

No. 215

AN ACT

SB 1216

Amending the act of May 28, 1937 (P.L.1053, No.286), entitled "An act relating to the regulation of public utilities; defining as public utilities certain corporations, companies, associations, and persons; providing for the regulation of public utilities, including, to a limited extent, municipalities engaging in public utility business, by prescribing, defining, and limiting their duties, powers, and liabilities, and regulating the exercise, surrender or abandonment of their powers, privileges, and franchises; defining and regulating contract carriers by motor vehicle and brokers in order to regulate effectively common carriers by motor vehicle; conferring upon the Pennsylvania Public Utility Commission the power and duty of supervising and regulating persons, associations, companies, and corporations, including, to a limited extent, municipal corporations subject to this act, and administering the provisions of this act; authorizing the commission to fix temporary rates; placing the burden of proof on public utilities to sustain their rates and certain other matters; authorizing a permissive or mandatory sliding scale method of regulating rates; providing for the supervision of financial and contractual relations between public utilities and affiliated interests, and supervision and regulation of accounts and securities or obligations issued, assumed, or kept by persons, associations, companies, corporations or municipal corporations subject to this act; conferring upon the commission power to vary, reform, or revise certain contracts; conferring upon the commission the exclusive power to regulate or order the construction, alteration, relocation, protection, or abolition of crossings of facilities of public utilities, and of such facilities by or over public highways, to appropriate property for the construction or improvement of such crossings, and to award or apportion resultant costs and damages; authorizing owners of such property to sue the Commonwealth for such damages; providing for ejectment proceedings in connection with the appropriation of property for crossings; conferring upon the commission power to control and regulate budgets of public utilities; imposing upon persons, associations, companies, and corporations (except municipal corporations) subject to regulation, the cost of administering this act; prescribing and regulating practice and procedure before the commission and procedure for review by the courts of commission action; giving the court of common pleas of Dauphin County exclusive original jurisdiction over certain proceedings; prescribing penalties, fines, and imprisonment for violations of the provisions of this act and regulations and orders of the commission, and the procedure for enforcing such fines and penalties; and repealing legislation supplied and superseded by or inconsistent with this act," further defining terms; providing for rate increases and adjustments; further regulating billing procedures; providing for suspended railroad crossing; providing for appeals; further providing for budget limitations; and increasing certain penalties.

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

Section 1. Clause (1) and subclause (f) of clause (17) of section 2, act of May 28, 1937 (P.L.1053, No.286), known as the "Public Utility Law," clause (17) amended November 18, 1968 (P.L.1049, No.320), are amended to read:

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

[(1) “Affiliated Interest” means (a) any person or corporation who or which owns or controls, directly or indirectly, five per centum or more of the voting capital stock of a public utility; (b) any corporation, five per centum or more of the voting capital stock of which is owned or controlled, directly or indirectly, by any person or corporation who or which owns or controls, directly or indirectly, five per centum or more of the voting capital stock of a public utility; (c) any corporation, five per centum or more of the voting capital stock of which is owned or controlled, directly or indirectly, by a public utility; (d) any person or corporation who or which, either singly or in conjunction with one or more other persons or corporations, is exercising any substantial influence over the policies, acts, or actions of a public utility, or stands in such relationship to the public utility that there is an absence of free and equal bargaining power between him or it and the public utility: Provided, however, That any public utility, prior to contracting with any person or corporation, may apply to the commission for a determination as to whether or not such person or corporation is an affiliated interest, as herein defined; and (e) any director, officer, or employe of an affiliated interest, as herein defined.]

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(17) “Public Utility” means persons or corporations now or hereafter owning or operating in this Commonwealth equipment, or facilities for:

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(f) Conveying or transmitting messages or communications by telephone or telegraph *or domestic public land mobile radio service including, but not limited to, point-to-point microwave radio service* for the public for compensation;

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Section 2. Subsection (e) of section 202 of the act, amended June 19, 1939 (P.L.419, No.236), is amended to read:

Section 202. Enumeration of Acts Requiring Certificate.—Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, and not otherwise, it shall be lawful:

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(e) For any public utility *or an affiliated interest of a public utility, as defined in section 701.1(a)*, except a common carrier by railroad subject to the Interstate Commerce Act, to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, *including the sale or transfer of stock and* including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service: Provided, however, That such approval shall not be required—(1) if the undepreciated book value of the property to be acquired or transferred does not exceed one thousand dollars; or (2) if the undepreciated book value of the property to be acquired or transferred does not exceed the

lesser of—(a) two per centum of the undepreciated book value of all of the fixed assets of such public utility, or (b) five thousand dollars in the case of personalty or fifty thousand dollars in the case of realty; or (3) if the property to be acquired is to be installed new as a part of or consumed in the operation of the used and useful property of such public utility; or (4) if the property to be transferred by such public utility is obsolete, worn out or otherwise unserviceable.

