

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2035

Session of
1978

INTRODUCED BY MESSRS. TAYLOR, B.F. O'BRIEN, SWEET, J.L. WRIGHT,
BURNS, GOODMAN, D.M. FISHER, McCALL, LINCOLN, LEHR, GATSKI,
ITKIN, MISCEVICH, PRATT, YAHNER, DeWEESE, WASS, SMITH,
HILFRICK AND A.C. FOSTER, JANUARY 31, 1978

AS REPORTED FROM COMMITTEE ON MINES AND ENERGY MANAGEMENT,
AS AMENDED, FEBRUARY 21, 1978

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

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19 penalties; and repealing legislation supplied and superseded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

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

24 Section 1. Section 2, act of May 28, 1937 (P.L.1053,
25 No.286), known as the "Public Utility Law," is amended by adding
26 a clause to read:

27 Section 2. Definitions.--The following words, terms and
28 phrases shall have the meanings ascribed to them in this
29 section, unless the context clearly indicates otherwise:

30 * * *

31 (24) "Historic natural gas" means interstate natural gas
32 that is regulated by the appropriate Federal agency.

33 * * *

34 Section 2. ~~Subsection (a)~~ SUBSECTIONS (A) AND (B) of section <—
35 307 of the act, ~~is~~ ARE amended to read: <—

36 Section 307. Sliding Scale of Rates.--(a) Any public
37 utility, except a common carrier, may establish a sliding scale
38 of rates or such other method for the automatic adjustment of
39 the rates of the public utility as shall provide a just and
40 reasonable return on the fair value of the property used and

1 useful in the public service, to be determined upon such
2 equitable or reasonable basis as shall provide such fair return:
3 Provided, That a tariff showing the scale of rates under such
4 arrangement is first filed with the commission, and such tariff,
5 and each rate set out therein, approved by it: Provided further,
6 That the cost of fuel used or purchased by any gas utility
7 company shall not be subject to automatic adjustment of the
8 rates but shall only be recoverable in accordance with section
9 308.1. The commission may revoke its approval at any time and
10 fix other rates for any such public utility if, after notice and
11 hearing, the commission finds the existing rates unjust or
12 unreasonable.

13 (B) THE COMMISSION, BY REGULATION OR ORDER, UPON REASONABLE <—
14 NOTICE AND AFTER HEARING, MAY PRESCRIBE FOR ANY CLASS OF PUBLIC
15 UTILITIES, EXCEPT A COMMON CARRIER, A MANDATORY SYSTEM FOR THE
16 AUTOMATIC ADJUSTMENT OF THEIR RATES, BY MEANS OF A SLIDING SCALE
17 OF RATES OR OTHER METHOD, ON THE SAME BASIS AS PROVIDED IN
18 PARAGRAPH (A), TO BECOME EFFECTIVE WHEN AND IN THE MANNER
19 PRESCRIBED IN SUCH REGULATION OR ORDER: PROVIDED, HOWEVER, THAT
20 THE COST OF FUEL USED OR PURCHASED BY ANY GAS UTILITY COMPANY
21 SHALL NOT BE SUBJECT TO AUTOMATIC ADJUSTMENT OF THE RATES BUT
22 SHALL ONLY BE RECOVERABLE IN ACCORDANCE WITH SECTION 308.1.
23 EVERY SUCH PUBLIC UTILITY SHALL, WITHIN SUCH TIME AS SHALL BE
24 PRESCRIBED BY THE COMMISSION, FILE TARIFFS SHOWING THE RATES
25 ESTABLISHED IN ACCORDANCE WITH SUCH REGULATION OR ORDER.

26 * * *

27 Section 3. The act is amended by adding a section to read:

28 Section 308.1. Gas Utility Fuel and Energy Cost Base Rate
29 Adjustments.--(a) After one hundred eighty days YEAR following <—
30 the effective date of this act, no gas utility company shall

make use of any method for the automatic adjustment of its rates to reflect changes in its fuel and energy costs. All fuel and energy costs and any associated gross receipts taxes recoverable under any previously used method for automatically adjusting its rates to reflect changes in fuel and energy costs shall thereafter be reflected in its base rates.

(b) All contracts or agreements for the purchase of fuel by a gas utility company must be approved by the commission. A copy of any such proposed contract or agreement shall be submitted to the commission for approval within sixty days of its proposed effective date. Any such contract or agreement shall include a provision that the approval of the commission is a condition precedent to the contract or agreement having any legal force or effect.

(c) The initial conversion period for each gas utility company complying with the requirements of subsection (a) shall be determined by the commission. All procedures for filing the annual and interim revisions of said utility's base rate schedule shall also be established by the commission, except as specified herein. Each gas utility company shall file a plan by which it proposes to amortize deferred energy costs accumulated in deferred energy accounts from automatic adjustment clauses used prior to the effective date of this act. Such plan shall be filed no later than sixty days after the effective date of this act. The commission shall accept such plan if it is found to be reasonable.

(d) Any gas utility company shall be authorized to annually adjust its base rates to reflect, to the extent not previously incorporated into its base rates, its future anticipated recoverable fuel and energy costs during such prospective

twelve-month period as the commission shall determine. The cost of any new gas, other than historic natural gas, required to be purchased to continue service to customers who otherwise would have been subject to curtailed service without the purchase of such gas, shall be allocable under this section to said customers only.

