMATE SHALL NOT EXCEED THREE-TENTHS OF ONE PER CENTUM
16 OF THE TOTAL GROSS INTRASTATE OPERATING REVENUES OF THE PUBLIC
17 UTILITIES UNDER ITS JURISDICTION FOR THE PRECEDING CALENDAR
18 YEAR. THE COMMISSION SHALL SUBTRACT FROM THE ESTIMATE (1) THE
19 ESTIMATED FEES TO BE COLLECTED PURSUANT TO SECTIONS 1202 AND
20 1203 OF THE SAID ACT DURING SUCH FISCAL YEAR (2) THE ESTIMATED
21 BALANCE OF THE APPROPRIATION, SPECIFIED IN SECTION 1204 OF SAID
22 ACT, TO BE CARRIED OVER INTO SUCH FISCAL YEAR FROM THE PRECEDING
23 ONE AND (3) ANY FEDERAL MONEYS TO BE RECEIVED DURING SUCH FISCAL
24 YEAR. THE REMAINDER SO DETERMINED, HEREIN CALLED THE TOTAL
25 ASSESSMENT, SHALL BE ALLOCATED TO, AND PAID BY, SUCH PUBLIC
26 UTILITIES IN THE MANNER HEREAFTER PRESCRIBED. A PROPOSED BUDGET
27 SHALL BE SUBMITTED TO THE GENERAL ASSEMBLY. IF THE GENERAL
28 ASSEMBLY FAILS TO APPROVE THE COMMISSION'S BUDGET FOR THE
29 PURPOSES OF THIS ACT, BY THE FIRST DAY OF JULY, THE COMMISSION
30 SHALL ASSESS PUBLIC UTILITIES ON THE BASIS OF THE LAST APPROVED

1 OPERATING BUDGET. AT SUCH TIME AS THE GENERAL ASSEMBLY APPROVES
2 THE PROPOSED BUDGET THE COMMISSION SHALL HAVE THE AUTHORITY TO
3 MAKE AN ADJUSTMENT IN THE ASSESSMENTS TO REFLECT THE APPROVED
4 BUDGET.

5 (B) ON OR BEFORE MARCH THIRTY-FIRST OF EACH YEAR, EVERY
6 PUBLIC UTILITY SHALL FILE WITH THE COMMISSION A STATEMENT UNDER
7 OATH SHOWING ITS GROSS INTRASTATE OPERATING REVENUES FOR THE
8 PRECEDING CALENDAR YEAR: PROVIDED, HOWEVER, THAT IF ANY PUBLIC
9 UTILITY SHALL FAIL TO FILE SUCH STATEMENT ON OR BEFORE MARCH
10 THIRTY-FIRST AS AFORESAID THE COMMISSION SHALL ESTIMATE SUCH
11 REVENUES, WHICH ESTIMATE SHALL BE BINDING UPON THE PUBLIC
12 UTILITY FOR THE PURPOSES OF THIS SECTION. FOR THE FISCAL YEAR
13 BEGINNING JULY 1, 1971, THE TOTAL ASSESSMENT SHALL BE ALLOCATED
14 TO AND PAID BY EACH PUBLIC UTILITY IN THE PROPORTION THAT THE
15 GENERAL ASSESSMENT CHARGED TO IT FOR COMMISSION EXPENDITURES FOR
16 THE CALENDAR YEAR 1970 BEARS TO THE TOTAL AMOUNT OF SUCH GENERAL
17 ASSESSMENT CHARGED TO ALL PUBLIC UTILITIES. FOR EACH SUBSEQUENT
18 FISCAL YEAR, THE ALLOCATION SHALL BE MADE AS FOLLOWS: (1) THE
19 COMMISSION SHALL DETERMINE FOR THE PRECEDING CALENDAR YEAR THE
20 AMOUNT OF ITS EXPENDITURES DIRECTLY ATTRIBUTABLE TO THE
21 REGULATION OF EACH GROUP OF UTILITIES FURNISHING THE SAME KIND
22 OF SERVICE, AND DEBIT THE AMOUNT SO DETERMINED TO SUCH GROUP.
23 (2) THE COMMISSION SHALL ALSO DETERMINE FOR THE PRECEDING
24 CALENDAR YEAR THE BALANCE OF ITS EXPENDITURES, NOT DEBITED AS
25 AFORESAID, AND ALLOCATE SUCH BALANCE TO EACH GROUP IN THE
26 PROPORTION WHICH THE GROSS INTRASTATE OPERATING REVENUES OF SUCH
27 GROUP FOR THAT YEAR BEAR TO THE GROSS INTRASTATE OPERATING
28 REVENUES OF ALL GROUPS FOR THAT YEAR. (3) THE COMMISSION SHALL
29 THEN ALLOCATE THE TOTAL ASSESSMENT PRESCRIBED BY SUBSECTION (A)
30 TO EACH GROUP IN THE PROPORTION WHICH THE SUM OF THE DEBITS MADE