But exceptions (1), (2), (3), and (4) shall not be applicable, and approval of the commission evidenced by a certificate of public convenience shall be required, if any such acquisition or transfer of property involves a transfer of patrons.

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Section 3. Subsection (c) of section 307 of the act, added July 30, 1975 (No.76), is amended and subsections are added to read:

Section 307. Sliding Scale of Rates.—* * *

(c) In any method automatically adjusting rates to reflect changes in fossil fuel cost under this section, the fuel cost used in computing the adjustment shall be limited, in the case of an electric utility, to the cost of such fuel delivered to the utility at the generating site at which it is to be consumed, and the cost of disposing of solid waste from scrubbers or other devices designed so that the consumption of Pennsylvania-mined coal at the generating site would comply with the sulfur oxide emission standards prescribed by the Commonwealth of Pennsylvania. The cost of fuel handling after such delivery, or of waste disposal, other than as prescribed above, shall be excluded from such computation. ***In any method automatically adjusting rates to reflect changes in fuel cost other than fossil fuel cost under this section, the fuel cost used in computing the adjustment shall be limited, in the case of an electric utility, to the cost of such fuel delivered to the utility at the generating site at which it is to be consumed after deducting therefrom the present salvage or reuse value of such fuel, as shall be established by commission rule or order.***

(d) ***The commission shall conduct or cause to be conducted, at such times as it may order, but at least annually, an audit of each public utility which, by any method described in this section, automatically adjusts its rates to reflect changes in its fuel costs, 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. The auditors report shall be in a form and manner directed by the commission.***

(e) ***Within thirty days following the end of such twelve month period as the commission shall designate, each public utility using an automatic adjustment clause shall file with the commission a statement which shall specify for such period (1) the total revenues received pursuant to the automatic adjustment clause, (2) the total amount of that expense or class of expenses incurred which is the basis of the automatic adjustment clause, and (3) the difference between the amounts specified by (1) and (2). Such***

report shall be a matter of public record and copies thereof shall be made available to any person upon request to the commission. Within sixty days following the submission of such report by a public utility, the commission shall hold a public hearing on the substance of the report and any matters pertaining to the use by such public utility of such automatic adjustment clause in the preceding period and may include the present and subsequent periods. Absent good reason being shown to the contrary, the commission shall, within sixty days following such hearing, by order direct each such public utility to, over an appropriate twelve-month period, refund to its patrons an amount equal to that by which its revenues received pursuant to such automatic adjustment clause exceeded the amount of such expense or class of expenses, or recover from its patrons an amount equal to that by which such expense or class of expenses exceeded the revenues received pursuant to such automatic adjustment clause. For the purpose of this subsection, where a twelve month report period and twelve month refund or recovery period shall have been previously established or designated, nothing herein shall impair the continued use of such previously established or designated periods; nor shall anything herein prevent the commission from amending at any time any method used by any utility in automatically adjusting its rates, so as to provide the commission more adequate supervision of the administration by a utility of such method and to decrease the likelihood of collection by a utility, in subsequent periods, of amounts greater or less than that to which it is entitled, or, in the event that such deficiency or surplus in collected amounts is found, more prompt readjustment thereof.

Section 4. Subsection (b) of section 308 of the act is amended and subsections are added to read:

Section 308. Voluntary Changes in Rates.—* * *

(b) Whenever there is filed with the commission by any public utility any tariff stating a new rate, the commission may, either upon complaint or upon its own motion, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, and pending such hearing and the decision thereon, the commission, upon filing with such tariff and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before it becomes effective, suspend the operation of such rate for a period not longer than six months from the time such rate would otherwise become effective, and an additional period of not more than three months pending such decision. The rate in force when the tariff stating the new rate was filed shall continue in force during the period of suspension, unless the commission shall establish a temporary rate as authorized in section three hundred ten of this act. The commission shall consider the effect of such suspension in finally determining and prescribing the rates to be thereafter charged and collected by such public utility. *Provided that this subsection shall not apply to any tariff stating a new rate which constitutes a general rate increase as described in subsection (d) herein.*

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(d) As used in this act, general rate increase shall mean a tariff filing which affects more than five per centum of the customers and amounts to in excess of three per centum of the total gross annual intrastate operating revenues of the public utility. If the public utility furnishes two or more types of service listed in section 2(17) of this act, the foregoing percentages shall be determined only on the basis of the customers receiving, and the revenues derived from, the type of service to which the tariff filing pertains.

