

No. 1984-74

AN ACT

HB 132

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for commission powers and duties relating to the use of coal; prohibiting certain natural gas utilities from utilizing a sliding scale of rates to recover natural gas costs; and further providing for procedures and standards for regulating the rates of natural gas utilities.

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

Section 1. Title 66 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 514. *Use of coal.*

(a) *Upgrading capability to use coal.*—*The commission shall require utilities to uprate their electric power production by upgrading the capability to use coal in existing coal-fueled plants where economically feasible.*

(b) *Incentive for uprating.*—*The commission shall develop a special cost recovery and shared benefits procedure for electric utilities and their ratepayers as an incentive to implement upratings as provided in subsection (a).*

Section 2. Section 1307(a) and (b) of Title 66 are amended and subsections are added to read:

§ 1307. Sliding scale of rates; adjustments.

(a) *General rule.*—*Any public utility, except [a common carrier] common carriers and those natural gas distributors with gross intrastate annual operating revenues in excess of \$40,000,000 with respect to the gas costs of such natural gas distributors, may establish a sliding scale of rates or such other method for the automatic adjustment of the rates of the public utility as shall provide a just and reasonable return on the fair value of the property used and useful in the public service, to be determined upon such equitable or reasonable basis as shall provide such fair return. A tariff showing the scale of rates under such arrangement shall first be filed with the commission, and such tariff, and each rate set out therein, approved by it. The commission may revoke its approval at any time and fix other rates for any such public utility if, after notice and hearing, the commission finds the existing rates unjust or unreasonable.*

(b) *Mandatory system for automatic adjustment.*—*The commission, by regulation or order, upon reasonable notice and after hearing, may prescribe for any class of public utilities, except [a common carrier] common carriers and those natural gas distributors with gross intrastate annual operating revenues in excess of \$40,000,000, a mandatory system for the automatic adjustment of their rates, by means of a sliding scale of rates or other method, on the same basis as provided in subsection (a), to become effective when and in the manner prescribed in such regulation or order. Every such public utility*

shall, within such time as shall be prescribed by the commission, file tariffs showing the rates established in accordance with such regulation or order.

* * *

(f) Recovery of natural gas costs.—

(1) Natural gas distributors with gross intrastate annual operating revenues in excess of \$40,000,000 may file tariffs reflecting increases or decreases in their natural gas costs and the tariffs shall have an effective date six months from the date of filing.

(2) The commission shall hold a hearing or hearings in the distributor's service area, with notice, to investigate the tariffs. Prior to the effective date of the filing, the commission shall issue a final order establishing the rate to be charged to reflect such increases or decreases in natural gas costs. Rates established under this subsection do not constitute either a sliding scale of rates or an automatic adjustment subject to the prohibitions in subsections (a) and (b). Such rates, however, are subject to the same kinds of audits, reports and proceedings required by subsections (d) and (e). In addition to the reports required by subsections (d) and (e), gas distribution companies subject to this subsection shall:

(i) Submit evidence in the form of testimony or some other manner showing how actual costs are different from costs allowed under this subsection.

(ii) Show how these costs are consistent with a least cost procurement policy as required by section 1318 (relating to determination of just and reasonable natural gas rates).

The commission shall allow these companies to recover the difference in these costs only after a hearing on the matter, if the commission makes a finding that the difference in costs was consistent with the requirements of section 1318.

(g) Definition.—As used in this section the term "natural gas" includes natural gas, liquified natural gas, synthetic natural gas and any natural gas substitutes.

Section 3. Title 66 is amended by adding sections to read:

§ 1317. Regulation of natural gas costs.

(a) General rule.—In every rate proceeding instituted by a natural gas distribution utility, pursuant to section 1307(f) (relating to sliding scale of rates; adjustments), each such utility shall be required to provide to the commission such information, to be established by commission regulation within 120 days of the passage of this section, that will permit the commission to make specific findings as to whether the utility is pursuing a least cost fuel procurement policy, consistent with the utility's obligation to provide safe, adequate and reliable service to its customers. Such information shall include, but need not be limited to, information, data and statements regarding:

(1) The utility's participation in rate proceedings before the Federal Energy Regulatory Commission which affect the utility's gas costs.

(2) The utility's efforts to negotiate favorable contracts with gas suppliers and to renegotiate existing contracts with gas suppliers or take legal

actions necessary to relieve the utility from existing contract terms which are or may be adverse to the interests of the utility's ratepayers.