(e) Prior to first making a base rate adjustment authorized by this section, and approximately annually thereafter, said utility shall file revisions of its base rate schedules. The <—
INITIAL REVISED BASE RATE SCHEDULE SHOULD INCLUDE ALL FUEL COSTS AND ASSOCIATED GROSS RECEIPTS TAXES RECOVERABLE UNDER ANY PREVIOUSLY USED METHOD FOR AUTOMATICALLY ADJUSTING ITS RATES TO REFLECT CHANGES IN FUEL COSTS. THE FIRST AND ALL SUBSEQUENT revised base rate schedules shall provide for increase or decrease of the energy charge per m.c.f. specified in each such schedule by such amounts as will provide, on an annual basis, an aggregate increase or decrease in base rate revenues as will equivalently reflect the amount of the estimated increase or decrease, for a prospective operative period of twelve months duration, of the gas utility's recoverable fuel and energy costs. The revised base rate schedules shall specify an effective date not less than ninety days following the day of their filing and shall include but not be limited to the following:

(1) The estimated volume of gas reserves on hand at the beginning of such twelve-month period together with the cost basis of such reserves;

(2) The estimated volume of all new gas to be purchased during such twelve-month period together with the estimated cost of such new gas;

1 (3) The estimated volume of new gas, other than historic
2 natural gas, required to be purchased to continue service to
3 customers who otherwise would be subject to curtailed service
4 without the purchase of such gas together with the estimated
5 cost of such gas;

6 (4) The estimated volume of gas to be supplied to customers
7 who could receive continuous service without the purchase of new
8 gas, other than historic natural gas;

9 (5) The estimated volume of gas to be supplied to customers
10 who otherwise would be subject to curtailed service without the
11 purchase of new gas, other than historic natural gas;

12 (6) The estimated average cost of fuel per m.c.f. to be
13 supplied to customers who could receive continuous service
14 without the purchase of new gas other than historic natural gas;
15 and

16 (7) The estimated average cost of fuel per m.c.f. to be
17 supplied to customers who otherwise would be subject to
18 curtailed service without the purchase of new gas, other than
19 historic natural gas. Notice of a filing pursuant to this
20 section will be given in such a manner as shall be prescribed by
21 the commission and an opportunity for public review and comment
22 on such filing will be afforded on the day set by the
23 commission. The commission shall either approve, disapprove, <—
24 MODIFY or suspend such schedule within ninety days of its
25 filing. However, pursuant to this section, the commission may
26 not suspend any rate filed unless such rate represents a
27 material increase over the prior period. In such cases, the
28 suspension period will be limited to three months with prior
29 rates remaining in effect during this time. BEFORE THE <—
30 EXPIRATION OF SUCH THREE-MONTH PERIOD, THE COMMISSION SHALL, BY

1 ORDER, APPROVE SUCH SCHEDULES OR ORDER SUCH MODIFICATIONS OF
2 THEM AS IT DEEMS NECESSARY AND PROPER FOR THE PURPOSES OF THIS
3 SECTION. IF SUCH AN ORDER IS NOT MADE BY THE EXPIRATION OF SUCH
4 THREE-MONTH PERIOD, SUCH SCHEDULES SHALL GO INTO EFFECT AT THE
5 END OF SUCH PERIOD, SUBJECT TO REFUND OF SUCH AMOUNTS AS THE
6 COMMISSION MAY ULTIMATELY FIND TO BE UNJUSTIFIED.

7 (f) Currently effective base rate schedules of any gas
8 utility company may be revised on an interim basis prior to the
9 next ordinary annual revision authorized by this section. Such
10 an interim revision shall be made by the said utility subject to
11 review and approval by the commission or as ordered by the
12 commission, after hearing, when the utility or the commission
13 shall have reason to believe that the revenues estimated to be
14 finally produced, during the remainder of their current
15 operative period, by such currently effective base rate
16 schedules will result in a material over-collection or under-
17 collection, on the basis of the entire current operative period
18 of the commission's most recent estimate of the utility's
19 recoverable fuel and energy costs for the entire current
20 operative period: Provided, however, That the provisions of this
21 clause shall not apply to any estimated material over-collection
22 or under-collection resulting from an increase or decrease in
23 fuel costs which has not been approved by the appropriate
24 Federal regulatory agency. The commission shall adopt procedures
25 for reviewing and approving, ~~or~~ disapproving OR MODIFYING such <—
26 revised base rate schedules within thirty days of their filing.

27 (g) The commission may order any such gas utility to refund
28 any portion of increased revenues received by it pursuant to
29 revisions of its base rate schedules authorized by this section.
30 Refunds shall bear interest at the average rate of interest

specified for residential mortgage lending by the Secretary of
Banking, in accordance with the act of January 30, 1974 (P.L.13,
No.6), referred to as the Loan Interest and Protection Law, for
the period or periods for which refunds are ordered. ANY REFUND <—
REQUIRED OR ORDERED TO BE MADE PURSUANT TO THIS SECTION SHALL BE
MADE BY MEANS OF A CREDIT AGAINST CURRENTLY APPLICABLE BILLING
CHARGES, OVER SUCH PERIODS AS THE COMMISSION SHALL DETERMINE IN
EACH CASE.

(h) Any difference between the annual revenues collected by
a utility under this section and the actual energy costs
incurred by the utility during the twelve-month period will be
either refunded or charged to the utility's customers in a
manner prescribed by the commission. The commission is also <—
empowered to establish a policy of incentives and penalties
designed to encourage utilities to provide service at a minimum
cost.

(i) The commission shall conduct or cause to be conducted at
such times as it may order, but at least annually, an audit of
each gas utility company, which audit shall enable the
commission to determine the propriety and correctness of amounts
billed and collected under this section. Whoever shall perform
the audit shall be a person knowledgeable in the subject matter
encompassed within the operation of the automatic adjustment <—
clause THIS SECTION. The auditors report shall be in a form and <—
manner directed by the commission.

SECTION 4. THIS ACT SHALL TAKE EFFECT IMMEDIATELY. <—