(e) Whenever there is filed with the commission by any public utility described in section 2(17)(a), (b), (f) or (g), and such other public utility as the commission may by rule or regulation direct, any tariff stating a new rate which constitutes a general rate increase, the commission shall promptly enter into an investigation and analysis of said tariff filing and may by order setting forth its reasons therefor, upon complaint, or upon its own motion, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, and, the commission may at any time by vote of a majority of the members of the commission serving in accordance with law, permit such tariff to become effective, provided that absent such order such tariff shall be suspended for a period not to exceed seven months from the time such rate would otherwise become effective. Before the expiration of such seven month period, a majority of the members of the commission serving in accordance with law, acting unanimously, shall make a final decision and order, setting forth its reasons therefor, granting or denying, in whole or in part, the general rate increase requested. If, however, such an order has not been made at the expiration of such seven month period, the proposed general rate increase shall go into effect at the end of such period, but the commission may by order require the interested public utility to refund, in accordance with section 313, to the persons in whose behalf such amounts were paid, such portion of such increased rates as by its decision shall be found not justified, plus interest, which shall be 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), during the period or periods for which the commission orders refunds. The rate in force when the tariff stating such new rate was filed shall continue in force during the period of suspension unless the commission shall grant extraordinary rate relief as prescribed in subsection (f) herein. The commission shall consider the effect of such suspension in finally determining and prescribing the rates to be thereafter charged and collected by such public utility, provided that the commission shall have no authority to prescribe, determine, or fix, at any time during the pendency of a general rate increase proceeding or prior to a final determination of a general rate increase request, temporary rates as provided in section 310, which rates may provide retroactive increases through recoupment.

(f) Upon petition to the commission at the time of filing of a rate request or at any time during the pendency of proceedings on such rate request, any public utility may seek extraordinary rate relief of such portion of the total rate relief requested as can be shown to be immediately

necessary for the maintenance of financial stability in order to enable the utility to continue providing normal services to its customers, avoid reductions in its normal maintenance programs, avoid substantially reducing its employment, and which will provide no more than the rate of return on the utility's common equity established by the commission in consideration of the utility's preceding rate filing: Provided, That no utility shall file, either with a request for a general rate increase or at any time during the pendency of such a request, more than one petition under this subsection pertaining to rates for a particular type of service, nor any supplement or amendment thereto, except when permitted to do so by order of the commission. Any public utility requesting extraordinary rate relief shall file with the petition sufficient additional testimony and exhibits which will permit the commission to make appropriate findings on the petition. The public utility shall give notice of the petition in the same manner as its filing upon which this petition is based. The commission shall within thirty days from the date of the filing of a petition for extraordinary rate relief, and after hearing for the purpose of cross-examination of the testimony and exhibits of the public utility, and the presentation of such other evidentiary testimony as the commission may by rule prescribe, by order setting forth its reasons therefor, grant or deny, in whole or in part, the extraordinary relief requested. Absent such order, the petition shall be deemed to have been denied. Rates established pursuant to extraordinary rate relief shall not be deemed to be temporary rates within the meaning of that term as it is used in section 310 of this act.

Section 5. Subsections (a) and (e) of section 310 of the act are amended to read:

Section 310. Temporary Rates.—(a) The commission may, in any proceeding involving the rates of a public utility, ***except a proceeding involving a general rate increase***, brought either upon its own motion or upon complaint, after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine, and prescribe temporary rates to be charged by such public utility, pending the final determination of such rate proceeding. Such temporary rates, so fixed, determined, and prescribed, shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property (when first devoted to public use) of such public utility, used and useful in the public service, and if the duly verified reports of such public utility to the commission do not show such original cost, less accrued depreciation, of such property, the commission may estimate such cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided.

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(e) Temporary rates so fixed, determined, and prescribed under this section shall be effective until the final determination of the rate proceeding, unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined, and prescribed

under this section, the commission shall consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceeding. **[If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect.]**

Section 6. Section 312 of the act is amended to read:

Section 312. **Burden of Proof in Rate Proceedings.**—In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceeding upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. *In discharging its burden of proof the utility may utilize a future test year. The commission shall promptly adopt rules and regulations regarding the information and data to be submitted when and if a future test period is to be utilized.* The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

Whenever a utility utilizes a future test year in any rate proceeding and such future test year forms a substantive basis for the final rate determination of the commission, the utility shall provide, as specified by the commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the future test year, and the commission may, after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data.