1 TO IT BEARS TO THE SUM OF THE DEBITS MADE TO ALL GROUPS. (4)
2 EACH PUBLIC UTILITY WITHIN A GROUP SHALL THEN BE ASSESSED FOR
3 AND SHALL PAY TO THE COMMISSION SUCH PROPORTION OF THE AMOUNT
4 ALLOCATED TO ITS GROUP AS THE GROSS INTRASTATE OPERATING
5 REVENUES OF THE PUBLIC UTILITY FOR THE PRECEDING CALENDAR YEAR
6 BEAR TO THE TOTAL GROSS INTRASTATE OPERATING REVENUES OF ITS
7 GROUP FOR THAT YEAR.

8 (C) THE COMMISSION SHALL GIVE NOTICE BY REGISTERED OR
9 CERTIFIED MAIL TO EACH PUBLIC UTILITY OF THE AMOUNT LAWFULLY
10 CHARGED AGAINST IT UNDER THE PROVISIONS OF THIS SECTION, WHICH
11 AMOUNT SHALL BE PAID BY THE PUBLIC UTILITY WITHIN THIRTY DAYS OF
12 RECEIPT OF SUCH NOTICE, UNLESS THE COMMISSION SPECIFIES ON THE
13 NOTICES SENT TO ALL PUBLIC UTILITIES AN INSTALLMENT PLAN OF
14 PAYMENT, IN WHICH CASE EACH PUBLIC UTILITY SHALL PAY EACH
15 INSTALLMENT ON OR BEFORE THE DATE SPECIFIED THEREFOR BY THE
16 COMMISSION. WITHIN FIFTEEN DAYS AFTER RECEIPT OF SUCH NOTICE,
17 THE PUBLIC UTILITY AGAINST WHICH SUCH ASSESSMENT HAS BEEN MADE
18 MAY FILE WITH THE COMMISSION OBJECTIONS SETTING OUT IN DETAIL
19 THE GROUNDS UPON WHICH THE OBJECTOR REGARDS SUCH ASSESSMENT TO
20 BE EXCESSIVE, ERRONEOUS, UNLAWFUL OR INVALID. THE COMMISSION,
21 AFTER NOTICE TO THE OBJECTOR, SHALL HOLD A HEARING UPON SUCH
22 OBJECTIONS. AFTER SUCH HEARING, THE COMMISSION SHALL RECORD UPON
23 ITS MINUTES ITS FINDINGS ON THE OBJECTIONS AND SHALL TRANSMIT TO
24 THE OBJECTOR, BY REGISTERED OR CERTIFIED MAIL, NOTICE OF THE
25 AMOUNT, IF ANY, CHARGED AGAINST IT IN ACCORDANCE WITH SUCH
26 FINDINGS, WHICH AMOUNT OR ANY INSTALLMENT THEREOF THEN DUE,
27 SHALL BE PAID BY THE OBJECTOR WITHIN TEN DAYS AFTER RECEIPT OF
28 NOTICE OF THE FINDINGS OF THE COMMISSION WITH RESPECT TO SUCH
29 OBJECTIONS. IF ANY PAYMENT PRESCRIBED BY THIS SUBSECTION IS NOT
30 MADE AS AFORESAID, THE COMMISSION MAY SUSPEND OR REVOKE

CERTIFICATES OF PUBLIC CONVENIENCE, CERTIFY AUTOMOBILE
REGISTRATIONS TO THE SECRETARY OF TRANSPORTATION FOR SUSPENSION
OR REVOCATION OR, THROUGH THE DEPARTMENT OF JUSTICE, MAY
INSTITUTE AN APPROPRIATE ACTION AT LAW FOR THE AMOUNT LAWFULLY
ASSESSED, TOGETHER WITH ANY ADDITIONAL COST INCURRED BY THE
COMMISSION OR THE DEPARTMENT OF JUSTICE BY VIRTUE OF SUCH
FAILURE TO PAY.

