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TITLE 66
PUBLIC UTILITIES

Part
I. Public Utility Code
II. Other Provisions (Reserved)

Enactment. Unless otherwise noted, the provisions of Part I were added July 1, 1978, P.L.598, No.116, effective in 60 days.

PART I
PUBLIC UTILITY CODE

Subpart
A. Preliminary Provisions
B. Commission Powers, Duties, Practices and Procedures
C. Regulation of Public Utilities Generally
D. Special Provisions Relating to Regulation of Public Utilities
E. Miscellaneous Provisions

Enactment. Unless otherwise noted, the provisions of Part I were added July 1, 1978, P.L.598, No.116, effective in 60 days.

SUBPART A
PRELIMINARY PROVISIONS

Chapter
1. General Provisions
3. Public Utility Commission

CHAPTER 1
GENERAL PROVISIONS

Sec.
101. Short title of part.
102. Definitions.
103. Prior rights preserved.
104. Interstate and foreign commerce.

Enactment. Chapter 1 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

§ 101. Short title of part.

This part shall be known and may be cited as the "Public Utility Code."

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"City natural gas distribution operation." A collection of real and personal assets used for distributing natural gas to retail gas customers owned by a city or a municipal authority, nonprofit corporation or public corporation formed pursuant to section 2212(m) (relating to city natural gas distribution operations).

"Commission." The Pennsylvania Public Utility Commission of this Commonwealth.

"Common carrier." Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by, through, over, above, or under land, water, or air, and shall include forwarders, but shall not include contract carriers by motor vehicles, or brokers, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis. The term does not include a transportation network company or a transportation network company driver.

"Common carrier by motor vehicle." As follows:

(1) Any common carrier who or which holds out or undertakes the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle for compensation, whether or not the owner or operator of such motor vehicle, or who or which provides or furnishes any motor vehicle, with or without driver, for transportation or for use in transportation of persons or property as aforesaid.

(2) The term includes:

(i) Common carriers by rail, water, or air, and express or forwarding public utilities insofar as such common carriers or such public utilities are engaged in such motor vehicle operations.

(ii) A person that holds itself out to provide or furnish transportation of household property between residential dwellings within this Commonwealth by motor vehicle for compensation, owns or operates the motor vehicle and provides or furnishes a driver of the motor vehicle with the transportation.

(3) The term does not include:

(i) A lessor under a lease given on a bona fide sale of a motor vehicle where the lessor retains or assumes no responsibility for maintenance, supervision, or control of the motor vehicles so sold.

(ii) Transportation of school children for school purposes or to and from school-related activities whether as participants or spectators, with their chaperones, or between their homes and Sunday school in any motor vehicle owned by the school district, private school or parochial school, or transportation of school children between their homes and school or to and from school-related activities whether as participants or spectators, with their chaperones, if the person performing the school-related transportation has a contract for the transportation of school children between their homes and school, with the private or parochial school, with the school district or jointure in which the school is located, or with a school district that is a member of a jointure in which the school is located if the jointure has no contracts with other persons for the transportation of students between their homes and school, and if the person maintains a copy of all contracts in the vehicle at all times, or children between their homes and Sunday school in any motor vehicle operated under contract with the school district, private school or parochial school. Each school district shall adopt regulations regarding the number of chaperones to accompany students in connection with school-related activities.

(iii) Any owner or operator of a farm transporting agricultural products from, or farm supplies to, such farm, or any independent contractor or cooperative agricultural association hauling agricultural products or farm supplies exclusively for one or more owners or operators of farms.

(iv) Any person or corporation who or which uses, or furnishes for use, dump trucks for the transportation of ashes, rubbish, excavated and road construction materials. This paragraph does not include the use or furnishing of five-axle tractor trailers.

(v) Transportation of property by the owner to himself, or to purchasers directly from him, in vehicles owned and operated by the owner of such property and not otherwise used in transportation of property for compensation for others.

(vi) Transportation of voting machines to and from polling places by any person or corporation for or on behalf of any political subdivision of this Commonwealth for use in any primary, general, municipal or special election.

(vii) Transportation of pulpwood, chemical wood, saw logs or veneer logs from woodlots.

(viii) Transportation by towing of wrecked or disabled motor vehicles.

(ix) Any person or corporation who or which furnishes transportation for any injured, ill or dead person.

(x) A person or entity that is any of the following:

(A) A transportation network company.

(B) A transportation network company driver.

(xi) A motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely packed, loaded, unloaded or unpacked by an individual other than an employee or agent of the motor carrier.

"Corporation." All bodies corporate, joint-stock companies, or associations, domestic or foreign, their lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations, except as otherwise expressly provided in this part, nor bona fide cooperative associations which furnish service on a nonprofit basis only to their stockholders or members.

"Customer's service line." The pipe and appurtenances owned by the customer extending from the service connection of the gas utility to the inlet of the meter serving the customer.

"Digital network." Any online-enabled application, software, website or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers.

"Dual motor carrier." A call or demand carrier operating under a certificate of public convenience and providing transportation network services pursuant to a license from the commission. For purposes of this chapter, only certificated call or demand carriers may file an application with the commission requesting a license to operate a transportation network service as a dual motor carrier.

"Dual motor carrier driver." An individual who:

(1) receives connections to potential passengers and related services from a dual motor carrier in exchange for payment of a fee to the dual motor carrier; and

(2) uses a personal vehicle to offer or provide a prearranged ride to passengers upon connection through a digital network controlled by a dual motor carrier in return for compensation or payment of a fee.

"Dynamic pricing." A transportation network company's practice of adjusting the calculation used to determine fares at certain times and locations in response to the supply of transportation network company drivers and the demand for transportation network services.

"Facilities." All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility. Property owned by the Commonwealth or any municipal corporation prior to June 1, 1937, shall not be subject to the commission or to any of the terms of this part, except as elsewhere expressly provided in this part.

"Forwarder." Any person or corporation not included in the terms "motor carrier" or "broker" who or which issues receipts or billings for property received by such person or corporation for transportation, forwarding, or consolidating, or for distribution by any medium of transportation or combination or media of transportation, other than solely by motor vehicle.

"Highway." A way or place of whatever nature open to the use of the public as a matter of right for purposes of vehicular traffic.

"Motor carrier." A common carrier by motor vehicle, and a contract carrier by motor vehicle. The term does not include a transportation network company or a transportation network company driver.

"Motor vehicle." Any vehicle which is self-propelled, excepting power shovels, tractors other than truck tractors, road rollers, agricultural machinery, and vehicles which solely move upon or are guided by a track, or travel through the air.

"Municipal corporation." All cities, boroughs, towns, townships, or counties of this Commonwealth, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.

"Person." Individuals, partnerships, or associations other than corporations, and includes their lessees, assignees, trustees, receivers, executors, administrators, or other successors in interest.

"Personal vehicle." As follows:

(1) A vehicle that is used by a transportation network company driver and is owned, leased or otherwise authorized for use by the transportation network company driver.

(2) The term does not include:

(i) a call or demand service or limousine service as defined under 53 Pa.C.S. § 5701 (relating to definitions);

(ii) a common carrier, common carrier by motor vehicle or motor carrier;

(iii) a broker or contract carrier by motor vehicle as defined under section 2501(b) (relating to declaration of policy and definitions); or

(iv) a vehicle operated under a ridesharing arrangement or by a ridesharing operator as defined under the act of December 14, 1982 (P.L.1211, No.279), entitled "An act providing for ridesharing arrangements and providing that certain laws shall be inapplicable to ridesharing arrangements."

"Prearranged ride." The provision of transportation by a transportation network company driver to a passenger, beginning when a transportation network company driver accepts a ride requested by a passenger through a digital network, continuing while the driver transports the passenger and ending when the last passenger departs from the personal vehicle. A prearranged ride does not include:

(1) transportation provided using a call or demand service or limousine service as defined under 53 Pa.C.S. § 5701 (relating to definitions);

(2) a common carrier, common carrier by motor vehicle or motor carrier, unless a prearranged ride is provided by a dual motor carrier;

(3) a broker or contract carrier by motor vehicle as defined under section 2501(b) (relating to declaration of policy and definitions); or

(4) a driver operating under a ridesharing arrangement or a ridesharing operator as defined under the act of December 14, 1982 (P.L.1211, No.279), entitled "An act providing for ridesharing arrangements and providing that certain laws shall be inapplicable to ridesharing arrangements."

"Public utility."

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

(ii) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.

(iii) Transporting passengers or property as a common carrier.

(iv) Use as a canal, turnpike, tunnel, bridge, wharf, and the like for the public for compensation.

(v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

(vi) Conveying or transmitting messages or communications, except as set forth in paragraph (2)(iv), 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.

(vii) Wastewater collection, treatment, or disposal for the public for compensation.

(viii) Providing limousine service in a county of the second class pursuant to Subchapter B of Chapter 11 (relating to limousine service in counties of the second class).

(2) The term does not include:

(i) Any person or corporation, not otherwise a public utility, who or which furnishes service only to himself or itself.

(ii) Any bona fide cooperative association which furnishes service only to its stockholders or members on a nonprofit basis.

(iii) Any producer of natural gas not engaged in distributing such gas directly to the public for compensation.

(iv) Any person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service.

(v) Any building or facility owner/operators who hold ownership over and manage the internal distribution system serving such building or facility and who supply electric power and other related electric power services to occupants of the building or facility.

(vi) Electric generation supplier companies, except for the limited purposes as described in sections 2809 (relating to requirements for electric generation suppliers) and 2810 (relating to revenue-neutral reconciliation).

(vii) Service as follows:

(A) Any water or sewer service provided to independently owned user premises by a person or corporation that owns and operates as a primary business a resort where:

(I) the service provided is from a point within the boundaries of the resort's property and is provided to no more than 100 independently owned user premises for each type of service;

(II) the service is verified by the resort, in a form and manner prescribed by the commission, to be incidental to the supplier's primary resort business as evidenced by the gross annual revenues derived from each type of service provided to independently owned user premises being less than 1% of the annual gross revenues of the primary resort business;

(III) rates to independently owned user premises do not exceed the average of the rates for comparable service provided by two municipal corporations or municipal authorities or any combination of the two that are reasonably proximate to the resort or within the same county if rural;

(IV) service will not be terminated to any independently owned user premises in the resort, unless termination is requested by the user, is necessary due to nonpayment or to prevent misuse of the system by a user which impairs or jeopardizes service to other users and the resort, or if termination is directed by law, regulation or by a Federal or State agency or governmental body;

(V) the water and sewer service provided to the independently owned user premises is the same service that the resort owner provides to itself or its affiliates;

(VI) the resort adopts a resolution providing that it will not serve any additional independently owned user premises except if

lawfully directed by any Federal or State agency or governmental body to protect public health and safety due to an emergency such as contamination or failure of existing supply, and does not revoke or amend such resolution without first notifying the secretary of the commission in writing 30 days in advance of such proposed revocation or amendment; and

(VII) disputes between an independently owned user premises and the resort are resolved by the applicable court system.

(B) For purposes of this subparagraph:

(I) The term "resort" means a place or business visited primarily for leisure or vacation that offers or provides lodging, entertainment, hospitality, dining, recreational facilities or activities for guests, business conferees, members or residents.

(II) The term "independently owned user premises" means a structure not owned by the resort or its affiliates, including a structure intended to be used as a seasonal residence, served from a point within the boundaries of a resort and to which a resort owner or its affiliates provides water or sewer service.

(3) For the purposes of sections 2702 (relating to construction, relocation, suspension and abolition of crossings), 2703 (relating to ejectment in crossing cases) and 2704 (relating to compensation for damages occasioned by construction, relocation or abolition of crossings) and those portions of sections 1501 (relating to character of service and facilities), 1505 (relating to proper service and facilities established on complaint; authority to order conservation and load management programs) and 1508 (relating to reports of accidents), as those sections or portions thereof relate to safety only, a municipal authority or transportation authority organized under the laws of this Commonwealth shall be considered a public utility when it owns or operates, for the carriage of passengers or goods by rail, a line of railroad composed of lines formerly owned or operated by the Pennsylvania Railroad, the Penn-Central Transportation Company, the Reading Company or the Consolidated Rail Corporation.

"**Railroad.**" Every railroad, other than a street railway, by whatsoever power operated, for public use in the conveyance of passengers or property, or both, and all the facilities thereof.

"**Rate.**" Every individual, or joint fare, toll, charge, rental, or other compensation whatsoever of any public utility, or contract carrier by motor vehicle, made, demanded, or received for any service within this part, offered, rendered, or furnished by such public utility, or contract carrier by motor vehicle, whether in currency, legal tender, or evidence thereof, in kind, in services or in any other medium or manner whatsoever, and whether received directly or indirectly, and any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll, or rental.

"**Rate base.**" The value of the whole or any part of the property of a public utility which is used and useful in the public service.

"**Service.**" Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any

and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them, but shall not include any acts done, rendered or performed, or any thing furnished or supplied, or any facility used, furnished or supplied by public utilities or contract carriers by motor vehicle in the transportation of voting machines to and from polling places for or on behalf of any political subdivision of this Commonwealth for use in any primary, general or special election, or in the transportation of any injured, ill or dead person, or in the transportation by towing of wrecked or disabled motor vehicles, or in the transportation of pulpwood or chemical wood from woodlots.

"**Service line.**" The pipe and appurtenances of the gas utility, water utility or wastewater utility which connect any main with either the point of connection of a customer's service line or the meter of the public utility if the utility owns all the pipe and appurtenances between its main and meter.

"**Street railway.**" Every railroad and railway, or any extension or extensions thereof, by whatsoever power operated, for public use in the conveyance of passengers or property, or both, located mainly or in part upon, above, below, through, or along any highway in any city, borough, or town, and not constituting or used as a part of a trunk line railroad system, and all the facilities thereof.

"**Tariff.**" All schedules of rates, all rules, regulations, practices, or contracts involving any rate or rates, including contracts for interchange of service, and, in the case of a common carrier, schedules showing the method of distribution of the facilities of such common carrier.

"**Transportation network company**" or "**company.**" A person or entity licensed by the commission to operate a transportation network service in this Commonwealth and that uses a digital network to facilitate prearranged rides. The following shall apply:

(1) The term shall include a dual motor carrier.

(2) The term shall not include:

(i) A common carrier, common carrier by motor vehicle or motor carrier other than a dual motor carrier.

(ii) A company providing transportation under a ridesharing arrangement, as defined under the act of December 14, 1982 (P.L.1211, No.279), entitled "An act providing for ridesharing arrangements and providing that certain laws shall be inapplicable to ridesharing arrangements."

"**Transportation network company driver**" or "**driver.**" As follows:

(1) An individual who:

(i) receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and

(ii) uses a personal vehicle to offer or provide a prearranged ride to passengers upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

(2) The term shall include a dual motor carrier driver.

(3) The term shall not include an individual who receives only reimbursement for actual expenses incurred during the provision of transportation.

"**Transportation network company passenger**" or "**passenger**." A person who uses a digital network to connect with a transportation network driver who provides prearranged rides to the passenger in the driver's personal vehicle between points chosen by the passenger.

"**Transportation network service**" or "**service**."

(1) A service which meets all of the following:

(i) Matches a passenger and transportation network company driver using a digital network in advance of a prearranged ride.

(ii) Is characterized by a transportation network company driver offering or providing a prearranged ride to a passenger.

(iii) Is rendered on an exclusive basis. For purposes of this paragraph, the term "exclusive basis" means a transportation network service on a given prearranged ride when each individual, party or group may not be required to ride with another passenger on that prearranged ride unless the individual, party or group consents to additional passengers on the prearranged ride.

(2) The term includes the periods when:

(i) A driver is logged onto a transportation network company's digital network and available for service.

(ii) A driver is conducting a prearranged ride.

"**Transportation of passengers or property**." Any and all service in connection with the receiving, transportation, elevation, transfer in transit, ventilation, refrigeration, icing, storage, handling, and delivering of property, baggage or freight, as well as any and all service in connection with the transportation or carrying of passengers, but shall not mean any service in connection with the receiving, transportation, handling or delivering of voting machines to and from polling places for or on behalf of any political subdivision of this Commonwealth for use in any primary, general or special election, or the transportation of any injured, ill or dead person, or the transportation by towing of wrecked or disabled motor vehicles, or the transportation of pulpwood or chemical wood from woodlots.

"**Wastewater**." Any used water and water-carried solids collected or conveyed by a sewer, including:

(1) Sewage, as defined in section 2 of the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act.

(2) Industrial waste originating from an establishment. For the purposes of this paragraph, the terms "industrial waste" and "establishment" shall be as defined in section 1 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

(3) Infiltration or inflow into sewers.

(4) Other water containing solids or pollutants.

(5) Storm water which is or will become mixed with waters described under paragraph (1), (2), (3) or (4) within a combined sewer system.

The term does not include storm water collected in a municipal separate storm sewer, as that term is defined by 40 CFR 122.26(b)(8) (relating to storm water discharges (applicable to State NPDES programs, see § 123.25)), that does not flow into a combined sewer system.

(Mar. 7, 1984, P.L.104, No.22, eff. 60 days; Sept. 27, 1984, P.L.721, No.153, eff. 60 days; Dec. 21, 1984, P.L.1265, No.240, eff. imd.; Dec. 21, 1984, P.L.1270, No.241, eff. imd.; Oct. 10, 1985, P.L.257, No.62, eff. 60 days; June 30, 1988, P.L.481, No.81, eff. 60 days; Dec. 3, 1996, P.L.802, No.138, eff. Jan. 1, 1997; June 22, 1999, P.L.122, No.21, eff. June 30, 2000; Apr. 2, 2002, P.L.218, No.23, eff. imd.; Nov. 30, 2004, P.L.1578, No.201, eff. 14 days; June 23, 2016, P.L.362, No.50, eff. imd.; Nov. 4, 2016, P.L.1180, No.154, eff. imd.; Nov. 4, 2016, P.L.1222, No.164, eff. imd.; Dec. 22, 2017, P.L.1244, No.77, eff. 60 days; July 2, 2019, P.L.357, No.53, eff. 60 days)

2019 Amendment. Act 53 amended the def. of "service line."
2017 Amendment. Act 77 amended the def. of "common carrier by motor vehicle."
2016 Amendments. Act 50 amended the def. of "public utility," retroactive to January 1, 2009, Act 154 amended par. (1)(vii) of the def. of "public utility" and added the def. of "wastewater" and Act 164 amended the defs. of "common carrier" and "motor carrier," added par. (10) of the def. of "common carrier by motor vehicle" and added the defs. of "digital network," "dual motor carrier," "dual motor carrier driver," "dynamic pricing," "personal vehicle," "prearranged ride," "transportation network company" or "company," "transportation network company driver" or "driver," "transportation network company passenger" or "passenger" and "transportation network service" or "service."
2004 Amendment. Act 201 amended par. (4) of the def. of "common carrier by motor vehicle."
1999 Amendment. Act 21 added the def. of "city natural gas distribution operation."
1988 Amendment. Act 81 amended the def. of "common carrier by motor vehicle."
1984 Amendments. Act 22 added the defs. of "customer's service line" and "service line," Acts 153 and 240 added the def. of "rate base" and Act 241 amended the def. of "public utility." The amendments by Acts 153 and 240 are identical and therefore have been merged.
Cross References. Section 102 is referred to in sections 510, 1308, 1503, 1509, 1522, 2202, 2212, 3310 of this title; sections 103, 202, 204 of Title 26 (Eminent Domain); sections 8401, 9501 of Title 74 (Transportation); section 102 of Title 75 (Vehicles).

§ 103. Prior rights preserved.

(a) Existing law continued.--Except as otherwise specifically provided in this part, it is the intention of this part to continue existing law. Any public utility, contract carrier by motor vehicle, or broker rendering service or having the right to render service on the day preceding the effective date of this part shall be entitled to the full enjoyment and the exercise of all and every right, power and privilege which it lawfully possessed on that date.

(b) Existing proceedings, certificates, regulations, tariffs and contracts.--All litigation, hearings, investigations, and other proceedings whatsoever, pending under any repealed statute supplied by this part, shall continue and remain in full force and effect, and may be continued and completed under the provisions of this part. All certificates, permits, licenses, orders, rules, regulations or tariffs made, issued, or filed under any repealed statute supplied by this part, and in full force and effect upon the effective date of this part, shall remain in full force and effect for the term issued, or until

revoked, vacated, or modified under the provisions of this part. All existing contracts and obligations of the commission or its predecessor, entered into or created under any repealed statute supplied by this part, and in force and effect upon the effective date of this part, shall remain in full force and effect and shall continue to be performed by the commission.

(c) Remedies cumulative.--Except as otherwise provided in this part, nothing in this part shall abridge or alter the existing rights of action or remedies in equity or under common or statutory law of this Commonwealth, and the provisions of this part shall be cumulative and in addition to such rights of action and remedies.

Cross References. Section 103 is referred to in section 1102 of this title.

§ 104. Interstate and foreign commerce.

The provisions of this part, except when specifically so provided, shall not apply, or be construed to apply, to commerce with foreign nations, or among the several states, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

CHAPTER 3
PUBLIC UTILITY COMMISSION

Subchapter

A. General Provisions
B. Investigations and Hearings

Enactment. Chapter 3 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

Special Provisions in Appendix. See sections 14 and 15 of Act 114 of 1986 in the appendix to this title for special provisions relating to reestablishment and termination of commission.

Cross References. Chapter 3 is referred to in sections 515, 2603 of this title.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

301. Establishment, members, qualifications and chairman.
302. Removal of commissioner.
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304. Administrative law judges.
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§ 301. Establishment, members, qualifications and chairman.

(a) Appointment and terms of members.--The Pennsylvania Public Utility Commission, established by the act of March 31, 1937 (P.L.160, No.43), as an independent administrative commission, is hereby continued as such. Prior to the third Tuesday in January of 1987, the commission shall consist of five members who shall be appointed by the Governor, by and with the advice and consent of two-thirds of all the members of the Senate, for a term of ten years, provided that the term of any member appointed to fill a vacancy existing on the effective date of this amendatory act and prior to the third Tuesday in January of 1987 shall expire on March 31, 1987. Vacancies on April 1, 1987, shall be filled as follows: One term shall be until April 1, 1990, and one term shall be until April 1, 1992. Confirmation of such gubernatorial appointees shall be by a majority of the members of the Senate. If other vacancies occur between the effective date of this amendatory act and April 1, 1987, the term shall be the balance of the term to which the predecessor had been appointed. Vacancies after April 1, 1987, shall be filled for the balance of the term to which a predecessor had been appointed. Thereafter, the commission shall consist of five members appointed by the Governor, by and with the advice and consent of a majority of the members of the Senate, for a term of five years. The Governor may submit the nomination to the Senate within 60 days prior to the expiration of the term or the effective date of the resignation of the member whom the nominee would replace and shall submit that nomination no later than 90 days after the expiration of the term or the effective date of the resignation. A commissioner may continue to hold office for a period not to exceed six months beyond the expiration of his term if his successor has not been duly appointed and qualified according to law.

(b) Qualifications and restrictions.--Each commissioner, at the time of his appointment and qualification, shall be a resident of this Commonwealth and shall have been a qualified elector therein for a period of at least one year next preceding his appointment, and shall also be not less than 25 years of age. No person shall be appointed a member of the commission or hold any place, position or office under it, who occupies any official relation to any public utility or who holds any other appointive or elected office of the Commonwealth or any political subdivision thereof. Commencing July 1, 1977, commissioners shall devote full time to their official duties. No commissioner shall hold any office or position, the duties of which are incompatible with the duties of his office as commissioner, or be engaged in any business, employment or vocation, for which he shall receive any remuneration, except as provided in this chapter. No employee, appointee or official engaged in the service of or in any manner connected with, the commission shall hold any office or position, or be engaged in any employment or vocation, the duties of which are incompatible with his employment in the service of or in connection with the work of the commission. No commissioner shall be paid or accept for any service connected with the office, any fee or emolument other than the salary and expenses provided by law. No

commissioner shall participate in any hearing or proceeding in which he has any direct or indirect pecuniary interest. Within 90 days of confirmation, each commissioner shall disclose, at that time and thereafter annually, the existence of all security holdings in any public utility or its affiliates held by such commissioner, his or her spouse and any minor or unemancipated children and must either divest or place in a blind trust such securities. As used in this part, blind trust means a trust over which neither the commissioners, their spouses, nor any minor or unemancipated children shall exercise any managerial control, and from which neither the commissioners, their spouses, nor any minor or unemancipated children shall receive any income from the trust during the commissioner's tenure of office. Such disclosure statement shall be filed with the secretary of the commission and shall be open to inspection by the public during the normal business hours of the commission during the tenure of the commissioner. Every commissioner, and every individual or official, employed or appointed to office under, in the service of, or in connection with, the work of the commission, is forbidden, directly or indirectly, to solicit or request from, or to suggest or recommend to any public utility, or to any officer, attorney, agent or employee thereof, the appointment of any individual to any office, place or position in, or the employment of any individual in any capacity by, such public utility. Every commissioner, every bureau or office director and every administrative law judge employed or appointed to office under, in the service of or in connection with the work of the commission, is prohibited from accepting employment with any public utility subject to the rules and regulations of the commission for a period of one year, and every commissioner is prohibited from appearing before the commission on behalf of any public utility subject to the rules and regulations of the commission for a period of three years, after terminating employment or service with the commission. If any person employed or appointed in the service of the commission violates any provision of this section, the commission shall forthwith remove him from the office or employment held by him.

(c) Chairman.--A member designated by the Governor shall be the chairman of the commission during such member's term of office, except that within 120 days following the third Tuesday in January 1987, and, every four years thereafter, the Governor shall designate a chairman. The commissioners shall annually elect a member to serve as the vice chairman of the commission. When present, the chairman shall preside at all meetings, but in his absence the vice chairman or, in his absence, a member, designated by the chairman, shall preside and shall exercise, for the time being, all the powers of the chairman. The chairman shall have such powers and duties as authorized by the commission as provided in section 331(b) (relating to powers of commission and administrative law judges).

(d) Quorum.--A majority of the members of the commission serving in accordance with law shall constitute a quorum and such majority, acting unanimously, shall be required for any action, including the making of any order or the ratification of any act done or order made by one or more of the commissioners. No vacancy in the commission shall impair the right of a quorum of the commissioners to exercise all the rights and perform all the duties of the commission.

(e) Compensation.--Each of the commissioners shall receive an annual salary of $55,000, except the chairman, who shall receive an annual salary of $57,500.

(f) Open proceedings.--The proceedings of the commission shall be conducted in accordance with the provisions of the act of July 19, 1974 (P.L.486, No.175), referred to as the Public Agency Open Meeting Law.

(g) Monitoring cases.--Each commissioner shall be responsible for monitoring specified cases as shall be assigned to him in a manner determined by the commission. All proceedings properly before the commission shall be assigned immediately upon filing.

(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 amended subsecs. (a), (b), (c) and (e). Section 16 provided that as much of the amendment to subsec. (a) as relates to the advice and consent of a majority of all the members of the Senate shall apply on and after the third Tuesday of January 1987.

2002 Partial Repeal. Section 4 of Act 231 of 2002 provided that section 301 is repealed insofar as it relates to the consent required by the Senate to appointments by the Governor.

1993 Partial Repeal. Section 2 of Act 30 repealed subsec. (e) insofar as it is inconsistent with Act 30.

References in Text. The act of July 19, 1974 (P.L.486, No.175), referred to as the Public Agency Open Meeting Law, referred to in subsec. (f), was repealed by the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act. The Sunshine Act was repealed by the act of October 15, 1998 (P.L.729, No.93). The subject matter is now contained in Chapter 7 of Title 65 (Public Officers).

The act of March 31, 1937 (P.L.160, No.43), referred to in subsec. (a), was repealed by the act of July 1, 1978 (P.L.598, No.116). The subject matter in now contained in Chapter 3 of this title.

Cross References. Section 301 is referred to in section 302 of this title.

§ 302. Removal of commissioner.

The Governor, by and with the consent of two-thirds of all of the members of the Senate, shall remove from office any commissioner who violates the provision of section 301(b) (relating to establishment, members, qualifications and chairman) requiring commissioners to devote full time to their official duties and may remove any commissioner for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges against him, and affording him an opportunity to be publicly heard in person or by counsel in his own defense upon not less than ten days notice. If the commissioner is removed, the Governor shall file with the Department of State a complete statement of all charges made against the commissioner and his finding thereon, together with a complete record of the proceedings.

Cross References. Section 302 is referred to in section 319 of this title.

§ 303. Seal.

The commission shall adopt and use an official seal, by which the commission shall authenticate its proceedings, and of which seal the courts shall take judicial notice. A copy of any paper or document on file with the commission authenticated by any such seal shall be evidence equally and in like manner as the original.

§ 304. Administrative law judges.

(a) General rule.--The office of administrative law judge to the Pennsylvania Public Utility Commission is hereby created.

The commission shall have the power to appoint as many qualified and competent administrative law judges as may be necessary for proceedings pursuant to this part, and who shall devote full time to their official duties and who shall perform no duties inconsistent with their duties and responsibilities as administrative law judges. Administrative law judges shall be afforded employment security as provided by the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act." Compensation for administrative law judges shall be established by the commission. If the commission is occasionally and temporarily understaffed of administrative law judges, the commission may appoint qualified and competent persons who meet the minimum standards established by this part to temporarily serve as such judges, who shall serve at the pleasure of the commission and shall receive such compensation as the commission may establish.

(b) Staff.--The commission may appoint secretaries and legal or technical advisors to assist each judge in performance of his duties or may assign personnel from any of the other bureaus within the commission.

(c) Qualifications.--All judges must meet the following minimum requirements:

(1) Be an attorney in good standing before the Supreme Court of Pennsylvania.

(2) Have three years of practice before administrative agencies or equivalent experience.

(3) Conform to such other requirements as shall be established by the commission.

(d) Chief administrative law judge.--The commission shall appoint a chief administrative law judge who shall be responsible for assigning a hearing judge to every proceeding before the commission which may require the utilization of an administrative law judge and who shall receive remuneration above that of any other administrative law judge. The position of chief administrative law judge may not be withdrawn from a person so appointed, nor his salary diminished, except for good cause shown. The chief administrative law judge shall have such other responsibilities as the commission may by rule prescribe.
(June 29, 1982, P.L.658, No.187, eff. imd.; Oct. 31, 1995, P.L.348, No.59, eff. 60 days)

1995 Amendment. Act 59 amended subsec. (d).
1982 Amendment. Act 187 amended subsec. (a).

§ 305. Director of operations, secretary, employees and consultants.

(a) Director of operations.--The commission may appoint a director of operations who shall serve at the pleasure of the commission and shall be responsible for the day-to-day administration and operation of the bureaus and offices of the commission, except that the director of operations shall have responsibility for the prosecutorial function only with regard to administrative matters.

(b) Secretary.--The commission may appoint and fix the compensation of a secretary to hold office at its pleasure. The secretary shall have such powers and shall perform such duties not contrary to law as the commission shall prescribe. The commission shall have power and authority to designate, from time to time, one of its clerks to perform the duties of the secretary during his absence, and the clerk so designated shall possess, for the time so designated, the powers of the secretary of the commission.

(c) Employees and consultants.--The commission may appoint, fix the compensation of, authorize and delegate such officers, consultants, experts, engineers, statisticians, accountants, inspectors, clerks and employees as may be appropriate for the proper conduct of the work of the commission. The total compensation paid to consultants in any fiscal year shall not exceed 4% of the commission's budget. The commission shall keep records of the names of each consultant, the services performed for the commission, and the amounts expended for each consultant's services. The commission shall submit these records as a part of its annual budget submission. Such records shall be a matter of public record open for inspection at the office of the commission during the normal business hours of the commission. The commission shall establish, after consultation with the Civil Service Commission, standardized qualifications for employment and advancement, and all titles, and establish different standards for different kinds, grades, and classes of similar work or service. The employees of the commission shall be afforded employment security as provided by the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act," or the appropriate collective bargaining agreement, whichever is applicable, but the commission shall set the salaries of all employees in accordance with the employment standards established under this section.
(July 10, 1986, P.L.1238, No.114; Oct. 15, 2008, P.L.1592, No.129, eff. 30 days)

2008 Amendment. Act 129 amended subsec. (a).
1986 Amendment. Act 114 amended the entire section, effective in 60 days as to subsec. (a) and immediately as to the remainder of the section.

§ 306. Office of Trial Staff (Repealed).

2008 Repeal. Section 306 was repealed October 15, 2008, P.L.1592, No.129, effective in 30 days.

§ 307. Inspectors for enforcement.

The commission may employ such inspectors, as it may deem necessary, for the purpose of enforcing the provisions of this part. Such inspectors are hereby declared to be police officers, and are hereby given police power and authority throughout this Commonwealth to arrest on view, without writ, rule, order, or process, any person operating as a motor carrier or common carrier by airplane without a certificate or permit required by this part. Such inspectors are hereby given authority to stop vehicles on the highways of this Commonwealth, and to inspect the cargoes of such vehicles, and any receipts or bills of lading pertaining to such cargoes.

§ 308. Bureaus and offices.

(a) Enumeration.--There shall be established within the commission the following bureaus and functions:

(1) Law Bureau.
(2) (Deleted by amendment).
(3) Bureau of Consumer Services.
(4) (Deleted by amendment).

(b) Law Bureau.--The Law Bureau shall be a multifunction legal staff, consisting of a prosecutory function, an advisory function, a representational function and an enforcement function. The Director of the Law Bureau shall be the chief counsel of the commission and shall serve at the pleasure of the commission. The commission may also, from time to time, appoint such assistant counsel to the commission as may be required for the proper conduct of the work of the Law Bureau.

Assistant counsel may be removed by the commission only for good cause. The Law Bureau shall advise the commission on any and all matters. No counsel shall in the same case or a factually related case perform duties in the prosecutory and advisory functions, if such performance would represent a conflict of interest. Except for litigation referred to the Attorney General or other appropriate outside counsel, the Law Bureau solely shall be responsible to represent the commission upon appeals and other hearings in the courts of common pleas and in the Commonwealth Court, Supreme Court or other courts of this Commonwealth or in any Federal court or agency and in actions instituted to recover penalties and to enforce regulations and orders of the commission. If necessary to protect the public interest, the Law Bureau, pursuant to its prosecutorial function, may initiate and participate in proceedings before the commission.

(c) Bureau of Conservation, Economics and Energy Planning.--(Deleted by amendment).

(d) Bureau of Consumer Services.--

(1) The Bureau of Consumer Services shall investigate and issue final determinations on all informal consumer complaints and shall advise the commission as to the need for formal commission action on any matters brought to its attention by the complaints. Any party may appeal a final determination issued by the Bureau of Consumer Services and seek review by an administrative law judge or special agent subject to the procedures in section 335 (relating to initial decisions). The bureau shall on behalf of the commission keep records of all complaints received, the matter complained of, the utility involved, and the disposition thereof and shall at least annually report to the commission on such matters. The commission may take official notice of all complaints and the nature thereof in any proceeding before the commission in which the utility is a party. The commission shall adopt, publish and generally make available rules by which a consumer may make informal complaints. The bureau shall also assist and advise the commission on matters of safety compliance by public utilities.

(2) Annually on or before April 15, the commission shall submit a report to the Governor and to the Business and Commerce Committee of the House and the Community and Economic Development Committee of the Senate. The report shall compare all nonresidential categories of ratepayers for all electric and gas public utilities so that reasonably accurate comparisons of rates can be made between similar individuals or groups of nonresidential ratepayers receiving services in different service areas.

(e) Office of Special Assistants.--(Deleted by amendment).

(f) Other bureaus and offices.--(Deleted by amendment).

(g) Staff testimony.--(Deleted by amendment).

(Oct. 15, 1980, P.L.950, No.164, eff. Jan. 20, 1981; Dec. 18, 1980, P.L.1247, No.226, eff. Jan. 20, 1981; July 10, 1986, P.L.1238, No.114; Oct. 15, 2008, P.L.1592, No.129, eff. 30 days; Feb. 14, 2012, P.L.72, No.11, eff. 60 days)

2012 Amendment. Act 11 amended subsec. (b).

2008 Amendment. Act 129 amended subsec. (b) and deleted subsecs. (a)(2) and (4), (c), (e), (f) and (g).

1986 Amendment. Act 114 amended the entire section, effective in 60 days as to subsecs. (a), (b), (e) and (g) and immediately as to the remainder of the section.

§ 308.1. Consumer protection and information.

(a) Informal complaints.--The commission shall promulgate regulations by which a consumer may make informal complaints. A party may appeal a determination regarding the informal complaint and seek review by an administrative law judge or special agent subject to the procedures in section 335 (relating to initial decisions and release of documents). The commission shall keep records of each informal complaint received, the matter complained of, the utility involved and the disposition and shall at least annually prepare a report on these matters.

(b) Rate comparison report.--Annually, by April 15, the commission shall submit a report to the Governor and to the General Assembly. The report shall compare all categories of ratepayers for all electric and gas public utilities so that reasonably accurate comparisons of rates can be made between similar individuals or groups of ratepayers receiving services in different service areas.

(Nov. 30, 2004, P.L.1578, No.201, eff. 14 days)

2004 Amendment. Act 201 added section 308.1.

§ 308.2. Other bureaus, offices and positions.

(a) Establishment of other bureaus, offices and positions.--In addition to the specific bureaus established in this part, the commission may establish other bureaus, offices and positions to perform the following functions:

(1) Review and provide advice regarding applications, petitions, tariff filings and other matters filed with the commission.

(2) Provide advice, review exceptions and prepare orders regarding matters to be adjudicated.

(3) Conduct financial reviews, earnings analyses and other financial studies.

(4) Conduct economic research, forecasting, energy conservation studies, cost studies and other economic studies related to public utilities.

(5) Monitor industry markets to detect anticompetitive, discriminatory or other unlawful conduct.

(6) Insure adequate maintenance, safety and reliability of utility networks.

(7) Insure adequate service quality, efficiency and availability at just and reasonable rates.

(8) Conduct financial, management, operational and special audits.

(9) Provide consumer information, consumer protection and informal resolution of complaints.

(10) Insure adequate safety, insurance, fitness and other requirements relevant to transportation utilities.

(11) Take appropriate enforcement actions, including rate proceedings, service proceedings and application proceedings, necessary to insure compliance with this title, commission regulations and orders.

(12) Perform other functions the commission deems necessary for the proper work of the commission.

(b) Prohibition on commingling of functions.--A commission employee engaged in a prosecutory function may not, in that matter or a factually related matter, provide advice or assistance to a commission employee performing an advisory function as to that matter.

(Oct. 15, 2008, P.L.1592, No.129, eff. 30 days; Feb. 14, 2012, P.L.72, No.11, eff. 60 days)

2012 Amendment . Act 11 amended subsec. (a)(11).

2008 Amendment. Act 129 added section 308.2.

§ 309. Oaths and subpoenas.

The commission, or its representative, shall have the power, in any part of this Commonwealth, to subpoena witnesses, to administer oaths, to examine witnesses, or to take such testimony, or compel the production of such books, records, papers, and documents as it may deem necessary or proper in, and pertinent to, any proceeding, investigation, or hearing, held or had by it, and to do all necessary and proper things and acts in the lawful exercise of its powers or the performance of its duties. The fees for serving a subpoena shall be the same as those paid sheriffs for similar services.

§ 310. Depositions.

The commission, or any commissioner, or any party to proceedings before the commission, may cause the deposition of witnesses residing within or without this Commonwealth to be taken in the manner prescribed by the Pennsylvania Rules of Civil Procedure for taking depositions in civil actions.

§ 311. Witness fees.

Witnesses who are summoned before the commission shall be paid the same fees and mileage as are paid to witnesses in the courts of common pleas. Witnesses whose depositions are taken pursuant to the provisions of this part, and the officer taking the same, shall be entitled to the same fees as are paid for like services in such courts. All disbursements made in the payment of such fees shall be included in and paid in the same manner as is provided for the payment of other expenses of the commission.

§ 312. Privilege and immunity.

No person shall be excused from testifying or from producing any book, document, paper, or account in any investigation or inquiry by, or hearing before, the commission or its representative, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required may tend to incriminate him or subject him to penalty or forfeiture. No person shall be prosecuted, punished, or subjected to any forfeiture or penalty for or on account of any act, transaction, matter, or thing concerning which he shall have been compelled, under objection, to testify or produce documentary evidence. No person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

§ 313. Joint hearings and investigations; reciprocity.

(a) Joint hearings and investigations.--The commission shall have full power and authority to make joint investigations, hold joint hearings within or without this Commonwealth, and issue joint or concurrent orders in conjunction or concurrence with any official, board, commission, or agency of any state or of the United States, whether in the holding of such investigations or hearings, or in the making of such orders, the commission shall function under agreements or compacts between states or under the concurrent power of states to regulate the interstate commerce, or as an agency of the Federal Government, or otherwise.

(b) Reciprocity.--The commission shall have full power and authority to arrange reciprocity of treatment of public utilities and contract carriers by motor vehicle of this Commonwealth by regulatory bodies, under regulatory laws of other states, and to that end the commission is hereby vested with power to impose upon public utilities and contract carriers by motor vehicle of other states, the same penalties, restrictions, and regulations as are imposed by the regulatory body of such other states upon public utilities and contract

carriers by motor vehicle of this Commonwealth when operating into, out of, or through such other states.

§ 314. Investigation of interstate rates, facilities and service.

The commission may investigate the interstate rates, traffic facilities, or service of any public utility within this Commonwealth, and when such rates, facilities or service are, in the determination of the commission, unjust, unreasonable, discriminatory or in violation of any Federal law, or in conflict with the rulings, orders or regulations of any Federal regulatory body, the commission may apply, by petition to the proper Federal regulatory body, for relief, or may present to the proper Federal regulatory body all facts coming to its knowledge as to the violation of the rules, orders, or regulations of such regulatory body, or as to the violation of the particular Federal law.

§ 315. Burden of proof.

(a) Reasonableness of rates.--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings 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. 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.

(b) Compliance with commission determinations and orders.--In any case involving any alleged violation by a public utility, contract carrier by motor vehicle, or broker of any lawful determination or order of the commission, the burden of proof shall be upon the public utility, contract carrier by motor vehicle, or broker complained against, to show that the determination or order of the commission has been complied with.

(c) Adequacy of services and facilities.--In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility.