Section 7. The act is amended by adding a section to read:

Section 314. Billing Procedures.—*All bills rendered by a public utility described in section 2(17)(a), (b), (f) or (g) to its service customers, except bills for installation charges, shall allow at least fifteen days for non-residential customers and twenty days for residential customers from the date of transmittal of the bill for payment without incurring any late payment penalty charges therefor. All customers shall be permitted to receive bills monthly and shall be notified of their right thereto. All bills shall be itemized to separately show amounts for basic service, Federal excise taxes, applicable State sales and gross receipts to the extent practicable taxes, fuel adjustment charge, if any, State tax adjustment charge, or such other similar components of the total bill as the commission may order. Any electric or gas public utility billing customers on a bi-monthly or quarterly basis and rendering interim statements or bills each month shall include in such interim statement or bill an amount for the fuel*

adjustment charge based upon one-half of the total expected bi-monthly kilowatt-hour or cubic foot billing or one-third of the total expected quarterly billing and using the fuel adjustment charge rate applicable in the month of the interim statement or bill. At the time of preparing the bi-monthly or quarterly bill, an appropriate adjustment shall be made in the total fuel adjustment charge billing for the period. Any public utility rendering bills on a bi-monthly basis or quarterly basis shall calculate the fuel adjustment charge per kilowatt-hour or cubic foot for the entire period as the weighted average of the two monthly rates or the three monthly rates whichever is applicable.

Section 8. Section 401 of the act is amended to read:

Section 401. Character of Service and Facilities.—Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employes, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this act and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. *The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.*

Section 9. Section 402.1 of the act, added March 1, 1974 (P.L.109, No.25), is amended to read:

Section 402.1. Days Discontinuance of Service is Prohibited.—Except when required to prevent or alleviate an emergency as defined by the Public Utility Commission, except in the case of danger to life or property, no public utility, as defined in subclauses (a), (b), (e), and (g) of clause (17) of section 2 of this act, shall discontinue, and the commission shall not authorize such a public utility to discontinue, except upon request of the customer, for nonpayment of charges or for any other reason, the rendering of service during the following periods:

- (1) On Friday, Saturday or Sunday.
- (2) On a bank holiday or on the day preceding a bank holiday.
- (3) On a holiday observed by the public utility or on the day preceding such holiday. A holiday observed by a public utility shall mean any day on which the business office of the public utility is closed to observe a legal holiday, to attend public utility meetings or functions or for any other reason.

(4) On a holiday observed by the commission or on the day preceding such holiday.

Section 10. The act is amended by adding a section to read:

Section 402.2. Personal Contact Before Service Discontinued.—*Except when required to prevent or alleviate an emergency as defined by the Public Utility Commission or except in the case of danger to life or property, no public utility, as defined in subclauses (a), (b), (e), and (g) of clause (17) of section 2 of this act, shall discontinue, and the commission shall not authorize such a public utility to discontinue, except upon request of a customer, for nonpayment of charges or for any other reason, the rendering of service without personally contacting the customer at least three days prior to such discontinuance, in addition to any written notice of discontinuance of service. Personal contact shall mean:*

- (1) contacting the customer by means other than writing, or*
- (2) contacting another person whom the customer has designated to receive a copy of any notice of disconnection, or*
- (3) if the customer has not made such designation, contacting a community interest group or other entity, including local police departments, which shall have previously agreed to receive a copy of the notice of disconnection and to attempt to contact the customer, or*
- (4) if the customer has not made such designation and no such community interest group or other entity has previously agreed to receive a copy of the notice of disconnection, contacting the Public Utility Commission or such other local government unit as the commission shall, by rule or regulation, designate.*

Section 11. Section 409 of the act, subsection (a) amended September 28, 1938 (Sp.Sess. P.L.44, No.19), subsection (b) amended July 9, 1971 (P.L.217, No.40) and amended May 22, 1972 (P.L.301, No. 79), and subsection (d) amended May 25, 1945 (P.L.1012, No.388), is amended and subsections are added to read:

Section 409. Construction, Improvement, Protection, **Suspension**, and Abolition of Crossings; Recording.—(a) No public utility engaged in the transportation of passengers or property, shall, without prior order of the commission, construct its facilities across the facilities of any other such public utility or across any highway at grade or above or below grade, or at the same or different levels; and no highway, without like order, shall be so constructed across the facilities of any such public utility, and, without like order, no such crossing heretofore or hereafter constructed shall be altered, relocated, **suspended** or abolished.