(D) NO SUIT OR PROCEEDING SHALL BE MAINTAINED IN ANY COURT
FOR THE PURPOSE OF RESTRAINING OR IN ANYWISE DELAYING THE
COLLECTION OR PAYMENT OF ANY ASSESSMENT MADE UNDER SUBSECTIONS
(A), (B), AND (C) BUT EVERY PUBLIC UTILITY AGAINST WHICH AN
ASSESSMENT IS MADE SHALL PAY THE SAME AS PROVIDED IN SUBSECTION
(C) OF THIS SECTION. ANY PUBLIC UTILITY MAKING ANY SUCH PAYMENT
MAY, AT ANY TIME WITHIN TWO YEARS FROM THE DATE OF PAYMENT, SUE
THE COMMONWEALTH IN AN ACTION AT LAW TO RECOVER THE AMOUNT PAID,
OR ANY PART THEREOF, UPON THE GROUND THAT THE ASSESSMENT WAS
EXCESSIVE, ERRONEOUS, UNLAWFUL, OR INVALID, IN WHOLE OR IN PART,
PROVIDED OBJECTIONS, AS HEREINBEFORE PROVIDED, WERE FILED WITH
THE COMMISSION, AND PAYMENT OF THE ASSESSMENT WAS MADE UNDER
PROTEST EITHER AS TO ALL OR PART THEREOF. IN ANY ACTION FOR
RECOVERY OF ANY PAYMENTS MADE UNDER THIS SECTION, THE CLAIMANT
SHALL BE ENTITLED TO RAISE EVERY RELEVANT ISSUE OF LAW, BUT THE
FINDINGS OF FACT MADE BY THE COMMISSION, PURSUANT TO THIS
SECTION, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS THEREIN
STATED. ANY RECORDS, BOOKS, DATA, DOCUMENTS, AND MEMORANDA
RELATING TO THE EXPENSES OF THE COMMISSION SHALL BE ADMISSIBLE
IN EVIDENCE IN ANY COURT, AND SHALL BE PRIMA FACIE EVIDENCE OF
THE TRUTH OF THEIR CONTENTS. IF IT IS FINALLY DETERMINED IN ANY
SUCH ACTION THAT ALL OR ANY PART OF THE ASSESSMENT FOR WHICH
PAYMENT WAS MADE UNDER PROTEST WAS EXCESSIVE, ERRONEOUS,

1 UNLAWFUL, OR INVALID, THE COMMISSION SHALL MAKE A REFUND TO THE
2 CLAIMANT OUT OF THE APPROPRIATION SPECIFIED IN SECTION 1204 AS
3 DIRECTED BY THE COURT.

4 (E) THE PROVISIONS OF THIS ACT RELATING TO THE JUDICIAL
5 REVIEW OF ORDERS AND DETERMINATIONS OF THE COMMISSION SHALL NOT
6 BE APPLICABLE TO ANY FINDINGS, DETERMINATIONS, OR ASSESSMENTS
7 MADE UNDER THIS SECTION. THE PROCEDURE IN THIS SECTION PROVIDING
8 FOR THE DETERMINATION OF THE LAWFULNESS OF ASSESSMENTS AND THE
9 RECOVERY BACK OF PAYMENTS MADE PURSUANT TO SUCH ASSESSMENTS
10 SHALL BE EXCLUSIVE OF ALL OTHER REMEDIES AND PROCEDURES.

11 (F) IT IS THE INTENT AND PURPOSE OF THIS SECTION THAT EACH
12 PUBLIC UTILITY SUBJECT TO THIS ACT SHALL ADVANCE TO THE
13 COMMISSION ITS REASONABLE SHARE OF THE COST OF ADMINISTERING
14 THIS ACT. THE COMMISSION SHALL KEEP RECORDS OF THE COSTS
15 INCURRED IN CONNECTION WITH THE ADMINISTRATION AND ENFORCEMENT
16 OF THIS ACT, OR ANY OTHER ACT. THE COMMISSION SHALL ALSO KEEP A
17 RECORD OF THE MANNER IN WHICH IT SHALL HAVE COMPUTED THE AMOUNT
18 ASSESSED AGAINST EVERY PUBLIC UTILITY. SUCH RECORDS SHALL BE
19 OPEN TO INSPECTION BY ALL INTERESTED PARTIES. THE DETERMINATION
20 OF SUCH COSTS AND ASSESSMENTS BY THE COMMISSION, AND THE RECORDS
21 AND DATA UPON WHICH THE SAME ARE MADE, SHALL BE CONSIDERED PRIMA
22 FACIE CORRECT; AND IN ANY PROCEEDING INSTITUTED TO CHALLENGE THE
23 REASONABLENESS OR CORRECTNESS OF ANY ASSESSMENT UNDER THIS
24 SECTION, THE PARTY CHALLENGING THE SAME SHALL HAVE THE BURDEN OF
25 PROOF.

26 (G) NOTHING HEREIN CONTAINED SHALL BE DEEMED TO REPEAL ANY
27 OF THE PROVISIONS OF THE ACT OF JULY 31, 1968 (P.L.769, NO.240),
28 KNOWN AS THE "COMMONWEALTH DOCUMENTS LAW."

29 SECTION 2. SECTION 1201 OF THE ACT OF MAY 28, 1937
30 (P.L.1053, NO.286), KNOWN AS THE "PUBLIC UTILITY LAW," IS HEREBY

1 REPEALED.

2 Section ~~2~~ 3. Any provisions of the act of May 28, 1937 <—
3 (P.L.1053, No.286), known as the "Public Utility Law," which are
4 inconsistent with the provisions hereof are hereby repealed.

5 Section ~~3~~ 4. This act shall take effect in 60 days. <—