(d) Justification of accounting entries.--The burden of proof to justify every accounting entry questioned by the commission shall be upon the public utility making, authorizing, or requiring such entry, and the commission may suspend any charge or credit pending submission of such proof by such public utility.

(e) Use of future test year.--In discharging its burden of proof the utility may utilize a future test year or a fully projected future test year, which shall be the 12-month period beginning with the first month that the new rates will be placed in effect after application of the full suspension period permitted under section 1308(d) (relating to voluntary changes in rates). The commission shall promptly adopt rules and regulations regarding the information and data to be submitted when and if a future test period or a fully projected future test year is to be utilized. Whenever a utility utilizes a future test year or a fully projected future test year in any rate proceeding and such future test year or a fully projected 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 or a fully projected 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. Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities), the commission may permit facilities which are projected to be in service during the fully projected future test year to be included in the rate base.
(Feb. 14, 2012, P.L.72, No.11, eff. 60 days)

2012 Amendment. Act 11 amended subsec. (e).
Cross References. Section 315 is referred to in section 332 of this title.

§ 316. Effect of commission action.

Whenever the commission shall make any rule, regulation, finding, determination or order, 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 on judicial review. The issuing or registration by the commission of any certificate, license or permit whatsoever, under the provisions of this part, or any finding, determination or order made by the commission refusing or granting such certificates, licenses or permits, shall not be construed to revive or validate any lapsed, terminated, invalidated or void powers, franchises, rights or privileges; or to enlarge or add to the rights, powers, franchises or privileges contained in any charter, or in the grant of any franchise, or any supplement or amendment to any charter, or to give or remit any forfeiture.

§ 317. Fees for services rendered by commission.

(a) General rule.--The commission shall by rule establish on a reasonable cost basis the fees to be charged and collected for the following services:

(1) Copies of paper, testimony and records.
(2) Certifying a copy of any paper, testimony or record.
(3) (Repealed).
(4) Filing of each securities certificate, or each application for a certificate of public convenience, registration certificate, permit or license.

(b) Fees for testing.--The commission shall by rule establish on a reasonable cost basis the fees to be charged and collected from public utilities for the testing of their instruments of precision and measuring apparatus.
(Dec. 20, 1982, P.L.1409, No.326, eff. 60 days; Apr. 4, 1990, P.L.104, No.22, eff. imd.)

1990 Amendment. Act 22 amended subsec. (b). Section 2 provided that the fees for testing previously established by rule or regulation and currently in effect at the commission shall remain in full force and effect unless and until increased, decreased or otherwise modified pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.
1982 Repeal. Act 326 repealed subsec. (a)(3).
Cross References. Section 317 is referred to in section 510 of this title.

§ 318. Commission to cooperate with other departments.

(a) Vehicle registration plates.--The Department of Transportation and the commission are hereby authorized and directed to cooperate in the issuance by the Department of Transportation, under the provisions of Title 75 (relating to vehicles), of registration plates for commercial motor vehicles, which will classify and identify motor vehicles operated under certificates or permits issued by the commission, without the

necessity of the requirement of separate identification plates in addition to registration plates required under Title 75.

(b) Purity of water supply.--The commission may certify to the Department of Environmental Resources any question of fact regarding the purity of water supplied to the public by any public utility over which it has jurisdiction, when any such question arises in any controversy or other proceeding before it, and upon the determination of such question by the department incorporate the department's findings in its decision.

(c) Powers of certain governmental agencies unaffected.--Nothing in this part shall be construed to deprive the Department of Health or the Department of Environmental Resources of any jurisdiction, powers or duties now vested in them.

References in Text. The Department of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

§ 319. Code of ethics.

(a) General rule.--Each commissioner and each administrative law judge shall conform to the following code of ethics for the Public Utility Commission. A commissioner and an administrative law judge must:

(1) Avoid impropriety and the appearance of impropriety in all activities.

(2) Perform all duties impartially and diligently.

(3) Avoid all ex parte communications prohibited in this part.

(4) Abstain publicly from expressing, other than in executive or public session, his personal views on the merits of a matter pending before the commission and require similar abstention on the part of commission personnel subject to his direction and control.

(5) Require staff and personnel subject to his direction to observe the standards of fidelity and diligence that apply to the commissioner and administrative law judge.

(6) Initiate appropriate disciplinary measures against commission personnel for unprofessional conduct.

(7) Disqualify himself from proceedings in which his impartiality might be reasonably questioned.

(8) Inform himself about his personal and fiduciary interests and make a reasonable effort to inform himself about the personal financial interests of his spouse and children.

(9) Regulate his extra-curricular activities to minimize the risk of conflict with his official duties. He may speak, write or lecture and any reimbursed expenses, honorariums, royalties, or other moneys received in connection therewith shall be disclosed annually. Such disclosure statement shall be filed with the secretary of the commission and shall be open to inspection by the public during the normal business hours of the commission during the tenure of the commissioner or of the administrative law judge.

(10) Refrain from solicitation of funds for any political, educational, religious, charitable, fraternal or civic purposes, although he may be an officer, director or trustee of such organizations.

(11) Refrain from financial or business dealing which would tend to reflect adversely on impartiality, although

the commissioner or administrative law judge may hold and manage investments which are not incompatible with the duties of his office.

(12) Conform to such additional rules as the commission may prescribe.

(b) Removal of commissioner for violation.--Any commissioner who violates the provisions of subsection (a) shall be removed from office in the manner provided in section 302 (relating to removal of commissioner).

(c) Removal of judge for violation.--Any administrative law judge who violates the provisions of subsection (a) shall be removed from office in the manner provided by the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."

§ 320. Annual appropriations.

The following sums, or as much thereof as may be necessary, are hereby specifically appropriated from the restricted revenue account within the General Fund to the Public Utility Commission to provide for the operation of the commission for the fiscal period July 1, 1982 to June 30, 1983, for the purposes and in the amounts shown:

(1) For the salaries, wages and all necessary expenses for the proper administration of the Public Utility Commission including the chairman and commissioners, Office of the Director of Operations, Bureau of Public Information, Office of Special Assistants, Office of Intergovernmental Affairs and the Secretary's Bureau........................	$5,759,000
(2) For the salaries, wages and all necessary expenses for the proper administration of the Offices of Counsel and Administrative Law Judge.............	4,438,000
(3) For the salaries, wages and all necessary expenses for the proper administration of rates, research and transportation including the Bureau of Conservation, Economics and Energy Planning, Bureau of Nonrail Transportation, Bureau of Rail Transportation and the Bureau of Rates....................................	5,309,000
(4) For the salaries, wages and all necessary expenses for the proper administration of investigations, services and enforcement including the Bureau of Audits, the Bureau of Consumer Services and the Bureau of Safety and Compliance.......	5,020,000

(June 29, 1982, P.L.658, No.187, eff. July 1, 1982)

1982 Amendment. Act 187 added section 320.

§ 321. Annual reports.

The commission shall annually transmit, to the Governor and the General Assembly and shall make available to the public, a report on the conduct of the commission. The report shall include, but shall not be limited to, a summary of all rate proceedings completed within the reporting period, the amount of the rate increase requested in each such proceeding, the amount of the request granted by the commission in each such proceeding, the percentage increase in rates requested and granted in each such proceeding as compared to the percentage increase requested and granted in the most recent similar

proceeding for the affected utility prior to the reporting period, a summary of other significant regulatory issues which the commission resolved during the reporting period, a summary of significant orders and decisions of the commission and the courts of the Commonwealth during the reporting period relating to public utilities, a summary of significant anticipated issues by type of utility and a status report of any commission action regarding these issues, and a summary of the audits completed by the commission during the reporting period. In the annual report and at such other times as the commission determines, the commission shall make recommendations to the Governor and the General Assembly which the commission believes to be necessary or desirable to protect the public interest.
(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 321.

SUBCHAPTER B
INVESTIGATIONS AND HEARINGS

Sec.

331. Powers of commission and administrative law judges.
332. Procedures in general.
333. Prehearing procedures.
334. Presiding officers.
335. Initial decisions and release of documents.

Cross References. Subchapter B is referred to in sections 2310, 3305 of Title 58 (Oil and Gas).

§ 331. Powers of commission and administrative law judges.

(a) General rule.--The commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of any public utility or any other person or corporation subject to this part. In conducting the investigations the commission may proceed, either with or without a hearing, as it may deem best, but it shall make no order without affording the parties affected thereby a hearing. Any investigation, inquiry or hearing which the commission has power to undertake or hold shall be conducted pursuant to the provisions of this chapter.

(b) Assignment of proceedings; powers of chairman.--All on-the-record proceedings shall be referred to an administrative law judge for decision except that in those proceedings involving a rate determination, safety matters, rulemaking procedures, unprotested applications or matters covered by section 335(a)(1) (relating to initial decisions), the commission may authorize the chairman to assign cases as provided in paragraphs (2) and (3); and, in addition, the commission may authorize the chairman to:

(1) Designate the time and place for the conducting of investigations, inquiries and hearings.

(2) Assign cases to a commissioner or commissioners for hearing, investigation, inquiry, study or other similar purposes.

(3) Assign cases to special agents or administrative law judges for the taking and receiving of evidence.

(4) Direct and designate officers and employees of the commission to make investigations, inspections, inquiries, studies and other like assignments for reports to the commission.

(5) Be responsible through the secretary for specifically enumerated daily administrative operations of the commission.

(c) Requirements for presiding officers.--There shall preside at the taking of evidence the commission, one or more commissioners, or one or more administrative law judges appointed as provided in this chapter. The functions of all presiding officers shall be conducted in an impartial manner. Any such officer may at any time withdraw from a proceeding if he deems himself disqualified, and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the commission shall determine the matter as a part of the record and decision in the proceeding.

(d) Authority of presiding officers.--In addition to any administrative rules of procedure contained in this part, the commission may adopt and publish such additional rules of procedure as are not inconsistent with this part. Officers presiding at hearings shall have authority subject to the published rules of the commission and within its powers, to:

(1) Administer oaths and affirmations.

(2) Issue subpoenas authorized by law.

(3) Rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken whenever the ends of justice would be served thereby.

(4) Regulate the course of the hearing.

(5) Require persons requesting to make a statement at a public input hearing to state their name, occupation and place of employment for the record.

(6) Hold conferences for settlement or simplification of the issues by consent of the parties.

(7) Dispose of procedural requests or similar matters.

(8) Make decisions or recommend decisions in conformity within this part.

(9) Take any other action authorized by commission rule.

(e) Interlocutory appeals.--A presiding officer may certify to the commission, or allow the parties an interlocutory appeal to the commission on any material question arising in the course of a proceeding, where he finds that it is necessary to do so to prevent substantial prejudice to any party or to expedite the conduct of the proceeding. The presiding officer or the commission may thereafter stay the proceeding if necessary to protect the substantial rights of any of the parties therein. The commission shall determine the question forthwith and the hearing and further decision shall thereafter be governed accordingly. No interlocutory appeal to the commission shall otherwise be allowed, except as may be allowed by the commission.

(f) Declaratory orders.--The commission, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

(g) Official notice defined.--As used in this chapter the term "official notice" means a method by which the commission may notify all parties that no further evidence will be heard on a material fact and that unless the parties prove to the contrary, the commission's findings will include that particular fact.

(Nov. 26, 1978, P.L.1241, No.294, eff. 60 days; July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 amended subsec. (d).

1978 Amendment. Act 294 amended subsec. (b).

Cross References. Section 331 is referred to in sections 301, 332 of this title.

§ 332. Procedures in general.

(a) Burden of proof.--Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

(b) Admissibility of evidence.--Any oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. No sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.

(c) Submission of evidence.--Every party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The commission may, by rule, adopt procedures for the submission of all or part of the evidence in written form.

(d) Record, briefs and argument.--The transcript of a public input hearing, the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision, and shall be available for inspection by the public. Briefing and oral argument shall be held in accordance with rules established by the commission. For the purpose of this section, a public input hearing is a hearing held in the service area at which the ratepayers may offer testimony, written or otherwise, relating to any matter which has a bearing on the proceeding.

(e) Official notice of facts.--When the commission's decision rests on official notice of a material fact not appearing in the evidence in the record, upon notification that facts are about to be or have been noticed, any party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed. The commission in its discretion shall determine whether written presentations suffice, or whether oral argument, oral evidence, or cross-examination is appropriate in the circumstances. Nothing in this subsection shall affect the application by the commission in appropriate circumstances of the doctrine of judicial notice.

(f) Actions of parties and counsel.--Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. If the actions of a party or counsel in a proceeding shall be determined by the commission, after due notice and opportunity for hearing, to be obstructive to the orderly conduct of the proceeding and inimical to the public interest, the commission may reject or dismiss any rule or order in any manner proposed by the offending party or counsel, and, with respect to counsel, may

bar further participation by him in any proceedings before the commission.

(g) Decision of administrative law judge.--In all on-the-record proceedings referred to an administrative law judge under section 331(b) (relating to powers of commission and administrative law judges), hearings shall be commenced by the administrative law judge within 90 days after the proceeding is initiated, and he shall render a decision within 90 days after the record is closed, unless the commission for good cause by order allows an extension not to exceed an additional 90 days.

(h) Exceptions and appeal procedure.--Any party to a proceeding referred to an administrative law judge under section 331(b) may file exceptions to the decision of the administrative law judge with the commission, in a form and manner and within the time to be prescribed by the commission. The commission shall rule upon such exceptions within 90 days after filing. If no exceptions are filed, the decision shall become final, without further commission action, unless two or more commissioners within 15 days after the decision request that the commission review the decision and make such other order, within 90 days of such request, as it shall determine. The Office of Trial Staff and the chief counsel shall be deemed to have automatic standing as a party to such proceeding and may file exceptions to any decision of the administrative law judge under this subsection.

(i) Review of testimony.--Any party of record in an investigation or inquiry by or hearing before the commission or its representative whose testimony is recorded electronically and subsequently transcribed shall, upon request, be permitted to review the recording to ensure that it has been transcribed accurately. The commission may impose a fee in an amount not exceeding the actual costs involved for making the recording available. Any request to review the recording must be made within the time prescribed by commission regulation, and such request shall not be used to unreasonably delay commission proceedings. This section shall not be construed to require the electronic recording of testimony. The official record of a proceeding shall be the written transcript.

(Nov. 26, 1978, P.L.1241, No.294, eff. 60 days; Oct. 10, 1985, P.L.257, No.62, eff. 60 days; July 10, 1986, P.L.1238, No.114, eff. imd.; Apr. 21, 1989, P.L.11, No.3, eff. imd.)

1989 Amendment. Act 3 added subsec. (i). Section 3 provided that Act 3 shall apply to any action pending before the commission or any action taken by the commission within 180 days prior to the effective date of Act 3.

1986 Amendment. Act 114 amended subsec. (h).

1985 Amendment. Act 62 amended subsec. (d).

1978 Amendment. Act 294 added subsecs. (g) and (h).

§ 333. Prehearing procedures.

(a) Conferences.--The presiding officer shall have the authority to hold one or more prehearing conferences during the course of the proceeding on his own motion or at the request of a party to the proceeding. The presiding officer shall normally hold at least one prehearing conference in proceedings where the issues are complex or where it appears likely that the hearing will last a considerable period of time. In addition to other matters which the commission may prescribe by rule, the presiding officer at a prehearing conference may direct the parties to exchange their evidentiary exhibits and witness lists prior to the hearing. Where good cause exists, the parties may

at any time amend, by deletion or supplementation, their evidentiary exhibits and witness lists.

(b) Depositions.--A party to the proceeding shall be able to take depositions of witnesses upon oral examination or written questions for purposes of discovering relevant, unprivileged information, subject to the following conditions:

(1) The taking of depositions shall normally be deferred until there has been at least one prehearing conference.

(2) The party seeking to take a deposition shall apply to the presiding officer for an order to do so.

(3) The party seeking to take a deposition shall serve copies of the application on the other party or parties to the proceedings, who shall be given an opportunity, along with the deponent, to notify the presiding officer of any objections to the taking of the deposition.

(4) The presiding officer shall not grant an application to take a deposition if he finds that the taking of the deposition would result in undue delay.

(5) The presiding officer shall otherwise grant an application to take a deposition unless he finds that there is not good cause for doing so.

(6) The deposing of a commission employee shall only be allowed upon an order of the presiding officer based on a specific finding that the party applying to take the deposition is seeking significant, unprivileged information not discoverable by alternative means. Any such order shall be subject to an interlocutory appeal to the commission.

(7) An order to take a deposition shall be enforceable through the issuance of a subpoena ad testificandum.

(c) Disclosure of information on witnesses.--At the prehearing conference or at some other reasonable time prior to the hearing, which may be established by commission rule, each party to the proceeding shall make available to the other parties to the proceeding the names of the witnesses he expects to call and the subject matter of their expected testimony. Where good cause exists, the parties shall have the right at any time to amend, by deletion or supplementation, the list of names of the witnesses they plan to call and the subject matter of the expected testimony of those witnesses.

(d) Interrogatories.--Any party to a proceeding may serve written interrogatories upon any other party for purposes of discovering relevant, unprivileged information. A party served with interrogatories may, before the time prescribed either by commission rule or otherwise for answering the interrogatories, apply to the presiding officer for the holding of a prehearing conference for the mutual exchange of evidence exhibits and other information. Each interrogatory which requests information not previously supplied at a prehearing conference or hearing shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objections shall be stated in lieu of an answer. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections within a reasonable time, unless otherwise specified, upon the party submitting the interrogatories. The party submitting the interrogatories may petition the presiding officer for an order compelling an answer to an interrogatory or interrogatories to which there has been an objection or other failure to answer. The commission shall designate an appropriate official, other than the Director of Trial Staff or any other employee of the Office of Trial Staff, on whom other parties to the proceeding may serve written interrogatories directed to the commission. That official shall

arrange for agency personnel with knowledge of the facts to answer and sign the interrogatories on behalf of the commission. Interrogatories directed to the commission shall be allowed only upon an order of the commission based upon a specific finding that the interrogating party is seeking significant, unprivileged information not discoverable by alternative means. When participating in a commission proceeding, the Office of Trial Staff shall be subject to the same rules of discovery applicable to any other party to the case.

(e) Requests for admissions.--A party to a proceeding may serve upon any other party and upon the commission to the same extent permissible in subsection (d) a written request for the admission, for purposes of the pending proceeding and to conserve hearing time, of any relevant, unprivileged, undisputed facts, the genuineness of any document described in the request, the admissibility of evidence, the order of proof and other similar matters.

(f) Subpoena duces tecum.--A party to a proceeding may obtain in accordance with commission rules a subpoena duces tecum requiring the production of or the making available for inspection, copying or photographing of relevant necessary designated documents at a prehearing conference or other specific time and place.

(g) Scheduling.--The presiding officer shall have the authority to impose schedules on the parties to the proceeding specifying the periods of time during which the parties may pursue each means of discovery available to them under the rules of the commission. Such schedules and time periods shall be set with a view to accelerating disposition of the case to the fullest extent consistent with fairness.

(h) Certification of interlocutory appeals.--Except as provided in subsection (b)(6), an interlocutory appeal from a ruling of the presiding officer on discovery shall be allowed only upon certification by the presiding officer that the ruling involves an important question of law or policy which should be resolved at that time. Notwithstanding the presiding officer's certification, the commission shall have the authority to dismiss summarily the interlocutory appeal if it should appear that the certification was improvident. An interlocutory appeal shall not result in a stay of the proceedings except upon a finding by the presiding officer and the commission that extraordinary circumstances exist.

(i) Protective orders.--The presiding officer shall have the authority, upon motion by a party or by the person from whom discovery is sought, and for good cause shown, to make any order, subject to the rules of the commission, which justice requires to protect the party or person.

(j) Other subpoenas.--The presiding officer shall have the power in accordance with commission rules to issue subpoenas ad testificandum and duces tecum at any time during the course of the proceeding.

(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 amended subsec. (d).

§ 334. Presiding officers.

(a) Presiding officers to decide.--The same presiding officer shall to the fullest extent possible preside at all the reception of evidence in a particular case to which he has been assigned. The same presiding officer who presides at the reception of evidence shall make the recommended decision or initial decision except where such presiding officer becomes unavailable to the commission.

(b) Outside consultation prohibited.--Save to the extent required for the disposition of ex parte matters not prohibited by this part, no presiding officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall any presiding officer be responsible to or subject to the supervision or direction of any officer, employee or agent engaged in the performance of investigative or prosecuting functions for the commission. No employee, appointee, commissioner or official engaged in the service of, or in any manner connected with the commission shall engage in ex parte communications save to the extent permitted by this part. No officer, employee or agent engaged in the performance of investigative or prosecuting functions for the commission in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision or commission review, except as witness or counsel in public proceedings.

(c) Ex parte communications.--Ex parte communications prohibited in this section shall mean any off-the-record communications to or by any member of the commission, administrative law judge, or employee of the commission, regarding the merits or any fact in issue of any matter pending before the commission in any contested on-the-record proceeding. Contested on-the-record proceeding means a proceeding required by a statute, constitution, published commission rule or regulation or order in a particular case, to be decided on the basis of the record of a commission hearing, and in which a protest or a petition or notice to intervene in opposition to requested commission action has been filed. This subsection does not prohibit off-the-record communications to or by any employee of the commission prior to the actual beginning of hearings in a contested on-the-record proceeding when such communications are solely for the purpose of seeking clarification of or corrections in evidentiary materials intended for use in the subsequent hearings.

§ 335. Initial decisions and release of documents.

(a) Procedures.--When the commission does not preside at the reception of evidence, the presiding officer shall initially decide the case, unless the commission requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding officer makes an initial decision, that decision then shall be approved by the commission and may become the opinion of the commission without further proceeding within the time provided by commission rule. On review of the initial decision, the commission has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the commission makes the decision in a rate determination proceeding without having presided at the reception of the evidence, the presiding officer shall make a recommended decision to the commission in accordance with the provisions of this part. Alternatively, in all other matters:

(1) the commission may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the commission finds on the record that due and timely execution of the functions imperatively and unavoidably so requires.

(b) Exceptions or proposed findings and conclusions.--Before a recommended, initial or tentative decision issued under this section, or a decision on commission review of the decision of

subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the commission:

(1) (i) proposed findings and conclusions; or

(ii) exceptions to the decisions or recommended decisions of subordinate employees or to tentative commission decisions; and

(2) supporting reason for the exceptions or proposed findings or conclusions.

(c) Record.--The record shall show the ruling on each finding, conclusion or exception presented. All decisions, including initial, recommended and tentative decisions, are a part of the record and shall include a statement of:

(1) findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record; and

(2) the appropriate rule, order, sanction, relief or denial thereof.

(d) Release of documents.--In addition to any other requirements imposed by law, including the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, and the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act, whenever the commission conducts an investigation of an act or practice of a public utility and makes a decision, enters into a settlement with a public utility or takes any other official action, as defined in the Sunshine Act, with respect to its investigation, it shall make part of the public record and release publicly any documents relied upon by the commission in reaching its determination, whether prepared by consultants or commission employees, other than documents protected by legal privilege; provided, however, that if a document contains trade secrets or proprietary information and it has been determined by the commission that harm to the person claiming the privilege would be substantial or if a document required to be released under this section contains identifying information which would operate to the prejudice or impairment of a person's reputation or personal security, or information that would lead to the disclosure of a confidential source or subject a person to potential economic retaliation as a result of their cooperation with a commission investigation, or information which, if disclosed to the public, could be used for criminal or terroristic purposes, the identifying information may be expurgated from the copy of the document made part of the public record. For the purposes of this section, "a document" means a report, memorandum or other document prepared for or used by the commission in the course of its investigation whether prepared by an adviser, consultant or other person who is not an employee of the commission or by an employee of the commission.

(Apr. 21, 1989, P.L.11, No.3, eff. imd.)

1989 Amendment. Act 3 amended the section heading and added subsec. (d). Section 3 of Act 3 provided that Act 3 shall apply to any action pending before the commission or any action taken by the commission within 180 days prior to the effective date of Act 3.

References in Text. The act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act, referred to in subsec. (d), was repealed by the act of October 15, 1998 (P.L.729, No.93). The subject matter is now contained in Chapter 7 of Title 65 (Public Officers).

The act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, referred to in subsec. (d), was repealed

by the act of Feb. 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

Cross References. Section 335 is referred to in sections 308, 308.1, 331 of this title.

SUBPART B
COMMISSION POWERS, DUTIES, PRACTICES AND PROCEDURES

Chapter

5. Powers and Duties
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CHAPTER 5
POWERS AND DUTIES

Sec.

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Enactment. Chapter 5 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

Cross References. Chapter 5 is referred to in section 2603 of this title.

§ 501. General powers.

(a) Enforcement of provisions of part.--In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.

(b) Administrative authority and regulations.--The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

(c) Compliance.--Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.

Cross References. Section 501 is referred to in sections 2212, 2806, 3209 of this title.

§ 502. Enforcement proceedings by commission.

Whenever the commission shall be of opinion that any person or corporation, including a municipal corporation, is violating, or is about to violate, any provisions of this part; or has done, or is about to do, any act, matter, or thing herein prohibited or declared to be unlawful; or has failed, omitted, neglected, or refused, or is about to fail, omit, neglect, or refuse, to perform any duty enjoined upon it by this part, or has failed, omitted, neglected or refused, or is about to fail, omit, neglect, or refuse to obey any lawful requirement, regulation or order made by the commission; or any final judgment, order, or decree made by any court, then and in every such case the commission may institute injunction, mandamus or other appropriate legal proceedings, to restrain such violations of the provisions of this part, or of the regulations, or orders of the commission, and to enforce obedience thereto.

Saved from Suspension. Pennsylvania Rule of Civil Procedure No. 1549(11), adopted June 3, 1994, provided that section 502 shall not be deemed suspended or affected by Rules 1501 through 1536 relating to action in equity.

Cross References. Section 502 is referred to in section 2905 of this title.

§ 503. Enforcement proceedings by Chief Counsel.

The Chief Counsel, in addition to the exercise of the powers and duties now conferred upon him by law, shall also, upon request of the commission proceed in the name of the Commonwealth, by mandamus, injunction, or quo warranto, or other appropriate remedy at law or, in equity, to restrain violations

of the provisions of this part, or of the regulations or orders of the commission, or the judgments, orders, or decrees of any court, or to enforce obedience thereto.
(Dec. 18, 1980, P.L.1247, No.226, eff. Jan. 20, 1981)

§ 504. Reports by public utilities.

The commission may require any public utility to file periodical reports, at such times, and in such form, and of such content, as the commission may prescribe, and special reports concerning any matter whatsoever about which the commission is authorized to inquire, or to keep itself informed, or which it is required to enforce. The commission may require any public utility to file with it a copy of any report filed by such public utility with any Federal department or regulatory body. All reports shall be under oath or affirmation when required by the commission.

Cross References. Section 504 is referred to in sections 2212, 3209 of this title.

§ 505. Duty to furnish information to commission; cooperation in valuing property.

Every public utility shall furnish to the commission, from time to time, and as the commission may require, all accounts, inventories, appraisals, valuations, maps, profiles, reports of engineers, books, papers, records, and other documents or memoranda, or copies of any and all of them, in aid of any inspection, examination, inquiry, investigation, or hearing, or in aid of any determination of the value of its property, or any portion thereof, and shall cooperate with the commission in the work of the valuation of its property, or any portion thereof, and shall furnish any and all other information to the commission, as the commission may require, in any inspection, examination, inquiry, investigation, hearing, or determination of such value of its property, or any portion thereof.

Cross References. Section 505 is referred to in sections 1706, 2212, 3209 of this title.

§ 506. Inspection of facilities and records.

The commission shall have full power and authority, either by or through its members, or duly authorized representatives, whenever it shall deem it necessary or proper in carrying out any of the provisions of, or its duties under this part, to enter upon the premises, buildings, machinery, system, plant, and equipment, and make any inspection, valuation, physical examination, inquiry, or investigation of any and all plant and equipment, facilities, property, and pertinent records, books, papers, accounts, maps, inventories, appraisals, valuations, memoranda, documents, or effects whatsoever, of any public utility, or prepared or kept for it by others, and to hold any hearing for such purposes. In the performance of such duties, the commission may have access to, and use any books, records, or documents in the possession of, any department, board, or commission of the Commonwealth, or any political subdivision thereof.

Cross References. Section 506 is referred to in sections 1706, 2212, 3209 of this title.

§ 507. Contracts between public utilities and municipalities.

Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its

effective date. Upon notice to the municipal authorities, and the public utility concerned, the commission may, prior to the effective date of such contract or agreement, institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the commission grants its approval thereof.

§ 508. Power of commission to vary, reform and revise contracts.

The commission shall have power and authority to vary, reform, or revise, upon a fair, reasonable, and equitable basis, any obligations, terms, or conditions of any contract heretofore or hereafter entered into between any public utility and any person, corporation, or municipal corporation, which embrace or concern a public right, benefit, privilege, duty, or franchise, or the grant thereof, or are otherwise affected or concerned with the public interest and the general well-being of this Commonwealth. Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms, and conditions of such contract. Such contract, as modified by the order of the commission, shall become effective 30 days after service of such order upon the parties to such contract.

Cross References. Section 508 is referred to in section 2807 of this title.

§ 509. Regulation of manufacture, sale or lease of appliances.

It is unlawful for any public utility engaged in the manufacture, sale, or lease of any appliance or equipment offered by such public utility for sale to the public to:

(1) Discontinue service to any consumer for failure of such consumer to pay the whole, or any installment, of the purchase price, or rental, of any appliance or equipment sold to such consumer.

(2) Apply to the purchase price or rental, or any part thereof, of any appliance or equipment purchased by, or leased to, a consumer of the service of the public utility, any deposit or other moneys of the consumer in the possession of the public utility. This restriction does not apply to any claims of the public utility against such consumer when such claims arise from damages to meters or other facilities used to measure and ascertain the quantity of service rendered by the public utility.

(3) Employ in the manufacture, sale, or lease of any such appliance or equipment, any property used in, or revenue derived from, the rendering of service to the public, unless separate accounts as to the property used and the costs incurred by, and the revenue derived from, the manufacture, lease, or sale of such appliance or equipment are adopted, used, and kept by the public utility.

(4) Employ in the manufacture, sale, or lease of any such appliance or equipment, the service of any officer or employee engaged in rendering service to the public, unless separate accounts as to the amount paid to such officer or employee, while engaged in the manufacture, lease or sale of such appliance or equipment, and whether any amount be

salary, bonus, commission, or expense are adopted, used, and kept by the public utility.

§ 510. Assessment for regulatory expenses upon public utilities.

(a) Determination of assessment.--Before November 1 of each year, the commission shall estimate its total expenditures in the administration of this part for the fiscal year beginning July of the following year, which estimate shall not exceed three-tenths of 1% of the total gross intrastate operating revenues of the public utilities and licensed entities under its jurisdiction for the preceding calendar year, except that the estimate may exceed this amount to reflect Federal funds received by the commission and funds received from other sources to perform functions that are unrelated to the regulation of public utilities and licensed entities. Such estimate shall be submitted to the Governor in accordance with section 610 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. At the same time the commission submits its estimate to the Governor, the commission shall also submit that estimate to the General Assembly. The commission or its designated representatives shall be afforded an opportunity to appear before the Governor and the Senate and House Appropriations Committees regarding their estimates. The commission shall subtract from the final estimate:

(1) The estimated fees to be collected pursuant to section 317 (relating to fees for services rendered by commission) during such fiscal year.

(2) The estimated balance of the appropriation, specified in section 511 (relating to disposition, appropriation and disbursement of assessments and fees), 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 prescribed. If the General Assembly fails to approve the commission's budget for the purposes of this part, by March 30, the commission shall assess public utilities on the basis of the last approved operating budget. At such time as the General Assembly approves the proposed budget the commission shall have the authority to make an adjustment in the assessments to reflect the approved budget. If, subsequent to the approval of the budget, the commission determines that a supplemental budget may be needed, the commission shall submit its request for that supplemental budget simultaneously to the Governor and the chairmen of the House and Senate Appropriations Committees.

(b) Allocation of assessment.--On or before March 31 of each year, every public utility shall file with the commission a statement under oath showing its gross intrastate operating revenues for the preceding calendar year. If any public utility shall fail to file such statement on or before March 31, the commission shall estimate such revenues, which estimate shall be binding upon the public utility for the purposes of this section. For each fiscal year, the allocation shall be made as follows:

(1) The commission shall determine for the preceding calendar year the amount of its expenditures directly attributable to the regulation of each group of utilities furnishing the same kind of service, and debit the amount so determined to such group. The commission may, for purposes of the assessment, deem utilities rendering water, sewer or water and sewer service, as defined in the definition of

"public utility" in section 102 (relating to definitions), as a utility group.

(2) The commission shall also determine for the preceding calendar year the balance of its expenditures, not debited as aforesaid, and allocate such balance to each group in the proportion which the gross intrastate operating revenues of such group for that year bear to the gross intrastate operating revenues of all groups for that year.

(3) The commission shall then allocate the total assessment prescribed by subsection (a) to each group in the proportion which the sum of the debits made to it bears to the sum of the debits made to all groups.

(4) Each public utility within a group shall then be assessed for and shall pay to the commission such proportion of the amount allocated to its group as the gross intrastate operating revenues of the public utility for the preceding calendar year bear to the total gross intrastate operating revenues of its group for that year.

(5) (Repealed).

(c) Notice, hearing and payment.--The commission shall give notice by registered or certified mail to each public utility of the amount lawfully charged against it under the provisions of this section, which amount shall be paid by the public utility within 30 days of receipt of such notice, unless the commission specifies on the notices sent to all public utilities an installment plan of payment, in which case each public utility shall pay each installment on or before the date specified therefor by the commission. Within 15 days after receipt of such notice, the public utility against which such assessment has been made may file with the commission objections setting out in detail the grounds upon which the objector regards such assessment to be excessive, erroneous, unlawful or invalid. The commission, after notice to the objector, shall hold a hearing upon such objections. After such hearing, the commission shall record upon its minutes its findings on the objections and shall transmit to the objector, by registered or certified mail, notice of the amount, if any, charged against it in accordance with such findings, which amount or any installment thereof then due, shall be paid by the objector within ten days after receipt of notice of the findings of the commission with respect to such objections. If any payment prescribed by this subsection is not made as aforesaid, the commission may suspend or revoke certificates of public convenience, certify automobile registrations to the Department 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) Suits by public utilities.--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). 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, unlawful, or invalid, the commission shall make a refund to the claimant out of the appropriation specified in section 511 as directed by the court.

(e) Certain provisions not applicable.--The provisions of this part relating to the judicial review of orders and determinations of the commission shall not be applicable to any findings, determinations, or assessments made under this section. The procedure in this section providing for the determination of the lawfulness of assessments and the recovery back of payments made pursuant to such assessment shall be exclusive of all other remedies and procedures.

(f) Intent of section.--It is the intent and purpose of this section that each public utility subject to this part shall advance to the commission its reasonable share of the cost of administering this part. The commission shall keep records of the costs incurred in connection with the administration and enforcement of this part or any other statute. The commission shall also keep a record of the manner in which it shall have computed the amount assessed against every public utility. Such records shall be open to inspection by all interested parties. The determination of such costs and assessments by the commission, and the records and data upon which the same are made, shall be considered prima facie correct; and in any proceeding instituted to challenge the reasonableness or correctness of any assessment under this section, the party challenging the same shall have the burden of proof.

(g) Saving provision.--This section does not affect or repeal any of the provisions of the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law."

(Dec. 18, 1980, P.L.1247, No.226, eff. imd.; July 10, 1986, P.L.1238, No.114, eff. imd.; Apr. 4, 1990, P.L.93, No.21, eff. 90 days; June 22, 1990, P.L.241, No.56, eff. 60 days; Dec. 30, 2002, P.L.2001, No.230, eff. 60 days; July 16, 2004, P.L.758, No.94; Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

2014 Amendment. Act 155 amended subsec. (a). See section 1 of Act 155 in the appendix to this title for special provisions relating to legislative findings and declarations.

2004 Repeal. Act 94 repealed subsec. (b)(5). Section 25(1)(ii) of Act 94 provided that the repeal of subsec. (b)(5) shall take effect in 270 days or on the date of publication of the notice under section 24 of Act 94. The notice was published in the Pennsylvania Bulletin March 12, 2005, at 35 Pa.B. 1737. See sections 20(5), 21(5) and 24 of Act 94 in the appendix to this title for special provisions relating to Pennsylvania Public Utility Commission contracts, preservation of rights, obligations, duties and remedies and publication in Pennsylvania Bulletin.

1990 Amendments. Act 21 amended subsec. (b) and Act 56 amended subsec. (b)(1).

Cross References. Section 510 is referred to in sections 2212, 2610, 3207 of this title; section 2303 of Title 58 (Oil and Gas).

§ 511. Disposition, appropriation and disbursement of assessments and fees.

(a) Payment into General Fund.--All assessments and fees received, collected or recovered under this chapter shall be paid by the commission into the General Fund of the State Treasury through the Department of Revenue.

(b) Use and appropriation of funds.--All such assessments and fees, having been advanced by public utilities for the purpose of defraying the cost of administering this part, shall be held in trust solely for that purpose, and shall be earmarked for the use of, and annually appropriated to, the commission for disbursement solely for that purpose.

(c) Requisition of funds.--All requisitions upon such appropriation shall be signed by the chairman and secretary of the commission, or such deputies as they may designate in writing to the State Treasurer, and shall be presented to the State Treasurer and dealt with by him and the Treasury Department in the manner prescribed by the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."
(Dec. 18, 1980, P.L.1247, No.226, eff. imd.)

1980 Amendment. Act 226 amended subsec. (b).

Cross References. Section 511 is referred to in section 510 of this title.

§ 511.1. Use of Federal funds under energy program.

(a) General rule.--The commission is authorized to apply for and, subject to appropriation by the General Assembly, use Federal funds pursuant to the National Energy Act which is composed of:

(1) The "National Energy Conservation Policy Act," Public Law 95-619.

(2) The "Powerplant and Industrial Fuel Use Act of 1978," Public Law 95-620.

(3) The "Public Utility Regulatory Policies Act of 1978," Public Law 95-617.

(4) The "Natural Gas Policy Act of 1978," Public Law 95-621.

(5) The "Energy Tax Act of 1978," Public Law 95-618.

(6) The "Energy Conservation and Production Act of 1976," Public Law 94-385.

(7) Any future Federal legislation or amendments to the statutes listed in this subsection providing special funds for:

(i) Rate making research and development.

(ii) Energy conservation research and development.

(iii) Motor carrier and rail transportation safety programs.

(iv) Gas safety programs.

(b) Funds not subject to lapse.--Funds received by the commission pursuant to subsection (a) shall not be subject to lapsing at the end of any fiscal period.

(c) Reimbursement to utilities prohibited.--Funds received by the commission pursuant to subsection (a) shall not be reimbursed to any public utility.
(Dec. 18, 1980, P.L.1247, No.226, eff. imd.)

1980 Amendment. Act 226 added section 511.1.

§ 512. Power of commission to require insurance.

The commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may deem necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance, or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters. All motor carriers of passengers, whose current liquid assets do not exceed their current liabilities by at least $100,000, shall cover each and every vehicle, transporting such passengers, with a public liability insurance policy or a surety bond issued by an insurance carrier or a bonding company authorized to do business in this Commonwealth, in such amounts as the commission may prescribe, but not less than $5,000 for one and $10,000 for more than one person injured in any one accident.

§ 512.1. Power of commission to confiscate, impound and sell vehicles.

(a) Authorization.--The commission is empowered to confiscate a vehicle and impound and sell a vehicle if the vehicle is used to provide a prearranged ride following disqualification under section 2609(b) (relating to fines and penalties) or suspension or revocation of a transportation network company's license under this title.

(b) Return of vehicle.--The vehicle may be returned to the registered owner upon payment of the costs of the commission associated with confiscation and impoundment. Failure of a transportation network company, driver of a confiscated vehicle or registered owner to pay these costs may result in forfeiture and sale of the vehicle.

(c) Commission duties.--The commission shall establish the following by regulation or order:

(1) grounds for confiscation, impoundment or sale;

(2) procedures for satisfaction of outstanding fines, penalties and costs and notice and hearing; and

(3) if the fines, penalties and costs are not timely paid, the timing of the sale and the allocation of proceeds from the sale of impounded vehicles.

(d) Disposition of sale proceeds.--The proceeds of the sale of a vehicle by the commission under this section shall first be used to satisfy any liens on the vehicle or, if the vehicle is subject to a lease, to pay the lessor damages due to the lessor upon default by the lessee as provided by 13 Pa.C.S. § 2A527 (relating to lessor's rights to dispose of goods) prior to paying any fines, penalties and costs.

(Nov. 4, 2016, P.L.1222, No.164, eff. imd.)

2016 Amendment. Act 164 added section 512.1.

§ 513. Public letting of contracts.

Whenever the commission deems that the public interest so requires, it may direct, by regulation or order, that any public utility shall award contracts or agreements for the construction, improvement, or extension, of its plant or system to the lowest responsible bidder, after a public offering has been made, after advertisement and notice. Any such public utility may participate as a bidder in any such public offering. The commission may prescribe regulations relative to such advertisement, notice, and public letting.

§ 514. Use of coal.

(a) Upgrading capability to use coal.--The commission shall promulgate regulations which require utilities to uprate their electric power production by increasing the capability to use

coal in existing coal-fueled plants where economically feasible and where the uprate is beneficial to ratepayers.

(b) Incentive for uprating.--The commission shall promulgate regulations which establish 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). Nothing in this section shall permit or require the commission to establish rates or procedures which are inconsistent with any other section in this title.

(c) Cost of upgrading.--Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities) and subject to regulations promulgated by the commission, the commission may allow a portion of the prudently incurred costs, determined on a per megawatt basis and not to exceed 50% of the unit's undepreciated original cost per megawatt, of uprating the capability of an existing coal-fueled plant to use coal mined in Pennsylvania to be made a part of the rate base or otherwise included in the rates charged by the utility before such uprating is completed. This subsection shall not apply unless, upon application of the affected public utility, the commission determines that the uprating would be more cost effective for the utility's ratepayers than other alternatives for meeting the utility's load and capacity requirements. Notwithstanding section 1309 (relating to rates fixed on complaint; investigation of costs of production), the commission, by regulation, shall provide for a utility to remove the costs of an uprating from its rate base and to refund any revenues collected as the result of this subsection, 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), referred to as the Loan Interest and Protection Law, during the period or periods for which the commission orders refunds, if the commission, after notice and hearings, determines that the uprating has not been completed within a reasonable time.