(b) The commission is hereby vested with exclusive power to appropriate property for any such crossing, except as to such property as has been or may hereafter be condemned by the Secretary of Transportation for Federal Aid Projects under section 1004 of the act of June 1, 1945 (P.L.1242, No.428), known as the "State Highway Law," or any amendment, supplement or reenactment thereof, in which case the

provisions of that act shall be in effect, and to determine and prescribe, by regulation or order, the points at which, and the manner in which, such crossing may be constructed, altered, relocated, *suspended* or abolished, and the manner and conditions in or under which such crossings shall be maintained, operated, and protected to effectuate the prevention of accidents and the promotion of the safety of the public. The commission shall require every railroad the right-of-way of which crosses a public highway at grade to cut or otherwise control the growth of brush and weeds upon property owned by the railroad within two hundred feet of such crossing on both sides and in both directions so as to ensure proper visibility by motorists.

(c) Upon its own motion or upon complaint, the commission shall have exclusive power after hearing, upon notice to all parties in interest, including the owners of adjacent property, to order any such crossing heretofore or hereafter constructed to be relocated or altered, *or to be suspended* or to be abolished upon such reasonable terms and conditions as shall be prescribed by the commission. In determining the plans and specifications for any such crossing, the commission may lay out, establish, and open such new highways as, in its opinion, may be necessary to connect such crossing with any existing highway, or make such crossing more available to public use; and may abandon or vacate such highways or portions of highways as, in the opinion of the commission, may be rendered unnecessary for public use by the construction, relocation, or abandonment of any of such crossings. The commission may order the work of construction, relocation, alteration, protection, *suspension* or abolition of any crossing aforesaid to be performed in whole or in part by any public utility or municipal corporation concerned or by the Commonwealth.

(d) When any real property is appropriated by the commission under this section, each parcel of such property so appropriated, shall be accurately described by metes and bounds, and the record owner of each such parcel shall be named in the order of appropriation. The commission shall file with the recorder of deeds of the proper county, a copy of that portion of the order of the commission which appropriates such property, and such plans and other detailed information as the commission may deem necessary. Such portion of the commission's order dealing with the specific property appropriated shall be recorded and indexed under the name or names of the record owners of such specific property at the expense of the utility or utilities, political subdivision, municipality or municipalities, governmental agency, including the Department of **[Highways] Transportation** and Public Utility Commission, corporation or persons upon whose instigation, petition or complaint the said crossing was constructed, reconstructed, relocated, altered, *suspended* or abolished, as may be ordered, to bear such expense of recording by the commission: Provided, That when such appropriation of real property has been recorded under the provisions of any other statute, such recording shall not be duplicated under the terms of this section.

(e) The commission may, within its discretion upon petition by any railroad, the Commonwealth, a political subdivision or any other affected party by order reactivate any crossing suspended under this section.

(f) Upon the commission's finding of an immediate danger to the safety and welfare of the public at any such crossing, the commission shall order the crossing to be immediately altered, improved, or suspended. Thereafter hearing shall be held and costs shall be allocated in the manner prescribed in this act.

(g) Any order of suspension under this section shall require the following for the protection of the motoring public:

(1) removal or covering of crossing warning devices; and

(2) either

(i) paving over the tracks; or

(ii) removal of the tracks and paving over of the area formerly occupied by said tracks; or

(iii) barricading the crossing.

Section 12. Subsections (a) and (c) of section 503 of the act are amended to read:

Section 503. Depreciation Accounts; Reports.—(a) Every public utility shall carry on its books or records of account, proper and reasonable sums representing the annual depreciation on its property used or useful in the public service, which sums shall be based upon the average estimated life of each of the several units or classes of depreciable property. The commission, by appropriate order, after hearing, **[may] shall, except where found to be inappropriate**, establish for each class of public utilities, the units of depreciable property, the loss upon the retirement of which shall be charged to the depreciation reserve.

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

Section 13. Section 701 of the act is repealed.

Section 14. The act is amended by adding a section to read:

Section 701.1. Affiliated Interests; Contracts for Services; Filing With Commission and Commission Power.—(a) As used in this section the words or phrases "affiliated interests" with a public utility means and includes the following:

(1) Every corporation and person owning or holding directly or indirectly five per centum or more of the voting securities of such public utility.

(2) Every corporation and person in any chain of successive ownership of five per centum or more of voting securities.

(3) Every corporation five per centum or more of whose voting securities are owned by any person or corporation owning five per centum

or more of the voting securities of such public utility or by any person or corporation in any such chain of successive ownership of five per centum or more of voting securities.