(3) *The utility's efforts to secure lower cost gas supplies both within and outside of the Commonwealth, including the use of transportation arrangements with pipelines and other gas distribution companies.*

(4) *The sources and amounts of all gas supplies which have been withheld or have been caused to be withheld from the market by the utility and the reasons why such gas is not to be utilized.*

(b) *Integrated gas companies.—In the case of a natural gas distribution utility which purchases all or part of its gas supplies from an affiliated interest, as that term is defined in section 2101 (relating to definition of affiliated interest), such utility shall, in addition to the materials required in subsection (a), be required to provide to the commission such information, to be established by commission regulation within 120 days of the passage of this section, that will permit the commission to make specific findings as to whether any purchases of gas from an affiliated interest are consistent with a least cost fuel procurement policy, consistent with the utility's obligation to provide safe, adequate and reliable service to its customers. Such information shall include, but need not be limited to, statements regarding:*

(1) *Efforts made by the utility to obtain gas supplies from nonaffiliated interests.*

(2) *The specific reasons why the utility has purchased gas supplies from an affiliated interest and demonstration that such purchases are consistent with a least cost fuel procurement policy.*

(3) *The sources and amounts of all gas supplies which have been withheld from the market by the utility or any affiliated interest and the reasons why such gas is not being utilized.*

(c) *Definition.—As used in this section the term "natural gas" includes natural gas, liquified natural gas, synthetic natural gas and any natural gas substitutes.*

§ 1318. *Determination of just and reasonable natural gas rates.*

(a) *General rule.—In establishing just and reasonable rates for those natural gas distribution utilities with gross intrastate operating revenues in excess of \$40,000,000 under section 1307(f) (relating to sliding scale of rates; adjustments) or 1308(d) (relating to voluntary changes in rates) or any other rate proceeding, the commission shall consider the materials provided by the utilities pursuant to section 1317 (relating to regulation of natural gas costs). No rates for a natural gas distribution utility shall be deemed just and reasonable unless the commission finds that the utility is pursuing a least cost fuel procurement policy, consistent with the utility's obligation to provide safe, adequate and reliable service to its customers. In making such a determination, the commission shall be required to make specific findings which shall include, but need not be limited to, findings that:*

(1) *The utility has fully and vigorously represented the interests of its ratepayers in proceedings before the Federal Energy Regulatory Commission.*

(2) *The utility has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the utility from terms in existing contracts with its gas suppliers which are or may be adverse to the interests of the utility's ratepayers.*

(3) *The utility has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies.*

(4) *The utility has not withheld from the market or caused to be withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy.*

(b) *Limitation on gas purchased from affiliates.—In any instance in which a gas distribution utility purchases all or part of its gas supplies from an affiliated interest, as that term is defined in section 2101 (relating to definition of affiliated interest), the commission, in addition to the determinations and findings set forth in subsection (a), shall be required to make specific findings with regard to the justness and reasonableness of all such purchases. Such findings shall include, but not be limited to findings:*

(1) *That the utility has fully and vigorously attempted to obtain less costly gas supplies on both short-term and long-term bases from nonaffiliated interests.*

(2) *That each contract for the purchase of gas from its affiliated interest is consistent with a least cost fuel procurement policy.*

(3) *That neither the utility nor its affiliated interest has withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy.*

(c) *Shut-in gas; special rule.—In determining whether a gas utility has purchased the least costly natural gas available, the commission shall consider as available to the utility any gas supplies that reasonably could have been brought to market during the relevant period but which were voluntarily withheld from the market by the utility or an affiliated interest of the utility.*

(d) *Other regulatory approvals.—The fact that a contract or rate has been approved by a Federal regulatory agency for interstate ratemaking purposes shall not, in and of itself, be adequate to satisfy the utility's burden of proof that gas prices and volumes associated with such contract or rate are just and reasonable for purposes of this section.*

(e) *Reports.—Each natural gas distribution utility with gross intrastate annual operating revenues in excess of \$40,000,000 shall file with the commission and the Office of Consumer Advocate, in accordance with regulations to be prescribed by the commission, quarterly reports setting forth the actual gas costs incurred by the utility on a monthly basis. Actual gas costs shall be reviewed for their accuracy by the Bureau of Audits at least annually and the results of that review shall be submitted to the commission.*

(f) *Definition.—As used in this section the term "natural gas" includes natural gas, liquified natural gas, synthetic natural gas and any natural gas substitutes.*

Section 4. Section 2107 of Title 66 is amended to read:
§ 2107. Federal regulatory agencies.

The provisions of this chapter 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 the commission may regulate the volume of such purchases. *This section shall not apply to any proceeding under section 1317 (relating to regulation of natural gas costs) or 1318 (relating to determination of just and reasonable natural gas rates).*

Section 5. The provisions of this act shall be applicable to each natural gas distribution utility under commission jurisdiction no later than January 1, 1986. Until such time, such utilities shall remain subject to the provisions of 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments) in effect prior to this amendatory act and the regulations issued by the commission pursuant to that section for natural gas distribution utilities. The commission shall adopt regulations prescribing the method by which utilities are to reflect the gas costs previously collectible under the provisions of 66 Pa.C.S. § 1307(a) and (b) (relating to sliding scale of rates; adjustments), so that the transition in methods of collection required by this act does not, of itself, necessitate base rate or 66 Pa.C.S. § 1307(f) filings.

Section 6. This act shall take effect in 60 days.

APPROVED—The 31st day of May, A. D. 1984.

DICK THORNBURGH