(May 31, 1984, P.L.370, No.74, eff. 60 days; Dec. 21, 1984, P.L.1265, No.240, eff. imd.; July 3, 1986, P.L.348, No.80, eff. 60 days)

Cross References. Section 514 is referred to in section 523 of this title.

§ 515. Construction cost of electric generating units.

(a) Submission of estimate.--No later than 30 days after construction of an electric generating unit is begun, either in this Commonwealth or in some other state, any public utility operating in this Commonwealth and owning any share in that unit shall submit to the commission an estimate of the cost of constructing that unit. If the public utility acquires ownership of any share in an electric generating unit which is under construction on the date of acquisition, the public utility shall, within 30 days of the date of acquisition, submit an estimate of the cost of constructing that unit which was formulated no later than 30 days from the beginning of construction.

(b) Auditor in charge.--For each electric generating unit under construction which falls under the provisions of this section, the commission shall designate an auditor in charge. In addition to the access to evidence granted by this section, each utility having a generating unit under construction shall promptly submit, to the appropriate auditor in charge, copies and a description of any change with respect to construction

which may be expected to result in substantial variances in the construction cost. A summary of all other changes shall be submitted to the commission at such reasonable times as the commission shall require.

(c) Access to evidence.--From and after the beginning of construction of an electric generating unit, the commission, or the auditor in charge, and the Consumer Advocate, or his designee, shall have reasonable access to the construction site and to any oral or documentary evidence relevant to determining the necessity and propriety of any construction cost. If a public utility objects to any request by the commission or the auditor in charge or the Consumer Advocate, or the person designated by the Consumer Advocate, for access to the construction site or to any oral or documentary evidence, the objection shall be decided in the same manner as an on-the-record proceeding pursuant to Chapter 3 (relating to public utility commission). The affected public utility shall have the burden of proof in sustaining any such objection.

(d) Definition.--As used in this section the term "construction" includes any work performed on an electric generating unit which is expected to require the affected public utility to incur an aggregate of at least $100,000,000 of expenses which, in accordance with generally accepted accounting principles, are capital expenses and not operating or maintenance expenses.

(July 6, 1984, P.L.602, No.123, eff. imd.; July 10, 1986, P.L.1238, No.114, eff. imd.)

Cross References. Section 515 is referred to in sections 523, 1308 of this title.

§ 516. Audits of certain utilities.

(a) General rule.--The commission shall provide for audits of any electric, gas, telephone or water utility whose plant in service is valued at not less than $10,000,000. The audits shall include an examination of management effectiveness and operating efficiency. The commission shall establish procedures for audits of the operations of utilities as provided in this section. Audits shall be conducted at least once every five years unless the commission finds that a specific audit is unnecessary, but in no event shall audits be conducted less than once every eight years. A summary of the audits mandated by this subsection shall be released to the public, and a complete copy of the audits shall be provided to the Office of Trial Staff and the Office of Consumer Advocate.

(b) Management efficiency investigations.--In addition to the audits mandated by subsection (a), the commission shall appoint a management efficiency investigator who shall periodically examine the management effectiveness and operating efficiency of all utilities required to be audited under subsection (a) and monitor the utility company responses to the audits required by subsection (a). For the purposes of carrying out the periodic audit required by this subsection and for carrying out the monitoring of audits required by subsection (a), the commission is hereby empowered to direct the management efficiency investigator to conduct such investigations through and with teams made up of commission staff and/or independent consulting firms; further, the commission may designate specific items of management effectiveness and operating efficiency to be investigated. The management efficiency investigator shall provide an annual report to the commission, the affected utility, the Office of Trial Staff and the Office of Consumer Advocate detailing the findings of such investigations.

(c) Use of independent auditing firms.--The commission may require an audit under subsection (a) or (b) to be performed by an independent consulting firm. When the commission, under either subsection (a) or (b), orders an audit to be performed by an independent consulting firm, the commission, after consultation with the utility, shall select the firm and require the utility to enter into a contract with the firm providing for payment of the firm by the utility. The terms of the contract shall include all reasonable expenses directly related to the performance of the audit or to the management efficiency investigation activities of independent consulting firms at the utility, as well as their preparation and presentation of testimony in any contested litigation which may be undertaken as a result of the audit findings under subsection (a) or (b). That contract shall require the audit firm to work under the direction of the commission.

(d) Other powers of commission unaffected.--This section is not intended to alter or repeal any existing powers of the commission.

(Dec. 21, 1984, P.L.1240, No.234, eff. 60 days; July 10, 1986, P.L.1238, No.114, eff. imd.)

Cross References. Section 516 is referred to in sections 523, 2204 of this title.

§ 517. Conversion of electric generating units fueled by oil or natural gas.

(a) Order by commission.--Whenever the commission determines that conversion of an oil or a natural gas-fueled electric generating unit to coal, a synthetic derived in whole or in part from coal or a mixture which includes coal or is derived in whole or in part from coal is economically and technologically feasible, the commission shall issue an order to the affected public utility to show cause why the commission should not order the conversion of that unit. The commission shall subsequently issue an order requiring the conversion of that unit unless the affected public utility proves, and the commission finds, any of the following:

(1) Conversion of the unit is not technologically feasible.

(2) The unit, if converted, could not be operated in compliance with present and reasonably anticipated environmental laws and regulations.

(3) There is a strong probability that the conversion and subsequent operation of the converted unit would be more costly to ratepayers over the remaining useful life of the converted unit than would continued operation as an oil or a natural gas-fueled unit.

(b) Environmental questions.--The commission may certify, to the Department of Environmental Resources, any question regarding the applicability of environmental laws and regulations, when the question arises in a proceeding under this section, and may incorporate the department's findings in its decision.

(c) Mixture with oil or natural gas.--For purposes of this section, the phrase "mixture which includes coal or is derived in whole or in part from coal" includes, but is not limited to, both the intermittent and the simultaneous burning of oil or natural gas with coal or a coal derivative if the intermittent or simultaneous burning of oil or natural gas would:

(1) lower the cost, to the ratepayers, of using coal or a coal derivative; or

(2) enable coal or a coal derivative to be burned in compliance with present and reasonably anticipated environmental laws and regulations.

(d) Recovery of conversion costs.--Notwithstanding any other provision of this title, if the commission, acting pursuant to this section, issues an order requiring the conversion of an oil or a natural gas-fueled unit, the affected utility shall be permitted to recover all reasonable and prudent costs associated with the conversion even if the conversion or continued operation of the converted unit is ultimately prevented by factors beyond the utility's control. The affected utility shall be permitted to include in its rate base, or otherwise in its rates during construction, such reasonable and prudent costs of construction associated with the conversion.

(e) Availability of funds.--(Repealed).

(Dec. 21, 1984, P.L.1240, No.234, eff. imd.; Dec. 21, 1984, P.L.1270, No.241, eff. imd.; July 3, 1986, P.L.348, No.80, eff. 60 days; July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Repeals. Act 80 repealed subsec. (e) and Act 114 repealed subsec. (e).

1984 Amendments. Acts 234 and 241 added section 517. The amendments by Acts 234 and 241 are identical and therefore have been merged.

References in Text. The Department of Environmental Resources, referred to in subsec. (b), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

§ 518. Construction of electric generating units fueled by nuclear energy.

(a) General rule.--Only upon the application of a public utility and the approval of the application by the commission shall it be lawful for the utility to begin the construction of an electric generating unit fueled by nuclear energy.

(b) Review by commission.--Every application shall be made to the commission, in writing, and shall be in the form and contain the information the commission requires by its regulations. The commission shall approve an application if, after reasonable notice and hearing, the affected public utility proves, and the commission finds, any of the following:

(1) There are no reasonably available sites on which a unit or units of comparable capacity fueled by coal, a synthetic derived in whole or in part from coal or a mixture which includes coal or is derived in whole or in part from coal could be operated in compliance with present and reasonably anticipated environmental laws and regulations.

(2) There is a strong probability that construction and subsequent operation of a unit or units of comparable capacity fueled by coal, a synthetic derived in whole or in part from coal or a mixture which includes coal or is derived in whole or in part from coal would be more costly to ratepayers over the useful life of the nonnuclear unit or units than would construction and subsequent operation of the unit proposed by the utility.

(c) Environmental questions.--The commission may certify, to the Department of Environmental Resources, any question regarding the applicability of environmental laws and regulations, when the question arises in a proceeding under this section, and may incorporate the department's findings in its decision.

(d) Time limit on commission review.--If the commission fails to approve or disapprove an application within six months after the date on which the application is filed, it shall be lawful for the affected utility to construct the proposed electric generating unit as though the commission had approved the application.

(e) Capacity determinations.--This section does not authorize the commission to review the affected public utility's determination that there is a need to construct a new electric generating unit of the capacity and by the in-service date proposed by the utility and does not supersede a decision by the commission under some other provision of law that there is, or was, not a need to construct a new electric generating unit of the capacity and by the in-service date proposed by the utility.

(f) Mixture with oil or natural gas.--For the purposes of this section, the phrase "mixture which includes coal or is derived in whole or in part from coal" includes, but is not limited to, both the intermittent and the simultaneous burning of oil or natural gas with coal or a coal derivative if the intermittent or simultaneous burning of oil or natural gas would:

(1) lower the cost, to the ratepayers, of using coal or a coal derivative; or

(2) enable coal or a coal derivative to be burned in compliance with present and reasonably anticipated environmental laws and regulations.

(Dec. 21, 1984, P.L.1240, No.234, eff. imd.; Dec. 21, 1984, P.L.1270, No.241, eff. 60 days)

1984 Amendments. Acts 234 and 241 added section 518. The amendments by Acts 234 and 241 are identical and therefore have been merged.

References in Text. The Department of Environmental Resources, referred to in subsec. (c), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

§ 519. Construction of electric generating units fueled by oil or natural gas.

(a) General rule.--Only upon the application of a public utility and the approval of the application by the commission shall it be lawful for the utility to begin the construction of an electric generating unit fueled by oil or natural gas.

(b) Review by commission.--Every application shall be made to the commission, in writing, and shall be in the form and contain the information the commission requires by its regulations. The commission shall approve an application if, after reasonable notice and hearing, the affected public utility proves, and the commission finds, any of the following:

(1) There are no reasonably available sites on which a unit or units of comparable capacity fueled by coal, a synthetic derived in whole or in part from coal or a mixture which includes coal or is derived in whole or in part from coal could be operated in compliance with present and reasonably anticipated environmental laws and regulations.

(2) There is a strong probability that construction and subsequent operation of a unit or units of comparable capacity fueled by coal, a synthetic derived in whole or in part from coal or a mixture which includes coal or is derived in whole or in part from coal would be more costly to ratepayers over the useful life of the nonoil or nongas unit

or units than would construction and subsequent operation of the unit proposed by the utility.

(c) Environmental questions.--The commission may certify, to the Department of Environmental Resources, any question regarding the applicability of environmental laws and regulations, when the question arises in a proceeding under this section, and may incorporate the department's findings in its decision.

(d) Time limit on commission review.--If the commission fails to approve or disapprove an application within six months after the date on which the application is filed, it shall be lawful for the affected utility to construct the proposed electric generating unit as though the commission had approved the application.

(e) Capacity determinations.--This section does not authorize the commission to review the affected public utility's determination that there is a need to construct a new electric generating unit of the capacity and by the in-service date proposed by the utility and does not supersede a decision by the commission under some other provision of law that there is, or was, not a need to construct a new electric generating unit of the capacity and by the in-service date proposed by the utility.

(f) Mixture with oil or natural gas.--For the purposes of this section, the phrase "mixture which includes coal or is derived in whole or in part from coal" includes, but is not limited to, both the intermittent and the simultaneous burning of oil or natural gas with coal or a coal derivative if the intermittent or simultaneous burning of oil or natural gas would:

(1) lower the cost, to the ratepayers, of using coal or a coal derivative; or

(2) enable coal or a coal derivative to be burned in compliance with present and reasonably anticipated environmental laws and regulations.

(Dec. 21, 1984, P.L.1240, No.234, eff. imd.; Dec. 21, 1984, P.L.1270, No.241, eff. 60 days)

1984 Amendments. Acts 234 and 241 added section 519. The amendments by Acts 234 and 241 are identical and therefore have been merged.

References in Text. The Department of Environmental Resources, referred to in subsec. (c), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

§ 520. Power of commission to order cancellation or modification of construction of electric generating units.

(a) General rule.--The commission shall order any public utility engaged in producing, generating, transmitting, distributing or furnishing electricity to cancel or modify the construction of, or its participation in the construction of, any generating unit where the commission, after notice and an opportunity for hearing, determines that the construction is not in the public interest. In addition to any other relevant matters, the commission shall consider in its determination whether:

(1) The generating unit is necessary for the utility to provide adequate and reliable service to the public.

(2) There are less costly alternatives by which the utility could maintain its ability to provide adequate and reliable service.

(b) Investigations and hearings.--For the purpose of enabling the commission to make its determination, it may hold hearings, make inquiries and require the submission of information which it deems necessary or proper in enabling it to reach a determination. The burden of proof at these hearings to show that construction of the generating unit is in the public interest shall be on the public utility.

(c) Regulatory treatment of costs.--Notwithstanding any other provisions of this title, for a generating unit canceled after the effective date of this section, either voluntarily or by commission order, an electric utility may be permitted to recover a return of, but not a return on, prudently incurred costs on any partially completed facility when cancellation is found by the commission to be in the public interest. The burden of proof to show that any costs claimed were prudently incurred shall be on the public utility.

(Oct. 10, 1985, P.L.257, No.62, eff. imd.)

1985 Amendment. Act 62 added section 520.

§ 521. Retirement of electric generating units.

(a) Removal from normal operation.--No public utility shall discontinue an electric generating unit from normal operation unless it has petitioned for and obtained the approval of the commission. The commission may, upon its own motion or upon complaint, prohibit a public utility from discontinuing an electric generating unit from normal operation if the commission determines that it would be more cost effective for the utility's ratepayers if the unit were to remain in normal operation, either with or without capital additions or operating improvements, than if the utility were to implement its plan for replacing the power which the unit is, or could be made, capable of producing.

(b) Return to normal operation.--The commission may, upon its own motion or upon complaint, order a public utility to return an electric generating unit to normal operation if the commission determines that it would be more cost effective for the utility's ratepayers if the unit were to be returned to normal operation, with or without capital additions or operating improvements, than if the utility were to implement its plan for providing the power which the unit is, or could be made, capable of producing.

(c) Procedure.--The commission may hold such hearings as it deems necessary in making the determinations required by subsection (a) or (b). The affected public utility shall have the burden of proof in any proceeding pursuant to this section.

(d) Regulations.--The commission may adopt such regulations as it deems necessary to carry out its powers and duties under this section.

(e) Exclusion.--This section shall not apply to a nuclear generating unit or to variations in operation of electric generating units to satisfy economic dispatch requirements or to maintain intrasystem or intersystem stability.

(f) Construction costs.--Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities) and subject to regulations promulgated by the commission, the commission may allow a portion of the prudently incurred costs of capital additions, determined on a per megawatt basis and not to exceed 50% of the unit's undepreciated original cost per megawatt, to an electric

generating unit to be made a part of the rate base or otherwise included in the rates charged by the utility before such capital additions are completed if the commission, acting pursuant to subsection (a) or (b), prohibits the utility from retiring the unit or orders the utility to return the unit to normal operation, provided that:

(1) the capital additions would allow the continued or increased use of coal mined in Pennsylvania; and

(2) the capital additions would be more cost effective for the utility's ratepayers than other alternatives for meeting the utility's load and capacity requirements.

Notwithstanding section 1309 (relating to rates fixed on complaint; investigation of costs of production), the commission, by regulation, shall provide for a utility to remove the costs of capital additions from its rate base and to refund any revenues collected as the result of this subsection, 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), referred to as the Loan Interest and Protection Law, during the period or periods for which the commission orders refunds, if the commission, after notice and hearing, determines that the capital addition has not been completed within a reasonable time.

(g) Definition.--As used in this section the term "normal operation" means the continuing availability of an electric generating unit to meet consumer demand except during:

(1) Scheduled outages for repairs, tests or other procedures essential to the unit's further use.

(2) Unscheduled outages caused by the unit's physical malfunctioning or breakdown.

(3) Reduced levels of generation pending execution of repairs.

(4) Reduced levels or complete cessation of generation, on a temporary basis, because of disruptions in fuel supplies, waste disposal or cooling water; or because of compliance with environmental protection limitations or conservation of fuel during periods of, or in anticipation of, scarcity.

(July 3, 1986, P.L.348, No.80, eff. 60 days)

1986 Amendment. Act 80 added section 521.

§ 522. Expense reduction program.

(a) Target.--The commission shall establish an expense reduction program for calendar year 1986 for all electric and gas utilities with total annual intrastate operating revenues of at least $40,000,000 and for all telephone utilities with total annual intrastate operating revenues of at least $9,000,000. Utilities regulated by the commission pursuant to this subsection shall make every reasonable effort to reduce their level of expenses, other than expenses associated with depreciation, fuel, collective bargaining agreements and other categories of expense as determined by the commission for the calendar year 1986 as compared to calendar year 1985. The commission shall periodically review the expense reducing efforts undertaken by utilities pursuant to this subsection and shall take appropriate action in response to these efforts.

(b) Ongoing effort.--The commission may direct or permit any utility to take any lawful action not inconsistent with this title for the purpose of encouraging economies, efficiencies or improvements which benefit the utility and its ratepayers.

(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 522.

§ 523. Performance factor consideration.

(a) Considerations.--The commission shall consider, in addition to all other relevant evidence of record, the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates under this title. On the basis of the commission's consideration of such evidence, it shall give effect to this section by making such adjustments to specific components of the utility's claimed cost of service as it may determine to be proper and appropriate. Any adjustment made under this section shall be made on the basis of specific findings upon evidence of record, which findings shall be set forth explicitly, together with their underlying rationale, in the final order of the commission.

(b) Fixed utilities.--As part of its duties pursuant to subsection (a), the commission shall set forth criteria by which it will evaluate future fixed utility performance and in assessing the performance of a fixed utility pursuant to subsection (a), the commission shall consider specifically the following:

(1) Management effectiveness and operating efficiency as measured by an audit pursuant to section 516 (relating to audits of certain utilities) to the extent that the audit or portions of the audit have been properly introduced by a party into the record of the proceeding in accordance with applicable rules of evidence and procedure.

(2) Action or failure to act pursuant to section 514 (relating to use of coal) to upgrade capability to use coal for electric utilities.

(3) Efficiency and cost-effectiveness of generating capacity for electric utilities.

(4) Action or failure to act to encourage development of cost-effective energy supply alternatives such as conservation or load management, cogeneration or small power production for electric and gas utilities.

(5) Action or failure to act to encourage cost-effective conservation by customers of water utilities.

(6) Action or failure to act to contain costs of constructing new generating units consistent with sections 515 (relating to construction cost of electric generating units) and 1308(f) (relating to voluntary changes in rates).

(7) Any other relevant and material evidence of efficiency, effectiveness and adequacy of service.

(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 523.

§ 524. Data to be supplied by electric utilities.

(a) General rule.--Effective December 31, 1987, each public utility producing, generating, distributing or furnishing electricity shall submit annually to the commission information concerning its future plans to meet its customer demand, including, but not limited to, the following data:

(1) A year-by-year projection of electrical energy use and electrical energy demand for each of the next 20 years. The forecast shall examine alternative scenarios for demand growth and shall be divided into the residential, commercial, industrial and utility sectors.

(2) A year-by-year projection of all available sources of supply for each of the next 20 years, including, but not limited to, the following:

(i) Electric generating capacity from centralized power plants over 25,000 KW indicating planned additions, retirements, purchases and all other expected changes in levels of generating capacity.

(ii) The projected utilization, and the potential for additional utilization, of cogeneration and nonconventional technologies relying on renewable energy resources, including, but not limited to, solar, wind, biomass and geothermal and other small power technologies not accounted for in subparagraph (i). The information shall identify specifically any such capacity that is expected to or may be available to each utility.

(3) A year-by-year examination of the potential for promoting and ensuring the full utilization of all practical and economical energy conservation for the next 20 years and a discussion of how existing and planned utility programs do or do not adequately reach this potential. Such programs should include, but not be limited to, educational, audit, loan, rebate, third-party financing and load management efforts to shift load from peak to off-peak periods.

(4) An explanation of how the utility has integrated all demand-side and supply-side options to derive a resource mix to meet customer demand.

(5) A comparison of the total annual cost to customers and to the company of the utility's plan to meet new demand compared with alternative plans for the next 20 years.

(6) A discussion of the methodologies, assumptions and data sources used to determine the projections and estimates required by paragraphs (1), (2), (3), (4) and (5).

(7) With respect to the planned construction of any new generation or production facilities, the utility shall provide all of the following:

(i) A discussion of proposed and alternative sites for the construction and operation of planned facilities and an estimate of the effect on annual costs of each alternative considered.

(ii) A discussion of the type of fuel and method of generation to be used at the proposed facility as well as alternative types of facilities studied and an estimate of the effect upon annual costs of the various alternative types of facilities considered.

(iii) A discussion of expected financial impacts and requirements of construction and operation of the proposed facility, as well as alternative facilities.

(iv) A discussion of why all the alternatives considered were rejected.

(b) Report.--The commission shall prepare a report summarizing and discussing the data provided pursuant to subsection (a) and annually, on or before September 1, shall submit the report to the General Assembly, the Governor, the Office of Consumer Advocate and each affected public utility.

(c) Regulations.--The commission shall promulgate regulations to establish the specific forms and methods of reporting the information to be submitted pursuant to subsection (a).

(d) Effect of submission of information.--Neither the submission to the commission of the information required by subsection (a) or the issuance by the commission of a report on the information, or anything contained in such reports, or

any action taken by the commission as a result of the issuance of such reports, shall be considered or construed as approval or acceptance by the commission of any of the plans, assumptions or calculations made by the public utility and reflected in the information submitted.
(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 524.

§ 525. Sale of generating units and power.

The commission may prohibit a public utility from discontinuing an electric generating unit from normal operation if the commission determines that it would be technically feasible and cost effective for the utility to sell the unit or the power from the unit to another utility and if the commission determines that it would be cost effective for the other utility to make such a purchase. The commission may also order the sale of the unit or the power from the unit if the commission determines that such a sale would be technically feasible and cost effective for both the selling and buying utilities.
(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 525.

§ 526. Rejection of rate increase requests due to inadequate quality or quantity of service.

(a) General rule.--The commission may reject, in whole or in part, a public utility's request to increase its rates where the commission concludes, after hearing, that the service rendered by the public utility is inadequate in that it fails to meet quantity or quality for the type of service provided.

(b) Other powers and duties preserved.--This section shall not be construed to diminish the powers and duties of the commission under any other provision of law to remedy inadequate service by a public utility.
(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 526. Section 18 provided that section 526 shall be applicable to all cases pending before the commission or courts, whether on appeal or otherwise.

§ 527. Cogeneration rules and regulations.

(a) Availability.--The commission shall promulgate rules and regulations concerning the rates, terms, conditions and availability of cogeneration in this Commonwealth. The commission shall require that utility rates to the public reflect the costs and savings to the utility from cogeneration, including, but not limited to, the costs incurred by utilities under contracts with nonutility generating unit project developers for the purchase of electric capacity or energy, or both; the costs recoverable under subsection (b) to buy out and cancel unfinished nonutility generating unit projects by mutual agreement of the project developer and the public utility; and the costs prudently incurred by utilities under a voluntary buyout, buydown or other restructured arrangement which are just and reasonable and which reduce the cost to customers of nonutility generating unit projects.

(b) Recovery of cancellation costs of nonutility generating unit projects.--A nonutility generating unit project is a generating unit project that is not owned by a public utility. If the construction of a nonutility generating unit project for which a public utility has a contract, whether entered into voluntarily or pursuant to commission order, to purchase project

energy or project capacity and energy is canceled by mutual agreement of the project developer and the public utility prior to the unit's completion and operation, the public utility may recover all costs to be paid to the project developer and all costs directly related thereto which are prudently incurred as a result of such cancellation. The burden of proof to show that any costs claimed were prudently incurred shall be on the public utility. In reviewing a claim for such costs:

(1) the commission shall not disallow any portion solely on the basis that it constitutes an amount greater than actual development expenditures and all costs related thereto; and

(2) the commission shall consider the amount of the claim compared to the utility's total estimated costs of obligations under the contract.

(July 10, 1986, P.L.1238, No.114, eff. imd.; July 2, 1996, P.L.542, No.94, eff. imd.)

1996 Amendment. See the preamble and section 2 of Act 94 in the appendix to this title for special provisions relating to legislative findings and construction of act.

Cross References. Section 527 is referred to in sections 2803, 2804, 2808 of this title.

§ 528. Use of foreign coal by qualifying facilities.

(a) Legislative findings.--The General Assembly hereby finds as follows:

(1) Potential qualifying facilities which would generate electricity from United States energy sources are, and will for the foreseeable future continue to be, able to supplement adequately the capacity needs of public utilities in this Commonwealth.

(2) Some of those qualifying facilities offer the multiple benefits of supplying electricity to Pennsylvania ratepayers at a reasonable price, creating jobs in areas of high unemployment in this Commonwealth and helping to clean up this Commonwealth's environment.

(3) Although Federal law places a duty on public utilities to buy electricity generated by qualifying facilities, Federal law does not dictate how the price paid by public utilities and the charges to ratepayers for that electricity are to be calculated.

(4) The energy source used by a qualifying facility is a significant factor in determining if a qualifying facility would be able to meet its commitment to supply electricity to a public utility at a reasonable price.

(5) Coal mined in a foreign country is subject to major supply interruptions, price increases and quality reductions which are unpredictable and which may result not only from market factors, but also from foreign policy decisions of the United States Government or one or more foreign governments or from domestic policy changes in the foreign country in which the coal is mined.

(6) It is much easier for a public utility and the commission to predict the reliability of a qualifying facility and the reasonableness of the price of the electricity to be supplied by that qualifying facility if United States energy sources are to be used than if coal mined in a foreign country is to be used.

(7) A qualifying facility which would burn coal mined in a foreign country is too potentially unreliable to justify a public utility in foregoing alternative capacity

commitments and in paying the qualifying facility a price which includes any capacity credit.

(b) General rule.--The price paid by a public utility to a qualifying facility and the charge imposed on the utility's ratepayers for electricity generated by that qualifying facility shall not include any capacity credit if that qualifying facility burns coal mined in a foreign country.

(c) Restriction on contract approval.--The commission shall not approve any contract between a public utility and a qualifying facility which burns coal mined in a foreign country for the purchase by the utility of electricity generated by the qualifying facility unless:

(1) the price to be paid by the utility reflects no more than the actual avoided cost of the utility when the payment is made; and

(2) the contract does not exceed five years in duration.

(d) Review of contracts.--Notwithstanding any other provision of law, a contract in effect on the effective date of this section or thereafter between a public utility and a qualifying facility for the purchase by the utility of electricity generated by the qualifying facility shall, after notice and hearing, be subject to review and modification in accordance with subsections (b) and (c) at any time upon complaint or upon the commission's own motion if the qualifying facility burns coal mined in a foreign country.

(e) Recovery from ratepayers.--For the express purpose of implementing the intent of this section, a public utility shall not be permitted to recover from ratepayers pursuant to section 1307 (relating to sliding scale of rates; adjustments) any of the costs associated with a contract between the utility and a qualifying facility which burns coal mined in a foreign country for the purchase by the utility of electricity generated by the qualifying facility. Any such costs which the commission determines to be reasonable and prudent shall be recoverable only through a base rate proceeding pursuant to Chapter 13 (relating to rates and rate making).

(f) Definition.--For the purposes of this section, "qualifying facility" means any cogeneration facility or small power producer which is a qualifying facility pursuant to the Federal Energy Regulatory Commission's guidelines set forth at 18 CFR §§ 292.101(b)(1) (relating to definitions) and 292.203(a) and (b) (relating to general requirements for qualification).

(g) Severability.--The provisions of this section shall be severable. If any provision of this section or the application thereof to any public utility, qualifying facility or circumstance is held invalid, the remainder of this section and the application of any provision thereof to any other public utilities, qualifying facilities or circumstances shall not be affected thereby.

(July 6, 1988, P.L.490, No.83, eff. imd.)

1988 Amendment. Act 83 added section 528.

§ 529. Power of commission to order acquisition of small water and sewer utilities.

(a) General rule.--The commission may order a capable public utility to acquire a small water or sewer utility if the commission, after notice and an opportunity to be heard, determines:

(1) that the small water or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January

24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water or sewer utility;

(2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;

(3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;

(4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible;

(5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and

(6) that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.

(b) Alternatives to acquisition.--Before the commission may order the acquisition of a small water or sewer utility in accordance with subsection (a), the commission shall discuss with the small water or sewer utility, and shall give such utility a reasonable opportunity to investigate, alternatives to acquisition, including, but not limited to:

(1) The reorganization of the small water or sewer utility under new management.

(2) The entering of a contract with another public utility or a management or service company to operate the small water or sewer utility.

(3) The appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public.

(4) The merger of the small water or sewer utility with one or more other public utilities.

(5) The acquisition of the small water or sewer utility by a municipality, a municipal authority or a cooperative.

(c) Factors to be considered.--In making a determination pursuant to subsection (a), the commission shall consider:

(1) The financial, managerial and technical ability of the small water or sewer utility.

(2) The financial, managerial and technical ability of all proximate public utilities providing the same type of service.

(3) The expenditures which may be necessary to make improvements to the small water or sewer utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(4) The expansion of the franchise area of the acquiring capable public utility so as to include the service area of the small water or sewer utility to be acquired.

(5) The opinion and advice, if any, of the Department of Environmental Resources as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(6) Any other matters which may be relevant.

(d) Order of the commission.--Subsequent to the determinations required by subsection (a), the commission shall issue an order for the acquisition of the small water or sewer utility by a capable public utility. Such order shall provide for the extension of the service area of the acquiring capable public utility.

(e) Acquisition price.--The price for the acquisition of the small water or sewer utility shall be determined by agreement between the small water or sewer utility and the acquiring capable public utility, subject to a determination by the commission that the price is reasonable. If the small water or sewer utility and the acquiring capable public utility are unable to agree on the acquisition price or the commission disapproves the acquisition price on which the utilities have agreed, the commission shall issue an order directing the acquiring capable public utility to acquire the small water or sewer utility by following the procedure prescribed for exercising the power of eminent domain pursuant to the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code.

(f) Separate tariffs.--The commission may, in its discretion and for a reasonable period of time after the date of acquisition, allow the acquiring capable public utility to charge and collect rates from the customers of the acquired small water or sewer utility pursuant to a separate tariff.

(g) Appointment of receiver.--The commission may, in its discretion, appoint a receiver to protect the interests of the customers of the small water or sewer utility. Any such appointment shall be by order of the commission, which order shall specify the duties and responsibilities of the receiver.

(h) Notice.--The notice required by subsection (a) or any other provision of this section shall be served upon the small water or sewer utility affected, the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, the Department of Environmental Resources, all proximate public utilities providing the same type of service as the small water or sewer utility, all proximate municipalities and municipal authorities providing the same type of service as the small water or sewer utility and the municipalities served by the small water or sewer utility. The commission shall order the affected small water or sewer utility to provide notice to its customers of the initiation of proceedings under this section in the same manner in which the utility is required to notify its customers of proposed general rate increases.

(i) Burden of proof.--The Bureau of Investigation and Enforcement shall have the burden of establishing a prima facie case that the acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of this section. Once the commission determines that a prima facie case has been established:

(1) the small water or sewer utility shall have the burden of proving its ability to render adequate, efficient,

safe and reasonable service at just and reasonable rates; and

(2) a proximate public utility providing the same type of service as the small water or sewer utility shall have the opportunity and burden of proving its financial, managerial or technical inability to acquire and operate the small water or sewer utility.

(j) Plan for improvements.--Any capable public utility ordered by the commission to acquire a small water or sewer utility shall, prior to acquisition, submit to the commission for approval a plan, including a timetable, for bringing the small water or sewer utility into compliance with applicable statutory and regulatory standards. The capable public utility shall also provide a copy of the plan to the Department of Environmental Resources and such other State or local agency as the commission may direct. The commission shall give the Department of Environmental Resources adequate opportunity to comment on the plan and shall consider any comments submitted by the department in deciding whether or not to approve the plan. The reasonably and prudently incurred costs of each improvement shall be recoverable in rates only after that improvement becomes used and useful in the public service.

(k) Limitations on liability.--Upon approval by the commission of a plan for improvements submitted pursuant to subsection (j) and the acquisition of a small water or sewer utility by a capable public utility, the acquiring capable public utility shall not be liable for any damages beyond the aggregate amount of $50,000, including a maximum amount of $5,000 per incident, if the cause of those damages is proximately related to identified violations of applicable statutes or regulations by the small water or sewer utility. This subsection shall not apply:

(1) beyond the end of the timetable in the plan for improvements;

(2) whenever the acquiring capable public utility is not in compliance with the plan for improvements; or

(3) if, within 60 days of having received notice of the proposed plan for improvements, the Department of Environmental Resources submitted written objections to the commission and those objections have not subsequently been withdrawn.

(l) Limitations on enforcement actions.--Upon approval by the commission of a plan for improvements submitted pursuant to subsection (j) and the acquisition of a small water or sewer utility by a capable public utility, the acquiring capable public utility shall not be subject to any enforcement actions by State or local agencies which had notice of the plan if the basis of such enforcement action is proximately related to identified violations of applicable statutes or regulations by the small water or sewer utility. This subsection shall not apply:

(1) beyond the end of the timetable in the plan for improvements;

(2) whenever the acquiring capable public utility is not in compliance with the plan for improvements;

(3) if, within 60 days of having received notice of the proposed plan for improvements, the Department of Environmental Resources submitted written objections to the commission and those objections have not subsequently been withdrawn; or

(4) to emergency interim actions of the commission or the Department of Environmental Resources, including, but

not limited to, the ordering of boil-water advisories or other water supply warnings, of emergency treatment or of temporary, alternate supplies of water.

(m) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Capable public utility." A public utility which regularly provides the same type of service as the small water utility or the small sewer utility to 4,000 or more customer connections, which is not an affiliated interest of the small water utility or the small sewer utility and which provides adequate, efficient, safe and reasonable service. A public utility which would otherwise be a capable public utility except for the fact that it has fewer than 4,000 customer connections may elect to be a capable public utility for the purposes of this section regardless of the number of its customer connections and regardless of whether or not it is proximate to the small sewer utility or small water utility to be acquired.

"Small sewer utility." A public utility which regularly provides sewer service to 1,200 or fewer customer connections.

"Small water utility." A public utility which regularly provides water service to 1,200 or fewer customer connections.

(Apr. 16, 1992, P.L.149, No.27, eff. 60 days; July 2, 2019, P.L.357, No.53, eff. 60 days)

2019 Amendment. Act 53 amended subsec. (i).

1992 Amendment. Act 27 added section 529.

References in Text. The Department of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

The act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code, referred to in subsec. (e), was repealed by the act of May 4, 2006 (P.L.111, No.34). The subject matter is now contained in Title 26 (Eminent Domain).

§ 530. Clean Air Act implementation plans.

(a) Phase I compliance.--On or before February 1, 1993, each public utility shall submit to the commission and may request commission approval of a plan to bring its generating units which use coal to generate electricity into compliance with the Phase I requirements of Title IV of the Clean Air Act (Public Law 95-95, 42 U.S.C. § 7651 et seq.).

(b) Phase II compliance.--On or before January 1, 1996, each public utility shall submit to the commission and may request commission approval of a plan to bring its generating units which use coal to generate electricity into compliance with the Phase II requirements of Title IV of the Clean Air Act.

(c) Notice of plan.--At the same time it submits its plan to the commission, the public utility shall provide a copy of the plan to the Department of Environmental Resources, the Consumer Advocate and the Small Business Advocate. For plans submitted after the effective date of this section, the commission shall cause notice of the utility's filing to be published in the Pennsylvania Bulletin. The public utility shall make available, upon request, a copy of the proposed plan to any coal supplier with which it has a supply contract for more than one year and to any collective bargaining representative for the coal supplier.

(d) Review by commission.--

(1) If the utility has requested commission approval of its plan, the commission shall review the proposed plan on an expedited basis to determine if the utility's proposed compliance plan submitted under this section is in the public interest.

(2) After notice and opportunity for a hearing, the commission shall approve or disapprove the compliance plan within nine months after the plan is filed, provided that approval may be in whole or in part and may be subject to such limitations and qualifications as may be deemed necessary and in the public interest. The commission's decision shall establish that the utility's costs of compliance are recoverable costs of service, provided the costs:

(i) are reasonable in amount and prudently incurred as determined in an appropriate rate or other proceeding; and

(ii) represent investment in flue gas desulfurization devices, clean coal technologies or similar facilities designed to maintain or promote the use of coal, including facilities which intermittently or simultaneously burn natural gas with coal.

(3) Costs established as recoverable under paragraph (2) shall qualify as nonrevenue-producing investment to improve environmental conditions under section 1315 (relating to limitation on consideration of certain costs for electric utilities), provided that any benefits to the utility generated by the sale of allowances under the Clean Air Act shall be flowed through to the utility's ratepayers.

(4) The utility shall not be required to refile its plan or to seek additional commission approvals concerning its plan unless the utility's plan is significantly amended or revised.

(e) Definition.--As used in this section, the term "Clean Air Act" means Public Law 95-95, 42 U.S.C. § 7401 et seq. and includes the Clean Air Act Amendments (Public Law 101-549, 104 Stat. 2399) approved November 15, 1990.
(Apr. 16, 1992, P.L.149, No.27, eff. 60 days)

1992 Amendment. Act 27 added section 530.

References in Text. The Department of Environmental Resources, referred to in subsec. (c), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

CHAPTER 7
PROCEDURE ON COMPLAINTS

Sec.
701. Complaints.
702. Service of complaints on parties.
703. Fixing of hearings.

Enactment. Chapter 7 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

Cross References. Chapter 7 is referred to in sections 2603, 2609 of this title.

§ 701. 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 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 may prescribe the form of complaints filed under this section.

Cross References. Section 701 is referred to in sections 1358, 2205, 2807, 3014 of this title.

§ 702. Service of complaints on parties.

Upon the filing of a complaint, the commission shall cause to be served upon each party named in the complaint a copy of the complaint and notice from the commission calling upon such party to satisfy the complaint, or to answer the same in writing, within such time as is specified by the commission in the notice. Service in all hearings, investigations and proceedings pending before the commission shall be made by registered or certified mail or by e-mail upon agreement by each party.

(July 2, 2019, P.L.357, No.53, eff. 60 days)

§ 703. Fixing of hearings.

(a) Satisfaction of complaint or hearing.--If any party complained against, within the time specified by the commission, shall satisfy the complaint, the commission shall dismiss the complaint. Such party shall be relieved from responsibility only for the specific matter complained of. If such party shall not satisfy the complaint within the time specified, and it shall appear to the commission from a consideration of the complaint and answer, or otherwise, that reasonable ground exists for investigating such complaint, it shall be the duty of the commission to fix a time and place for a hearing.

(b) Notice of hearing.--The commission shall fix the time and place of hearing, within or without this Commonwealth, if any is required, and shall serve notice thereof upon parties in interest. The commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

(c) Hearing and record.--All hearings before the commission, or its representative, shall be public, and shall be conducted in accordance with such regulations as the commission may prescribe. A full and complete record shall be kept of all proceedings had before the commission, or its representative, on any formal hearing, and all testimony shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney, and to introduce evidence.

(d) Informal hearings.--The commission may, in addition to the hearings specially provided by this part, conduct such other hearings as may be required in the administration of the powers and duties conferred upon it by this part and by other acts relating to public utilities. Reasonable notice of all such hearings shall be given the persons interested therein.

(e) Decisions by commission.--After the conclusion of the hearing, the commission shall make and file its findings and order with its opinion, if any. Its findings shall be in

sufficient detail to enable the court on appeal, to determine the controverted question presented by the proceeding, and whether proper weight was given to the evidence. A copy of such order, certified under the seal of the commission, shall be served by registered or certified mail upon the party or parties against whom it runs, or his attorney, and notice thereof shall be given to the other parties to the proceedings or their attorney. Such order shall take effect and become operative as designated therein, and shall continue in force either for a period which may be designated therein, or until changed or revoked by the commission. The commission may grant and prescribe such additional time as, in its judgment, is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

(f) Rehearing.--After an order has been made by the commission, any party to the proceedings may, within 15 days after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing, and the commission may grant and hold such rehearing on such matters. No application for a rehearing shall in anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of any existing order, except as the commission may, by order, direct. If the application be granted, the commission may affirm, rescind, or modify its original order.

(g) Rescission and amendment of orders.--The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

CHAPTER 9
JUDICIAL PROCEEDINGS

Sec.

901. Right to trial by jury.
902. Reliance on orders pending judicial review.
903. Restriction on injunctions (Repealed).

Enactment. Chapter 9 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

§ 901. Right to trial by jury.

Nothing in this part shall be construed to deprive any party, upon any 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 Pennsylvania or the Constitution of the United States, but in every such case such right of trial by jury shall remain inviolate. When any judicial review is sought, such right shall be deemed to be waived upon all issues, unless expressly reserved in such manner as shall be prescribed by the court.

§ 902. Reliance on orders pending judicial review.

The issue or assumption of securities registered by the commission, the performance of any contract or arrangement approved by the commission and any other act by a person or corporation shall be subject to the provisions of 42 Pa.C.S. §

5105(f) (relating to effect of reversal or modification) insofar as relates to any sale, mortgage, exchange or conveyance subject to the jurisdiction of the commission.
(Dec. 20, 1982, P.L.1409, No.326, eff. 60 days)

1982 Amendment. Act 326 added present section 902.
Prior Provisions. Former section 902, which related to costs on review, was added July 1, 1978, P.L.598, No.116, and repealed October 5, 1980, P.L.693, No.142, effective in 60 days.