(4) Every person who is an officer or director of such public utility or of any corporation in any chain of successive ownership of five per centum or more of voting securities.

(5) Every corporation operating a public utility or a servicing organization for furnishing supervisory, construction, engineering, accounting, legal and similar services to utilities, which has one or more officers or one or more directors in common with such public utility, to every other corporation which has directors in common with such public utility where the number of such directors is more than one-third of the total number of the utility's directors.

(6) Every corporation or person which the commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of such public utility even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section. As used in this act substantial influence shall mean any corporation or person who stands in such relationship to the public utility that there is an absence of free and equal bargaining power between him or it and the public utility.

(7) Every person or corporation who or which the commission may determine as a matter of fact after investigation and hearing is actually exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more other corporations and/or persons with which or whom they are related by ownership and/or blood relationship or by action in concert that together they are affiliated with such public utility within the meaning of this section even though no one of them alone is so affiliated.

The term "person" shall not be construed to exclude trustees, lessees, holders of beneficial equitable interest, voluntary associations, receivers, and partnerships.

(b) No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this act between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission. If such contract is oral, a complete statement of the terms and conditions thereof shall be filed with the commission and subject to its approval.

(c) It shall be the duty of every public utility to file with the commission a verified copy of any such contract or arrangement, or a verified summary as described above of any such unwritten contract or arrangement. All such

contracts and arrangements, where written or unwritten, entered into prior to the effective date of this act and required to be on file with the commission by prior act and in full force and effect at the effective date of this act shall be subject to the provisions of the sections regarding affiliated interests. The commission shall approve such contract or arrangement made or entered into after the effective date of this act only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest: Provided, That, if, at the end of thirty days after the filing of a contract or arrangement, no order of rejection has been entered, such contract or arrangement, whether written or unwritten, shall be deemed, in fact and law, to have been approved: Provided further, That the commission may, by written order, giving reasons therefor, extend the thirty day consideration period. No such contract or arrangement shall receive the commission's approval unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein to the public utility. No proof shall be satisfactory within the meaning of the foregoing sentence unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom as the commission may deem adequate, properly identified and duly authenticated: Provided, however, That the commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

(d) If the commission shall determine that the amounts paid or payable under a contract or arrangement filed in accordance with this section are in excess of the reasonable price for furnishing the services provided for in the contract, or that such services are not reasonably necessary and proper, it shall disallow such amounts, in so far as found excessive, in any proceeding involving the rates or practices of the public utility. In any proceeding involving such amounts, the burden of proof to show that such amounts are not in excess of the reasonable price for furnishing such services, and that such services are reasonable and proper, shall be on the public utility.

Section 15. Section 702 of the act is repealed.

Section 16. The act is amended by adding a section to read:

Section 702.1. Exclusions to Written Approval; Continuing Supervision.—(a) The provisions requiring the written approval of the commission shall not apply to transactions with affiliated interests of any common carrier by railroad or motor vehicle that is subject to the Interstate Commerce Act, 24 Stat.379 and 49 Stat.543, unless required by order of the commission, nor where the amount of consideration involved is not in excess of ten thousand dollars or five per centum of the par value of outstanding common stock, whichever is smaller: Provided, however, That regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within the aforesaid exemption: And,

provided further, That where the commission has given its approval generally as to a class or category of transactions, the commission may apply such approval to all subsidiary or related transactions. Such transactions shall be valid or effective without commission approval under this section. However, in any proceeding involving the rates or practices of the public utility, the commission may disallow any payment or compensation made pursuant to such transaction unless the public utility shall establish the reasonableness of such payment or compensation.

(b) The commission shall have continuing supervisory control over the terms and conditions of contracts and arrangements as described in this section and section 701.1 so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as it has over such original contracts and arrangements. The fact that the commission shall have approved entry into such contracts or arrangements shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement it appears that the payments provided for or made were or are unreasonable.

Section 17. Section 705 of the act is repealed.

Section 18. The act is amended by adding sections to read:

Section 705.1. Effect on Rates.—In any proceeding, upon the commission's own motion, or upon application or complaint, involving rates or practices of any public utility, the commission may disallow, in whole or in part, any payment or compensation to an affiliated interest for any services rendered or property or service furnished, or any property, right, or thing received by such public utility, or donation given or received, under existing contracts or arrangements with such affiliated interest unless such public utility shall establish the reasonableness thereof. In such proceeding no payment shall be approved or allowed by the commission, in whole or in part, unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the service, property, security, right or thing to the public utility. No proof shall be satisfactory, within the meaning of the foregoing sentence, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom as the commission may deem adequate, properly identified and duly authenticated: Provided, however, That the commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

Section 706.1. Federal Regulatory Agencies.—The provisions of article seven 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 nothing contained herein shall prohibit the commission from regulation of the volume of such purchases.