§ 903. Restriction on injunctions (Repealed).

1982 Repeal. Section 903 was repealed December 20, 1982, P.L.1409, No.326, effective in 60 days.

SUBPART C
REGULATION OF PUBLIC UTILITIES GENERALLY

Chapter

11. Certificates of Public Convenience
13. Rates and Distribution Systems
14. Responsible Utility Customer Protection
15. Service and Facilities
17. Accounting and Budgetary Matters
19. Securities and Obligations
21. Relations with Affiliated Interests

CHAPTER 11
CERTIFICATES OF PUBLIC CONVENIENCE

Subchapter

A. General Provisions
B. Limousine Service in Counties of the Second Class

Enactment. Chapter 11 was added July 1, 1978, P.L.598, No.116, effective in 60 days.
Cross References. Chapter 11 is referred to in sections 2212, 2601, 2604, 3202 of this title.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

1101. Organization of public utilities and beginning of service.
1102. Enumeration of acts requiring certificate.
1103. Procedure to obtain certificates of public convenience.
1104. Certain appropriations by right of eminent domain prohibited.

Subchapter Heading. The heading of Subchapter A was added April 2, 2002, P.L.218, No.23, effective immediately.

§ 1101. Organization of public utilities and beginning of service.
Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth. The commission's certificate of public convenience

granted under the authority of this section shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied.

Cross References. Section 1101 is referred to in section 1104 of this title.

§ 1102. Enumeration of acts requiring certificate.

(a) General rule.--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, it shall be lawful:

(1) For any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized by:

(i) A certificate of public convenience granted under this part or under the former provisions of the act of July 26, 1913 (P.L.1374, No.854), known as "The Public Service Company Law," or the act of May 28, 1937 (P.L.1053, No.286), known as the "Public Utility Law."

(ii) An unregistered right, power or privilege preserved by section 103 (relating to prior rights preserved).

(2) For any public utility to abandon or surrender, in whole or in part, any service, except that this provision is not applicable to discontinuance of service to a patron for nonpayment of a bill, or upon request of a patron.

(3) For any public utility or an affiliated interest of a public utility as defined in section 2101 (relating to definition of affiliated interest), 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. Such approval shall not be required if:

(i) the undepreciated book value of the property to be acquired or transferred does not exceed $1,000;

(ii) the undepreciated book value of the property to be acquired or transferred does not exceed the lesser of:

(A) 2% of the undepreciated book value of all fixed assets of such public utility; or

(B) $5,000 in the case of personalty or $50,000 in the case of realty;

(iii) 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

(iv) the property to be transferred by such public utility is obsolete, worn out or otherwise unserviceable.

Subparagraphs (i) through (iv) 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.

(4) For any public utility to acquire 5% or more of the voting capital stock of any corporation.

(5) For any municipal corporation to acquire, construct, or begin to operate, any plant, equipment, or other

facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits.

(b) Protection of railroad employees.--As a condition of its approval of any transaction covered by this section and involving those railroad carriers wholly located within this Commonwealth subject to the provisions of this part, the commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected and the commission shall include in its order of approval the terms and conditions it deems fair and equitable for the protection of the employees. The terms and conditions which the commission prescribes shall provide that, during the period of four years from the effective date of the order, the employees of the railroad carrier affected by the order shall not be in a worse position with respect to their employment except that any protection afforded an employee shall not be required to continue for a period longer than that during which the employee was in the employ of the railroad carrier prior to the effective date of the order. Notwithstanding any other provision of this section, the commission may accept as fair and equitable an agreement pertaining to the protection of the interests of the employees entered into by the railroad carrier and the duly authorized representatives of the employees.

Cross References. Section 1102 is referred to in sections 1329, 1901, 3019 of this title.

§ 1103. Procedure to obtain certificates of public convenience.

(a) General rule.--Every application for a certificate of public convenience shall be made to the commission in writing, be verified by oath or affirmation, and be in such form, and contain such information, as the commission may require by its regulations. A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable. In every case, the commission shall make a finding or determination in writing, stating whether or not its approval is granted. Any holder of a certificate of public convenience, exercising the authority conferred by such certificate, shall be deemed to have waived any and all objections to the terms and conditions of such certificate.

(b) Investigations and hearings.--For the purpose of enabling the commission to make such finding or determination, it shall hold such hearings, which shall be public, and, before or after hearing, it may make such inquiries, physical examinations, valuations, and investigations, and may require such plans, specifications, and estimates of cost, as it may deem necessary or proper in enabling it to reach a finding or determination.

(c) Taxicabs.--(Repealed).

(d) Temporary authority.--Except during the threat or existence of a labor dispute, the commission under such regulations as it shall prescribe may, without hearing, in proper cases, consider and approve applications for certificates of public convenience, and in emergencies grant temporary certificates under this chapter, pending action on permanent certificates; but no applications shall be denied without right of hearing thereon being tendered to the applicant.

(e) Armored vehicles.--A certificate of public convenience to provide the transportation of property of unusual value,

including money and securities, in armored vehicles shall be granted by order of the commission upon application. Such carriers must conform to the rules and regulations of the commission.
(June 19, 1980, P.L.244, No.69, eff. 30 days; July 6, 1984, P.L.602, No.123, eff. imd.; Apr. 4, 1990, P.L.93, No.21, eff. 90 days; Dec. 30, 2002, P.L.2001, No.230, eff. 60 days; July 16, 2004, P.L.758, No.94)

2004 Repeal. Act 94 repealed subsec. (c). Section 25(1)(ii) of Act 94 provided that the repeal of subsec. (c) shall take effect in 270 days or on the date of publication of the notice under section 24 of Act 94. The notice was published in the Pennsylvania Bulletin March 12, 2005, at 35 Pa.B. 1737. See sections 20(5), 21(5) and 24 of Act 94 in the appendix to this title for special provisions relating to Pennsylvania Public Utility Commission contracts, preservation of rights, obligations, duties and remedies and publication in Pennsylvania Bulletin.

1984 Amendment. Act 123 added subsec. (e).

1980 Amendment. Act 69 added subsecs. (c) and (d), effective in 30 days as to subsec. (c)(4) and immediately as to the remainder of the section. See the preamble and sections 2, 3 and 4 of Act 69 in the appendix to this title for special provisions relating to legislative findings, taxicab service in first class cities, annual reports to committees of General Assembly and effective date and applicability.

Cross References. Section 1103 is referred to in section 3202 of this title; section 5516 of Title 53 (Municipalities Generally).

§ 1104. Certain appropriations by right of eminent domain prohibited.

Unless its power of eminent domain existed under prior law, no domestic public utility or foreign public utility authorized to do business in this Commonwealth shall exercise any power of eminent domain within this Commonwealth until it shall have received the certificate of public convenience required by section 1101 (relating to organization of public utilities and beginning of service).

Cross References. Section 1104 is referred to in section 1511 of Title 15 (Corporations and Unincorporated Associations).

SUBCHAPTER B
LIMOUSINE SERVICE IN COUNTIES OF THE SECOND CLASS

Sec.
1121. Definitions.
1122. Certificate of public convenience required.
1123. Regulations.
1124. Miscellaneous provisions.

Enactment. Subchapter B was added April 2, 2002, P.L.218, No.23, effective immediately.

Cross References. Subchapter B is referred to in section 102 of this title.

§ 1121. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"County." A county of the second class.

"**Limousine service.**" Local nonscheduled common carrier service for passengers rendered in luxury-type vehicles for compensation on an exclusive basis that is arranged in advance.

§ 1122. Certificate of public convenience required.

(a) General rule.--In order to operate limousine service in a county of the second class, a certificate of public convenience must be issued by the commission.

(b) Enforcement.--The provisions of this chapter and the rules and regulations promulgated by the commission pursuant to this chapter shall be enforced in counties of the second class by commission personnel.

(c) Restrictions.--Certificates issued pursuant to this chapter shall be nontransferable unless a transfer is approved by the commission.

§ 1123. Regulations.

The commission is authorized to prescribe such rules and regulations as it deems necessary to administer and enforce this subchapter.

§ 1124. Miscellaneous provisions.

(a) Prosecution preserved.--Nothing in this subchapter shall be deemed to limit or affect prosecutions for violations under this title, Title 18 (Crimes and Offenses), Title 75 (Vehicles) or any other provision of law.

(b) Inconsistent provisions of law.--Any other law of this Commonwealth found to be inconsistent with this subchapter is hereby repealed insofar as it affects the regulation of limousine service in counties of the second class.

CHAPTER 13
RATES AND DISTRIBUTION SYSTEMS

Subchapter

A. Rates
B. Distribution Systems

Enactment. Chapter 13 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

Chapter Heading. The heading of Chapter 13 was amended February 14, 2012, P.L.72, No.11, effective in 60 days.

Cross References. Chapter 13 is referred to in sections 528, 2203, 2607, 2804, 3019 of this title.

SUBCHAPTER A
RATES

Sec.

1301. Rates to be just and reasonable.
1301.1. Computation of income tax expense for ratemaking purposes.
1302. Tariffs; filing and inspection.
1303. Adherence to tariffs.
1304. Discrimination in rates.
1305. Advance payment of rates; interest on deposits.
1306. Apportionment of joint rates.
1307. Sliding scale of rates; adjustments.
1308. Voluntary changes in rates.
1309. Rates fixed on complaint; investigation of costs of production.
1310. Temporary rates.

1311. Valuation of and return on the property of a public utility.
1312. Refunds.
1313. Price upon resale of public utility services.
1314. Limitation on prices paid for property and fuel.
1315. Limitation on consideration of certain costs for electric utilities.
1316. Recovery of advertising expenses.
1316.1. Recovery of club dues.
1317. Regulation of natural gas costs.
1318. Determination of just and reasonable gas cost rates.
1319. Financing of energy supply alternatives.
1320. Fuel purchase audits by complaint.
1321. Recovery of certain employee meeting expenses.
1322. Outages of electric generating units.
1323. Procedures for new electric generating capacity.
1324. Residential telephone service rates based on duration or distance of call.
1325. Local exchange service increases; limitation (Repealed).
1326. Standby charge prohibited.
1327. Acquisition of water and sewer utilities.
1328. Determination of public fire hydrant rates.
1329. Valuation of acquired water and wastewater systems.
1330. Alternative ratemaking for utilities.

Subchapter Heading. The heading of Subchapter A was added February 14, 2012, P.L.72, No.11, effective in 60 days.

§ 1301. Rates to be just and reasonable.

(a) Regulation.--Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission. Only public utility service being furnished or rendered by a municipal corporation, or by the operating agencies of any municipal corporation, beyond its corporate limits, shall be subject to regulation and control by the commission as to rates, with the same force, and in like manner, as if such service were rendered by a public utility.

(b) Municipal corporations.--In determining a just and reasonable rate furnished or rendered by a municipal corporation or by the operating agencies of a municipal corporation providing public utility water or wastewater service beyond its corporate limits, the commission shall employ an imputed capital structure of comparable public utilities providing water or wastewater service.

(Dec. 21, 2017, P.L.1208, No.65, eff. imd.)

Cross References. Section 1301 is referred to in sections 3015, 3016, 3019 of this title.

§ 1301.1. Computation of income tax expense for ratemaking purposes.

(a) Computation.--If an expense or investment is allowed to be included in a public utility's rates for ratemaking purposes, the related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates. If an expense or investment is not allowed to be included in a public utility's rates, the related income tax deductions and credits, including tax losses of the public utility's parent or affiliated companies, shall not be included in the computation of income tax expense to reduce rates. The deferred income taxes used to determine the rate base of a public utility for ratemaking purposes shall be

based solely on the tax deductions and credits received by the public utility and shall not include any deductions or credits generated by the expenses or investments of a public utility's parent or any affiliated entity. The income tax expense shall be computed using the applicable statutory income tax rates.

(b) Revenue use.--If a differential accrues to a public utility resulting from applying the ratemaking methods employed by the commission prior to the effective date of subsection (a) for ratemaking purposes, the differential shall be used as follows:

(1) fifty percent to support reliability or infrastructure related to the rate-base eligible capital investment as determined by the commission; and

(2) fifty percent for general corporate purposes.

(b.1) Taxable contributions.--A water or wastewater public utility shall be solely responsible for funding the income taxes on taxable contributions in aid of construction and customer advances for construction and shall record the income taxes the water or wastewater public utility pays in accumulated deferred income taxes for accounting and ratemaking purposes.

(c) Application.--The following shall apply:

(1) Subsection (b) shall no longer apply after December 31, 2025.

(2) This section shall apply to all cases where the final order is entered after the effective date of this section.

(June 12, 2016, P.L.332, No.40, eff. 60 days; July 2, 2019, P.L.357, No.53, eff. 60 days)

2019 Amendment. Act 53 added subsec. (b.1).

2016 Amendment. Act 40 added section 1301.1.

§ 1302. Tariffs; filing and inspection.

Under such regulations as the commission may prescribe, every public utility shall file with the commission, within such time and in such form as the commission may designate, tariffs showing all rates established by it and collected or enforced, or to be collected or enforced, within the jurisdiction of the commission. The tariffs of any public utility also subject to the jurisdiction of a Federal regulatory body shall correspond, so far as practicable, to the form of those prescribed by such Federal regulatory body. Every public utility shall keep copies of such tariffs open to public inspection under such rules and regulations as the commission may prescribe. One copy of any rate filing shall be made available, at a convenient location and for a reasonable length of time within each of the utilities' service areas, for inspection and study by customers, upon request to the utility.

(Dec. 21, 1984, P.L.1265, No.240, eff. imd.)

Cross References. Section 1302 is referred to in section 3019 of this title.

§ 1303. Adherence to tariffs.

No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part. Any public utility, having more than one rate applicable to service rendered to a patron, shall,

after notice of service conditions, compute bills under the rate most advantageous to the patron.

Cross References. Section 1303 is referred to in section 3019 of this title.

§ 1304. Discrimination in rates.

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service. Unless specifically authorized by the commission, no public utility shall make, demand, or receive any greater rate in the aggregate for the transportation of passengers or property of the same class, or for the transmission of any message or conversation for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or any greater rate as a through rate than the aggregate of the intermediate rates. This section does not prohibit the establishment of reasonable zone or group systems, or classifications of rates or, in the case of common carriers, the issuance of excursion, commutation, or other special tickets at special rates, or the granting of nontransferable free passes, or passes at a discount to any officer, employee, or pensioner of such common carrier. No rate charged by a municipality for any public utility service rendered or furnished beyond its corporate limits shall be considered unjustly discriminatory solely by reason of the fact that a different rate is charged for a similar service within its corporate limits.

Cross References. Section 1304 is referred to in section 3019 of this title.

§ 1305. Advance payment of rates; interest on deposits.

No public utility shall require the payment of rates in advance, or the making of minimum payments, ready to serve charges, or deposits to secure future payments of rates, except as the commission, by regulation or order, may permit. Any deposit made by any domestic consumer, under the provisions of this section or under any repealed statute supplied by this part, shall be returned with any interest due thereon to the consumer making such deposit when he shall have paid undisputed bills for service over a period of 12 consecutive months.

Cross References. Section 1305 is referred to in section 3019 of this title.

§ 1306. Apportionment of joint rates.

Where public utilities entitled to share in any joint rate shall be unable to agree upon the division thereof, or shall make any unjust or unreasonable division or apportionment thereof, the commission may, after hearing, upon its own motion or upon complaint, fix the proportion to which each public utility shall be entitled.

§ 1307. Sliding scale of rates; adjustments.

(a) General rule.--Any public utility, except 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 rate base of such public utility, 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 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.

(c) Fuel cost adjustment.--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. The cost of fuel handling after such delivery, or of waste disposal, other than as prescribed in this section, 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) Fuel cost adjustment audits.--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 performs the audit shall be a person knowledgable 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) Automatic adjustment reports and proceedings.--

(1) Within 30 days following the end of such 12-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:

(i) the total revenues received pursuant to the automatic adjustment clause;

(ii) the total amount of that expense or class of expenses incurred which is the basis of the automatic adjustment clause; and

(iii) the difference between the amounts specified by subparagraphs (i) and (ii).

Such report shall be a matter of public record and copies thereof shall be made available to any person upon request to the commission.

(2) Within 60 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.

(3) Absent good reason being shown to the contrary, the commission shall, within 60 days following such hearing, by order direct each such public utility to, over an appropriate 12-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.

(4) For the purpose of this subsection, where a 12-month report period and 12-month refund or recovery period shall have been previously established or designated, nothing in this section shall impair the continued use of such previously established or designated periods nor shall anything in this section 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.

(f) Recovery of natural gas costs.--

(1) Natural gas distribution companies, as defined in section 2202 (relating to definitions), with gross intrastate annual operating revenues in excess of $40,000,000 may file tariffs reflecting actual and projected increases or decreases in their natural gas costs, and the tariffs shall have an effective date six months from the date of filing. The commission shall promulgate regulations establishing the time and manner of such filing, but, except for adjustments pursuant to a tariff mechanism authorized in this title, no such natural gas distribution company shall voluntarily file more than one such tariff in a 12-month period: Provided, That:

(i) Nothing contained herein shall prohibit any party from advising the commission that there has been or there is anticipated to be a significant difference between the natural gas costs to the natural gas distribution company and the costs reflected in the then effective tariff or the commission from acting upon such advice.

(ii) A natural gas distribution company may also file a tariff to establish a mechanism by which such natural gas distribution company may further adjust its rates for natural gas sales on a regular, but no more

frequent than monthly, basis to reflect actual or projected changes in natural gas costs reflected in rates established pursuant to paragraph (2), subject to annual reconciliation under paragraph (5). In the event that the natural gas distribution company adjusts rates more frequently than quarterly, it shall also offer retail gas customers a fixed-rate option which recovers natural gas costs over a 12-month period, subject to annual reconciliation under paragraph (5). The commission shall, within 60 days of the effective date of this subparagraph, promulgate rules or regulations governing such adjustments and fixed-rate option, but the commission shall not prohibit such adjustments or fixed-rate option.

(2) The commission shall conduct an investigation and hold a hearing or hearings, with notice, to review the tariffs and consider the plans filed pursuant to section 1317 (relating to regulation of natural gas costs). Where there has been an indication of consumer interest, the hearing shall be held in the service territory of the natural gas distribution company. Prior to the effective date of the filing, the commission shall issue an order establishing the rate to be charged to reflect such changes in natural gas costs. The commission shall annually review and approve plans for purposes of reliability and supply. Such rates, however, are subject to the same types of audits, reports and proceedings required by subsection (d).

(3) Within 60 days following the end of such 12-month period as the commission shall designate, each natural gas distribution company subject to this subsection shall file with the commission a statement which specifies for such period:

(i) The total revenues received pursuant to this section.

(ii) The total natural gas costs incurred.

(iii) The difference between the amounts specified by subparagraphs (i) and (ii).

(iv) How actual natural gas costs incurred differ from the natural gas costs allowed under paragraph (2) and why such differences occurred.

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

Such report shall be a matter of public record and copies thereof shall be made available by the natural gas distribution company to any person upon request. Copies of the reports shall be filed with the Office of Consumer Advocate and the Office of Small Business Advocate at the same time as they are filed with the commission.

(4) The commission shall hold a public hearing on the substance of such statement submitted by a natural gas distribution company as required in paragraph (3) and on any related matters.

(5) The commission, after hearing, shall determine the portion of the company's natural gas distribution actual natural gas costs in the previous 12-month period which meet the standards set out in section 1318. The commission shall, by order, direct each natural gas distribution company subject to this subsection to refund to its customers gas revenues collected pursuant to paragraph (2) which exceed the amount of actual natural gas costs incurred consistent

with the standards in section 1318 and to recover from its customers any amount by which the actual natural gas costs, which have been incurred consistent with the standards in section 1318, exceed the revenues collected pursuant to paragraph (2). Absent good reason to the contrary, the commission shall issue its order within six months following the filing of the statement described in paragraph (3). Refunds to customers shall be made with and recoveries from customers shall include interest at the prime rate for commercial borrowing in effect 60 days prior to the tariff filing made under paragraph (1) and as reported in a publicly available source identified by the commission or at an interest rate which may be established by the commission by regulation. Nothing under this paragraph shall limit the applicability of a defense, principle or doctrine which would prohibit the commission's inquiry into matters that were decided finally in the commission's order issued under paragraph (2).

(6) If the natural gas distribution company's actual natural gas costs exceed the revenues collected under paragraph (2) by more than 10% in the previous 12-month period provided for under paragraph (5) due to customers switching from sales service to transportation service, the natural gas distribution company shall have the right to fully recover the under-collection through a nonbypassable charge. A request for authorization to impose a nonbypassable charge shall be made to the commission in a natural gas distribution company's annual filing under this section or at the time of the filing.

(g) Recovery of costs related to distribution system improvement projects designed to enhance water quality, fire protection reliability and long-term system viability.--(Repealed).

(g.1) Surcharge recoverability and offset.--Notwithstanding any other provision of this title or prior order of the commission, a surcharge imposed on and paid by a public utility under section 1111-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is recoverable under this section by such means as approved by the commission. Retail rates as adjusted in accordance with this subsection shall also reflect any reduction in Public Utility Realty Tax Act liabilities secured by the utility and adjustments in State taxes reflected in any applicable State tax adjustment surcharge as defined by commission regulations.

(h) Definition.--As used in this section, the terms "natural gas costs" and "gas costs" include the direct costs paid by a natural gas distribution company for the purchase and the delivery of natural gas to its system in order to supply its customers. Such costs may include costs paid under agreements to purchase natural gas from sellers; costs paid for transporting natural gas to its system; costs paid for natural gas storage service from others, including the costs of injecting and withdrawing natural gas from storage; all charges, fees, taxes and rates paid in connection with such purchases, pipeline gathering, storage and transportation; and costs paid for employing futures, options and other risk management tools. "Natural gas" and "gas" include natural gas, liquified natural gas, synthetic natural gas and any natural gas substitutes.
(May 31, 1984, P.L.370, No.74, eff. 60 days; Sept. 27, 1984, P.L.721, No.153, eff. 60 days; Dec. 21, 1984, P.L.1265, No.240, eff. imd.; Dec. 18, 1996, P.L.1061, No.156, eff. 60 days; June 22, 1999, P.L.122, No.21, eff. July 1, 1999; Dec. 9, 2002,

P.L.1556, No.203, eff. 60 days; Feb. 14, 2012, P.L.72, No.11, eff. 60 days; June 23, 2016, P.L.355, No.47, eff. 60 days)

2016 Amendment. Act 47 amended subsec. (f)(5) and (6).
2012 Repeal . Act 11 repealed subsec. (g).
2002 Amendment. Act 203 added subsec. (g.1).
1999 Amendment. Act 21 amended subsecs. (f) and (h).
1996 Amendment. Act 156 relettered former subsec. (g) to subsec. (h) and added present subsec. (g).
1984 Amendments. Act 74 amended subsecs. (a) and (b) and added subsecs. (f) and (g), Act 153 amended subsec. (a) and Act 240 amended subsecs. (a) and (f). The amendments by Acts 153 and 240 to subsec. (a) are identical and therefore have been merged. See section 5 of Act 74 in the appendix to this title for special provisions relating to applicability. See section 7 of Act 240 in the appendix to this title for special provisions relating to filing of tariffs.
Cross References. Section 1307 is referred to in sections 528, 1309, 1317, 1318, 1330, 1358, 2205, 2211, 2212, 2806.1, 2807, 2808 of this title.

§ 1308. Voluntary changes in rates.

(a) General rule.--Unless the commission otherwise orders, no public utility shall make any change in any existing and duly established rate, except after 60 days notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The public utility shall also give such notice of the proposed changes to other interested persons as the commission in its discretion may direct. Such notices regarding the proposed changes which are provided to the utility's customers shall be in plain understandable language as the commission shall prescribe. All proposed changes shall be shown by filing new tariffs, or supplements to existing tariffs filed and in force at the time. The commission, for good cause shown, may allow changes in rates, without requiring the 60 days notice, under such conditions as it may prescribe.

(b) Hearing and suspension of rate change.--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 1310 (relating to temporary rates). 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. This subsection shall not apply to any tariff stating a new rate which constitutes a general rate increase as defined in subsection (d).

(c) Determination.--If, after such hearing, the commission finds any such rate to be unjust or unreasonable, or in anywise in violation of law, the commission shall determine the just

and reasonable rate to be charged or applied by the public utility for the service in question, and shall fix the same by order to be served upon the public utility and such rate shall thereafter be observed until changed as provided by this part.

(d) General rate increases.--Whenever there is filed with the commission by any public utility described in paragraph (1)(i), (ii), (vi) or (vii) of the definition of "public utility" in section 102 (relating to definitions), 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, except 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 1312 (relating to refunds), 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), referred to as the Loan Interest and Protection Law, 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 (e). 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, except 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 1310, which rates may provide retroactive increases through recoupment. As used in this part general rate increase means a tariff filing which affects more than 5% of the customers and amounts to in excess of 3% of the total gross annual intrastate operating revenues of the public utility. If the public utility furnishes two or more types of service, 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.

(d.1) Multiple filings prohibited.--Except as required to implement an order granting extraordinary rate relief, no public utility which has filed a general rate increase request pursuant to this section shall file an additional general rate increase request pursuant to this section for the same type of service

until the commission has made a final decision and order on the prior general rate increase request or until the expiration of the maximum period of suspension of the prior general rate increase request pursuant to this section, whichever is earlier.

(e) Extraordinary rate relief.--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, except 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 30 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 1310.

(f) Limitation on rate increases by certain public utilities.--Whenever there is filed with the commission any tariff stating a new rate based in whole or in part on the cost of constructing an electric generating unit, the commission shall compare the estimated construction cost filed in accordance with section 515(a) (relating to construction cost of electric generating units) with the actual construction cost submitted by the utility in support of that tariff. If the actual construction cost exceeds the estimated construction cost, the rate determined by the commission under this section shall not be based on any part of that excess unless the public utility proves that part of the excess to have been necessary and proper. In making its determination under this subsection, the commission shall consider all relevant and material evidence, including evidence obtained pursuant to section 515. For purposes of this subsection "construction" includes any work performed on an electric generating unit which required, or is expected to require, the affected public utility to incur an aggregate of at least $100,000,000 of expenses which, in accordance with generally accepted accounting principles, are capital expenses and not operating or maintenance expenses. (July 6, 1984, P.L.602, No.123, eff. imd.; Sept. 27, 1984, P.L.721, No.153, eff. imd.; Dec. 21, 1984, P.L.1265, No.240, eff. imd.)

1984 Amendments. Act 123 added subsec. (f), Act 153 added subsec. (d.1) and Act 240 amended subsec. (a) and added subsec. (d.1). The amendments by Acts 153 and 240, adding subsec. (d.1), are substantially the same and have both been given effect in setting forth the text of subsec. (d.1). See section 5 of Act 123 in the appendix to this title for special provisions relating to submission of cost estimate for units not completed.

Cross References. Section 1308 is referred to in sections 315, 523, 1309, 1311, 1316, 1318, 1330, 1353, 2211, 2804, 2806.1, 2807, 3015 of this title.

§ 1309. Rates fixed on complaint; investigation of costs of production.

(a) General rule.--Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the existing rates of any public utility for any service are unjust, unreasonable, or in anywise in violation of any provision of law, the commission shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served upon the public utility, and such rates shall constitute the legal rates of the public utility until changed as provided in this part. Whenever a public utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the commission shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such public utility.

(b) Deadline for decision.--Before the expiration of a nine-month period beginning on the date of the commission's motion or the filing of a complaint pursuant to subsection (a), 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. If such an order has not been made at the expiration of such nine-month period and the motion or complaint pursuant to subsection (a) requested a reduction in rates, a final decision and order of the commission which determines or fixes a rate reduction shall be retroactive to the expiration of such nine-month period, provided that nothing herein shall be construed to prohibit the commission from setting temporary rates pursuant to section 1310 (relating to temporary rates) prior to the expiration of such nine-month period and giving such effect to the setting of temporary rates as is otherwise permitted by this title. This subsection shall apply only when the requested reduction in rates affects more than 5% of the customers and amounts to in excess of 3% of the total gross annual intrastate operating revenues of the public utility, provided that, if the public utility furnishes two or more types of service, 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 requested reduction pertains. This subsection shall not apply to any proceeding involving a change in rates proposed by a public utility pursuant to section 1307 (relating to sliding scale of rates; adjustments) or 1308 (relating to voluntary changes in rates).
(July 6, 1988, P.L.490, No.83, eff. imd.)

Cross References. Section 1309 is referred to in sections 514, 521, 1327, 3019 of this title.

§ 1310. Temporary rates.

(a) General rule.--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 5% 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.

(b) Exception where records unavailable.--If any public utility does not have continuing property records, kept in the manner prescribed by the commission under the provisions of section 1702 (relating to continuing property records), then the commission, after reasonable notice and hearing, may establish temporary rates which shall be sufficient to provide a return of not less than an amount equal to the operating income for such prior calendar, fiscal or other year as the commission may deem proper, to be determined on the basis of data appearing in the annual report of such public utility to the commission for such prior year as the commission may deem proper, plus or minus such return as the commission may prescribe from time to time upon such net changes of the physical property as are reported to and approved for rate-making purposes by the commission. In determining the net changes of the physical property, the commission may, in its discretion, deduct from gross additions to such physical property the amount charged to operating expenses for depreciation or, in lieu thereof, it may determine such net changes by deducting retirements from the gross additions. The commission, in determining the basis for temporary rates, may make such adjustments in the annual report data as may, in the judgment of the commission, be necessary and proper.

(c) Periodicity of rates.--The commission may fix, determine, and prescribe temporary rates every month, or at any other interval, if it be of opinion that the public interest so requires, and the existence of proceedings begun for the purpose of establishing final rates shall not prevent the commission from changing every month, or at any other interval, such temporary rates as it has previously fixed, determined, and prescribed.

(d) Excessive rates.--Whenever the commission, upon examination of any annual or other report, or of any papers, records, books, or documents, or of the property of any public utility, shall be of opinion that any rates of such public utility are producing a return in excess of a fair return upon the fair value of the property of such public utility, used and useful in its public service, the commission may, by order, prescribe for a trial period of at least six months, which trial period may be extended for one additional period of six months, such temporary rates to be observed by such public utility as, in the opinion of the commission, will produce a fair return upon such fair value, and the rates so prescribed shall become effective upon the date specified in the order of the commission. Such rates, so prescribed, shall become permanent

at the end of such trial period, or extension thereof, unless at any time during such trial period, or extension thereof, the public utility involved shall complain to the commission that the rates so prescribed are unjust or unreasonable. Upon such complaint, the commission, after hearing, shall determine the issues involved, and pending final determination the rates so prescribed shall remain in effect.

(e) Effect and adjustment of rates.--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.

Cross References. Section 1310 is referred to in sections 1308, 1309 of this title.

§ 1311. Valuation of and return on the property of a public utility.

(a) Valuation generally.--The commission may, after reasonable notice and hearing, ascertain and fix the value of the whole or any part of the property of any public utility, insofar as the same is material to the exercise of the jurisdiction of the commission, and may make revaluations from time to time in the value of rate base of a public utility on account of all new construction, extensions, additions and retirements to the property of any public utility.

(b) Method of valuation.--

(1) The value of the property of the public utility included in the rate base shall be the original cost of the property when first devoted to the public service less the applicable accrued depreciation as such depreciation is determined by the commission.

(2) (i) The value of the property of a public utility providing water or wastewater service shall include the original cost incurred by the public utility for the replacement of a customer-owned lead water service line or a customer-owned damaged wastewater lateral, performed concurrent with a scheduled utility main replacement project or under a commission-approved program, notwithstanding that the customer shall hold legal title to the replacement water service line or wastewater lateral.

(ii) The original cost of the replacement water service line or wastewater lateral shall be deemed other related capitalized costs that are part of the public utility's distribution system.

(iii) For the purpose of calculating the return of and on a public utility's prudently incurred cost for the replacement of a water service line and for the replacement of a wastewater lateral that is recovered in a public utility's base rates or distribution system improvement charge, the commission shall employ the equity return rate for water and wastewater public utilities calculations set forth in section 1357(b)(2) and (3) (relating to computation of charge).

(iv) The commission may allocate the cost associated with the replacement of a customer-owned lead water service line or customer-owned damaged wastewater lateral

among each customer, classes of customers and types of service.

(v) Notwithstanding any other provision of law to the contrary, a public utility providing water or wastewater service must obtain prior approval from the commission for the replacement of a customer-owned lead water service line or customer-owned damaged wastewater lateral by filing a new tariff or supplement to existing tariffs under section 1308 (relating to voluntary changes in rates).

(vi) A new tariff or supplement to an existing tariff approved by the commission under subparagraph (v) shall include a cap on the maximum number of customer-owned lead water service lines or customer-owned damaged wastewater laterals that can be replaced annually.

(vii) The commission shall, by regulation or order, establish standards, processes and procedures to:

(A) Ensure that work performed by a public utility or the public utility's contractor to replace a customer-owned lead water service line or a customer-owned damaged wastewater lateral is accompanied by a warranty of a term that the commission determines appropriate and the public utility and the public utility's contractor has access to the affected customer's property during the term of the warranty.

(B) Provide for a reimbursement to a customer who has replaced the customer's lead water service line or customer-owned damaged wastewater lateral within one year of commencement of a project in accordance with a commission-approved tariff.

(3) Nothing in this section shall be construed to limit the existing ratemaking authority of the commission nor invalidate nor void any rates approved by the commission before the effective date of this paragraph.

(4) Nothing in this section shall be construed to limit any provision or requirement of the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, or the regulations promulgated thereunder.

(5) For the purposes of this subsection, the term "lead water service line" means a service line made of lead that connects a water main to a building inlet and a lead pigtail, gooseneck or other fitting that is connected to the lead line.

(c) Segregation of property.--When any public utility furnishes more than one of the different types of utility service, the commission shall segregate the property used and useful in furnishing each type of such service, and shall not consider the property of such public utility as a unit in determining the value of the rate base of such public utility for the purpose of fixing base rates. A utility that provides water and wastewater service shall be exempt from this subsection upon petition of a utility to combine water and wastewater revenue requirements. The commission, when setting base rates, after notice and an opportunity to be heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest.

(d) Common carriers.--In fixing any rate of a public utility engaged exclusively as a common carrier by motor vehicle, the commission may, in lieu of other standards established by law,

fix the fair return by relating the fair and reasonable operating expenses, depreciation, taxes and other costs of furnishing service to operating revenues.

(e) Definition.--As used in this section, the term "utility that provides both water and wastewater service" shall include separate companies that individually provide water or wastewater service so long as the companies are wholly owned by a common parent company.

(Sept. 27, 1984, P.L.721, No.153, eff. 60 days; Dec. 21, 1984, P.L.1265, No.240, eff. imd.; Feb. 14, 2012, P.L.72, No.11, eff. 60 days; Oct. 24, 2018, P.L.738, No.120, eff. 60 days)

2018 Amendment. Act 120 amended subsec. (b).

2012 Amendment . Act 11 amended subsec. (c) and added subsec. (e).

1984 Amendments. Acts 153 and 240 amended the entire section. Act 240 overlooked the amendment by Act 153, but the amendments do not conflict in substance and have both been given effect in setting forth the text of section 1311.

§ 1312. Refunds.

(a) General rule.--If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive. Any order of the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact.

(b) Suit for refund.--If the public utility fails to make refunds within the time for payment fixed by any final order of the commission or court, any patron entitled to any refund may sue therefor and the findings and order made by the commission shall be prima facie evidence of the facts therein stated, and that the amount awarded is justly due the plaintiff in such suit, and the defendant public utility shall not be permitted to avail itself of the defense that the service was, in fact, rendered to the plaintiff at the rate contained in its tariffs in force at the time payment was made and received, nor shall the defendant public utility be permitted to avail itself of the defense that the rate was reasonable. Any patron entitled to any refund shall be entitled to recover, in addition to the amount of refund, a penalty of 50% of the amount of such refund, together with all court costs and reasonable attorney fees. No suit may be maintained for a refund unless instituted within one year from the date of the order of the commission or court. Any number of patrons entitled to such refund may join as plaintiffs and recover their several claims in a single action, in which action the court shall render a judgment severally for each plaintiff as his interest may appear.

(c) Condition for suit.--No action shall be brought in any court for a refund, unless and until the commission shall have

determined that the rate in question was unjust or unreasonable, or in violation of any regulation or order of the commission, or in excess of the applicable rate contained in an existing and effective tariff, and then only to recover such refunds as may have been awarded and directed to be paid by the commission in such order.

Cross References. Section 1312 is referred to in sections 1308, 3019 of this title.

§ 1313. Price upon resale of public utility services.

Whenever any person, corporation or other entity, not a public utility, electric cooperative corporation, municipality authority or municipal corporation, purchases service from a public utility and resells it to consumers, the bill rendered by the reseller to any residential consumer shall not exceed the amount which the public utility would bill its own residential consumers for the same quantity of service under the residential rate of its tariff then currently in effect.

Cross References. Section 1313 is referred to in section 3313 of this title.

§ 1314. Limitation on prices paid for property and fuel.

The commission shall adopt regulations prohibiting public utilities subject to its jurisdiction from paying for or agreeing to pay for goods, services, equipment or fuels at prices in excess of those contained in contracts existing between the utilities and providers of such goods, services, equipment or fuel services.
(Nov. 26, 1978, P.L.1245, No.297, eff. 60 days)

1978 Amendment. Act 297 added section 1314.

§ 1315. Limitation on consideration of certain costs for electric utilities.

Except for such nonrevenue producing, nonexpense reducing investments as may be reasonably shown to be necessary to improve environmental conditions at existing facilities or improve safety at existing facilities or as may be required to convert facilities to the utilization of coal, the cost of construction or expansion of a facility undertaken by a public utility producing, generating, transmitting, distributing or furnishing electricity shall not be made a part of the rate base nor otherwise included in the rates charged by the electric utility until such time as the facility is used and useful in service to the public. Except as stated in this section, no electric utility property shall be deemed used and useful until it is presently providing actual utility service to the customers.
(Dec. 30, 1982, P.L.1473, No.335, eff. imd.)

1982 Amendment. Act 335 added section 1315. Section 2 of Act 335 provided that Act 335 shall be applicable to all proceedings pending before the Public Utility Commission and the courts at the time and also provided that nothing contained in Act 335 shall be construed to modify or change existing law with regard to rate making treatment of investment in facilities of fixed utilities other than electric utilities.

Cross References. Section 1315 is referred to in sections 315, 514, 521, 530, 1319 of this title.

§ 1316. Recovery of advertising expenses.

(a) General rule.--For purposes of rate determinations, no public utility may charge to its consumers as a permissible operating expense for ratemaking purposes any direct or indirect

expenditure by the utility for political advertising. The commission shall also disallow as operating expense for ratemaking purposes expenditures for other advertising, unless and only to the extent that the commission finds that such advertising is reasonable and meets one or more of the following criteria:

(1) Is required by law or regulation.

(2) Is in support of the issuance, marketing or acquisition of securities or other forms of financing.

(3) Encourages energy independence by promoting the wise development and use of domestic sources of coal, oil or natural gas and does not promote one method of generating electricity as preferable to other methods of generating electricity.

(4) Provides important information to the public regarding safety, rate changes, means of reducing usage or bills, load management or energy conservation.

(5) Provides a direct benefit to ratepayers.

(6) Is for the promotion of community service or economic development.

(b) Charging expenses to stockholders.--Any direct or indirect expenditure by a public utility for political advertising, or any other advertising not meeting the criteria set forth in subsection (a), shall be charged to its stockholders and shall not be included as an operating expense for ratemaking purposes.

(c) Filing of information and materials.--Whenever a public utility proposes a change in rates under section 1308 (relating to voluntary changes in rates), the public utility shall file with the commission a listing of each type of advertising prepared, distributed or presented by the public utility or to be prepared, distributed or presented by the public utility during the test year utilized by the public utility in discharging its burden of proof, and a listing of each type of advertising prepared, distributed or presented by the public utility during the year immediately preceding the test year, as well as an accounting of the expenditures by the public utility for such advertising, to the extent such advertising is proposed to be included as operating expense for ratemaking purposes. The filing requirements imposed by this subsection shall not be construed to limit the right of any party to discovery under this or any other provision of law.

(d) Definition.--As used in this section the term "political advertising" means any advertising for the purpose of influencing public opinion with respect to any legislative, administrative action or candidate election or with respect to any controversial issue to be decided by public voting. The term includes money spent for lobbying but not money spent for appearances before regulatory or other governmental bodies in connection with a public utility's existing or proposed operations.

(Mar. 7, 1984, P.L.104, No.22, eff. 60 days; July 10, 1986, P.L.1238, No.114, eff. imd.)

§ 1316.1. Recovery of club dues.

No public utility may charge to its customers as a permissible operating expense for ratemaking purposes membership fees, dues or charges to fraternal, social or sports clubs or organizations.

(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 1316.1.

§ 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 supply 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) Reliability plans.--As part of its filing under section 1307(f) or if it is not required to make such a filing on an annual basis, a natural gas distribution company, as defined in section 2202 (relating to definitions), shall file a proposed reliability plan with the commission which shall, at a minimum, identify the following:

(1) The projected peak day and seasonal requirements of the firm customers utilizing the distribution system of the natural gas distribution company during the 12-month

projected period specified in section 1307(f)(1). Where operationally required, the design peak day requirements shall be specified for discrete segments of each natural gas distribution system.

(2) The transportation capacity, storage, peaking or on-system production that ensures deliverability of the natural gas supplies necessary to meet such projected period peak day and seasonal requirements.

(d) Supply plans.--As part of its filing under section 1307(f), a natural gas distribution company shall file a proposed plan with the commission for acquisition or receipt of natural gas supplies.

(e) Definition.--As used in this section, the terms "natural gas costs," "gas costs," "natural gas" and "gas" shall have the same definitions as provided in section 1307(h).

(May 31, 1984, P.L.370, No.74, eff. 60 days; June 22, 1999, P.L.122, No.21, eff. July 1, 1999)

Cross References. Section 1317 is referred to in sections 1307, 1318, 2107 of this title.

§ 1318. Determination of just and reasonable gas cost rates.

(a) General rule.--In establishing just and reasonable rates for those natural gas distribution companies, as defined in section 2202 (relating to definitions), 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 natural gas distribution company 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, the Office of Consumer Advocate and the Office of Small Business 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 terms "natural gas," "natural gas costs," "gas costs" and "gas" shall have the same definitions as provided in section 1307(h).

(May 31, 1984, P.L.370, No.74, eff. 60 days; June 22, 1999, P.L.122, No.21, eff. July 1, 1999)

Cross References. Section 1318 is referred to in sections 1307, 2107 of this title.

§ 1319. Financing of energy supply alternatives.

(a) Recovery of certain additional expenses.--If:

(1) a natural gas or electric public utility elects to establish a conservation or load management program and that program is approved by the commission after a determination by the commission that the program is prudent and cost-effective; or

(2) the commission orders a natural gas or electric public utility to establish a conservation or load management program that the commission determines to be prudent and cost-effective;

the commission shall allow the public utility to recover all prudent and reasonable costs associated with the development, management, financing and operation of the program, provided that such prudent and reasonable costs shall be recovered only in accordance with appropriate accounting principles. Nothing in this section shall permit the recovery of costs in a manner prohibited by section 1315 (relating to limitation on consideration of certain costs for electric utilities). Nothing

in this section shall permit the recovery of the cost of producing, generating, transmitting, distributing or furnishing electricity or natural gas.

(b) Option for recovery.--The commission may consider allowing the recovery of those costs permitted to be recovered by subsection (a) through charges to those persons who are participants in the financing program.

(Dec. 21, 1984, P.L.1270, No.241, eff. imd.; July 10, 1986, P.L.1238, No.114, eff. imd.)

§ 1320. Fuel purchase audits by complaint.

(1) Upon complaint, the commission shall conduct an audit of an electric public utility's purchases of fuel for generating purposes. Such an audit shall examine the utility's fuel purchasing activities for the two years prior to the date of such complaint, provided that:

(i) The utility does its own testing or procures its own analysis of its fuel.

(ii) The fuel cost of the utility for the most recently completed fiscal year exceeds that of the prior fiscal year by more than 5%.

(iii) The commission has not completed and made available to the public a fuel purchase audit of the utility in the past two years.

(2) This audit, which shall be completed within one year of the date of initiation of the complaint, shall include, but not be limited to, a comparison of unit price paid for fuel for generating purposes, considering such factors as ash, sulfur content, British thermal units, transportation costs and reliability of supply.

(3) The audit shall seek to determine whether the public utility's fuel purchasing procedures are conducted in such a manner as to result in the greatest benefit to the ratepayers.

(4) The commission's audit report shall contain recommendations as to methods by which the utility's fuel purchasing procedures can be adjusted so as to result in the greatest benefit to the ratepayers.

(5) The commission shall take the audit report into consideration at the utility's next request for a rate adjustment.

(6) Upon completion and release by the commission, copies of the audit report summary shall be mailed to every person who requests a copy.

(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 1320.

§ 1321. Recovery of certain employee meeting expenses.

No public utility may charge to its customers as a permissible operating expense for ratemaking purposes any portion or portions of the direct or indirect costs of meetings, conferences, seminars or other events conducted by the utility for its employees, managers or directors which portion or portions of such costs represent expenditures for activities or items unrelated to the business or civic purpose of the event, such as costs for entertainment, recreation, athletic activities, personal clothing or other personal effects.

(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 1321.

§ 1322. Outages of electric generating units.

(a) General rule.--Whenever an electric generating unit, determined by the commission to be a base load unit, is out of

service for more than 120 consecutive days, a utility owning a share of that unit shall not be permitted to recover, through base rates, a sliding scale of rates, or by any other means, the excess energy costs incurred to generate or purchase replacement power occasioned by any portion of the outage which the commission determines to be unreasonable or imprudent. In making its determination under this subsection, the commission shall consider, in addition to any other relevant evidence, whether the outage could have been shortened or avoided if the unit had been properly constructed, operated or maintained.

(b) Notice of outage.--Whenever an electric generating unit, determined by the commission to be a base load unit, is out of service for 45 consecutive days, any utility owning a share of that unit shall submit to the commission and the Office of Consumer Advocate a status report on that outage. The utility shall submit subsequent status reports on the outage to the commission and the Office of Consumer Advocate at least by the 20th day of each subsequent month until the unit returns to service. If more than one utility owns a share in the electric generating unit, the commission may designate one utility to make the reports required by this subsection.

(c) Operation at less than reasonable level of generation.--Whenever the actual generation of an electric generating unit, determined by the commission to be a base load unit, is less than 50% of the unit's potential generation during any calendar year or other 12-month period specified by the commission, the commission, on its own motion or upon complaint, may initiate an investigation to determine a reasonable level of generation for that unit. In establishing rates as part of that investigation or in any subsequent proceeding, the commission shall not permit recovery of the excess energy costs incurred to generate or purchase replacement power occasioned by the failure of the unit to operate at or above such reasonable level of generation, if such failure is determined to be unreasonable or imprudent.

(d) Procedure.--In carrying out its powers and duties under this section, the commission may hold such hearings as it deems necessary. The utility shall have the burden of proof in any proceeding under this section.

(e) Other powers and duties preserved.--This section shall not be construed to diminish the powers and duties of the commission under any other provision of law to reduce rates in the event of an outage of an electric generating unit, regardless of the duration of that outage.

(f) Definition.--As used in this section the term "excess energy costs" means the additional costs incurred to purchase or generate replacement power minus the fuel costs which would have been incurred to generate an equivalent amount of power from the affected base load unit.

(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 1322.

§ 1323. Procedures for new electric generating capacity.

(a) Excess capacity costs.--Whenever a public utility claims the costs of an electric generating unit in its rates for the first time and the commission finds that the unit results in the utility having excess capacity, the commission shall disallow from the utility's rates, in the same proportion as found to be excess capacity:

(1) the return on specific unit or units of any excess generating reserve;

(2) the return on the average net original cost per megawatt of the utility's generating capacity; or

(3) the equity investment in the new unit.

In addition to the disallowances set forth in this subsection, the commission may disallow any other costs of the unit or units which the commission deems appropriate. For the purposes of this section, a rebuttable presumption is created that a unit or units or portion thereof shall be determined to be excess unless found to be needed to meet the utility's customer demand plus a reasonable reserve margin in the test year or the year following the test year, or, if it is a base load unit, it is also found to produce annual economic benefits which will exceed the total annual cost of the plant during the test year or within a reasonable period following the test year.

(b) Units which are out of service.--Whenever an electric generating unit, determined by the commission to be a base load unit, is first claimed in the rates of a public utility and the unit is out of service at the time that the commission makes its final decision in the case in which the unit's costs are claimed, the commission shall make either of the following adjustments:

(1) exclude from the utility's rates all costs associated with the unit; or

(2) for a period of one year from the date of the final decision, require that the utility shall guarantee at least the level of either generation or energy savings, whichever produces the rate or rates most advantageous to the ratepayer, that the utility had estimated would be produced by the unit in the first year of its operation.

An adjustment shall be made under this subsection regardless of whether or not the new base load unit had been in service during or at the end of the test year used in the proceeding.

(c) Other powers and duties preserved.--This section shall not be construed to diminish the powers and duties of the commission under any other provision of law to reduce rates because of excess capacity or any other reason, provided that, in determining whether a base load unit, which was in commercial operation for at least one year prior to the effective date of this section, results in a public utility having excess capacity, cogeneration, for which an agreement has been entered into by the public utility within three years after the in-service date of the base load unit, shall not be considered by the commission in determining the reserve margins or economic benefits resulting from the base load unit for the first five years after the date of the cogeneration agreement.

(d) Record evidence.--Any adjustments to rates made under this section shall be made on the basis of specific findings upon evidence of record, which findings shall be set forth explicitly, together with their underlying rationale, in the final order of the commission.

(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 1323. Section 19 of Act 114 provided that section 1323 shall be applicable to all cases pending before the commission.

§ 1324. Residential telephone service rates based on duration or distance of call.

(a) Required charging method.--In addition to any other method of charging offered on an optional basis, a telecommunications utility providing local exchange telephone service to residential customers within a certified exchange area must provide service which charges, for calls originating

and terminating within the same local calling area, on the basis of a flat monthly fee for all such calls made.

(b) Options.--If the commission determines that a telecommunications utility may offer to residential customers an optional method of charging for calls originating and terminating within the same local calling area based, in whole or in part, on the duration or distance of the call, it shall also offer a rate which charges for such calls only on the basis of the number of calls made.

(c) Rate relationship.--In addition to any other requirements imposed by this title, the rates for services required or permitted pursuant to subsections (a) and (b) shall be maintained at just and reasonable levels in comparison to one another.

(d) Nonresidential rates pursuant to another section.--Nothing in this section shall preclude the commission from establishing rates for other classes of telephone service based upon another section of this title.
(July 10, 1986, P.L.1238, No.114, eff. imd.)

1986 Amendment. Act 114 added section 1324.

§ 1325. Local exchange service increases; limitation (Repealed).

2004 Repeal. Section 1325 was repealed November 30, 2004, P.L.1398, No.183, effective immediately.

§ 1326. Standby charge prohibited.

(a) Prohibition.--A public utility that furnishes water to or for the public shall not impose a standby charge on owners of residential structures equipped with automatic fire protection systems.

(b) Definition.--As used in this section, the term "standby charge" means an amount, in addition to the regular rate, assessed against the owner of a residential structure for the reason that the residential structure is equipped with an automatic fire protection system.
(July 6, 1988, P.L.490, No.83, eff. imd.)

1988 Amendment. Act 83 added section 1326.

§ 1327. Acquisition of water and sewer utilities.

(a) Acquisition cost greater than depreciated original cost.--If a public utility acquires property from another public utility, a municipal corporation or a person at a cost which is in excess of the original cost of the property when first devoted to the public service less the applicable accrued depreciation, it shall be a rebuttable presumption that the excess is reasonable and that excess shall be included in the rate base of the acquiring public utility, provided that the acquiring public utility proves that:

(1) the property is used and useful in providing water or sewer service;

(2) the public utility acquired the property from another public utility, a municipal corporation or a person which had 3,300 or fewer customer connections or which was nonviable in the absence of the acquisition;

(3) the public utility, municipal corporation or person from which the property was acquired was not, at the time of acquisition, furnishing and maintaining adequate, efficient, safe and reasonable service and facilities, evidence of which shall include, but not be limited to, any one or more of the following:

(i) violation of statutory or regulatory requirements of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service and facilities;

(ii) a finding by the commission of inadequate financial, managerial or technical ability of the small water or sewer utility;

(iii) a finding by the commission that there is a present deficiency concerning the availability of water, the palatability of water or the provision of water at adequate volume and pressure;

(iv) a finding by the commission that the small water or sewer utility, because of necessary improvements to its plant or distribution system, cannot reasonably be expected to furnish and maintain adequate service to its customers in the future at rates equal to or less than those of the acquiring public utility; or

(v) any other facts, as the commission may determine, that evidence the inability of the small water or sewer utility to furnish or maintain adequate, efficient, safe and reasonable service and facilities;

(4) reasonable and prudent investments will be made to assure that the customers served by the property will receive adequate, efficient, safe and reasonable service;

(5) the public utility, municipal corporation or person whose property is being acquired is in agreement with the acquisition and the negotiations which led to the acquisition were conducted at arm's length;

(6) the actual purchase price is reasonable;

(7) neither the acquiring nor the selling public utility, municipal corporation or person is an affiliated interest of the other;

(8) the rates charged by the acquiring public utility to its preacquisition customers will not increase unreasonably because of the acquisition; and

(9) the excess of the acquisition cost over the depreciated original cost will be added to the rate base to be amortized as an addition to expense over a reasonable period of time with corresponding reductions in the rate base.

(b) Procedure.--The commission, upon application by a public utility, person or corporation which has agreed to acquire property from another public utility, municipal corporation or person, may approve an inclusion in rate base in accordance with subsection (a) prior to the acquisition and prior to a proceeding under this subchapter to determine just and reasonable rates if:

(1) the applicant has provided notice of the proposed acquisition and any proposed increase in rates to the customers served by the property to be acquired, in such form and manner as the commission, by regulation, shall require;

(2) the applicant has provided notice to its customers, in such form and manner as the commission, by regulation, shall require, if the proposed acquisition would increase rates to the acquiring public utility's customers by an amount in excess of 1% of the acquiring public utility's base annual revenue;

(3) the applicant has provided notice of the application to the Director of Trial Staff and the Consumer Advocate; and

(4) in addition to any other information required by the commission, the application includes a full description of the proposed acquisition and a plan for reasonable and prudent investments to assure that the customers served by the property to be acquired will receive adequate, efficient, safe and reasonable service.

(c) Hearings.--The commission may hold such hearings on the application as it deems necessary.

(d) Forfeiture.--Notwithstanding section 1309 (relating to rates fixed on complaint; investigation of costs of production), the commission, by regulation, shall provide for the removal of the excess costs of acquisition from its rates, or any portion thereof, found by the commission to be unreasonable and to refund any excess revenues collected as a result of this section, 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), referred to as the Loan Interest and Protection Law, during the period or periods for which the commission orders refunds, if the commission, after notice and hearings, determines that the reasonable and prudent investments to be made in accordance with this section have not been completed within a reasonable time.

(e) Acquisition cost lower than depreciated original cost.--If a public utility acquires property from another public utility, a municipal corporation or a person at a cost which is lower than the original cost of the property when first devoted to the public service less the applicable accrued depreciation and the property is used and useful in providing water or sewer service, that difference shall, absent matters of a substantial public interest, be amortized as an addition to income over a reasonable period of time or be passed through to the ratepayers by such other methodology as the commission may direct. Notice of the proposed treatment of an acquisition cost lower than depreciated original cost shall be given to the Director of Trial Staff and the Consumer Advocate.

(f) Reports.--The commission shall annually transmit to the Governor and to the General Assembly and shall make available to the public a report on the acquisition activity under this title. Such report shall include, but not be limited to, the number of small water or sewer public utilities, municipal corporations or persons acquired by public utilities, and the amounts of any rate increases or decreases sought and granted due to the acquisition.

(Apr. 4, 1990, P.L.107, No.24, eff. 60 days; June 1, 1995, P.L.49, No.7, eff. 60 days; Feb. 14, 2012, P.L.72, No.11, eff. 60 days)

2012 Amendment . Act 11 amended subsec. (b) intro. par.

References in Text. The Department of Environmental Resources, referred to in subsec. (a), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

§ 1328. Determination of public fire hydrant rates.

(a) General rule.--A public utility that furnishes water to or for the public shall be allowed to recover in rates the full cost of service related to public fire hydrants.

(b) Charge to municipalities and other customers of the public utility.--

(1) In determining the rates to be charged for public fire hydrants by a public utility that furnishes water to

or for the public, the commission shall as part of a utility's general rate proceeding provide for the recovery of the costs of public fire hydrants in such a manner that the municipalities in which those public fire hydrants are located are not charged for more than 25% of the cost of service for those public fire hydrants, as such cost of service is reasonably determined by the commission.

(2) The commission shall also as part of the utility's general rate proceeding provide for the recovery of the remaining cost of service for those public fire hydrants not recovered from the municipalities under paragraph (1) by assessing all customers of the public utility the remaining cost of service to the public fire hydrants. The remaining cost of service for those public fire hydrants shall be included in the public utility's fixed or service charge or minimum bill.

(c) Effect on current rates.--The legal rates charged to municipalities for public fire hydrants in effect on the effective date of this section shall remain frozen and shall not be changed until the present rates for those public fire hydrants are determined to be below the 25% ceiling established under subsection (b). The remaining cost of service for those public fire hydrants not recovered from the municipality shall be recovered from all customers of the public utility in the public utility's fixed or service charge or minimum bill.

(d) Definition.--As used in this section, the term "public fire hydrant" means a fire hydrant that is charged, at least in part, to a municipality such as a city, borough, town or township.

(June 30, 1995, P.L.165, No.23, eff. 60 days)

1995 Amendment. Act 23 added section 1328.

§ 1329. Valuation of acquired water and wastewater systems.

(a) Process to establish fair market value of selling utility.--Upon agreement by both the acquiring public utility or entity and the selling utility, the following procedure shall be used to determine the fair market value of the selling utility:

(1) The commission will maintain a list of utility valuation experts from which the acquiring public utility or entity and selling utility will choose.

(2) Two utility valuation experts shall perform two separate appraisals of the selling utility for the purpose of establishing its fair market value.

(3) Each utility valuation expert shall determine fair market value in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches.

(4) The acquiring public utility or entity and selling utility shall engage the services of the same licensed engineer to conduct an assessment of the tangible assets of the selling utility. The assessment shall be incorporated into the appraisal under the cost approach required under paragraph (3).

(5) Each utility valuation expert shall provide the completed appraisal to the acquiring public utility or entity and selling utility within 90 days of execution of the service contract.

(b) Utility valuation experts.--

(1) The utility valuation experts required under subsection (a) shall be selected as follows:

(i) one shall be selected by the acquiring public utility or entity; and

(ii) one shall be selected by the selling utility.

(2) The utility valuation experts shall not:

(i) derive any material financial benefit from the sale of the selling utility other than fees for services rendered; or

(ii) be an immediate family member of a director, officer or employee of either the acquiring public utility, entity or selling utility within a 12-month period of the date of hire to perform an appraisal.

(3) Fees paid to utility valuation experts may be included in the transaction and closing costs associated with acquisition by the acquiring utility or entity. Fees eligible for inclusion may be of an amount not exceeding 5% of the fair market value of the selling utility or a fee approved by the commission.

(c) Ratemaking rate base.--The following apply:

(1) The ratemaking rate base of the selling utility shall be incorporated into the rate base of:

(i) the acquiring public utility during the acquiring public utility's next base rate case; or

(ii) the entity in its initial tariff filing.

(2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.

(d) Acquisitions by public utility.--The following apply:

(1) If the acquiring public utility and selling utility agree to use the process outlined in subsection (a), the acquiring public utility shall include the following as an attachment to its application for commission approval of the acquisition filed pursuant to section 1102 (relating to enumeration of acts requiring certificate):

(i) Copies of the two appraisals performed by the utility valuation experts under subsection (a).

(ii) The purchase price of the selling utility as agreed to by the acquiring public utility and selling utility.

(iii) The ratemaking rate base determined pursuant to subsection (c)(2).

(iv) The transaction and closing costs incurred by the acquiring public utility that will be included in its rate base.

(v) A tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition.

(2) The commission shall issue a final order on an application submitted under this section within six months of the filing date of an application meeting the requirements of subsection (d)(1).

(3) If the commission issues an order approving the application for acquisition, the order shall include:

(i) The ratemaking rate base of the selling utility, as determined under subsection (c)(2).

(ii) Additional conditions of approval as may be required by the commission.

(4) The tariff submitted pursuant to subsection (d)(1)(v) shall remain in effect until such time as new rates are approved for the acquiring public utility as the result of a base rate case proceeding before the commission. The

acquiring public utility may collect a distribution system improvement charge during this time, as approved by the commission under this chapter.

(5) The selling utility's cost of service shall be incorporated into the revenue requirement of the acquiring public utility as part of the acquiring utility's next base rate case proceeding. The original source of funding for any part of the water or sewer assets of the selling utility shall not be relevant to determine the value of said assets.

(e) Acquisitions by entity.--An entity shall provide all the information required by subsection (d)(1) to the commission as an attachment to its application for a certificate of public convenience filed pursuant to section 1102.

(f) Postacquisition projects.--The following apply:

(1) An acquiring public utility's postacquisition improvements that are not included in a distribution improvement charge shall accrue allowance for funds used during construction after the date the cost was incurred until the asset has been in service for a period of four years or until the asset is included in the acquiring public utility's next base rate case, whichever is earlier.

(2) Depreciation on an acquiring public utility's postacquisition improvements that have not been included in the calculation of a distribution system improvement charge shall be deferred for book and ratemaking purposes.

(g) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Acquiring public utility." A water or wastewater public utility subject to regulation under this title that is acquiring a selling utility as the result of a voluntary arm's-length transaction between the buyer and seller.

"Allowance of funds used during construction." An accounting practice that recognizes the capital costs, including debt and equity funds that are used to finance the construction costs of an improvement to a selling utility's assets by an acquiring public utility.

"Entity." A person, partnership or corporation that is acquiring a selling utility and has filed or whose affiliate has filed an application with the commission seeking public utility status pursuant to section 1102.

"Fair market value." The average of the two utility valuation expert appraisals conducted under subsection (a)(2).

"Ratemaking rate base." The dollar value of a selling utility which, for postacquisition ratemaking purposes, is incorporated into the rate base of the acquiring public utility or entity.

"Rate stabilization plan." A plan that will hold rates constant or phase rates in over a period of time after the next base rate case.

"Selling utility." A water or wastewater company located in this Commonwealth, owned by a municipal corporation or authority that is being purchased by an acquiring public utility or entity as the result of a voluntary arm's-length transaction between the buyer and seller.

"Utility valuation expert." A person hired by an acquiring public utility and selling utility for the purpose of conducting an economic valuation of the selling utility to determine its fair market value.

(Apr. 14, 2016, P.L.76, No.12, eff. 60 days)

2016 Amendment. Act 12 added section 1329.

§ 1330. Alternative ratemaking for utilities.

(a) Declaration of policy.--The General Assembly finds and declares as follows:

(1) Innovations in utility operations and information technologies are creating new opportunities for all customers, and it is in the public interest for the commission to approve just and reasonable rates and rate mechanisms to facilitate customer access to these new opportunities while ensuring that utility infrastructure costs are reasonably allocated to and recovered from customers and market participants consistent with the use of the infrastructure.

(2) It is the policy of the Commonwealth that utility ratemaking should encourage and sustain investment through appropriate cost-recovery mechanisms to enhance the safety, security, reliability or availability of utility infrastructure and be consistent with the efficient consumption of utility service.

(b) Alternative rate mechanisms.--

(1) Notwithstanding any other provision of law, including, but not limited to, sections 2806.1(k)(2) (relating to energy efficiency and conservation program) and 2807(f)(4) (relating to duties of electric distribution companies), the commission may approve an application by a utility in a base rate proceeding to establish alternative rates and rate mechanisms, including, but not limited to, the following mechanisms:

(i) decoupling mechanisms;

(ii) performance-based rates;

(iii) formula rates;

(iv) multiyear rate plans; or

(v) rates based on a combination of more than one of the mechanisms in subparagraphs (i), (ii), (iii) and (iv) or other ratemaking mechanisms as provided under this chapter.

(2) An alternative rate mechanism established under this section may include rates under section 1307 (relating to sliding scale of rates; adjustments) or 1308 (relating to voluntary changes in rates) and may provide for recovery of returns on and return of capital investments or, in the case of city natural gas distribution operations, recovery under the cash flow ratemaking method.

(3) Capital costs and expenses recovered through alternative rates and rate mechanisms shall be reasonable and prudently incurred and used and useful in providing service. Nothing in this paragraph shall be construed to prohibit or limit the recovery of revenue, as appropriate, under a commission-approved performance-based rate plan.

(c) Customer notice.--

(1) A utility shall notify a customer of all of the following:

(i) The filing of an application under subsection (b)(1).

(ii) The commission's decision on the application.

(iii) A summary and, if applicable, a schedule of the rate adjustments that will occur as a result of the commission's approval of a utility application under subsection (b) and the effective date of the adjustments.

(iv) Any other information required by the commission by regulation or order.

(2) Notice shall be provided through customer bill inserts and posted on the utility's publicly accessible Internet website.

(d) Commission.--No later than six months after the effective date of this subsection, the commission, by regulation or order, shall prescribe the specific procedures for the approval of an application to establish alternative rates.

(e) Construction.--Nothing in this section shall be construed as limiting the existing ratemaking authority of the commission or be construed to invalidate or void any rate mechanisms approved by the commission prior to the effective date of this section.

(f) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Decoupling mechanism." As follows:

(1) A rate mechanism that reconciles authorized distribution rates or revenues for differences between the projected sales used to set rates and actual sales, which may include, but not be limited to, adjustments resulting from fluctuations in the number of customers served and other adjustments deemed appropriate by the commission.

(2) In the case of water and wastewater, a rate mechanism that adjusts or reconciles authorized rates or revenues for differences between sales used to set rates and actual sales, which may include, but not be limited to, adjustments resulting from fluctuations in the number of customers served and other adjustments deemed appropriate by the commission.

"Formula rates." Rates that are periodically adjusted based on a predetermined formula without the need for a full base rate proceeding.

"Multiyear rate plan." A rate mechanism under which the commission sets base rates and revenue requirements for a multiyear plan period and authorizes periodic changes in base rates, including, but not limited to, adjustments to account for inflation and capital investments without the necessity for base rate proceedings during the approved plan period.

"Performance-based rates." Rates that are set or adjusted based on a public utility's financial or operating performance. Such mechanisms can be part of, or in addition to, existing rate base/rate of return ratemaking or cash flow ratemaking method and may include capital costs and return thereon.

"Utility." As defined in section 1351 (relating to definitions).

(June 28, 2018, P.L.417, No.58, eff. 60 days)

2018 Amendment. Act 58 added section 1330.

SUBCHAPTER B
DISTRIBUTION SYSTEMS

Sec.

1350. Scope of subchapter.
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Enactment. Subchapter B was added February 14, 2012, P.L.72, No.11, effective in 60 days.

Cross References. Subchapter B is referred to in sections 3204, 3205 of this title.

§ 1350. Scope of subchapter.

This subchapter shall provide an additional mechanism for a distribution system to recover costs related to the repair, improvement and replacement of eligible property.

§ 1351. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Capitalized cost." Costs permitted to be capitalized pursuant to the Uniform System of Accounts and Generally Accepted Accounting Principles.

"Distribution system." A system owned or operated by a utility. The term includes a natural gas distribution company, a city natural gas distribution operation, an electric distribution company, a water utility and a collection system for a wastewater utility.

"Distribution system improvement charge." A charge imposed by a utility to recover the reasonable and prudent costs incurred to repair, improve or replace eligible property that is part of the utility's distribution system.

"Eligible property." Property that is part of a distribution system and eligible for repair, improvement and replacement of infrastructure under this subchapter. Included property shall be as follows:

(1) For electric distribution companies, eligible property shall include:

(i) Poles and towers.

(ii) Overhead and underground conductors.

(iii) Transformers and substation equipment.

(iv) Any fixture or device related to eligible property under subparagraphs (i), (ii) and (iii), including insulators, circuit breakers, fuses, reclosers, grounding wires, crossarms and brackets, relays, capacitors, converters and condensers.

(v) Unreimbursed costs related to highway relocation projects where an electric distribution company must relocate its facilities.

(vi) Other related capitalized costs.

(2) For natural gas distribution companies and city natural gas distribution operations, eligible property shall include:

(i) Piping.

(ii) Couplings.

(iii) Gas services lines and insulated and noninsulated fittings.

(iv) Valves.

(v) Excess flow valves.

(vi) Risers.

(vii) Meter bars.

(viii) Meters.

(ix) Unreimbursed costs related to highway relocation projects where a natural gas distribution company or city natural gas distribution operation must relocate its facilities.

(x) Other related capitalized costs.

(3) For water utilities, eligible property shall include:

(i) Utility service lines, meters and hydrants installed as in-kind replacements for customers.

(ii) Mains and valves installed as replacements for existing facilities that have worn out, are in deteriorated condition or are required to be upgraded to meet under 52 Pa. Code Ch. 65 (relating to water service).

(iii) Main extensions installed to eliminate dead ends and to implement solutions to regional water supply problems that present a significant health and safety concern for customers currently receiving service from the water utility.

(iv) Main cleaning and relining projects.

(v) Unreimbursed costs related to highway relocation projects where a water utility must relocate its facilities.

(vi) Other related capitalized costs.

(4) For wastewater utilities, eligible property shall include:

(i) Collection sewers, collecting mains and service laterals, including sewer taps, curbstops and lateral cleanouts installed as in-kind replacements for customers.

(ii) Collection mains and valves for gravity and pressure systems and related facilities such as manholes, grinder pumps, air and vacuum release chambers, cleanouts, main line flow meters, valve vaults and lift stations installed as replacements or upgrades for existing facilities that have worn out, are in deteriorated condition or are required to be upgraded by law, regulation or order.

(iii) Collection main extensions installed to implement solutions to wastewater problems that present a significant health and safety concern for customers currently receiving service from the wastewater utility.

(iv) Collection main rehabilitation including inflow and infiltration projects.

(v) Unreimbursed costs related to highway relocation projects where a wastewater utility must relocate its facilities.

(vi) Other related capitalized costs.

"Utility." A natural gas distribution company, electric distribution company, water or wastewater utility or city natural gas distribution operation.

Cross References. Section 1351 is referred to in section 1330 of this title.

§ 1352. Long-term infrastructure improvement plan.

(a) Submission.--In order to be eligible to recover costs under section 1353 (relating to distribution system improvement charge), a utility must submit a long-term infrastructure improvement plan. The plan shall include the following:

(1) Identification of the types and age of eligible property owned or operated by the utility for which the utility would seek recovery under this subchapter.

(2) An initial schedule for the planned repair and replacement of eligible property.

(3) A general description of the location of the eligible property.

(4) A reasonable estimate of the quantity of eligible property to be improved.

(5) Projected annual expenditures to implement the plan and measures taken to ensure that the plan is cost effective.

(6) The manner in which the replacement of aging infrastructure will be accelerated and how the repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service.

(7) If the plan is not adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service, the commission shall order a new or revised plan.

(b) Periodic review.--

(1) The commission shall promulgate regulations for the periodic review at least once every five years of long-term infrastructure plans. The regulations may authorize a utility to revise, update or resubmit a plan as appropriate.

(2) The regulations shall ensure that a distribution system improvement charge shall terminate if the commission determines that the utility is not in compliance with the approved plan.

Cross References. Section 1352 is referred to in sections 1353, 1360 of this title.

§ 1353. Distribution system improvement charge.

(a) Authority.--Except as provided under this subchapter, after January 1, 2013, a utility may petition the commission, or the commission, after notice and hearing, may approve the establishment of a distribution system improvement charge to provide for the timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

(b) Petition.--A petition for commission approval of a distribution system improvement charge shall include the following:

(1) An initial tariff that complies with a model tariff adopted by the commission. The proposed tariff shall include the following:

(i) A description of the eligible property.

(ii) The effective date of the distribution system improvement charge.

(iii) Computation of the distribution system improvement charge.

(iv) The method by which the utility will provide quarterly updates of the distribution improvement charge.

(v) A description of consumer protections.

(2) Testimony, affidavits, exhibits or other evidence that demonstrates that a distribution improvement system charge is in the public interest and will facilitate utility compliance with the following:

(i) The provision and maintenance of adequate, efficient, safe, reliable and reasonable service consistent with section 1501 (relating to character of service and facilities).

(ii) Commission regulations and orders relating to the provision and maintenance of adequate, efficient, safe, reliable and reasonable service.

(iii) Any other requirement under Federal or State law relating to the provision and maintenance of adequate, efficient, safe, reliable and reasonable service.

(3) A long-term infrastructure improvement plan under section 1352 (relating to long-term infrastructure improvement plan).

(4) Certification that a base rate case has been filed within five years prior to the date of the filing of the petition under section 1308(d) (relating to voluntary changes in rates).

(5) If a base rate case has not been filed within five years prior to the date of the filing of the petition, the utility must file a base rate case in order to be eligible for a distribution system improvement charge.

(6) Any other information required by the commission.

Cross References. Section 1353 is referred to in sections 1352, 1355 of this title.

§ 1354. Customer notice.

Utilities shall provide notice to customers in bill inserts or through other means as prescribed by the commission of the following:

(1) Submission of the proposed distribution system improvement charge and initial tariff.

(2) Notice of the commission's disposition of the submission under paragraph (1).

(3) Any changes that occur as a result of quarterly adjustments.

(4) Any other information required by the commission.

§ 1355. Review.

Following the filing of a petition in compliance with section 1353 (relating to distribution system improvement charge), the commission shall, after notice and opportunity to be heard, approve, modify or reject the distribution system improvement charge and initial tariff. The commission shall hold evidentiary and public input hearings as necessary to review the petition.

§ 1356. Asset optimization plans.

A utility with an approved distribution system charge and long-term infrastructure plan shall file annual asset optimization plans. The plan shall include the following:

(1) A description that specifies all eligible property repaired, improved and replaced in the immediately preceding 12-month period pursuant to the utility's long-term infrastructure improvement plan and prior year's asset optimization plan.

(2) A detailed description of all the facilities to be improved in the upcoming 12-month period.

§ 1357. Computation of charge.

(a) Recovery.--The following shall apply:

(1) The initial distribution system improvement charge shall be calculated to recover the fixed cost of eligible property that has:

(i) Not previously been reflected in the utility's rates or rate base.

(ii) Been placed in service during the three-month period ending one month prior to the effective date of the distribution improvement system charge.

(2) After calculation of the initial charge under paragraph (1), the distribution system improvement charge must be updated on a quarterly basis to reflect eligible property placed in service during the three-month period ending one month prior to the effective date of each distribution system improvement charge update.

(3) The fixed cost of eligible property shall consist of depreciation and pretax return, except as provided for

in subsection (c) for city natural gas distribution operation.

(b) Depreciation calculation.--Depreciation shall be calculated by applying the original cost of the eligible property to the annual accrual rates employed in the utility's most recent base rate case for the plant accounts in which each retirement unit of distribution system improvement charge eligible property is recorded. The following shall apply:

(1) The pretax return shall be calculated using the Federal and State income tax rates, the utility's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day of the three-month period ending one month prior to the effective date of the distribution system improvement charge and subsequent updates.

(2) The cost of equity shall be the equity return rate approved in the utility's most recent fully litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the distribution system improvement charge.

(3) If more than two years have elapsed between the entry of a final order and the effective date of the distribution system improvement charge, the equity return rate used in the calculation shall be the equity return rate calculated by the commission in the most recent Quarterly Report on the Earnings of Jurisdictional Utilities released by the commission.

(c) Recovery of costs.--Utilities may file tariffs establishing a sliding scale of rates or other method for the automatic adjustment of the rates of the utility to provide for recovery of the depreciation and pretax return fixed costs of eligible property, as approved by the commission, that are completed and placed in service between base rate proceedings. For city natural gas distribution operations, recoverable costs shall be amounts reasonably expended or incurred to purchase and install eligible property and associated financing costs, if any, including debt service, debt service coverage and issuance costs.

(d) Calculation.--

(1) The distribution system improvement charge shall be expressed as a percentage carried to two decimal places and shall be applied in a manner consistent with section 1358 (relating to customer protections) to each customer under the utility's applicable rates and charges. The charge shall not be applied to amounts billed for public fire protection service by water utilities and the State tax adjustment surcharge.

(2) The distribution system improvement charge shall be calculated by dividing one-fourth of the annual fixed costs associated with all eligible property under the distribution system improvement charge by the projected revenue for the quarterly period during which the distribution system will be collected. The projected revenues shall not include revenues from public fire protection service earned by water utilities and the State tax adjustment surcharge.

(3) Supporting data for each quarterly update shall be filed with the commission and served upon the commission, the Office of Consumer Advocate and the Office of Small Business Advocate at least ten days prior to the effective date of the update.

Cross References. Section 1357 is referred to in section 1311 of this title.

§ 1358. Customer protections.

(a) Limitation.--As follows:

(1) Except as provided under paragraph (2), the distribution system improvement charge may not exceed 5% of the amount billed to customers under the applicable rates of the wastewater utility or distribution rates of the electric distribution company, natural gas distribution company or city natural gas distribution operation. The commission may upon petition grant a waiver of the 5% limit under this paragraph for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

(2) A distribution system improvement charge granted to a water utility under former section 1307(g) (relating to sliding scale of rates; adjustments) or this subchapter may not exceed 7.5% of the amount billed to customers. All proceedings, orders and other actions of the commission related to a distribution system improvement charge granted to a water utility and all practices and procedures of a water utility operating under a distribution system improvement charge prior to the effective date of this paragraph shall remain in effect unless specifically amended or revoked by the commission.

(b) Charge reset.--

(1) The distribution system improvement charge shall be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs previously recovered under the distribution system improvement charge.

(2) After the reset date under paragraph (1), only the fixed costs of new eligible property that have not previously been reflected in the utility's rate base shall be reflected in the quarterly updates of the distribution system improvement charge.

(3) The distribution system improvement charge shall be reset at zero if, in any quarter, data filed with the commission in the utility's most recent annual or quarterly earnings report show that the utility will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the distribution system improvement charge.

(c) Construction.--Except as otherwise expressly provided under this subchapter, nothing under this subchapter shall be construed as limiting the existing ratemaking authority of the commission, including the authority to permit recovery of operating expenses through an automatic adjustment clause, or as indicating that the existing authority of the commission over rate structure or design is limited.

(d) Commission.--The commission, by regulation or order, shall prescribe the specific procedures to be followed to approve a distribution system improvement charge. A distribution system improvement charge approved by the commission shall provide:

(1) That the distribution system improvement charge shall be applied equally to all customer classes as a percentage of each customer's billed revenue, consistently with subsection (a).

(2) A process to adjust the charge and to provide:

(i) Credit to customer accounts for over collections and collections for ineligible projects.

(ii) Charges to customer accounts for under collections.

(3) A cap on the amount that may be collected from customers under this subchapter.

(e) Audit and reconciliation.--The following shall apply:

(1) The distribution system improvement charge shall be subject to the following:

(i) Audit at intervals determined by the commission.

(ii) Annual reconciliation based on a reconciliation period consisting of the 12 months ending December 31 of each year. The commission may also permit quarterly reconciliation.

(2) The revenue received under the distribution system improvement charge for the reconciliation period shall be compared to the utility's eligible costs for that period. The difference between revenue and costs shall be recouped or refunded, as appropriate, in accordance with section 1307(e), over a one-year period or quarterly period commencing April 1 of each year.

(3) If revenues received from the distribution system improvement charge exceed eligible costs, the over collections shall be refunded with interest. Interest on the over collections shall be calculated at the residential mortgage lending rate specified 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, and shall be refunded in the same manner as an over collection.

(f) Complaint.--The distribution system improvement charge shall be subject to complaint under section 701 (relating to complaints).

Cross References. Section 1358 is referred to in section 1357 of this title.

§ 1359. Projects.

(a) Standards.--The commission shall establish standards to ensure that work on utility systems to repair, improve or replace eligible property is performed by qualified employees of either the utility or an independent contractor in a manner that protects system reliability and the safety of the public.

(b) Inspection.--Projects for which work to repair, improve or replace eligible property is performed by independent contractors shall be subject to reliability and safety standards and to inspection by utility employees.

(c) Cost.--Work on projects to repair, improve or replace eligible property that is not performed by qualified employees or contractors or inspected by the utility's qualified personnel shall not be eligible for recovery of a distribution system improvement charge.

§ 1360. Applicability.

(a) Acceptance.--The commission may accept a long-term infrastructure plan filed by a water utility prior to the effective date of this subsection in order to comply with section 1352 (relating to long-term infrastructure improvement plan).

(b) Submission.--The commission may require the submission of a new long-term infrastructure plan by a water utility.

CHAPTER 14
RESPONSIBLE UTILITY CUSTOMER PROTECTION

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1418. Construction.
1419. Expiration.

Enactment. Chapter 14 was added November 30, 2004, P.L.1578, No.201, effective in 14 days.

Special Provisions in Appendix. See sections 4, 5 and 6 of Act 201 of 2004 in the appendix to this title for special provisions relating to applicability, expiration and administration and enforcement of chapter.

§ 1401. Scope of chapter.

This chapter relates to protecting responsible customers of public utilities.

§ 1402. Declaration of policy.

The General Assembly finds and declares as follows:

(1) Formal service rules were first adopted by the Pennsylvania Public Utility Commission in 1978 with the stated goal of enforcing uniform, fair and equitable residential utility service standards governing eligibility criteria, credit and deposit practices, account billing, termination and restoration of service procedures and customer complaint procedures. These rules have not successfully managed the issue of bill payment. Increasing amounts of unpaid bills now threaten paying customers with higher rates due to other customers' delinquencies.

(2) The General Assembly believes that it is now time to revisit these rules and provide protections against rate increases for timely paying customers resulting from other customers' delinquencies. The General Assembly seeks to achieve greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills.

(3) Through this chapter, the General Assembly seeks to provide public utilities with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and by increasing timely collections. At the same time, the General Assembly seeks to ensure that service remains available to all customers on reasonable terms and conditions.

(4) The General Assembly believes that it is appropriate to provide additional collection tools to city natural gas distribution operations to recognize the financial circumstances of the operations and protect their ability

to provide natural gas for the benefit of the residents of the city.

§ 1403. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Applicant." A natural person not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. The term does not include a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility.

"Change in income." A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.

"Creditworthiness." An assessment of an applicant's or customer's ability to meet bill payment obligations for utility service.

"Customer." A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. The term includes a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility.

"Customer assistance program." A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by section 2202 (relating to definitions) or 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

"Electric distribution utility." An entity providing facilities for the jurisdictional transmission and distribution of electricity to retail customers, except building or facility owners or operators that manage the internal distribution system serving such building or facility and that supply electric power and other related electric power services to occupants of the building or facility.

"Formal complaint." A complaint filed before the Pennsylvania Public Utility Commission requesting a legal proceeding before a Pennsylvania Public Utility Commission administrative law judge or a mediation under the management of a Pennsylvania Public Utility Commission administrative law judge.

"Household income." The combined gross income of all adults in a residential household who benefit from the public utility service.

"Informal complaint." A complaint filed with the Pennsylvania Public Utility Commission by a customer that does not involve a legal proceeding before a Pennsylvania Public Utility Commission administrative law judge or a mediation under the management of a Pennsylvania Public Utility Commission administrative law judge.

"**LIHEAP**" or "**Low Income Home Energy Assistance Program.**" A federally funded program that provides financial assistance in the form of cash and crisis grants to low-income households for home energy bills and is administered by the Department of Public Welfare.

"**Medical certificate.**" A written document, in a form approved by the commission:

(1) certifying that a customer or member of the customer's household is seriously ill or has been diagnosed with a medical condition which requires the continuation of service to treat the medical condition; and

(2) signed by a licensed physician, nurse practitioner or physician's assistant.

"Natural gas distribution service." The delivery of natural gas to retail gas customers utilizing the jurisdictional facilities of a natural gas distribution utility.