Section 19. Section 1001 of the act is amended to read:

Section 1001. Complaints.—The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission. Any public utility, or other person, or corporation, subject to this act, likewise may complain of any regulation or order of the commission, which the complainant is or has been required by the commission to observe or carry into effect. *The Commonwealth through the Attorney General may be a complainant before the commission in any matter solely as an advocate for the Commonwealth as a consumer of public utility services.* The commission, by regulation, may prescribe the form of complaints filed under this section.

Section 20. Sections 1101, 1102, 1103, 1104, 1105, 1106, 1107 (except the last sentence) and 1108 of the act are repealed absolutely.

Section 21. Sections 1110 and 1112 of the act, repealed in part, June 3, 1971 (P.L.118, No.6), are amended to read:

Section 1110. Right to Trial by Jury.—Nothing in this act contained shall be construed to deprive any party, upon any **[such appeal and]** judicial review of the proceedings and orders of the commission, of the right to trial by jury of any issue of fact raised thereby or therein, where such right is secured either by the Constitution of the Commonwealth or of the United States, but in every such case such right of trial by jury shall remain inviolate: Provided, however, That when any **[appeal is taken] judicial review is sought**, such right shall be deemed to be waived upon all issues, unless expressly reserved in such reasonable manner as shall be prescribed by **[the Court] general rule**.

Section 1112. Effect of Commission Action.—Whenever the commission shall make any rule, regulation, finding, determination, or order under the provisions of this act, the same shall be prima facie evidence of the facts found, and shall remain conclusive upon all parties affected thereby, unless set aside, annulled, or modified **[in an appeal taken as provided in this act] on judicial review**.

Section 22. Subsection (a) of section 1201 of the act, amended March 3, 1972 (P.L.90, No.33), is amended to read:

Section 1201. Assessment of Regulatory Expenses Upon Public Utilities.—(a) Before **[July] March** first of each year, the commission shall estimate its total expenditures in the administration of this act for the fiscal year beginning **[that date] July of that year**, which estimate shall not exceed **[two-tenths] three-tenths** of one per centum of the total gross intrastate operating revenues of the public utilities under its jurisdiction for the preceding calendar year. Such estimate shall be submitted to the Governor, and to the Appropriation Committees of the House and Senate through their respective chairmen, for their respective approvals of such

estimate in the amount submitted or such lesser amount as each of them may determine: Provided, That if the Governor or either committee, through its chairman, shall not notify the commission in writing of his or its action within thirty days after such submission, the estimate as submitted shall be deemed approved by him or by such committee as the case may be. The least of the amounts so approved by the three approving authorities shall be the final estimate; and approval of such least amount shall constitute compliance with section 604 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929." The commission shall subtract from the final estimate (1) the estimated fees to be collected pursuant to sections 1202 and 1203 during such fiscal year and (2) the estimated balance of the appropriation, specified in section 1204, to be carried over into such fiscal year from the preceding one. The remainder so determined, herein called the total assessment, shall be allocated to, and paid by, such public utilities in the manner hereafter prescribed. The commission or its designated representatives shall [**when requested,**] **be afforded an opportunity to appear before the Senate and House Appropriation Committees regarding their estimates. Within thirty days of enactment of this section, the commission may compute a supplemental estimate of its expenditures for fiscal year 1976-77, which estimates shall not exceed one-tenth of one percent of the total gross intrastate operating revenues for the preceding calendar year multiplied by the ratio which the number of days then remaining in fiscal year 1976-77 bears to the total number of days in fiscal year 1976-77. Such estimates shall be submitted to the Governor and to the Appropriation Committees of the House and Senate, through their respective chairmen, for their respective approvals within sixty days of enactment, in accordance with the procedures set forth in this subsection. The amount approved, herein called the supplemental assessment, shall be allocated to, and paid by, such public utilities in the manner below provided for the total assessment.**

* * *

Section 23. Section 1202 of the act is repealed.

Section 24. The act is amended by adding a section to read:

Section 1202.1. Fee Changes and Approval.—The commission shall by rule establish on a reasonable cost basis the fees to be charged and collected for the following services: For copies of paper, testimony, and records; for certifying a copy of any paper, testimony, or record; for preparing and certifying to the Commonwealth Court any record in appeal; and for the filing of each securities certificate, or each application for a certificate of public convenience, registration certificate, permit or license.