"Natural gas distribution utility." A city natural gas distribution operation or entity that provides natural gas distribution services and may provide natural gas supply services and other services. The term does not include either of the following:

(1) Any public utility providing natural gas distribution services subject to the jurisdiction of the Pennsylvania Public Utility Commission that has annual gas operating revenues of less than $6,000,000 per year, except where the public utility voluntarily petitions the commission to be included within this definition or where the public utility seeks to provide natural gas supply services to retail gas customers outside its service territory.

(2) Any public utility providing natural gas distribution services subject to the jurisdiction of the commission that is not connected to an interstate gas pipeline by means of a direct connection or an indirect connection through the distribution system of another natural gas public utility or through a natural gas gathering system.

"Natural gas supply services." The sale or arrangement of the sale of natural gas to retail gas customers and services that may be unbundled by the Pennsylvania Public Utility Commission under section 2203(3) (relating to standards for restructuring of natural gas utility industry). The term does not include natural gas distribution service.

"Occupant." (Reserved).

"Payment arrangement." An agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.

"Public utility." Any electric distribution utility, natural gas distribution utility, small natural gas distribution utility, steam heat utility, wastewater utility or water distribution utility in this Commonwealth that is within the jurisdiction of the Pennsylvania Public Utility Commission.

"Significant change in circumstance." Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

(1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.

(2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.

(3) Loss of the customer's residence.

(4) Increase in the customer's number of dependents in the household.

"Small natural gas distribution utility." A public utility providing natural gas distribution services subject to the jurisdiction of the commission that:

(1) has annual gas operating revenues of less than $6,000,000 per year; or

(2) is not connected to an interstate gas pipeline by means of a direct connection or any indirect connection through the distribution system of another natural gas public utility or through a natural gas gathering system.

"Steam heat utility." An entity producing, generating, distributing or furnishing steam for the production of heat or to or for the public for compensation.

"Wastewater utility." An entity owning or operating equipment or facilities for the collection, treatment or disposal of sewage to or for the public for compensation. The term includes separate companies that individually provide water or wastewater service so long as the separate companies are wholly owned by a common parent company.

"Water distribution utility." An entity owning or operating equipment or facilities for diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation.

(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

2014 Amendment. Act 155 amended the defs. of "applicant," "customer," "payment agreement," and "public utility" and added the defs. of "creditworthiness," "medical certificate," "small natural gas distribution utility," "steam heat utility" and "wastewater utility."

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

§ 1404. Cash deposits and household information requirements.

(a) General rule.--In addition to the right to collect a deposit under any commission regulation or order, the commission shall not prohibit a public utility from requiring a cash deposit, payable during a 90-day period in accordance with commission regulations, in an amount that is equal to one-sixth of the applicant's estimated annual bill, at the time the public utility determines a deposit is required, from the following:

(1) An applicant who previously received utility distribution services and was a customer of the public utility and whose service was terminated for any of the following reasons:

(i) Nonpayment of an undisputed delinquent account.

(ii) Failure to complete payment of a deposit, provide a guarantee or establish credit.

(iii) Failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading.

(iv) Unauthorized use of the utility service delivered on or about the affected dwelling.

(v) Failure to comply with the material terms of a settlement or payment arrangement.

(vi) Fraud or material misrepresentation of identity for the purpose of obtaining utility service.

(vii) Tampering with meters, including, but not limited to, bypassing a meter or removal of an automatic meter reading device or other public utility equipment.

(viii) Violating tariff provisions on file with the commission so as to endanger the safety of a person or the integrity of the delivery system of the public utility.

(2) Any applicant or customer who is unable to establish creditworthiness to the satisfaction of the public utility through the use of a generally accepted credit scoring methodology, as provided in a commission-approved tariff, and which employs standards for using the methodology that fall within the range of general industry practice.

(3) A customer who fails to comply with a material term or condition of a settlement or payment arrangement.

(a.1) Cash deposit prohibition.--Notwithstanding subsection (a), no public utility may require a customer or applicant that is confirmed to be eligible for a customer assistance program to provide a cash deposit.

(b) Third-party guarantor.--Nothing in this section shall be construed to preclude an applicant from furnishing a third-party guarantor in lieu of a cash deposit. The guaranty shall be in writing and shall state the terms of the guaranty. The guarantor shall be responsible for all missed payments owed to the public utility.

(c) Deposit hold period.--

(1) A public utility may hold a deposit until a timely payment history is established.

(2) A timely payment history is established when a customer has paid in full and on time for twelve consecutive months.

(3) At the end of the deposit holding period as established in paragraph (1), the public utility shall deduct the outstanding balance from the deposit and return or credit any positive difference to the customer.

(4) If service is terminated before the end of the deposit holding period as established in paragraph (1), the public utility shall deduct the outstanding balance from the deposit and return any positive difference to the customer within 60 days of the termination.

(5) If a customer becomes delinquent before the end of the deposit holding period as established in paragraph (1), the public utility may deduct the outstanding balance from the deposit.

(6) The public utility shall accrue interest on the deposit until it is returned or credited.

(i) Interest shall be computed at the simple annual interest rate determined by the Secretary of Revenue for interest on the underpayment of tax under section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(ii) The interest rate in effect when deposit is required to be paid shall remain in effect until the later of:

(A) the date the deposit is refunded or credited; or

(B) December 31.

(iii) On January 1 of each year, the new interest rate for that year will apply to the deposit.

(d) Adult occupants.--Prior to providing utility service, a public utility may require the applicant to provide the names of each adult occupant residing at the location and proof of their identity.

(e) Failure to pay full amount of cash deposit.--A public utility shall not be required to provide service if the

applicant or customer fails to pay the full amount of the cash deposit within the time period under subsection (a).

(f) City natural gas distribution operation; additional deposit rules for city natural gas distribution operations.--Except for applicants who are subject to a deposit under subsection (a), a city natural gas distribution operation may require a deposit from the applicant as follows:

(1) If an applicant has household income above 300% of the Federal poverty level, one-sixth of the applicant's estimated annual bill paid in full at the time the city natural gas distribution operation determines a deposit is required; or

(2) If an applicant has household income no greater than 300% of the Federal poverty level, one-twelfth of the applicant's estimated annual bill paid in full at the time the city natural gas distribution operation determines a deposit is required. Applicants who enroll into the Customer Assistance Program made available by the city natural gas distribution operation are not subject to this paragraph.

(g) Estimated annual bill.--When used in this section, an estimated annual bill shall be calculated on the basis of the annual bill to the dwelling at which service is being requested for the prior 12 months or, if unavailable, a similar dwelling in close proximity.

(h) Time for paying deposits upon reconnection.--Applicants and customers required to pay a deposit upon reconnection under subsection (a)(1) shall have up to 90 days to pay the deposit in accordance with commission regulations.

(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

2014 Amendment. Act 155 amended subsecs. (a) intro. par., (1)(v), (2) and (3), (c)(1) and (6), (e) and (f) and added subsec. (a.1).

§ 1405. Payment arrangements.

(a) General rule.--The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

(b) Length of payment arrangements.--The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

(c) Customer assistance programs.--Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

(d) Number of payment arrangements.--Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

(e) Extension of payment arrangements.--If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

(f) Failure to comply with payment arrangement.--Failure of a customer to comply with the terms of a payment arrangement shall be grounds for a public utility to terminate the customer's service. Pending the outcome of a complaint filed with the commission, a customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute.

(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

2014 Amendment. Act 155 amended the section heading and subsecs. (a), (b) intro. par. and (2), (c), (d), (e) and (f).

§ 1406. Termination of utility service.

(a) Authorized termination.--A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer:

(1) Nonpayment of an undisputed delinquent account.

(2) Failure to comply with the material terms of a payment arrangement.

(3) Failure to complete payment of a deposit, provide a guarantee of payment or establish credit.

(4) Failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading.

(b) Notice of termination of service.--

(1) Prior to terminating service under subsection (a), a public utility:

(i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

(ii) Shall attempt to contact the customer or occupant to provide notice of the proposed termination at least three days prior to the scheduled termination, using one or more of the following methods:

(A) in person;

(B) by telephone. Phone contact shall be deemed complete upon attempted calls on two separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day; or

(C) by e-mail, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.

(D) In the case of electronic notification only, the customer must affirmatively consent to be contacted using a specific electronic messaging format for purpose of termination.

(iii) During the months of December through March, unless personal contact has been made with the customer or responsible adult by personally visiting the customer's residence, the public utility shall, within 48 hours of the scheduled date of termination, post a notice of the proposed termination at the service location.

(iv) After complying with paragraphs (ii) and (iii), the public utility shall attempt to make personal contact with the customer or responsible adult at the time service is terminated. Termination of service shall not be delayed for failure to make personal contact.

(2) The public utility shall not be required by the commission to take any additional actions prior to termination.

(c) Grounds for immediate termination.--

(1) A public utility may immediately terminate service for any of the following actions by the customer:

(i) Unauthorized use of the service delivered on or about the affected dwelling.

(ii) Fraud or material misrepresentation of the customer's identity for the purpose of obtaining service.

(iii) Tampering with meters or other public utility's equipment.

(iv) Violating tariff provisions on file with the commission so as to endanger the safety of a person or the integrity of the public utility's delivery system.

(v) Tendering payment for reconnection of service that is subsequently dishonored, revoked, canceled or otherwise not authorized under subsection (h) and which has not been cured or otherwise made full payment within three business days of the utility's notice to the customer, made in accordance with the notice provisions of subsection (b)(1)(ii), of the dishonored payment.

(2) Upon termination, the public utility shall make a good faith attempt to provide a post termination notice to the customer or a responsible person at the affected premises, and, in the case of a single meter, multiunit dwelling, the public utility shall conspicuously post the notice at the dwelling, including in common areas when possible.

(d) Timing of termination.--Notwithstanding the provisions of section 1503 (relating to discontinuance of service), a public utility may terminate service for the reasons set forth in subsection (a) from Monday through Thursday as long as the public utility can accept payment to restore service on the following day and can restore service consistent with section 1407 (relating to reconnection of service).

(e) Winter termination.--

(1) Unless otherwise authorized by the commission, after November 30 and before April 1, an electric distribution utility or natural gas distribution utility shall not terminate service to customers with household incomes at or below 250% of the Federal poverty level except for customers whose actions conform to subsection (c)(1). The commission shall not prohibit an electric distribution utility or natural gas distribution utility from terminating service in accordance with this section to customers with household incomes exceeding 250% of the Federal poverty level.

(2) In addition to the winter termination authority set forth in paragraph (1), a city natural gas distribution operation may terminate service to a customer whose household

income exceeds 150% of the Federal poverty level but does not exceed 250% of the Federal poverty level, and starting January 1, has not paid at least 50% of his charges for each of the prior two months unless the customer has done one of the following:

(i) Has proven in accordance with commission rules that his household contains one or more persons who are 65 years of age or over.

(ii) Has proven in accordance with commission rules that his household contains one or more persons 12 years of age or younger.

(iii) Has obtained a medical certification in accordance with commission rules.

(iv) Has paid to the city natural gas distribution operation an amount representing at least 15% of the customer's monthly household income for each of the last two months.

(3) At the time that the notice of termination required by subsection (b)(1)(i) is provided to the customer, the city natural gas distribution operation shall provide notice to the commission. The commission shall not stay the termination of service unless the commission finds that the customer meets the criteria in paragraph (2)(i), (ii), (iii) or (iv).

(f) Medical certification.--A public utility shall not terminate service to a premises when a customer has submitted a medical certificate to the public utility. The customer shall obtain a medical certificate verifying the condition and shall promptly forward it to the public utility. The medical certification procedure shall be implemented in accordance with commission regulations.

(g) Qualification for LIHEAP.--A notice of termination to a customer of a public utility shall be sufficient proof of a crisis for a customer with the requisite income level to receive a LIHEAP Crisis Grant from the Department of Public Welfare or its designee as soon as practicable after the date of the notice. Termination of service is not necessary to demonstrate sufficient proof of crisis.

(h) Dishonorable tender of payment after receiving termination notice.--

(1) After a public utility has provided a written termination notice under subsection (b)(1)(i) and attempted telephone contact as provided in subsection (b)(1)(ii), termination of service may proceed without additional notice if:

(i) a customer tenders payment which is subsequently dishonored under 13 Pa.C.S. § 3502 (relating to dishonor);

(ii) a customer tenders payment with an access device, as defined in 18 Pa.C.S. § 4106(d) (relating to access device fraud), which is unauthorized, revoked or canceled; or

(iii) a customer tenders payment electronically that is subsequently dishonored, revoked, canceled or is otherwise not authorized and which has not been cured or otherwise made full payment within three business days of the utility's notice to the customer, made in accordance with the notice provisions of subsection (b)(1)(ii), of the dishonored payment.

(2) The public utility shall not be required by the commission to take any additional actions prior to the termination.

(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

2014 Amendment. Act 155 amended subsecs. (a)(2), (b)(1)(ii), (d), (f), (g) and (h) and added subsec. (c)(1)(v).

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Cross References. Section 1406 is referred to in section 1407 of this title.

§ 1407. Reconnection of service.

(a) Fee.--A public utility may require a reconnection fee based upon the public utility's cost as approved by the commission prior to reconnection of service following lawful termination of the service.

(b) Timing.--When service to a dwelling has been terminated and provided the applicant has met all applicable conditions, the public utility shall reconnect service as follows:

(1) Within 24 hours for erroneous terminations or upon receipt by the public utility of a valid medical certification.

(2) Within 24 hours for terminations occurring after November 30 and before April 1.

(3) Within three days for erroneous terminations requiring street or sidewalk digging.

(4) Within three days from April 1 to November 30 for proper terminations.

(5) Within seven days for proper terminations requiring street or sidewalk digging.

(c) Payment to restore service.--

(1) A public utility shall provide for and inform the applicant or customer of a location where the customer can make payment to restore service.

(2) A public utility may require:

(i) Full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level or has defaulted on two or more payment arrangements. If a customer or applicant with household income exceeding 300% of the Federal poverty level experiences a life event, the customer shall be permitted a period of not more than three months to pay the outstanding balance required for reconnection. For purposes of this subparagraph, a life event is:

(A) A job loss that extended beyond nine months.

(B) A serious illness that extended beyond nine months.

(C) Death of the primary wage earner.

(ii) Full payment of any reconnection fees together with repayment over 12 months of any outstanding balance incurred by the customer or applicant if the customer or applicant has an income exceeding 150% of the Federal poverty level but not greater than 300% of the Federal poverty level.

(iii) Full payment of any reconnection fees together with payment over 24 months of any outstanding balance incurred by the customer or applicant if the customer or applicant has an income not exceeding 150% of the Federal poverty level. A customer or applicant of a city natural gas distribution operation whose household income does not exceed 135% of the Federal poverty level shall be reinstated pursuant to this subsection only if the

customer or applicant enrolls in the customer assistance program of the city natural gas distribution operation except that this requirement shall not apply if the financial benefits to such customer or applicant are greater if served outside of that assistance program.

(3) Payment tendered by a customer to reconnect service that is subsequently dishonored, revoked, canceled or is otherwise not authorized under section 1406(h)(1) (relating to termination of utility service) and which has not been cured or otherwise made full payment within three business days of the utility's notice to the customer, made in accordance with the notice provisions of section 1406(b)(1)(ii), of the dishonored payment is grounds for immediate termination under section 1406(c). A public utility may require a customer or applicant to cure a dishonored payment, as provided for in section 1406(h), as a condition of entering into a payment agreement with the customer or applicant for a remaining account balance.

(d) Payment of outstanding balance at premises.--A public utility may also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there.

(e) Approval.--A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the commission.
(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

2014 Amendment. Act 155 amended subsec. (c)(2)(i) and added subsec. (c)(3).

Cross References. Section 1407 is referred to in section 1406 of this title.

§ 1408. Surcharges for uncollectible expenses prohibited.

The commission shall not grant or order for any public utility a cash receipts reconciliation clause or another automatic surcharge mechanism for uncollectible expenses. Any orders by the commission entered after the effective date of this chapter for a cash receipts reconciliation clause or other automatic surcharge for uncollectible expenses shall be null and void. This section shall not affect any clause associated with universal service and energy conservation.

§ 1409. Late payment charge waiver.

A public utility shall waive late payment charges on any customer accounts if the charges were improperly assessed. The commission may order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level.
(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

§ 1410. Complaints filed with commission.

The following apply:

(1) The commission shall accept formal and informal complaints only from customers or applicants who affirm that they have first contacted the public utility for the purpose of resolving the problem about which the customer wishes to file a complaint. If the customer has not contacted the public utility, the commission shall direct the customer to the public utility.

(2) Pending the outcome of a formal or informal complaint filed with the commission, the customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute.

(3) For a formal complaint filing to be valid, the customer or applicant must provide a statement attesting to the truth as to the facts alleged in the complaint. All testimony in formal complaint proceedings must be under oath.

(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

Cross References. Section 1410 is referred to in section 1410.1 of this title.

§ 1410.1. Public utility duties.

When a customer or applicant contacts a public utility to make a payment agreement as required by section 1410 (relating to complaints filed with commission), the public utility shall:

(1) Provide information about the public utility's universal service programs, including a customer assistance program.

(2) Refer the customer or applicant to the universal service program administrator of the public utility to determine eligibility for a program and to apply for enrollment in a program.

(3) Have an affirmative responsibility to attempt to collect payment on an overdue account. The utility shall report to the commission annually residential customer accounts which have accumulated $10,000 or more in arrearages and shall demonstrate what efforts are being taken to collect the arrearages. Failure to make reasonable attempts to collect payments on overdue accounts with arrearages in excess of $10,000 may result in civil fines or other appropriate sanctions by the commission.

(4) Report to the commission on an annual basis the number of medical certificates and renewals submitted and accepted in the service territory.

(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

2014 Amendment. Act 155 added section 1410.1.

§ 1411. Automatic meter readings.

All readings by an automatic meter reader device shall be deemed actual readings for the purposes of this title. Upon a customer request, the public utility shall secure an in-person meter reading to confirm the accuracy of an automatic meter reading device when a customer disconnects service or a new service request is received. A public utility may charge a fee, as provided in a commission-approved tariff.

(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

§ 1412. Reporting of delinquent customers.

A city natural gas distribution operation shall report to the Pennsylvania Intergovernmental Cooperation Authority established pursuant to the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, an assisted city or corporate entity of an assisted city, as those terms are defined in the Pennsylvania Intergovernmental Cooperation Authority Act, that has not paid in full for charges for service by the due dates stated on the bill or otherwise agreed upon.

§ 1413. Reporting of recipients of public assistance.

The Department of Public Welfare shall annually provide a city natural gas distribution operation with the listing of recipients of public assistance in a city of the first class. A city natural gas distribution operation shall not use the

listing for anything but qualification and continued eligibility for a customer assistance program or LIHEAP.

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

§ 1414. Liens by city natural gas distribution operations.

(a) General rule.--A city natural gas distribution operation furnishing gas service to a property is entitled to impose or assess a municipal claim against the property and file as liens of record claims for unpaid natural gas distribution service and other related costs, including natural gas supply, in the court of common pleas of the county in which the property is situated or, if the claim for the unpaid natural gas distribution service does not exceed the maximum amount over which the Municipal Court of Philadelphia has jurisdiction, in the Municipal Court of Philadelphia, pursuant to sections 3 and 9 of the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, and Chapter 22 (relating to natural gas competition).

(b) Residential field visit charge.--A city natural gas distribution operation is authorized to charge a minimum fee of $10 for each instance in which its representative is required to visit the residence of a customer in the process of attempting to complete required service termination steps.

(c) Refusal of service.--The commission shall permit a city natural gas distribution operation to refuse to provide service to an applicant if the applicant has a pending lien or civil judgment by the city natural gas distribution operation outstanding against the applicant or against property owned in whole or in part by the applicant unless the applicant enters into a payment arrangement for the payment of the amount associated with the lien or judgment that remains outstanding at the time of the application.

§ 1415. Reporting to General Assembly and Governor.

No later than five years following the effective date of this chapter and every five years thereafter, the commission shall submit a report to the Governor, the Chief Clerk of the House of Representatives and the Secretary of the Senate reviewing the implementation of the provisions of this chapter. The report shall include, but not be limited to:

(1) The degree to which the chapter's requirements have been successfully implemented.

(2) The effect upon the cash working capital or cash flow, uncollectible levels and collections of the affected public utilities.

(3) The level of access to utility services by residential customers, including low-income customers.

(4) The effect upon the level of consumer complaints and mediations filed with and adjudicated by the commission.

Public utilities affected by this chapter shall provide data required by the commission to complete this report. In its recommendations, the commission may also propose any legislative or other changes which it deems appropriate to the Governor and the General Assembly.

(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

2014 Amendment. Act 155 amended the intro. par.

§ 1416. Notice.

Within 30 days of the effective date of this chapter, public utilities affected by this chapter shall provide notice to the customers explaining the changes to be implemented.

§ 1417. Nonapplicability.

This chapter shall not apply to victims under a protection from abuse order as provided by 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or a court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence against the applicant or customer.
(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

§ 1418. Construction.

Nothing in this chapter shall affect any rights or procedure under the act of November 26, 1978 (P.L.1255, No.299), known as the Utility Service Tenants Rights Act, or the provisions of Subchapter B of Chapter 15 (relating to discontinuance of service to leased premises).
(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

§ 1419. Expiration.

This chapter shall expire December 31, 2024.
(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

2014 Amendment. Act 155 added section 1419.

CHAPTER 15
SERVICE AND FACILITIES

Subchapter
A. General Provisions
B. Discontinuance of Service to Leased Premises

Enactment. Chapter 15 was added July 1, 1978, P.L.598, No.116, effective in 60 days.
Cross References. Chapter 15 is referred to in section 2603 of this title.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.
1501. Character of service and facilities.
1501.1. Certain utilities prohibited from using foreign coal.
1502. Discrimination in service.
1503. Discontinuance of service.
1504. Standards of service and facilities.
1505. Proper service and facilities established on complaint; authority to order conservation and load management programs.
1506. Copies of service contracts, etc., to be filed with commission.
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1508. Reports of accidents.
1509. Billing procedures.
1510. Ownership and maintenance of natural and artificial gas service lines.
1511. Electricity supplied to certain organizations.
1512. Emergency response plans.

Subchapter Heading. The heading of Subchapter A was added November 26, 1978, P.L.1245, No.297, effective in 60 days.

§ 1501. 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, employees, 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 part 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.

Cross References. Section 1501 is referred to in sections 102, 1353, 2205, 2207, 2807, 3205 of this title.

§ 1501.1. Certain utilities prohibited from using foreign coal.

(a) General rule.--No public utility which provides electricity or heat to a State-owned facility shall use coal mined in a foreign country for the purpose of generating electricity or providing heat.

(b) Definition.--As used in this section the phrase "State-owned facility" means a building owned by the Commonwealth or any agency or authority of the Commonwealth. (Dec. 20, 1985, P.L.363, No.103, eff. 60 days)

1985 Amendment. Act 103 added section 1501.1.

§ 1502. Discrimination in service.

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

§ 1503. Discontinuance of service.

(a) Days discontinuance prohibited.--Except when required to prevent or alleviate an emergency as defined by the commission, except in the case of danger to life or property, no public utility, as defined in paragraph (1)(i), (ii), (v) or (vii) of the definition of "public utility" in section 102 (relating to definitions), 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.

(b) Personal contact before service discontinued.--Except when required to prevent or alleviate an emergency as defined by the commission or except in the case of danger to life or property, no public utility referred to in subsection (a) 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 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 commission or such other local government unit as the commission shall, by rule or regulation, designate.

Cross References. Section 1503 is referred to in section 1406 of this title.

§ 1504. Standards of service and facilities.

The commission may, after reasonable notice and hearing, upon its own motion or upon complaint:

(1) Prescribe as to service and facilities, including the crossing of facilities, just and reasonable standards, classifications, regulations and practices to be furnished, imposed, observed and followed by any or all public utilities.

(2) Prescribe adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the service of any and all public utilities.

(3) Prescribe reasonable regulations for the examination and testing of such service, and for the measurement thereof.

(4) Prescribe or approve reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurement.

(5) Provide for the examination and testing of any and all appliances used for the measurement of any service of any public utility.

§ 1505. Proper service and facilities established on complaint; authority to order conservation and load management programs.

(a) General rule.--Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this part, the

commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public.

(b) Authority to order conservation and load management.--In determining or prescribing safe, adequate and sufficient services and facilities of a public utility, the commission may order the utility to establish a conservation or load management program that the commission determines to be prudent and cost-effective.

(July 10, 1986, P.L.1238, No.114, eff. imd.)

Cross References. Section 1505 is referred to in section 102 of this title.

§ 1506. Copies of service contracts, etc., to be filed with commission.

Any public utility shall, when required by the commission, file with the commission verified copies of any and all contracts, writings, agreements, leases, arrangements, or other engagements, in relation to its public service, entered into by such public utility with any person, corporation, State Government, or the Federal Government, or any branch or subdivision thereof, or any other public utility.

§ 1507. Testing of appliances for measurement of service.

Every public utility, furnishing service upon meter or other similar measurement, shall provide, and keep in and upon the premises of such public utility, suitable and proper apparatus, to be approved from time to time and stamped or marked by the commission, for testing and proving the accuracy of meters furnished by such public utility for use; and by which apparatus every meter may be tested, upon the written request of the consumer to whom the same shall be furnished, and in the presence of the consumer, if he shall so desire. If the meter so tested shall be found to be accurate, within such commercially reasonable limits as the commission may fix for such meters, a reasonable fee, to be fixed by the commission, sufficient to cover the cost of such test, shall be paid by the consumer requiring such test; but, if not so found, then the cost thereof shall be borne by the public utility furnishing the meter.

§ 1508. Reports of accidents.

Every public utility shall give immediate notice to the commission of the happening of any accident in or about, or in connection with, the operation of its service and facilities, wherein any person shall have been killed or injured, and furnish such full and detailed report of such accident, within such time and in such manner as the commission shall require. Such report shall not be open for public inspection, except by order of the commission, and shall not be admitted in evidence for any purpose in any suit or action for damages growing out of any matter or thing mentioned in such report.

Cross References. Section 1508 is referred to in section 102 of this title.

§ 1509. Billing procedures.

All bills rendered by a public utility as defined in paragraph (1)(i), (ii), (vi) or (vii) of the definition of "public utility" in section 102 (relating to definitions) to its service customers, except bills for installation charges,

shall allow at least 15 days for nonresidential customers and 20 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 taxes, to the extent practicable, 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 bimonthly 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 bimonthly 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 bimonthly 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 bimonthly 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.

1994 Partial Repeal. Section 42(e) of Act 48 of 1994 provided that section 1509 is repealed insofar as it is inconsistent with Act 48.

Cross References. Section 1509 is referred to in section 2205 of this title.

§ 1510. Ownership and maintenance of natural and artificial gas service lines.

When connecting the premises of the customer with the gas utility distribution mains, the public utility shall furnish, install and maintain the service line or connection according to the rules and regulations of the filed tariff. A public utility shall not be authorized or required to acquire or assume ownership of any customer's service line. A public utility shall not be authorized or required to acquire or assume ownership of any pipe or appurtenances installed after the effective date of this section between its main and the meter unless the utility would have been authorized or required to do so according to the rules and regulations of its filed tariff if the pipe or appurtenances had been installed on or before the effective date of this section. Maintenance of service lines shall be the responsibility of the owner of the service line.
(Mar. 7, 1984, P.L.104, No.22, eff. 60 days)

1984 Amendment. Act 22 added section 1510.

§ 1511. Electricity supplied to certain organizations.

Any public utility company supplying electric service shall, upon application, permit a volunteer fire company, a nonprofit rescue squad or ambulance service or a nonprofit senior citizen center to elect to have its electric service rendered pursuant to a rate schedule which provides equivalent charges for such service as residential rates upon execution of a contract for a minimum term of one year.
(Dec. 20, 1985, P.L.363, No.103, eff. 60 days; Dec. 9, 2002, P.L.1556, No.203, eff. 60 days)

§ 1512. Emergency response plans.

(a) Plans.--A public utility that engages in the delivery of natural gas liquids through a high consequence area in this Commonwealth as defined in 49 CFR 192.903 (relating to what definitions apply to this subpart?) shall make available upon written request the public utility's emergency response plans to all of the following:

(1) The secretary of the commission.

(2) The Pennsylvania Emergency Management Agency.

(3) The emergency management director of each county in this Commonwealth where the high consequence area is located.

(b) Confidential information.--

(1) If the emergency response plan under subsection (a) contains confidential security information as defined in section 2 of the act of November 29, 2006 (P.L.1435, No.156), known as the Public Utility Confidential Security Information Disclosure Protection Act, and the public utility has marked the information in the plan as confidential security information, each reviewer of the plan under subsection (a) shall have the following duties:

(i) Comply with all requirements of the Public Utility Confidential Security Information Disclosure Protection Act to protect the information from dissemination to the public.

(ii) Enter into a notarized agreement with the public utility for the purpose of maintaining the confidentiality requirements under this paragraph.

(2) A public utility shall provide a copy of a proposed agreement under paragraph (1)(ii) to the commission before making available an emergency response plan under subsection (a) that contains confidential security information as specified under paragraph (1).

(c) Penalties.--A public utility that fails to comply with subsection (a) may be subject to an enforcement action by the commission.

(Nov. 25, 2020, P.L.1245, No.130, eff. 60 days)

2020 Amendment. Act 130 added section 1512.

SUBCHAPTER B
DISCONTINUANCE OF SERVICE TO LEASED PREMISES

Sec.

1521. Definitions.
1522. Applicability of subchapter.
1523. Notices before service to landlord terminated.
1524. Request to landlord to identify tenants.
1525. Delivery and contents of termination notice to landlord.
1526. Delivery and contents of first termination notice to tenants.
1527. Right of tenants to continued service.
1528. Delivery and contents of subsequent termination notice to tenants.
1529. Right of tenant to recover payments.
1529.1. Duty of owners of rental property.
1530. Waiver of subchapter prohibited.
1531. Retaliation by landlord prohibited.
1532. Penalties.
1533. Petition to appoint receiver.

Enactment. Subchapter B was added November 26, 1978, No.297, effective in 60 days.

Cross References. Subchapter B is referred to in sections 1418, 2206 of this title.

§ 1521. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Billing month." A period of time not to exceed 35 days. The bill shall not include any previously billed service furnished during a period other than that covered by the current bill. If previously unbilled utility service is included in the current utility bill, the utility shall use an estimated bill for the 30-day period.

"Discontinuance." Any cancellation of the service contract at the request of the ratepayer and in accordance with section 1523(b) (relating to notices before service to landlord terminated).

"Landlord ratepayer." One or more individuals or an organization listed on a gas, electric, steam, sewage or water utility's records as the party responsible for payment of the gas, electric, steam, sewage or water service provided to one or more residential units of a residential building or mobile home park of which building or mobile home park the party is not the sole occupant. In the event the landlord ratepayer is not the party to a lease between the landlord ratepayer and the tenant, the term also includes the individual or organization to whom the tenant makes rental payments pursuant to a rental arrangement.

"Mobile home." A transportable, single-family dwelling unit intended for permanent occupancy and constructed as a single unit, or as two or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations and constructed so that it may be used without a permanent foundation.

"Mobile home park." Any site, lot, field or tract of land, privately or publicly owned or operated, upon which three or more mobile homes, occupied for dwelling or sleeping purposes, are or are intended to be located.

"Residential building." A building containing one or more dwelling units occupied by one or more tenants. The term does not include nursing homes, hotels and motels or any dwelling of which the landlord ratepayer is the only resident.

"Tenant." Any person or group of persons who are contractually obligated to make rental payments to the landlord ratepayer pursuant to a rental arrangement, including, but not limited to, an oral or written lease with the landlord ratepayer for a dwelling unit in a residential building or mobile home park which is provided gas, electric, steam, sewer or water as an included service under the rental agreement and who are not the ratepayers of the utility which supplied the gas, electric, steam, sewer or water service.

"Termination." The cessation of service, whether temporary or permanent, without the consent of the ratepayer. For the purposes of this subchapter, this term shall include cessation of service at the request of the landlord ratepayer when a tenant does not agree to the cessation of service.

(July 2, 1993, P.L.379, No.54, eff. 60 days)

1993 Amendment. Act 54 amended the defs. of "landlord ratepayer," "residential building" and "tenant" and added the defs. of "billing month," "discontinuance" and "termination."

Cross References. Section 1521 is referred to in section 1522 of this title.

§ 1522. Applicability of subchapter.

(a) General rule.--This subchapter applies to public utilities as defined in paragraph (1)(i) and (ii) of the definition of "public utility" in section 102 (relating to definitions) and to public utility service rendered by those public utilities if the premises served constitute residential buildings as defined in section 1521 (relating to definitions).

(b) Municipal service beyond corporate limits.--

(1) Public utility service being furnished or rendered by a municipal corporation, or by the operating agencies of any municipal corporation, beyond its corporate limits shall be subject to the provisions of this subchapter establishing the procedures, rights, duties and remedies for the termination of service to landlord ratepayers.

(2) Tenants and landlord ratepayers of a dwelling unit in residential buildings or mobile home parks receiving public utility service being furnished or rendered by a municipal corporation, or by the operating agencies of any municipal corporation, beyond its corporate limits shall be subject to the provisions of this subchapter establishing the procedures, rights, duties and remedies for the termination of service, the right of the tenants to withhold rent, the prohibition of waiver and the prohibition against retaliation by the landlord ratepayer with respect to the public utility service.

(July 2, 1993, P.L.379, No.54, eff. 60 days)

§ 1523. Notices before service to landlord terminated.

(a) Nonpayment of charges.--Except when required to prevent or alleviate an emergency as defined by the commission or except in the case of danger to life or property, before any termination of service to a landlord ratepayer for nonaccess as defined by the commission in its rules and regulations or nonpayment of charges, a public utility shall:

(1) Notify the landlord ratepayer of the proposed termination in writing as prescribed in section 1525 (relating to delivery and contents of termination notice to landlord) at least 37 days before the date of termination of service.

(2) Notify the following agencies which serve the community in which the affected premises are located in writing not less than ten days before the proposed termination of service:

(i) The Department of Licenses and Inspections of any city of the first class.

(ii) The Department of Public Safety of any city of the second class, second class A or third class.

(iii) The city or county Public Health Department or, in the event that such a department does not exist, the Department of Health office responsible for that county.

(3) Notify each dwelling unit reasonably likely to be occupied by an affected tenant of the proposed termination in writing as prescribed in section 1526 (relating to delivery and contents of first termination notice to tenants) at least seven days after notice to the landlord ratepayer pursuant to this section and at least 30 days before the termination of service. If within seven days of delivery or

mailing of the notice to the landlord issued pursuant to this section the landlord ratepayer files a complaint with the commission disputing the right of the utility to terminate service, the notice shall not be rendered until the complaint has been adjudicated by the commission, but the landlord ratepayer shall continue to pay the undisputed portion of current bills when due pending the final decision of the complaint.

(b) Voluntary relinquishment of service.--Before any discontinuance of service by a public utility to a landlord ratepayer due to a request for voluntary relinquishment of service by the landlord ratepayer:

(1) the landlord ratepayer shall state in a form bearing his notarized signature that all of the affected dwelling units are either unoccupied or the tenants affected by the proposed discontinuance have consented in writing to the proposed discontinuance, which form shall conspicuously bear a notice that the information provided by the landlord ratepayer will be relied upon by the commission in administering a system of uniform service standards for public utilities, and that false statements are punishable criminally;

(2) all of the tenants affected by the proposed discontinuance shall inform the utility orally or in writing of their consent to the discontinuance; or

(3) the landlord ratepayer shall provide the utility with the names and addresses of the affected tenants pursuant to section 1524 (relating to request to landlord to identify tenants) and the utility shall notify the community service agencies and each dwelling unit pursuant to this section and section 1526.

(c) Rights of tenants.--Under the voluntary relinquishment discontinuance procedures of subsection (b)(3) the tenants shall have all of the rights provided in section 1527 (relating to right of tenants to continued service) through section 1531 (relating to retaliation by landlord prohibited).
(July 2, 1993, P.L.379, No.54, eff. 60 days)

1993 Amendment. Act 54 amended the section heading and subsec. (a).

Cross References. Section 1523 is referred to in sections 1521, 1524, 1525, 1526, 1527 of this title.

§ 1524. Request to landlord to identify tenants.

(a) Duty of public utility and landlord.--At least 37 days before the termination of service, it is the duty of any public utility to request from the landlord ratepayer the names and addresses of the affected tenants. Upon receiving such a request for the names and addresses of the affected tenants pursuant to this subchapter, the landlord ratepayer shall provide the utility with the names and addresses of every affected tenant of any residential building or mobile home park for which the utility is proposing to terminate service unless within seven days of delivery or mailing of the notice the landlord ratepayer pays the amount due the utility or makes an arrangement with the utility to pay the balance.

(b) Time for providing information.--The information shall be provided by the landlord ratepayer:

(1) within seven days of receipt of a request from a public utility for tenants' names under subsection (a);

(2) within seven days of delivery or mailing of the notice to the landlord ratepayer required by section 1523 (relating to notices before service to landlord terminated);

(3) within three days of any adjudication by the commission that the landlord ratepayer must provide the requested information if the landlord files a complaint with the commission within seven days of receipt of the notice to the landlord disputing the right of the utility to terminate service; or

(4) upon such terms as may be ordered by a court in an action brought by the utility under section 1532(b) (relating to penalties).

(c) Right of public utility.--In the event the public utility is unable to obtain the names and addresses of all affected tenants from the landlord ratepayer, the public utility may pursue any appropriate legal or equitable remedy it has in order to obtain from the landlord ratepayer the names and addresses of all affected tenants of a residential building or mobile home park for which the utility is proposing termination of service to the landlord ratepayer. The commission may order the public utility to obtain the information from the landlord ratepayer.

(July 2, 1993, P.L.379, No.54, eff. 60 days)

Cross References. Section 1524 is referred to in sections 1523, 1525, 1526, 1528, 1532 of this title.

§ 1525. Delivery and contents of termination notice to landlord.

(a) General rule.--The notice required to be given to a landlord ratepayer pursuant to section 1523 (relating to notices before service to landlord terminated) shall contain the following information:

(1) The amount owed the utility by the landlord ratepayer for each affected account.

(2) The date on or after which service will be terminated.

(3) The date on or after which the company will notify tenants of the proposed termination of service and of their rights under sections 1527 (relating to right of tenants to continued service), 1529 (relating to right of tenant to recover payments) and 1531 (relating to retaliation by landlord prohibited).

(4) The obligation of the landlord ratepayer under section 1524 (relating to request to landlord to identify tenants) to provide the utility with the names and addresses of every affected tenant or to pay the amount due the utility or make an arrangement with the utility to pay the balance including a statement:

(i) That the list must be provided or payment or arrangement must be made within seven days of receipt of the notice.

(ii) Of the penalties and liability which the landlord ratepayer may incur under section 1532 (relating to penalties) by failure to comply.

(5) The right of the landlord ratepayer to stay the notification of tenants by filing a complaint with the commission disputing the right of the utility to terminate service.

(b) Service of notice.--Any one of the following procedures shall constitute effective notice to the landlord under section 1523:

(1) Notice by certified mail if the utility receives a return receipt signed by the landlord ratepayer or the agent of the landlord ratepayer.

(2) Notice by personal service of the landlord ratepayer or the agent of the landlord ratepayer on one business day and conspicuously posting at the landlord ratepayer's principal place of business or the business address which the landlord provided the utility as his address for receiving communications.

(3) Notice by first class mail to the landlord ratepayer only after an unsuccessful attempt at personal service on one business day. Notice by first class mail may occur on the same business day as the attempt at personal service.

(4) If the landlord ratepayer's place of business is located outside of this Commonwealth and no agent of the landlord ratepayer is located in the State, notice by certified mail and notice by first class mail to the landlord ratepayer on the same business day.

(July 2, 1993, P.L.379, No.54, eff. 60 days)

Cross References. Section 1525 is referred to in sections 1523, 1526 of this title.

§ 1526. Delivery and contents of first termination notice to tenants.

(a) General rule.--The notice required to be given to a tenant pursuant to section 1523 (relating to notices before service to landlord terminated) shall be sent by first class mail or otherwise hand-delivered to each affected tenant by name at his individual dwelling unit, or by unit number or unit designation, and shall be posted in common areas.

(1) In the case when a utility does not send notice by first class mail, notice shall be hand-delivered. Hand-delivery shall mean two attempts at personal service on a responsible individual residing within the dwelling unit on the same or separate days. Each attempt at personal service must be made as follows:

(i) One attempt shall be made between 8 a.m. and 5 p.m. on any day Monday through Friday.

(ii) The other attempt shall be made either between 6 p.m. and 10 p.m. on any day Monday through Friday or between 8 a.m. and 5 p.m. on a Saturday or Sunday.

Each of these attempts must be made not less than four hours apart. If no personal service is made on any occasion, the notice must be posted on the individual dwelling unit and inserted under the door if floor space allows.

(2) In the case where the utility cannot gain access to a residential building to comply with paragraph (1), the utility shall apply to court to obtain the names and send notice by first class mail to the affected tenant.

In order to obtain the names and addresses of the affected tenants and in conjunction with section 1524 (relating to request to landlord to identify tenants), the utility representative shall visit the affected premises within seven days of service of notice to the landlord ratepayer, under section 1525 (relating to delivery and contents of termination notice to landlord), and, by personally contacting one or more of the affected tenants, shall attempt to obtain the names of all the tenants residing in the affected premises. The notice for each affected tenant for whom a name has been obtained shall be sent by first class mail or otherwise hand-delivered to each affected tenant by name at his individual dwelling unit by address and by unit number or, if none exists, by unit designation and shall also be conspicuously posted in the common areas. The notice for each affected tenant for whom a name has not been obtained shall be hand-delivered to each individual

dwelling unit by address and unit number or, if none exists, by unit designation and shall be conspicuously posted in the common areas. For the purposes of this section, the term "unit designation" means the geographic location of a dwelling unit by floor and floor area. All notices shall contain the following information:

(1) The date on which the notice is rendered.

(2) The date on or after which service will be discontinued.