Section 25. Subsection (a) of section 1301 of the act, amended July 3, 1941 (P.L. 267, No. 122), is amended to read:

Section 1301. Civil Penalties for Violations by Public Utilities.—(a) If any public utility, or any other person or corporation subject to this act, shall violate any of the provisions of this act, or shall do

any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this act; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, or any order of the commission prescribing temporary rates in any rate proceeding; or to comply with any final judgment, order or decree made by any court, such public utility, person or corporation for such violation, omission, failure, neglect, or refusal, shall forfeit and pay to the Commonwealth of Pennsylvania **[the sum of fifty dollars] a sum not exceeding one thousand dollars**; to be recovered by an action of assumpsit instituted in the name of the Commonwealth of Pennsylvania, in the **[court of common pleas of Dauphin County, which court is hereby clothed with exclusive jurisdiction throughout the Commonwealth to hear and determine all such actions] Commonwealth Court**. In construing and enforcing the provisions of this section, the violation, omission, failure, neglect, or refusal of any officer, agent, or employe acting for, or employed by, any such public utility, person or corporation shall, in every case be deemed to be the violation, omission, failure, neglect, or refusal of such public utility, person or corporation.

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Section 26. Section 1302 of the act is amended to read:

Section 1302. Penalties for Violations by Officers, Agents or Employes.—Any person (whether or not an officer, agent, or employe, of any public utility) or any corporation, who or which shall knowingly fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final order, direction, or requirement of the commission, or any order of the commission prescribing temporary rates in any rate proceeding, or any final order or decree of any court, or who shall knowingly procure, aid, or abet any such violation, omission, failure, neglect, or refusal, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay the costs of prosecution and a fine of not more than **[five hundred dollars] five thousand dollars**, or undergo imprisonment for not less than one month nor more than one year, or both, at the discretion of the court; and upon conviction of any subsequent offense shall be sentenced to pay the costs of prosecution and a fine of not more than **[one thousand dollars] ten thousand dollars**, or undergo imprisonment for not less than three months nor more than two years, or both, at the discretion of the court.

Section 27. Section 1311 of the act, amended May 29, 1951 (P.L.494, No.118), is amended to read:

Section 1311. Violations by Motor Carriers, Common Carriers by Airplane or Brokers.—Any person or corporation operating as a motor carrier or as a common carrier by airplane, and any operator or employe of such carrier, and any person or corporation operating as a broker, without a certificate of public convenience, permit or license, authorizing the service performed, as required by this act, shall, upon conviction of a first or second offense in a summary proceeding before any person having the

power of a committing magistrate, be sentenced to pay the costs of prosecution and a fine of not less than **[twenty-five dollars] one hundred dollars** nor more than **[three hundred dollars] five hundred dollars**, and in default of the payment of such fine and costs of prosecution, to undergo imprisonment not exceeding thirty days; and any subsequent offense by such person or corporation shall constitute a misdemeanor, and, upon conviction thereof, such person or corporation shall be sentenced to pay the costs of prosecution and a fine of not less than **[one hundred dollars] five hundred dollars** nor more than **[five hundred dollars] five thousand dollars**, or undergo imprisonment not exceeding six months, or both, in the discretion of the court. Whenever imprisonment is imposed under this section, the term "person" or "corporation" as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

Section 28. Section 1315 of the act, amended July 3, 1941 (P.L.267, No.122), is amended to read:

Section 1315. Penalties for Violations by Officers, Agents, Employes, Shippers, or Consignees.—Any person, whether carrier, shipper, consignee, or broker, or any officer, employe, agent, or representative thereof, who shall knowingly offer, grant, or give, or solicit, accept, or receive any rebate, concession, or discrimination, in violation of any provision of this act with respect to motor carriers, or who, by means of false statements or representations or by use of false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and wilfully, assist, suffer or permit any person or persons, natural or artificial, to obtain transportation of property by motor carrier subject to this act, for less than the applicable rate, fare or charge, or who shall knowingly and wilfully, by any such means, or otherwise seek to evade or defeat regulation in this act provided for motor carriers or brokers, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not more than **[fifty (\$50) dollars] five hundred (\$500) dollars** for the first offense, and not more than **[one hundred (\$100) dollars] one thousand (\$1,000) dollars** for any subsequent offense.

Section 29. This act shall take effect immediately except that section 20 shall not take effect prior to July 1, 1976 and that sections 4 and 5 of this act shall take effect one year after the date of this act.

APPROVED—The 7th day of October, A. D. 1976.

MILTON J. SHAPP