(3) On each account, the bill for the billing month preceding the notice to the tenants except that, in the case of water and sewer service where the billing period is bimonthly or quarterly, the utility shall provide an estimate of costs for the previous 30-day period. Estimates shall be based upon actual usage or, if actual usage is not available, by determining one-twelfth of the dwelling unit's annual usage.

(4) The following statement of the tenant's rights, the words and phrases of which appear all in capital letters to be printed in 12-point bold-faced type with the first letter printed in upper case and the letters that follow in lower case and the words and phrases which do not appear all in capital letters to be printed in ten-point type, with any letter in upper case to remain so and the rest in lower case:

IMPORTANT NOTICE TO TENANTS

WARNING: YOUR (utility company shall insert company name and type of service) MAY BE SHUT OFF ON OR AFTER (date) BECAUSE (utility shall fill in reason for termination). TO STOP THE SHUTOFF OF YOUR UTILITY SERVICE, YOU MUST DO ONE OF THE FOLLOWING THINGS:

1. You can join with the other tenants to pay the utility bill for the last 30 days preceding this notice or you can pay the total bill yourself. Either way, you do not have to pay a deposit or get credit granted in your name. You will not have to pay your landlord's other debts or the debts of prior tenants, and the utility service will remain in the name of the landlord.

2. You may deduct your payment to the utility company from your rent due now or from future rent. The utility company will tell your landlord how much you paid for that utility service.

ADDITIONAL INFORMATION

1. The bill which must be paid to continue service is $(amount).

2. Your landlord cannot punish you if you pay the utility bill. Your landlord cannot raise your rent, cannot evict you and cannot take action against you in any other way for paying the utility bill and deducting it from rent. You have a right to recover money damages from the landlord for any damages or injury he causes you for exercising your rights as a result of this notice.

3. You have the right to dispute the accuracy of the bill and have certain other rights. If you would like further information regarding these rights, contact your utility at (utility shall fill in a phone number and address where the tenant may get further information).

DO YOU HAVE ANY QUESTIONS?

If you have any questions about your utility service, please contact the utility company at (telephone number and address). If, after talking about your problems with the utility, you are not satisfied, then call the Pennsylvania Public Utility Commission at its toll-free

number, which is 1-800-692-7380, or write the Residential Termination Unit, Bureau of Consumer Services, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, Pennsylvania 17120. YOU SHOULD CALL OR WRITE BEFORE THE SHUTOFF. TO AVOID SHUTOFF, YOUR LETTER MUST BE RECEIVED BEFORE THE SHUTOFF DATE.

The words and phrases of the foregoing notice to tenants are subject to revisions due to changes in the rules, regulations and laws governing this subchapter.

(5) That the tenant or tenants must make payment to the utility on account of nonpayment of charges by the landlord ratepayer by check or money order drawn by the tenant to the order of the utility or by cash and that the tenant must provide, upon request, reasonable identification to the utility. Reasonable identification shall include, but not be limited to, a driver's license, photo identification, medical assistance or food stamp identification or any similar document issued by any public agency which contains the name and address of the tenant.

(b) Uniform explanation of tenants' rights and responsibilities.--The commission shall direct the affected utilities to develop for commission approval a uniform explanation of all rights and responsibilities of tenants under this subchapter. Within 180 days of the effective date of this section, the uniform explanation of all rights and responsibilities of tenants shall be available in a suitable format for distribution by the utility company in response to requests by tenants under subsection (a).

(July 2, 1993, P.L.379, No.54, eff. 60 days)

Cross References. Section 1526 is referred to in sections 1523, 1528, 1532 of this title.

§ 1527. Right of tenants to continued service.

(a) Application for continued service.--At any time before or after service is terminated by a public utility on account of nonpayment of charges by the landlord ratepayer, the affected tenants may apply to the utility to have service continued or resumed.

(b) Payment of charges by tenants.--A public utility shall not terminate service or shall promptly resume service previously terminated if it receives from the tenants an amount equal to the bill for the affected account of the landlord ratepayer for the billing month preceding the notice to the tenants. Thereafter, the utility shall notify each tenant of the total amount of the bill for the second and each succeeding billing month and, if the tenants fail to make payment of any bill within 30 days of the delivery of the notice to the tenants, the utility may commence termination of service, except that no termination may occur until 30 days after each tenant has been furnished notice of the proposed termination as prescribed in section 1528 (relating to delivery and contents of subsequent termination notice to tenants). The tenant or tenants shall make payment to the utility on account of nonpayment of charges by the landlord ratepayer by check or money order drawn by the tenant to the order of the utility or by cash. In all cases, the tenant shall provide, upon request, reasonable identification to the utility. For the purposes of this section, "reasonable identification" shall include, but not be limited to, a driver's license, photo identification, medical assistance or food stamp identification or any similar document issued by any public agency which contains the name and address of the tenant.

(c) Disposition of payment by utility.--Upon receiving any payment, the utility shall notify the landlord ratepayer who is liable for the utility service of the amount or amounts paid by any tenant and the amount or amounts credited to the landlord's bill for each tenant pursuant to this section. Tenants requesting continued utility service under this section, except those individually subscribing for service under subsection (d), shall not be considered utility customers but shall be considered to be acting on behalf of the landlord ratepayer, who shall remain liable to the utility for service provided after notice to tenants. In the event that the tenants fail to satisfy the requirements of subsection (b) with regard to the first billing month period preceding notice to the tenant, the utility shall refund any moneys received from a tenant to that tenant. Any payments made by the tenants shall be applied first against the bill for the billing month preceding notice to the tenants and then against bills for service rendered subsequent to the bill. Upon termination of service to the tenants for failure to pay the utility bill for service in full for any subsequent month or upon voluntary discontinuance of service at the request of the tenants, the utility shall immediately refund to the tenants any amounts paid to the utility for the billing period for which payment in full was not remitted.

(d) Agreement for individual service.--Any tenant of a residential building or mobile home park who has been notified of a proposed discontinuance of utility service pursuant to section 1523 (relating to notices before service to landlord discontinued) shall have the right to agree to subscribe for future service individually if this can be accomplished without a major revision of distribution facilities or additional right-of-way acquisitions.
(July 2, 1993, P.L.379, No.54, eff. 60 days)

1993 Amendment. Act 54 amended subsecs. (a), (b) and (c).

Cross References. Section 1527 is referred to in sections 1523, 1525, 1528, 1531 of this title.

§ 1528. Delivery and contents of subsequent termination notice to tenants.

Subsequent notices required to be given to a tenant pursuant to section 1527 (relating to right of tenants to continued service) shall be sent by first class mail or otherwise hand-delivered to each affected tenant by name at his individual dwelling unit, by unit number or unit designation, and shall be posted in common areas. Whenever the utility has been unable to obtain the names and addresses of the affected tenants under section 1524 (relating to request to landlord to identify tenants) or 1526 (relating to delivery and contents of first termination notice to tenants), the utility shall hand-deliver the subsequent notice of termination to each affected tenant for whom a name has not been obtained to the tenant's individual dwelling unit by address and unit number or, if none exists, by unit designation. The notice shall also be conspicuously posted in the common areas. For the purposes of this section, the term "unit designation" means the geographic location of a dwelling unit by floor and floor areas. All notices shall contain the following information:

(1) The date on or after which service will be terminated.

(2) The amount due, which shall include the arrearage on any earlier bill due from tenants.

(3) A telephone number and an address at the utility and at the commission which a tenant may call for an explanation of his rights.

(4) The right of a tenant to file a complaint with the commission to enforce any legal right that he may have under this part.

(July 2, 1993, P.L.379, No.54, eff. 60 days)

Cross References. Section 1528 is referred to in section 1527 of this title.

§ 1529. Right of tenant to recover payments.

Any tenant who has made a payment to a utility on account of nonpayment of charges by the landlord ratepayer pursuant to this subchapter may subsequently recover the amount paid to the utility either by deducting the amount from any rent or payment on account of taxes or operating expenses then or thereafter due from the tenant to the person to whom he would otherwise pay his rent or by obtaining reimbursement from the landlord ratepayer.

Cross References. Section 1529 is referred to in sections 1525, 1531 of this title.

§ 1529.1. Duty of owners of rental property.

(a) Notice to public utility.--It is the duty of every owner of a residential building or mobile home park which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

(b) History of account.--Upon receipt of the notice provided in this section, if the mobile home park or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises.

(c) Failure to give notice.--Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

(July 2, 1993, P.L.379, No.54, eff. 60 days)

1993 Amendment. Act 54 added section 1529.1.

§ 1530. Waiver of subchapter prohibited.

Any waiver of a tenant's rights under this subchapter shall be void and unenforceable.

§ 1531. Retaliation by landlord prohibited.

(a) General rule.--It is unlawful for any landlord ratepayer or agent or employee thereof to threaten or take reprisals against a tenant because the tenant exercised his rights under section 1527 (relating to right of tenants to continued service) or section 1529 (relating to right of tenant to recover payments).

(b) Liability of landlord for damages.--Any landlord ratepayer or agent or employee thereof who threatens or takes such reprisals against any tenant shall be liable for damages

which shall be two months rent or the actual damages sustained by the tenant, whichever is greater, and the costs of suit and reasonable attorneys' fees.

(c) Presumption of retaliation.--The receipt of any notice of termination of tenancy, an increase in rent or of any substantial alteration in the terms of tenancy within six months after the tenant has acted pursuant to section 1527 or 1529 to avoid termination of utility service shall create a rebuttable presumption that the notice is a reprisal against the tenant for exercising his rights under section 1527 or 1529. However, the presumption shall not arise if the notice of termination of tenancy is for nonpayment of rent not withheld under section 1529 or lawfully withheld under any other right that the tenant may have by law.

(July 2, 1993, P.L.379, No.54, eff. 60 days)

1993 Amendment. Act 54 amended subsec. (c).

Cross References. Section 1531 is referred to in sections 1523, 1525 of this title.

§ 1532. Penalties.

(a) Per diem liquidated damages.--Any landlord ratepayer who fails to provide a utility with the names and addresses of affected tenants in accordance with section 1524 (relating to request to landlord to identify tenants) or fails to provide reasonable access to the meter shall be deemed to have caused substantial damage to the utility by thus forcing a continuation of the existing utility service and, as a consequence, shall be required to pay, as liquidated damages to the utility, a sum of not less than $500 but not more than $1,000 for each day of the landlord's failure to comply, commencing with the first day of completion and exhaustion of the procedures provided under section 1524(a) and (b)(1), (2) and (3).

(b) Injunctive relief.--The utility may commence an action in equity against a landlord ratepayer to obtain injunctive relief compelling the landlord to furnish the names and addresses of affected tenants or compelling the landlord to provide access to the meter. Interference with the utility's ability to terminate service without this information shall be deemed sufficient proof of immediate, continuing and irreparable injury to sustain injunctive relief. The court shall, in addition to awarding injunctive relief, render judgment in favor of the utility for the total per diem liquidated damages recoverable under subsection (a) together with reasonable attorney fees and necessary costs of suit.

(c) Tampering with posted notice.--Any person who removes, interferes or tampers with a notice to tenants of proposed termination of service, posted pursuant to section 1526 (relating to delivery and contents of first termination notice to tenants) commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding $300.

(d) Denial of access to common areas.--Any landlord ratepayer or an agent or employee who willfully denies an agent or employee of the utility access to common areas of his residential building for any lawful purpose under this title, including, but not limited to, posting or delivering notices to tenants under this subsection, shall be subject to a civil penalty of not more than $500 for each day access is denied.

(July 2, 1993, P.L.379, No.54, eff. 60 days)

Cross References. Section 1532 is referred to in sections 1524, 1525 of this title.

§ 1533. Petition to appoint receiver.

(a) Appointment of receiver.--Notwithstanding the foregoing sections of this chapter, when a landlord ratepayer is two or more months in arrears in his utility payments, the affected utility shall have the right to petition the court of common pleas of the county wherein the leased premises are located to appoint a receiver to collect rent payments otherwise due the landlord ratepayer directly from the tenants and to pay all overdue and subsequent utility bills therefrom. The provisions of this section shall not be construed to supersede any tenant rights or defenses under law regarding the payment of rent. This right may be exercised only in those situations that involve units which are not individually metered by the utility. Upon appointment, the receiver shall notify the tenants of his powers and their rights under law regarding payment of rent and continued utility service by first class mail, certified mail, personal service or posting notice in each unit in the leased premises.

(b) Right to continued service.--The affected utility under this section shall not terminate utility service if it receives payment from the receiver in the amount specified in subsection (c)(2) within 60 days from the date notice to the tenants of the appointment of the receiver is mailed or delivered.

(c) Duty of receiver.--The receiver shall:

(1) collect all rents directly from the tenants;

(2) pay the utility bills equal to the amount due for the billing month prior to the tenants receiving notice of the appointment of the receiver and all future bills as they become due;

(3) after payment of the amounts in subsection (c)(2), any excess moneys shall be applied pursuant to further order of court; and

(4) return the remainder to the landlord ratepayer, less the costs of the notification made to the tenants, plus a 2% administrative fee.

(d) Termination.--The receiver shall continue to collect the rents and make disbursements in the manner provided in subsection (c) until the second rental period ends after all of the following conditions have been met:

(1) The landlord ratepayer deposits in escrow with the utility a sum equal to the utility charges from the two highest monthly periods in the preceding 12 months.

(2) The landlord ratepayer demonstrates to the satisfaction of the court of common pleas that it has the financial recourses necessary to resume its obligations to the utility and the tenants.

(3) The landlord ratepayer pays the undisputed amount of all outstanding utility bills.

At such time rental payments will once again be made to the landlord ratepayer. Notice of this change shall be made to the tenants by the receiver by means of first class mail, certified mail, personal service or posting notice in each unit in the leased premises, the costs of notice to be paid by the landlord ratepayer.

(e) Escrow fund.--The escrow fund established under subsection (d)(1) shall not be considered a prepayment of utility costs and shall be applied only against outstanding utility bills at the time a new receiver is appointed for a subsequent failure by the landlord ratepayer to pay utility bills for a two-month period. The escrow fund shall be returned to the landlord ratepayer not later than 90 days nor earlier than 60 days, after the landlord ratepayer obtains a court order releasing the fund and certifying that timely payment of utility

bills has been made for the immediately preceding 24 consecutive months.

(f) Interest on funds.--Any funds held in escrow by any utility shall bear interest payable to the landlord at a rate 1% lower than the rate actually received in a regular savings account at a commercial bank within the court's jurisdiction, and the remaining 1% shall be remitted to the court for administrative costs.

(g) Number of receivers.--In the event more than one utility company is affected by any landlord ratepayers' failure to pay utility bills, the court shall appoint the same receiver to function for all aggrieved utilities.

(July 20, 1979, P.L.175, No.57, eff. imd.; July 2, 1993, P.L.379, No.54, eff. 60 days)

CHAPTER 17
ACCOUNTING AND BUDGETARY MATTERS

Sec.

1701. Mandatory systems of accounts.
1702. Continuing property records.
1703. Depreciation accounts; reports.
1704. Records and accounts to be kept in Commonwealth.
1705. Budgets of public utilities.
1706. Applicability to municipal corporations.

Enactment. Chapter 17 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

§ 1701. Mandatory systems of accounts.

The commission may, after reasonable notice and hearing, establish systems of accounts, including cost finding procedures, to be kept by public utilities, or may classify public utilities and establish a system of accounts for each class, and prescribe the manner and form in which such accounts shall be kept. Every public utility shall establish such systems of accounting, and shall keep such accounts in the manner and form required by the commission. The accounting system of any public utility also subject to the jurisdiction of a Federal regulatory body shall correspond, as far as practicable, to the system prescribed by such Federal regulatory body. The commission may require any such public utility to keep and maintain supplemental or additional accounts to those required by any such regulatory body.

Cross References. Section 1701 is referred to in section 1706 of this title.

§ 1702. Continuing property records.

The commission may require any public utility to establish, provide, and maintain as a part of its system of accounts, continuing property records, including a list or inventory of all the units of tangible property used or useful in the public service, showing the current location of such property units by definite reference to the specific land parcels upon which such units are located or stored. The commission may require any public utility to keep accounts and records in such manner as to show, currently, the original cost of such property when first devoted to the public service, and the reserve accumulated to provide for the depreciation thereof.

Cross References. Section 1702 is referred to in section 1310 of this title.

§ 1703. Depreciation accounts; reports.

(a) Accounts.--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, 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.

(b) Statements.--Every public utility shall file with the commission, at such times and in such form as the commission may prescribe, statements setting forth the details supporting its computation of annual depreciation, as recorded on the books or records of accounts of the public utility. If the commission, upon review of such statements, is of the opinion that the amount of annual depreciation so recorded by any public utility is not reasonable and proper, it may, after hearing, require that provision be made for annual depreciation in such sums as may be found by it to be reasonable and proper. In making its findings, the commission shall give consideration to the experience of the public utility, and the predecessors of the public utility in accumulating depreciation reserves, the retirements actually made, and such other factors as may be deemed relevant.

(c) Use of estimates.--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 shall give consideration to statements submitted under this section, in addition to such other factors as may be relevant.

Cross References. Section 1703 is referred to in section 1706 of this title.

§ 1704. Records and accounts to be kept in Commonwealth.

(a) General rule.--Every public utility shall keep such books, accounts, papers, records, and memoranda, as shall be required by the commission, in an office within this Commonwealth, and shall not remove the same, or any of them, from this Commonwealth, except upon such terms and conditions as may be prescribed by the commission.

(b) Exceptions.--This section does not apply to a public utility of another state, engaged in interstate commerce, whose accounts are kept at its principal place of business without this Commonwealth, in the manner prescribed by any Federal regulatory body. Such public utility, when required by the commission, shall furnish to the commission, within such reasonable time as it shall fix, certified copies of its books, accounts, papers, records, and memoranda relating to the business done by such public utility within this Commonwealth.

§ 1705. Budgets of public utilities.

(a) Proposed budgets; adjustments; determination.--The commission may, by regulation, require any class of public utilities, except common carriers, to file proposed budgets with the commission on or before the first day of each budgetary period, showing the amount of money which each public utility within such class, will in its judgment, expend during the budgetary period for payment of salaries of executive officers, donations, advertising, lobbying expenses, entertainment, political contributions, expenditures, and major contracts for

the sale or purchase of facilities, and all items covering or contemplating any payment to any affiliated interest for advice, auditing, associating, sponsoring, engineering, managing, operating, financing, legal, or other services. Adjustments or additions to any such budget may be made from time to time by filing supplementary budgets with the commission. When any such budget or supplemental budget has been filed, the commission may examine into and investigate the same to determine whether any or all of the contemplated expenditures are unreasonable or contrary to the public interest and if after reasonable notice and hearing, it shall so determine, it shall make its findings and order in writing rejecting the same or any part thereof.

(b) Rejected budgets.--Upon such rejection, the public utility concerned shall not make further expenditures or payments under the budget or part thereof rejected, and no expenditures at any time made under such rejected budget, or part thereof, shall be allowed as an operating expense, or capital expenditure in any rate or valuation proceeding, or in any other proceeding or hearing before the commission, unless and until the propriety thereof shall have been established to the satisfaction of the commission, and any such finding or order shall remain in full force and effect, unless and until such finding or order shall be vacated, modified or set aside by the commission, or upon an appeal, as provided in this part.

(c) Use of budgets.--The filing of any budget, its examination, investigation, or determination by the commission, under this section, shall not bar or estop the commission from determining, in any rate valuation or other proceeding, whether any or all of the expenditures made under any budget or supplemental budget are reasonable or commensurate with the service or facilities received.

§ 1706. Applicability to municipal corporations.

The provisions of sections 505 (relating to duty to furnish information to commission; cooperation in valuing property), 506 (relating to inspection of facilities and records), 1701 (relating to mandatory systems of accounts) and 1703 (relating to depreciation accounts; reports), shall apply to any municipal corporation rendering or furnishing to the public any public utility service.

CHAPTER 19
SECURITIES AND OBLIGATIONS

Sec.

1901. Registration of securities to be issued or assumed.
1902. Contents of securities certificates.
1903. Registration or rejection of securities certificates.
1904. Unauthorized securities may be declared void.

Enactment. Chapter 19 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

Cross References. Chapter 19 is referred to in sections 2212, 3304, 3305 of this title.

§ 1901. Registration of securities to be issued or assumed.

(a) General rule.--Under such regulations as the commission may prescribe, every public utility, before it shall issue or assume securities, shall file with the commission and receive from it, notice of registration of a document to be known as a securities certificate.

(b) Issuance of securities defined.--Issuance of securities includes any act of a public utility executing, causing to be authenticated, delivering or making any change or extension in any term, condition or date of, any stock certificate, or other evidence of equitable interest in itself or any bond, note, trust certificate or other evidence of indebtedness of itself. Issuance of securities does not include the execution, authentication or delivery of the following:

(1) Securities to replace identical securities lost, mutilated or destroyed while in the ownership of a bona fide holder-for-value who properly indemnifies the public utility therefor.

(2) Securities in exchange for the surrender of identical securities, solely for the purpose of registering or facilitating changes in the ownership thereof between bona fide holders-for-value, which surrendered securities are thereupon cancelled.

(3) Securities from the treasury of the public utility previously reacquired from bona fide holders-for-value and held alive.

(4) Any evidence of indebtedness, the date of maturity of which is at a period of less than one year from the date of its execution.

(5) Any evidence of indebtedness for which no date of maturity is fixed but which matures upon demand of the holder.

(6) Any evidence of indebtedness in the nature of a contract between a public utility and a vendor of equipment wherein the public utility promises to pay installments upon the purchase price of equipment acquired and which is not in the form of an equipment trust certificate or similar instrument readily marketable to the general public.

(c) Assumption of securities defined.--Assumption of securities includes any act of a public utility assuming primary or contingent liability for the payment of any dividends upon any stocks or of any principal or interest of any indebtedness, created or incurred by any other person or corporation. Assumption of securities does not include the acquisition of all property of the issuing company by the assuming company as provided in section 1102(3) (relating to enumeration of acts requiring certificate) if the approval of the commission is obtained.

§ 1902. Contents of securities certificates.

Every securities certificate shall be verified by oath or affirmation, and shall be in such form, and contain such information pertinent to a proposed issuance or assumption of securities, as the commission may require by its regulations. If two or more issues of securities are proposed to be issued or assumed by a public utility, a separate securities certificate shall be submitted to the commission for the issuance or assumption of each security issue. All information submitted to the commission or obtained through investigation or hearing shall become a part of the securities certificate.

§ 1903. Registration or rejection of securities certificates.

(a) General rule.--Upon the submission or completion of any securities certificate, as provided in this part, the commission shall register the same if it shall find that the issuance or assumption of securities in the amount, of the character, and for the purpose therein proposed, is necessary or proper for the present and probable future capital needs of the public utility filing such securities certificate; otherwise it shall reject the securities certificate. The commission may consider

the relation which the amount of each class of securities issued by such public utility bears to the amount of other such classes, the nature of the business of such public utility, its credit and prospects, and other relevant matters. If, at the end of 30 days after the filing of a securities certificate, no order of rejection has been entered, such certificate shall be deemed, in fact and law, to have been registered. The commission may, by written order, giving reasons therefor, extend the 30-day consideration period.

(b) Effect of registration.--Such registration or rejection may be as to all or part of the securities to which such securities certificate pertains, and any registration may be made subject to such conditions as the commission may deem reasonable in the premises. No registration, however, shall be construed to imply any guaranty or obligation on the part of the Commonwealth as to such securities, nor shall it be taken as requiring the commission, in any proceeding brought before it for any purpose, to fix a valuation which shall be equal to the total of such securities and any other outstanding securities of such public utility, or to approve or prescribe a rate which shall be sufficient to yield a return on such securities or the total securities of such public utility.

(c) Written notice.--Written notice of the registration or rejection of any securities certificate shall be served by registered mail upon the public utility. Every notice of rejection shall contain a statement of the specific reasons for rejection. Both registered and rejected securities certificates shall be retained in the files of the commission.

(d) Amendment of rejected certificate.--At any time within 30 days after the commission shall have rejected a securities certificate, the public utility submitting such securities certificate may submit amendments thereto, verified by oath or affirmation, whereupon the commission shall again consider and act upon the securities certificate, as provided in subsection (a); but a securities certificate which shall have been twice rejected by the commission shall not be amended again. The registration by the commission of a securities certificate, either as completed or amended, shall bind the public utility submitting such securities certificate to issue or assume the securities only under the terms, and for the purpose recited in such securities certificate and the issuance or assumption of the securities under any other terms, or for any other purpose, shall be unlawful.

(e) Judicial review.--Appeals from the action of the commission upon any securities certificates may be taken as provided by law. The completed securities certificate shall constitute the record to be certified to the appellate court in such appeal.

Cross References. Section 1903 is referred to in section 2212 of this title.

§ 1904. Unauthorized securities may be declared void.

In addition to any other penalty provided in this part for any violation of this chapter, the commission, after due consideration of the public interest, may declare void any securities issued, or any assumption of securities made in violation of this chapter. Any such declaration shall not be construed as a bar to the recovery, by an innocent holder-for-value of such securities, of any losses sustained by reason of the wrongful acts of the issuing or assuming public utility.

CHAPTER 21
RELATIONS WITH AFFILIATED INTERESTS

Sec.
2101. Definition of affiliated interest.
2102. Approval of contracts with affiliated interests.
2103. Continuing supervision and jurisdiction over contracts.
2104. Contracts to be in writing; cost data.
2105. Contracts in violation of part void.
2106. Effect on rates.
2107. Federal regulatory agencies.

Enactment. Chapter 21 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

Cross References. Chapter 21 is referred to in sections 2212, 2807, 3019, 3202 of this title.

§ 2101. Definition of affiliated interest.

(a) General rule.--As used in this part "affiliated interest" with a public utility means and includes the following:

(1) Every corporation and person owning or holding directly or indirectly 5% or more of the voting securities of such public utility.

(2) Every corporation and person in any chain of successive ownership of 5% or more of voting securities.

(3) Every corporation 5% or more of whose voting securities are owned by any person or corporation owning 5% or more of the voting securities of such public utility or by any person or corporation in any such chain of successive ownership of 5% 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 5% 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 part substantial influence means any corporation or person which or who stands in such relationship to the public utility that there is an absence of free and equal bargaining power between it or him 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 or persons, or both, with which or whom they are related by ownership or blood relationship, or both, 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.

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

Cross References. Section 2101 is referred to in sections 1102, 1317, 1318 of this title.

§ 2102. Approval of contracts with affiliated interests.

(a) General rule.--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 section 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.

(b) Filing and action on contract.--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 in subsection (a) of any such unwritten contract or arrangement. All such contracts and arrangements, whether written or unwritten, entered into prior to the effective date of this section and required to be on file with the commission by prior act and in full force and effect at the effective date of this section 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 section only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. If at the end of 30 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. The commission may, by written order, giving reasons therefor, extend the 30-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. The commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

(c) Disallowance of excessive amounts.--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, insofar 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.

(d) Exceptions.--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 unless required by order of the commission, nor where the amount of consideration involved is not in excess of $10,000 or 5% of the par value of outstanding common stock, whichever is smaller. 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 this exemption. 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.

Cross References. Section 2102 is referred to in sections 2103, 2807 of this title.

§ 2103. Continuing supervision and jurisdiction over contracts.

The commission shall have continuing supervisory control over the terms and conditions of contracts and arrangements as described in section 2102 (relating to approval of contracts with affiliated interests) 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.

§ 2104. Contracts to be in writing; cost data.

The commission may, by regulation or order, require any contract with an affiliated interest to be in writing. The commission may also, by regulation or order, require that any contract with an affiliated interest shall contain a provision whereby the affiliated interest shall agree to furnish to the public utility, at the time of billing such public utility for any service, property, security, right, or thing, under such contract, a detailed statement of the cost to the affiliated interest of such service, property, security, right, or thing.

§ 2105. Contracts in violation of part void.

Every contract with an affiliated interest, made effective or modified in violation of any provision of this part, or of any regulation or order of the commission made under this part, shall be void; and any purchase, sale, payment, lease, loan, or exchange of any service, property, money, security, right, or thing under such contract, or under any contract with an affiliated interest, the terms of which shall have been breached by the affiliated interest, shall be unlawful.

§ 2106. 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. The commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

§ 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). (May 31, 1984, P.L.370, No.74, eff. 60 days)

1984 Amendment. See section 5 of Act 74 in the appendix to this title for special provisions relating to applicability.

SUBPART D
SPECIAL PROVISIONS RELATING TO REGULATION
OF PUBLIC UTILITIES

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CHAPTER 22
NATURAL GAS COMPETITION

Sec.

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Enactment. Chapter 22 was added June 22, 1999, P.L.122, No.21, effective July 1, 1999, unless otherwise noted.

Cross References. Chapter 22 is referred to in section 1414 of this title.

§ 2201. Short title of chapter.

This chapter shall be known and may be cited as the Natural Gas Choice and Competition Act.

§ 2202. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Consumer protection." The standards, practices and service protections for retail gas customers, including those provided for in 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service), as well as applicable Federal and State debt/credit collection statutes and any regulations or orders of the commission that provide such protections, as may be modified by the commission from time to time.

"Entity." A person or corporation as defined in section 102 (relating to definitions), including, for purposes of this chapter, a city natural gas distribution operation.

"Local commission." The local body or agency designated under applicable law as responsible for setting the rates and charges of a city natural gas distribution operation immediately prior to the date the commission assumes jurisdiction over the city natural gas distribution operation.

"Natural gas distribution company." A public utility or city natural gas distribution operation that provides natural gas distribution services and which may provide natural gas supply services and other services. For purposes of this chapter, this term does not include:

(1) any public utility subject to the jurisdiction of the commission which has annual gas operating revenues of less than $6,000,000 per year, except where the public utility voluntarily petitions the commission to be included within this definition or where the public utility seeks to provide natural gas supply services to retail gas customers outside its service territory; or

(2) any natural gas public utility subject to the jurisdiction of the commission that is not interconnected to an interstate gas pipeline by means of a direct connection or an indirect connection through the distribution system of another natural gas public utility or through a natural gas gathering system.

"Natural gas distribution service." The delivery of natural gas to retail gas customers utilizing the jurisdictional facilities of the natural gas distribution company.

"**Natural gas supplier.**" An entity other than a natural gas distribution company, but including natural gas distribution company marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of a natural gas distribution company. The term includes a natural gas distribution company that provides natural gas supply services outside its certificated service territories. The term includes a municipal corporation, its affiliates or any joint venture, to the extent that it chooses to provide natural gas supply services to retail customers located outside of its corporate or municipal limits, as applicable, other than:

(1) as provided prior to the effective date of this chapter, pursuant to a certificate of public convenience if required under this title;

(2) total natural gas supply services in de minimis amounts;

(3) natural gas supply services requested by or provided with the consent of the public utility in whose certificated territory the services are provided; or

(4) natural gas supply services provided to the municipal corporation itself or its tenants on land it owns or leases, or is subject to an agreement of sale or pending condemnation, as of September 1, 1999, to the extent permitted by applicable law independent of this chapter.

The term excludes an entity to the extent that it provides free gas to end-users under the terms of an oil or gas lease. Notwithstanding any other provision of this title, a natural gas supplier that is not a natural gas distribution company is not a public utility as defined in section 102 (relating to definitions) to the extent that the natural gas supplier is utilizing the jurisdictional distribution facilities of a natural gas distribution company or is providing other services authorized by the commission.

"**Natural gas supply services.**"

(1) The term includes:

(i) the sale or arrangement of the sale of natural gas to retail gas customers; and

(ii) services that may be unbundled by the commission under section 2203(3) (relating to standards for restructuring of natural gas utility industry).

(2) The term does not include distribution service.

"**Reliability.**" The term comprises adequacy and security. The term "adequacy" means the provision of sufficient volumes and deliverability of natural gas so as to supply the requirements of retail gas customers, taking into account peak and seasonal demands, as well as isolated market areas and system operation contingencies. The term "security" means designing, maintaining and operating a system so that it can safely handle extreme conditions as well as emergencies.

"**Retail gas customer.**" A direct purchaser of natural gas supply services or natural gas distribution services, other than a natural gas supplier. The term excludes an occupant of a building or facility where the owner/operators manage the internal distribution system serving such building or facility and supply natural gas and other related services to occupants of the building or facility; where such owner/operators are direct purchasers of natural gas supply service; and where the occupants are not direct purchasers.

"**Universal service and energy conservation.**" Policies, practices and services that help residential low-income retail gas customers and other residential retail gas customers

experiencing temporary emergencies, as defined by the commission, to maintain natural gas supply and distribution services. The term includes retail gas customer assistance programs, termination of service protections and consumer protection policies and services that help residential low-income customers and other residential customers experiencing temporary emergencies to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs and consumer education.

Cross References. Section 2202 is referred to in sections 1307, 1317, 1318, 1403 of this title.

§ 2203. Standards for restructuring of natural gas utility industry.

The following interdependent standards shall govern the commission's actions in adopting rules, orders or policies and in reviewing, assessing and approving each natural gas distribution company's restructuring filings and overseeing the transition process and regulation of the restructured natural gas utility industry:

(1) The commission shall adopt and enforce standards as necessary to ensure continuation of the safety and reliability of the natural gas supply and distribution service to all retail gas customers. In adopting the standards, the commission shall consider the absence of any applicable industry standards and practices or adopt standards in conformity with industry standards and practices meeting the standards of this chapter. The application of such standards shall be in a manner that incorporates the operating requirements of the different natural gas distribution companies.

(2) Consistent with section 2204 (relating to implementation), the commission shall allow retail gas customers to choose among natural gas suppliers and natural gas distribution companies to the extent that they offer such natural gas supply services. Retail gas customers shall be able to choose from these suppliers a variety of products, including, but not limited to, different supply and pricing options, and services that evolve as the competitive marketplace matures. Neither any natural gas supplier nor any natural gas distribution company shall offer interruptible gas service to any essential human needs retail gas customer lacking installed and operable alternative fuel capability or to any residential retail gas customer.

(3) The commission shall require natural gas distribution companies to unbundle natural gas supply services such that separate charges for the services can be set forth in tariffs and on retail gas customers' bills. In its restructuring filing, the natural gas distribution company shall establish system reliability standards and capacity contract mitigation parameters and address the unbundling of commodity, capacity, storage, balancing and aggregator services. The commission may address the unbundling of other services only through a rulemaking. In conducting the rulemaking, the commission shall consider the impact of such unbundling on the labor force, the creation of stranded costs, safety, reliability, consumer protections, universal service and the potential for unbundling to offer savings, new products and additional choices or services to retail gas customers. The commission's decisions shall assure that standards and procedures for safety and reliability,

consumer protections and universal service are maintained at levels consistent with this chapter.

(4) Consistent with the provisions of section 2204, the commission shall require that a natural gas distribution company that owns or operates jurisdictional distribution facilities shall provide distribution service to all retail gas customers in its service territory and to all natural gas suppliers, affiliated or nonaffiliated, on nondiscriminatory rates, terms of access and other conditions.

(5) The commission shall require that restructuring of the natural gas utility industry be implemented in a manner that does not unreasonably discriminate against one customer class for the benefit of another.

(6) After notice and hearings, the commission shall establish for each natural gas distribution company an appropriate nonbypassable, competitively neutral cost-recovery mechanism which is designed to recover fully the natural gas distribution company's universal service and energy conservation costs over the life of these programs. Except as provided in paragraph (10), policies, activities and services under this paragraph shall be funded and spent in each natural gas distribution company's service territory. Nothing in this chapter shall be construed to prohibit public funding or voluntary funding by third parties of a natural gas distribution company's universal service and energy conservation programs.

(7) The commission shall, at a minimum, continue the level and nature of the consumers protections, policies and services within its jurisdiction that are in existence as of the effective date of this chapter to assist low-income retail gas customers to afford natural gas services.

(8) The commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each natural gas distribution service territory. The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income retail gas customers to afford natural gas service. Programs under this paragraph shall be subject to the administrative oversight of the commission, which shall ensure that the programs are operated in a cost-effective manner.

(9) Each natural gas distribution company shall set forth in its restructuring filing an initial proposal to meet its universal service and energy conservation obligations.

(10) Consistent with paragraph (7), the commission shall convene a task force to review universal service programs and their funding. The task force shall issue a report to the commission by December 31, 1999, and annually thereafter. Recommendations regarding the use of general State revenue shall be concurrently forwarded to the General Assembly.

(11) The commission shall continue to regulate rates for natural gas distribution services for new and existing retail gas customers in accordance with Chapter 13 (relating to rates and rate making) and this chapter.

(12) The commission shall make its determinations pursuant to this chapter and shall adopt such orders or regulations as necessary and appropriate to ensure that natural gas suppliers meet their supply and reliability

obligations, including, but not limited to, establishing penalties for failure to deliver natural gas and revoking licenses. Any affected entity may at any time petition the commission to amend or rescind any such order or regulation issued or promulgated under this chapter.

(13) Each natural gas distribution company shall set forth in its restructuring filing an initial proposal to meet its employee transition obligations precipitated by this chapter.

(14) The natural gas distribution company may continue to provide natural gas service to its customers under all tariff rate schedules and riders incorporated into its tariff, and policies or programs, existing on the effective date of this chapter.

(15) Beginning May 1, 1999, and continuing for a 36-month period thereafter, if a natural gas distribution company lays off or terminates any of its employees, except for just cause, the natural gas distribution company shall:

(i) Provide the commission with sufficient information to show that with the reduction of employees the company will still be able to ensure the safety and reliability of natural gas distribution service to all retail gas customers, as provided for by the commission under paragraph (1).

(ii) Provide at least 60 days' written notice of such layoff or termination to the company's employees' authorized bargaining representative.

Cross References. Section 2203 is referred to in sections 1403, 2202, 2211 of this title.

§ 2204. Implementation.

(a) Commencement of customer choice.--Beginning on November 1, 1999, unless the commission for good cause shown extends this period by no more than eight months, consistent with this chapter, all retail gas customers of natural gas distribution companies other than city natural gas distribution operations shall have the opportunity to purchase natural gas supply services from a natural gas supplier or their natural gas distribution company to the extent it offers such services. The choice of natural gas suppliers shall rest with the retail gas customer. The commission shall adopt orders, rules, regulations and policies as shall be necessary and appropriate to implement fully this chapter within the time frames specified in this chapter, provided that the commission may, in the context of each natural gas distribution company's restructuring proceeding, establish the time frames for implementation of specific components of each natural gas distribution company's restructuring plan.

(b) Restructuring filings.--All natural gas distribution companies in this Commonwealth, except city natural gas distribution operations, shall file with the commission, pursuant to a schedule to be determined by the commission in consultation with the natural gas distribution companies, a restructuring filing consistent with this chapter and with any orders, rules or regulations adopted by the commission. A city natural gas distribution operation shall file with the commission its restructuring filing pursuant to section 2212 (relating to city natural gas distribution operations).

(c) Commission review.--

(1) The commission shall review the restructuring filing of each natural gas distribution company and shall, after open evidentiary hearings with proper notice and opportunity

for all parties to cross-examine witnesses and brief issues, issue an order accepting, modifying or rejecting such filing at the earliest date possible, but no later than nine months from the filing date.

(2) In issuing the restructuring order, the commission may consider the results of any collaborative process previously engaged in during or prior to the restructuring proceeding.

(3) If the commission modifies or rejects a restructuring filing, it shall state the specific reasons for modification or rejection and direct the natural gas distribution company to address such objections with another filing within 30 days of the entry date of the commission order modifying or rejecting the prior filing.

(4) The commission shall review the alternative filing, solicit comments and reply comments from interested parties and issue a final order within 45 days of the revised filing.

(5) The restructuring filing for a city natural gas distribution operation shall also include an initial tariff filing.

(d) Release, assignment or transfer of capacity.--

(1) A natural gas distribution company holding contracts for firm storage or transportation capacity, including gas supply contracts with Pennsylvania producers, on the effective date of this chapter, or a city natural gas distribution operation on the date the commission assumes jurisdiction over such city natural gas distribution operation, may at its option release, assign or otherwise transfer such capacity or Pennsylvania supply, in whole or part, associated with those contracts on a nondiscriminatory basis to licensed natural gas suppliers or large commercial or industrial customers on its system.

(2) Contracts which by their terms must be renewed within 150 days after the effective date of this chapter or, with respect to a city natural gas distribution operation, within 90 days after the date the commission assumes jurisdiction over such city natural gas distribution operation or contracts for which the last day for notice of renewal or nonrenewal pursuant to the notice provision of the contract has occurred or is within 150 days after the effective date of this chapter or, with respect to a city natural gas distribution operation, within 90 days after the date the commission assumes jurisdiction over such city natural gas distribution operation and which are renewed pursuant to such notice requirements shall also be subject to the provisions of this subsection.

(3) Such release, assignment or transfer shall be at the applicable contract rate for such capacity or Pennsylvania supply and shall be subject to applicable contractual arrangements and tariffs. The amount so released, assigned or transferred shall be sufficient to serve the level of the customers' requirements for which the natural gas distribution company has procured such capacity, determined in accordance with the natural gas distribution company's tariff or procedures approved in its restructuring proceedings.

(4) The licensed natural gas supplier shall accept such release, assignment or transfer of that capacity or Pennsylvania supply and enter into all applicable contracts or agreements as a condition of serving retail gas customers on the natural gas distribution company's system.

(5) On or after July 1, 2002, or, in the case of a city natural gas distribution operation, March 1, 2005, the commission shall have the authority to prevent such assignments, releases or transfers under either of the following circumstances:

(i) the natural gas distribution company, alone or together with one or more natural gas suppliers, voluntarily proposes an alternative to such assignments, releases or transfers and the commission finds such alternative to be in the public interest; or

(ii) upon the petition of the licensed natural gas supplier who desires to use alternate interstate storage or transportation capacity to serve its customers on the natural gas distribution company's system, the commission makes the following findings and issues a final order as to which all appeals have been exhausted in which:

(A) The commission finds that the alternate capacity which the natural gas supplier seeks to utilize meets the operational needs and reliability standards of the natural gas distribution company.

(B) The commission confirms that the natural gas distribution company's specific transportation and storage capacity contracts to be displaced are no longer needed to serve firm customers of the natural gas distribution company.

(C) The commission authorizes the natural gas distribution company to follow a specific, written mitigation plan approved by the commission or, if such a plan is not approved or applicable, to post the displaced capacity for release in accordance with the rules and regulations of the Federal Energy Regulatory Commission and applicable requirements of interstate pipelines.

(D) The commission authorizes the natural gas distribution company to recover the difference between the amount the natural gas distribution company is required to pay under the applicable contract terms for the capacity released, assigned or transferred pursuant to clause (C) and the amount the natural gas distribution company receives from an entity, if any, that acquires such capacity. Under no circumstances, however, shall such recovery result in shifting of costs between customer classes or in any increase in rates to customers who continue to purchase natural gas supplies from the natural gas distribution company acting in its supplier of last resort function.

(6) Prior to making the filing provided for in paragraph (5), the natural gas supplier shall meet with the natural gas distribution company to discuss the natural gas supplier's proposed alternatives to the existing gas supply or capacity contracts or to their mandatory assignment.

(7) Those natural gas distribution companies having gas supply contracts with Pennsylvania producers may address the issue of post-July 1, 2002, assignment of such contracts in their restructuring proceeding or thereafter.

(e) New and renewed capacity.--

(1) Subject to the service obligations imposed by this title, and to the extent such capacity is not needed to meet the natural gas distribution company's least-cost fuel procurement and other applicable standards pursuant to this title, prior to entering into new or renewed contracts for

firm storage or transportation capacity not subject to subsection (d)(1), (2), (3) or (4), each natural gas distribution company shall offer on a nondiscriminatory basis to each natural gas supplier licensed to do business on its system, and to large volume industrial or commercial customers of the natural gas distribution company being served by such contracts, the opportunity to renew such contracts, pursuant to the rules and regulations of the Federal Energy Regulatory Commission, or to enter into other contracts for capacity.

(2) The capacity shall meet the reliability criteria of the natural gas distribution company and, in the case of large volume industrial and commercial customers being served by such contracts, shall meet their current requirements.

(3) Each natural gas distribution company shall utilize the collaborative process established pursuant to subsection (f) to address its capacity requirements.

(4) Absent the natural gas supplier or large volume industrial or commercial customer taking or providing such capacity, the natural gas distribution company shall file with and obtain approval from the commission for such contracts necessary to ensure sufficient capacity to meet current and projected customer requirements considering the commitments of natural gas suppliers.

(5) Prior to being displaced by a natural gas supplier's alternate interstate storage or transportation capacity, contracts renewed or entered into by the natural gas distribution company pursuant to this subsection shall be subject to the process set forth in subsection (d).

(f) Working group and collaborative process.--In its restructuring proceeding, a natural gas distribution company shall set forth a process to establish a working group of licensed natural gas suppliers having customers on the natural gas distribution company's system and representatives of the residential, commercial and industrial customer classes to:

(1) Meet on a scheduled basis.

(2) Seek resolution of operational and capacity issues related to customer choice.

The final determination of operational and reliability issues resides with the natural gas distribution company. In addition, the natural gas distribution company shall include in its restructuring filing a collaborative process to address broader issues relating to unbundling, customer choice and deregulation.

(g) Investigation and report to General Assembly.--Five years after the effective date of this chapter, the commission shall initiate an investigation or other appropriate proceeding, in which all interested parties are invited to participate, to determine whether effective competition for natural gas supply services exists on the natural gas distribution companies' systems in this Commonwealth. The commission shall report its findings to the General Assembly. Should the commission conclude that effective competition does not exist, the commission shall reconvene the stakeholders in the natural gas industry in this Commonwealth to explore avenues, including legislative, for encouraging increased competition in this Commonwealth.

(h) Displaced employee program.--The Department of Labor and Industry shall establish and implement a program to assist the natural gas distribution company employees who are displaced by the transition to retail competition precipitated by this chapter. The program shall be designed to assist employees in obtaining employment and shall consist of utilizing the Federal

funds available for the purpose of retraining and outplacement services for such employees.

(i) Audit requirement.--Prior to the commencement of the restructuring proceeding of a city natural gas distribution operation, the commission shall provide for an independent management audit of all employees, records, equipment, contracts, assets, liabilities, appropriations and obligations related to a city natural gas distribution operation pursuant to section 516 (relating to audits of certain utilities). The city natural gas distribution operation shall have a 60-day period to submit written comments on the audit report to the commission.

Cross References. Section 2204 is referred to in sections 2203, 2206, 2211, 2212 of this title.

§ 2205. Duties of natural gas distribution companies.

(a) Integrity of distribution system.--

(1) Each natural gas distribution company shall maintain the integrity of its distribution system at least in conformity with the standards established by the Federal Department of Transportation and such other standards practiced by the industry in a manner sufficient to provide safe and reliable service to all retail gas customers connected to its system consistent with this title and the commission's orders or regulations.

(2) In performing such duties, the natural gas distribution company shall implement procedures to require all natural gas suppliers to supply natural gas to the natural gas distribution company at locations, volumes, qualities and pressures that are adequate to meet the natural gas supplier's supply and reliability obligations to its retail gas customers and the natural gas distribution company's supply and reliability obligations to its retail gas customers. The procedures shall include, but not be limited to:

(i) A communication protocol with natural gas suppliers.

(ii) An ability to issue system maintenance orders to control the flow of gas into the distribution system.

(iii) The right to issue and enforce penalties pursuant to commission direction, provided, however, that the commission may approve additional procedures of like nature by order or regulation to preserve reliability.

(b) Installation and improvement of facilities.--

(1) The natural gas distribution company shall not have an obligation to install nonstandard facilities, either as to type or location, for the purpose of receiving natural gas from the natural gas supplier unless the natural gas supplier or its retail gas customer pays the full cost of these facilities.

(2) Nothing in this chapter shall prevent the natural gas distribution company from maintaining and upgrading its system to meet retail gas customer requirements consistent with the requirement of section 1501 (relating to character of service and facilities) or compliance with other statutory and regulatory requirements.

(3) Disputes concerning facilities shall be subject to the jurisdiction of the commission and may be initiated by the filing of a complaint under section 701 (relating to complaints) by the commission or any interested party.

(c) Customer billing.--

(1) Subject to the right of a retail gas customer to choose to receive separate bills from its natural gas supplier for natural gas supply service, the natural gas distribution company shall be responsible for billing each of its retail gas customers for natural gas distribution service, consistent with the orders or regulations of the commission, regardless of the identity of the provider of natural gas supply services.

(2) (i) Bills to retail gas customers shall contain sufficient unbundled charge information to enable the customer to determine the basis for those charges and shall comply with section 1509 (relating to billing procedures). At a minimum, such charges shall include those services which are unbundled as a result of a restructuring filing or rulemaking.

(ii) Bills to retail residential customers rendered by a natural gas distribution company for natural gas distribution services shall include information required by commission regulations governing standards and billing practices for residential utility service.

(iii) Bills rendered by a natural gas distribution company on behalf of a natural gas supplier shall include, in a form and manner determined by the natural gas distribution company in consultation with the natural gas supplier, the following information with respect to natural gas supplier services: the name of the natural gas supplier; the rates, charges or prices of natural gas supply services billed, including adjustments to prior period billings, if applicable, and taxes, if applicable; and the natural gas supplier's toll-free telephone number and hours of operation for customer inquiries.

(3) Incremental costs relating to billing services designed, implemented and rendered by the natural gas distribution company, at its election, on behalf of a natural gas supplier or other entity may be recovered through fees charged by the natural gas distribution company to the natural gas supplier or other entity. Either party may request that the commission consider the appropriate level of the fee. In doing so, the commission shall consider fees charged by other natural gas distribution companies for similar services. The commission shall either permit the fee to continue as set or shall establish an alternative mechanism to permit full recovery of unrecovered just and reasonable costs from the supplier or the supplier's customers. Nothing in this section shall permit the recovery of such costs from natural gas supply service customers of the natural gas distribution company.

(4) If services are provided by an entity other than the natural gas distribution company, the entity that provided those services shall furnish to the natural gas distribution company billing data sufficient to enable the natural gas distribution company to timely bill retail gas customers. The entity shall provide data for billing purposes in a format and in a time frame as required by the natural gas distribution company. The natural gas distribution company shall consider the data and information confidential and shall treat it as such.

(5) No natural gas distribution company shall be required to forward payment to entities providing services to customers and on whose behalf the natural gas distribution company is billing those customers before the natural gas

distribution company has received payment for those services from customers. The commission shall issue guidelines addressing the application of partial payments.

(6) Natural gas distribution companies and natural gas suppliers shall take reasonable steps to allow retail gas customers to contribute via their bill to hardship energy funds which benefit low-income residential retail gas consumers.

(7) Natural gas distribution companies shall have the right to recover on a full and current basis all prudent and reasonable costs incurred to implement customer choice from retail natural gas customers or other entities as determined by the commission. Recovery from retail natural gas customers shall be made pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments).

(d) Enhanced metering.--Subject to commission approval, the natural gas distribution company may require the installation, at the retail gas customer's expense, of enhanced metering capability sufficient to match the natural gas delivered by the retail gas customer's natural gas supplier or suppliers with consumption by that retail gas customer. In exercising its discretion, the commission shall consider the effect on low-income retail gas customers.

(June 23, 2016, P.L.355, No.47, eff. 60 days)

2016 Amendment. Act 47 added subsec. (c)(7).

§ 2206. Consumer protections and customer service.

(a) Quality.--A natural gas distribution company shall be responsible for customer service functions consistent with the orders and regulations of the commission, including, but not limited to, meter reading, installation, testing and maintenance and emergency response for all customers, and complaint resolution and collections related to the service provided by the natural gas distribution company. Customer service and consumer protections and policies for retail gas customers shall, at a minimum, be maintained at the same level of quality under retail competition as in existence on the effective date of this chapter.

(b) Change of suppliers.--The commission shall, by order or regulation, establish procedures to ensure that a natural gas distribution company does not change a retail gas customer's natural gas supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier.

(c) Customer information.--The commission shall, by order or regulation, establish requirements that each natural gas distribution company and natural gas supplier provide adequate, accurate customer information to enable retail gas customers to make informed choices regarding the purchase of all natural gas services offered by that provider. Information shall be provided to retail gas customers in an understandable format that enables retail gas customers to compare prices and services on a uniform basis.

(d) Consumer education.--Prior to the implementation of any restructuring plan under section 2204 (relating to implementation), each natural gas distribution company, in conjunction with the commission and consistent with the guidelines established by the commission, shall implement a consumer education program to inform customers of the changes in the natural gas utility industry. The program shall provide retail gas customers with information necessary to help them

make appropriate choices as to their natural gas service. The education program shall be subject to approval by the commission. The consumer education program shall include goals, objectives and an action plan that is designed to be objective, easily understood, utilizes a uniform measurement as established by the commission for the cost of gas, be available in languages that the commission requires to meet the needs of a service territory and be separate and distinct from marketing.

(e) Consumer education cost recovery.--The consumer education program shall be subject to approval by the commission and shall be funded in each natural gas distribution service territory by a nonbypassable, competitively neutral cost-recovery mechanism that fully recovers the reasonable cost of such program. To the extent that the industrial customer class is not currently assigned such costs on the effective date of this chapter, it shall not be assigned such costs in the future.

(f) Tenants' rights.--Nothing in this chapter shall be construed to restrict the rights of tenants pursuant to Subchapter B of Chapter 15 (relating to discontinuance of service to leased premises).

Cross References. Section 2206 is referred to in section 2211 of this title.

§ 2207. Obligation to serve.

(a) Supplier of last resort.--

(1) After the effective date of this chapter, the natural gas distribution company shall serve as the supplier of last resort for residential, small commercial, small industrial and essential human needs customers and any other customer classes determined by the commission in the natural gas distribution company's restructuring proceeding until such time as the commission, pursuant to this section, approves an alternative supplier or suppliers to provide such services to any or all of the natural gas distribution company's customers.

(2) For purposes of this section, a supplier of last resort is a natural gas distribution company or natural gas supplier which is designated by the commission to provide natural gas supply service with respect to one or more of the following services:

(i) natural gas supply services to those customers who have not chosen an alternative natural gas supplier or who choose to be served by their supplier of last resort;

(ii) natural gas supply services to those customers who are refused supply service from a natural gas supplier; or

(iii) natural gas supply services to those customers whose natural gas supplier has failed to deliver its requirements.

No customer shall have more than one supplier of last resort designated for any of the services set forth in this paragraph.

(b) Consumer protection.--Service by the supplier of last resort shall be subject to all consumer protection standards, including those contained in 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service) and to all universal service obligations.

(c) Natural gas distribution company.--The natural gas distribution company shall deliver natural gas to the extent that it is provided by all natural gas suppliers, or suppliers

of last resort, as the case may be, in accordance with the natural gas distribution company's tariff.

(d) Standards of service.--Consistent with the standards set forth in section 1501 (relating to character of service and facilities) and applicable orders of the commission, a supplier of last resort under subsection (a)(2)(iii) shall provide sufficient supplies as to quantity, quality, pressure and location to meet the operational reliability requirements of the natural gas distribution company's system, including, but not limited to, a failure of one or more natural gas suppliers to:

(1) supply natural gas to their retail gas customers in conformance with their contractual obligations to such customers; or

(2) satisfy applicable reliability standards and obligations.

(e) Discontinuation of service.--The natural gas distribution company shall continue providing services as the supplier of last resort to all of its customers for all of the natural gas supply services described in subsection (a)(2) unless, at its discretion, it requests and receives commission approval to discontinue providing one or more such supplier of last resort obligation. In approving such a petition, the commission shall also approve another party as the alternative supplier of last resort for each customer or customer group for which the natural gas distribution company no longer provides such natural gas supply services.

(f) Regulations.--The commission shall promulgate regulations setting forth the standards for approving an alternative supplier of last resort consistent with the provisions of this title, including a mechanism to ensure that the rates charged by any alternate supplier of last resort are just and reasonable.

(g) Organized labor.--During the five-year period following the effective date of this chapter, approval of an alternative supplier of last resort pursuant to subsection (e) shall not be granted unless the entity designated by the commission to succeed the natural gas distribution company in the provision of service to these customers agrees to recognize relevant union and collective bargaining agreements of the natural gas distribution company then in place.

(h) Petition to become supplier of last resort.--After the five-year period following the effective date of this chapter, any party may petition the commission to become the supplier of last resort to some or all customers except for those customers identified in subsection (a)(2)(i).

(i) Notice required prior to market exit.--

(1) A natural gas supplier may not exit the market without providing notice as determined by the commission in the restructuring proceeding of the natural gas distribution company to its customers, the supplier of last resort and the natural gas distribution company.

(2) If firm gas supply contracts with Pennsylvania natural gas producers or storage or transportation capacity contracts used by the natural gas supplier to serve such retail gas customers were either assigned or released to the natural gas supplier or constitute capacity which was acquired by the natural gas supplier as the result of nonrenewal of a storage or transportation capacity contract previously held by the natural gas distribution company, the natural gas supplier shall offer the supplier of last resort or successor natural gas supplier a right of first refusal

to utilize such Pennsylvania supply contracts or storage or transportation capacity contracts at its contract cost as long as needed to serve those customers.

(3) If the storage or transportation capacity contracts held by the natural gas supplier were acquired in another manner, and there was not sufficient notice given to the supplier of last resort and the natural gas distribution company, or if there is not alternative storage or transportation capacity available which is operationally sufficient to serve the market the natural gas supplier was serving, then the supplier of last resort shall be provided with a right to use such storage or transportation capacity as designated by the natural gas supplier, at the contract cost, until the supplier of last resort is able to acquire replacement capacity sufficient to serve its customers using reasonable and diligent efforts to do so.

(4) If a dispute arises under this subsection, the aggrieved party may file a complaint with the commission for resolution within 45 days.

(j) Duty involving lost customers.--To the extent that a natural gas supplier loses retail gas customers such that its capacity requirements to a natural gas distribution company are reduced below the level established by the commission for such purpose in the natural gas distribution company's restructuring proceeding, the natural gas supplier shall have the same obligations set forth in subsection (i).

(k) Rate after service discontinued.--In the event the natural gas supplier discontinues service or defaults before its contract with the customer expires, the retail gas customer shall be served by the supplier of last resort at the commission-approved supplier of last resort rate commencing with the next billing cycle. However, the retail gas customer shall continue to be charged the rate the customer negotiated with the discontinuing or defaulting natural gas supplier for the remainder of the billing cycle. Any difference between the cost incurred by the supplier of last resort and the amount payable by the retail gas customer shall be recovered from the natural gas supplier or from the bond or other security provided by the natural gas supplier without recourse to any retail gas customer not otherwise contractually committed for the difference.

Cross References. Section 2207 is referred to in section 2208 of this title.

§ 2208. Requirements for natural gas suppliers.

(a) License requirements.--No entity shall engage in the business of a natural gas supplier unless it holds a license issued by the commission. To the extent that a natural gas distribution company provides natural gas supply service outside of its chartered or certificated territory, it also must hold a license. A license shall not be required for customers who make de minimis incidental sales or resales to themselves, an affiliate or other nonresidential retail gas customers.

(b) License application and issuance.--An application for a natural gas supplier license shall be made to the commission in writing, be verified by oath or affirmation and be in such form and contain such information as the commission may, by rule or order, require. A license shall be issued to any applicant, authorizing the whole or any part of the service covered by the application, if it is found that the applicant is fit, willing and able to perform properly the service proposed and to conform to the applicable provisions of this

title and the orders and regulations of the commission, including those concerning standards and billing practices, and that the proposed service, to the extent authorized by the license, will be consistent with the public interest. Otherwise, such application shall be denied.

(c) Financial fitness.--

(1) In order to ensure the safety and reliability of the natural gas supply service in this Commonwealth, no natural gas supplier license shall be issued or remain in force unless the applicant or holder, as the case may be, complies with all of the following:

(i) Furnishes a bond or other security in a form and amount to ensure the financial responsibility of the natural gas supplier. The criteria each natural gas distribution company shall use to determine the amount and form of such bond or other security shall be set forth in the natural gas distribution company's restructuring filing. In approving the criteria, commission considerations shall include, but not be limited to, the financial impact on the natural gas distribution company or an alternative supplier of last resort of a default or subsequent bankruptcy of a natural gas supplier. The commission shall periodically review the criteria upon petition by any party. The amount and form of the bond or other security may be mutually agreed to between the natural gas distribution company or the alternate supplier of last resort and the natural gas supplier or, failing that, shall be determined by criteria approved by the commission.

(ii) Provides the commission with the address of the participant's principal office in this Commonwealth or the address of the participant's registered agent in this Commonwealth, the latter being the address at which the participant may be served process.

(2) Failure of a natural gas supplier to comply with any provision of this chapter or the rules, regulations, orders or directives of the Department of Revenue or of the commission, including, but not limited to, engaging in anticompetitive behavior, shall be cause for the commission to revoke the license of the natural gas supplier.

(d) Transferability of licenses.--No license issued under this chapter may be transferred without prior commission approval.

(e) Form of regulation of natural gas suppliers.--Except where a natural gas supplier serves as a supplier of last resort, the commission may forbear from extending its regulation of natural gas suppliers beyond licensing, bonding, reliability and consumer services and protections, including all applicable portions of 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service). Subject to the provisions of section 2207 (relating to obligation to serve), nothing in this section shall preclude a natural gas supplier, upon appropriate and reasonable notice to the retail gas customer, supplier of last resort and the natural gas distribution company, from canceling its contract with any customer for legal cause, subject to the customer's right to have continued service from the supplier of last resort.

(f) Availability of the service of natural gas suppliers.--Prior to licensing any natural gas supplier, the commission shall set forth standards to ensure that all customer classes may choose to purchase natural gas from a natural gas supplier. The commission shall also ensure that natural gas

suppliers comply with applicable provisions of 52 Pa. Code Ch. 56.

(g) Open and nondiscriminatory access.--In addition to meeting the license requirements applicable to applicants under subsection (b), a municipal corporation shall, before it is permitted to provide natural gas supply services as a natural gas supplier, demonstrate, and the commission shall determine, that, by the date of the issuance of the license, it will provide other natural gas suppliers open and nondiscriminatory access to its gas distribution system under standards that are comparable to this title, taking into consideration the particular circumstances of the municipal corporation's ownership and/or operation of the gas distribution system.

(h) Annual fees.--The commission may establish, by order or rule, on a reasonable cost basis, fees to be charged for annual activities related to the oversight of natural gas suppliers.

(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

2014 Amendment. Act 155 added subsec. (h). See section 1 of Act 155 in the appendix to this title for special provisions relating to legislative findings and declarations.

Cross References. Section 2208 is referred to in section 2212 of this title.

§ 2209. Market power remediation.

(a) Interim standards of conduct.--Within 120 days of the effective date of this chapter, the commission shall provide by order binding, interim guidelines for standards of conduct governing the activities of and relationships between natural gas distribution companies and their affiliated natural gas suppliers and other natural gas suppliers and monitor and enforce compliance with those standards.

(b) Permanent standards of conduct.--The commission shall thereupon promulgate regulations setting forth permanent standards of conduct governing the activities of and relationships between natural gas distribution companies and their affiliated natural gas suppliers and other natural gas suppliers and monitor and enforce compliance with these standards. The commission shall neither favor nor disfavor conduct or operations by and between a natural gas distribution company and an affiliated natural gas supplier or a nonaffiliated natural gas supplier.

(c) Contents of standards.--Standards of conduct shall provide for:

(1) No discrimination against or preferential treatment of any natural gas supplier, including an affiliated natural gas supplier.

(2) No disclosure or preferential sharing of any confidential information to or with any individual natural gas supplier.

(3) Adequate rules prohibiting cross-subsidization of an affiliated natural gas supplier by a natural gas distribution company.

(4) Maintenance of separate books and records by the natural gas distribution company and its affiliated natural gas supplier.

(5) Sufficient physical and operational separation, but not including legal divestiture, to accomplish paragraphs (1), (2), (3) and (4).

(6) An informal dispute resolution procedure.

(7) A system of penalties for noncompliance with the final set of standards of conduct consistent with existing commission regulations.

(d) Limitation.--The standards shall not prohibit the natural gas distribution company and its affiliated natural gas supplier from using or sharing similar corporate names, trademarks, trade dress or service marks.

(e) Initiation of investigations.--Upon complaint or upon its own motion, for good cause shown, the commission shall conduct an investigation of the impact on the proper functioning of a fully competitive retail natural gas market of mergers, consolidations, acquisition or disposition of assets or securities of natural gas suppliers and anticompetitive or discriminatory conduct affecting the retail distribution of natural gas.

(f) Conduct of investigations.--

(1) The commission may require a natural gas supplier to provide information, including documents and testimony, in accordance with the commission's regulations regarding the discovery of information.

(2) Material which the commission determines to be confidential, proprietary or trade secret information provided under this subsection shall not be disclosed to any person not directly employed or retained by the commission to conduct the investigation without the consent of the party providing the information.

(3) Notwithstanding the prohibition on disclosure of information in paragraph (2), the commission shall disclose information obtained under this subsection to the Office of Consumer Advocate and the Office of Small Business Advocate under an appropriate confidentiality agreement. The commission may disclose the information to appropriate Federal or State law enforcement officials if it determines that the disclosure of the information is necessary to prevent or restrain a violation of Federal or State law and it provides the party that provided the information with reasonable notice and opportunity to prevent or limit disclosure.

(g) Referrals and investigation.--If, as a result of the investigation conducted under this section, the commission has reason to believe that anticompetitive or discriminatory conduct, including the unlawful exercise of market power, is preventing the retail gas customers from obtaining the benefits of a properly functioning and effectively competitive retail natural gas market, the commission, pursuant to its regulations, shall:

(1) Refer its findings to the Attorney General, the United States Department of Justice, the Securities and Exchange Commission or the Federal Energy Regulatory Commission.

(2) Subject to subsection (c)(3), disclose any information it has obtained in the course of its investigation to the agency or agencies to which it had made a referral under paragraph (1).

(3) Intervene, as provided and permitted by law or regulation, in any proceedings initiated as a result of a referral made under paragraph (1).

(h) Marketing standards.--As part of each natural gas distribution company's restructuring proceeding, the commission may, in its discretion, develop and apply different standards of conduct to the natural gas distribution company's marketing activities related to natural gas supply services. No such

standards shall apply to the natural gas distribution company's marketing division or operations until the commission issues an order in the context of that natural gas distribution company's restructuring proceeding.

(i) Definition.--Subject to the conditions set forth in subsection (h), for the purposes of this section, the term "affiliated natural gas supplier" includes marketing activities related to natural gas supply services by the marketing division or the marketing operation of a natural gas distribution company.

§ 2210. Approval of proposed mergers, consolidations, acquisitions or dispositions.

(a) General rule.--In the exercise of authority the commission otherwise may have to approve mergers or consolidations involving natural gas distribution companies or natural gas suppliers or the acquisition or disposition of assets or securities of natural gas distribution companies or natural gas suppliers, the commission shall consider:

(1) Whether the proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail gas customers from obtaining the benefits of a properly functioning and effectively competitive retail natural gas market.

(2) The effect of the proposed merger, consolidation, acquisition or disposition on the employees of the natural gas distribution company and on any authorized collective bargaining agent representing those employees.

(b) Procedure.--Upon request for any approval identified in subsection (a), the commission shall provide notice and an opportunity for open, public evidentiary hearings. If the commission finds, after hearing, that a proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail gas customers from obtaining benefits of a properly functioning and effectively competitive retail natural gas market, the commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary to preserve the benefits of a properly functioning and effectively competitive retail natural gas market.

(c) Preservation of rights.--Nothing in this section shall restrict the right of any party to pursue any other remedy available to it.

§ 2211. Rate caps.

(a) General rule.--Except as provided under subsections (d), (e), (f) and (g) and section 2212 (relating to city natural gas distribution operations), for a period from the effective date of this chapter until January 1, 2001, the total nongas cost charges of a natural gas distribution company for service to any retail gas customer shall not exceed the maximum nongas cost charges that are contained in the natural gas distribution company's tariff as of the effective date of this chapter.

(b) Recovery of deferred costs.--

(1) In a restructuring proceeding, the natural gas distribution company may identify categories of costs resulting from this chapter.

(2) The natural gas distribution company may seek permission in its restructuring proceeding to capitalize and to amortize such costs over an appropriate period to be

determined by the commission. The amortization shall commence at the time when restructuring orders are issued. The natural gas distribution company may seek recovery of the unamortized balance of such costs in a future rate proceeding, and the commission shall allow recovery of such costs provided that the commission determines that such costs are reasonable and that the resulting rates are just and reasonable.

(c) Deferral of costs.--Costs recoverable under sections 2203(6) (relating to standards for restructuring of natural gas utility industry) and 2206(e) (relating to consumer protections and customer service) in excess of amounts already reflected in a natural gas distribution company's rates, which are incurred between the date of entry of the commission's restructuring order and the earlier of the date on which the commission authorizes commencement of recovery or June 30, 2002, may be deferred for recovery in the future. Such deferrals shall be without interest.

(d) Circumstances for exceptions.--A natural gas distribution company may seek and the commission may approve an exception to the limitations set forth in this section under any of the following circumstances:

(1) The natural gas distribution company meets the requirements for extraordinary relief under section 1308(e) (relating to voluntary changes in rates).

(2) The natural gas distribution company demonstrates that a rate increase is necessary in order to preserve the reliability of the natural gas distribution system.

(3) The natural gas distribution company is subject to significant increases in the rate of Federal taxes or other significant increases in costs resulting from changes in law or regulations that would not allow the natural gas distribution company to earn a fair rate of return.

(e) Interclass and intraclass cost shifts.--Except as provided in section 2212, for the period from the effective date of this chapter until January 1, 2001, interclass or intraclass cost shifts are prohibited. This prohibition against cost shifting may be accomplished by maintaining the cost allocation methodology accepted by the commission for each natural gas distribution company in the company's most recent base rate proceeding.

(f) State tax adjustment surcharge.--The natural gas distribution company, other than a city natural gas distribution operation, shall remain subject to the State tax adjustment surcharge and shall be permitted to adjust its State tax adjustment surcharge mechanism to reflect State tax changes or additions. The natural gas distribution company shall also remain subject to existing riders or surcharges for the collection of nongas transition costs pursuant to Federal Energy Regulatory Commission decisions.

(g) Provisions relating to interstate pipelines.--

(1) Notwithstanding any other provisions of this chapter, if a natural gas distribution company's current base rate revenues reflect the margins realized through the utilization of firm interstate pipeline transportation and storage capacity to serve the interruptible market when such capacity is not needed to make firm retail deliveries, then the natural gas distribution company shall be permitted to increase base rates and, at the same time, reduce purchased gas cost rates, as described in this chapter.

(2) The natural gas distribution company may propose such a change in treatment, consistent with the following requirements:

(i) Base rates of customers who pay purchased gas cost rates pursuant to section 1307(f) (relating to sliding scale of rates; adjustments) shall be increased by an amount equal to the margin received for service provided to existing interruptible sales and transportation service customers using capacity reflected in rates established under section 1307(f) based upon the revenue for such services for the most recent 12-month period immediately preceding the application.

(ii) Purchased gas cost rates established pursuant to section 1307(f) shall be decreased by an amount equal to the amount by which base rates are increased in subparagraph (i).

(iii) Purchased gas cost rates established pursuant to section 1307(f) shall thereafter be reconciled to reflect the margins realized from interruptible sales and interruptible transportation customers utilizing capacity reflected in rates established under section 1307(f).

(h) Interstate pipeline transportation.--

(1) Except as specifically set forth in this subsection, nothing in this section or section 2204(d) (relating to implementation) shall prevent a natural gas distribution company from recovering costs paid under the terms of interstate pipeline transportation and storage capacity contracts which are not fully recovered through a release, assignment or transfer of such capacity to another natural gas supplier if such unrecovered costs arise under the terms of a natural gas transportation pilot program approved by the commission for such company on or before February 1, 1999.

(2) Such unrecovered interstate pipeline transportation and capacity costs incurred under such programs through October 31, 2004, may be recovered from a class or classes of customers in accordance with such program provided that the total volumetric charge for such costs does not exceed 1% of the volumetric charge for residential natural gas sales service set forth in the natural gas distribution company's tariff in effect at the time.

(3) With respect to such pilot programs, the commission may determine to extend such programs to include all customers of that company pursuant to the requirements of this chapter, and nothing in this section or section 2204(d) shall prevent unrecovered interstate pipeline and transportation capacity costs incurred through October 31, 2004, under such programs from being recovered in accordance with such programs provided that the total volumetric charge for such costs does not exceed the 1% limit specified in paragraph (2) for pilot programs.

§ 2212. City natural gas distribution operations.

(a) Application.--The provisions of this section shall apply only to city natural gas distribution operations.

(b) Commission jurisdiction.--Subject to the provisions of this section, commencing July 1, 2000, public utility service being furnished or rendered by a city natural gas distribution operation within its municipal limits shall be subject to regulation and control by the commission with the same force as if the service were rendered by a public utility.

(c) Applicability of other chapters.--Commencing July 1, 2000, to the extent not inconsistent with this section, the provisions of this title, other than Chapters 11 (relating to certificates of public convenience), 19 (relating to securities

and obligations) and 21 (relating to relations with affiliated interests), shall apply to the public utility service of a city natural gas distribution operation with the same force as if the city natural gas distribution operation was a public utility under section 102 (relating to definitions), provided that, upon request of a city natural gas distribution operation, the commission may suspend or waive the application to a city natural gas distribution operation of any provision of this title, including any provision of this chapter other than this section. Chapter 11 shall apply to a city natural gas distribution operation to the extent it seeks to provide natural gas distribution services outside of its corporate or municipal limits. Chapter 19 shall apply to issuances of securities for the benefit of a city natural gas distribution operation by an issuer other than a city to the extent provided in subsection (e) but shall not apply to issuances of securities by a city.

(d) Continuation of tariff.--For purposes of this section, prior tariff means the tariff, rate schedule and riders incorporated into the tariff of a city natural gas distribution operation on the date the commission assumes jurisdiction over such city natural gas distribution operation. A city natural gas distribution operation shall continue to provide natural gas supply and natural gas distribution services to its customers under the prior tariff and the policies or programs existing on the date that the commission assumes jurisdiction over the city natural gas distribution operation until the effective date of the final order entered by the commission approving the restructuring plan and new tariff of the city natural gas distribution operations unless such effective date has been stayed by a court of competent jurisdiction, in which event the prior tariff will continue in force until such stay has been dissolved. Where the prior tariff refers to, incorporates or includes a local commission, it shall be interpreted as referring to, incorporating or including the commission. Subject to subsection (s), the commission shall resolve all questions, disputes or conflicts arising under the prior tariff. Nothing contained in this section shall prevent a city natural gas distribution operation from requesting or, if so requested, the commission from approving modifications to the prior tariff at any time prior to the effective date of the final order approving the restructuring plan and new tariff.

(e) Securities of city natural gas distribution operations.--Notwithstanding any provision of this title to the contrary, in determining the city natural gas distribution operation's revenue requirement and approving overall rates and charges, the commission shall follow the same ratemaking methodology and requirements that were applicable to the city natural gas distribution operation prior to the assumption of jurisdiction by the commission, and such obligation shall continue until the date on which all approved bonds have been retired, redeemed, advance refunded or otherwise defeased. However, this section shall not prevent the commission from approving changes in the rates payable by any class of ratepayers of the city natural gas distribution operation so long as the revenue requirement and the overall rates and charges are not adversely affected by such changes. Notwithstanding any provision in this title to the contrary, the commission shall permit the city natural gas distribution operation to impose, charge or collect rates or charges as necessary to permit the city or municipal authority formed pursuant to subsection (m) that issued bonds on behalf of a city natural gas distribution operation to comply with its

covenants to the holders of any approved bonds. Notwithstanding any provision in this title to the contrary, the commission shall not require a city natural gas distribution operation to take action, or omit taking any actions, pursuant to this title if such action or omission would have the effect of causing the interest on tax-exempt bonds issued by a city or municipal authority formed pursuant to subsection (m) on behalf of a city natural gas distribution operation to be includable in the gross income of the holders of such bonds for Federal income tax purposes. For purposes of this section, approved bonds shall mean all bonds:

(1) issued by a city on behalf of a city natural gas distribution operation under the act of October 18, 1972 (P.L.955, No.234), known as The First Class City Revenue Bond Act, or the act of December 7, 1982 (P.L.827, No.231), known as The City of Philadelphia Municipal Utility Inventory and Receivables Financing Act, that were issued and outstanding on the date the commission assumed jurisdiction over the city natural gas distribution operation;

(2) issued by the city after the date the commission assumed jurisdiction over the city natural gas distribution operation unless the governing body of the city, at the time of approval of the bond issuance, determines that such bonds shall not be approved bonds;

(3) issued by the city or a municipal authority, nonprofit corporation or public corporation formed pursuant to subsection (m) for the purpose of refunding, redeeming, repaying or otherwise defeasing approved bonds; or

(4) issued by a municipal authority formed pursuant to subsection (m) for purposes other than refunding, redeeming, repaying or otherwise defeasing approved bonds unless the commission determines, at the time of the registration of a securities certificate pursuant to section 1903 (relating to registration or rejection of securities certificates), that the bonds should not be approved bonds.

Notwithstanding any provision of this title to the contrary, a city owning a city natural gas distribution operation may continue to issue bonds on behalf of the city natural gas distribution operation pursuant to The First Class City Revenue Bond Act and under The City of Philadelphia Municipal Utility Inventory and Receivables Financing Act, and any municipal authority formed pursuant to subsection (m) may issue bonds on behalf of the city natural gas distribution operation pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, and as otherwise provided by law. All documents that are required to be submitted to the governing body of the city by The First Class City Revenue Bond Act or The City of Philadelphia Municipal Utility Inventory and Receivables Financing Act or, in the case of an issuance of securities by a municipal authority, the Municipality Authorities Act of 1945 shall also be submitted to the commission for its information. Any issuance of securities by a municipal authority formed pursuant to subsection (m) on behalf of a city natural gas distribution operation, other than issuances of bonds for the purpose of refunding, redeeming, repaying or otherwise defeasing approved bonds, shall be subject to the provisions of Chapter 19 provided that commission determinations with respect to the registration of a securities certificate under Chapter 19 for the issuance of securities by a municipal authority formed pursuant to subsection (m) shall be determinations with respect to public debt and the commission

shall employ its abbreviated securities certificate process to such issuances.

(f) Transfers to city.--The commission shall permit the city natural gas distribution operation to impose, charge or collect rates and charges as necessary to permit the city natural gas distribution operation to transfer or pay to the city that is the owner of the city natural gas distribution operation, on an annual basis, such amount as may be specified from time to time in the applicable ordinances of the city or agreements of the city approved by ordinances. If the amount so specified shall exceed 110% of the amount that was authorized for transfer or payment to the city at the close of the fiscal year of the city ending June 30, 2000, such additional amount shall be subject to review and approval of the commission, which approval shall be given unless such additional amount would not be just and reasonable.

(g) Restructuring and tariff filings.--A city natural gas distribution operation shall file with the commission an initial tariff and a restructuring filing consistent with this chapter, and with any orders, rules or regulations adopted by the commission after the effective date of this chapter no later than July 1, 2002, and, unless the city natural gas operation agrees, no earlier than December 31, 2001, pursuant to a schedule to be determined by the commission in consultation with a city natural gas distribution operation. The commission shall conduct an initial rate proceeding pursuant to its procedures for such filings. Hearings on the tariff and restructuring filings shall be held within the municipal limits of the city in which the city natural gas distribution operation is located to the extent practicable.

(h) Restructuring proceedings.--In the restructuring proceeding of a city natural gas distribution operation, in addition to the requirements of section 2204(c) (relating to implementation):

(1) The city natural gas distribution operation shall file a plan to convert its existing information technology, accounting, billing, collection, gas purchasing and other operating systems and procedures to comply with the requirements applicable to jurisdictional natural gas utilities under this title and the applicable rules, regulations and orders. The commission shall examine the cost and burdens of converting existing systems and procedures of a city natural gas distribution operation to meet the requirements of this title generally applicable to natural gas distribution companies. If requested by the city natural gas distribution operation, the commission shall determine whether the cost of conversion of any system or procedure is prudent in light of the benefits to be obtained. In the event that the commission determines that the costs would not be prudent, it may waive application to the city natural gas distribution operation of any provision of this title or the commission's rules, regulations and orders as appropriate. In the event that the commission determines that such costs should be incurred, the commission shall permit the city natural gas distribution operation to fully recover such costs through a nonbypassable charge imbedded in the distribution rates of the city natural gas distribution operation.

(2) In its restructuring proceeding, a city natural gas distribution operation may propose an automatic adjustment mechanism or mechanisms in lieu of or as a supplement to section 1307 (relating to sliding scale of rates;

adjustments) to adjust rates for fluctuations in gas and nongas costs, including, but not limited to, an automatic adjustment mechanism or mechanisms to recover the costs of providing programs for low-income ratepayers and other assisted ratepayers. The commission may approve or modify the automatic adjustment mechanism or mechanisms proposed by the city natural gas distribution operation, or the commission may approve a section 1307 adjustment for a city natural gas distribution operation. However, the automatic adjustment mechanism, whether section 1307 or any alternative proposed by the city natural gas distribution operation, utilized for city natural gas distribution operations must enable the city or municipal authority formed pursuant to subsection (m) that issued bonds on behalf of a city natural gas distribution operation to fully comply at all times with its covenants to the holders of any approved bonds.

(i) Powers of the Consumer Advocate; Small Business Advocate.--The Consumer Advocate shall represent the interests of consumers as a party, or otherwise participate for the purpose of representing an interest of consumers, before the commission in any matter properly before the commission relating to a city natural gas distribution operation. The Consumer Advocate is authorized, in addition to any other authority conferred on him, to represent an interest of consumers which is presented to him for his consideration upon petition in writing by a substantial number of persons who make, direct, use or are ultimate recipients of a product or services supplied by a city natural gas distribution operation. The Small Business Advocate shall represent the interest of small business consumers as a party, or otherwise participate for the purpose of representing an interest of small business consumers, before the commission in any matter properly before the commission relating to a city natural gas distribution operation. The Small Business Advocate is authorized, in addition to any other authority conferred on him, to represent an interest of small business consumers which is presented to him for his consideration upon petition in writing by a substantial number of small business consumers who make, direct, use or are ultimate recipients of a product or services supplied by a city natural gas distribution operation.

(j) Commencement of customer choice.--Beginning with the commencement of the first fiscal year of a city natural gas distribution operation after the order approving the restructuring plan of a city natural gas distribution operation becomes effective, all retail gas customers of city natural gas distribution operations shall have the opportunity to purchase natural gas supply services from a natural gas supplier or the city natural gas distribution operation to the extent it offers the service. After that date, the choice of natural gas suppliers shall rest with the retail gas customer.

(k) City instrumentality.--Unless and until the governing body of a city that owns a city natural gas distribution operation otherwise provides:

(1) a city natural gas distribution operation shall be deemed an instrumentality of the city that owns it and independently authorized to establish and maintain pension, welfare and other employee benefit plans for the benefit of those individuals who render services in connection with its operations; and

(2) for the purpose of being a participant in such plans or programs, those individuals who render services exclusively and directly related to the operations of the

city natural gas distribution operation shall be deemed employees of the city natural gas distribution operation as a distinct entity from the city. If any pension plan established and maintained by or on behalf of a city natural gas distribution operation is or becomes subject to the act of December 18, 1984 (P.L.1005, No.205), known as the Municipal Pension Plan Funding Standard and Recovery Act, the provisions of Chapters 5 and 6 of that act (relating to financially distressed municipal pension system recovery programs) shall not require any pension plan of a city natural gas distribution operation to be aggregated with any pension plan established and maintained by the city.

(l) Assisted cities.--Notwithstanding any other provision of this title, no assisted city shall be required to take any action under this title if the effect of the action is to cause a variation in the financial plan of such assisted city approved pursuant to section 209 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class. As used in this subsection, "assisted city" and "variation" shall have the meanings set forth or construed in the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

(m) Corporate action.--A city that owns a city natural gas distribution operation may form a nonprofit corporation or public corporation or municipal authority under the Municipality Authorities Act of 1945 in order to own, manage, operate, lease or carry out natural gas supply and/or distribution services for, in place of or on behalf of the city natural gas distribution operation, provided that no such entity shall provide natural gas supply services outside of the municipal limits of the city unless licensed as a natural gas supplier. Notwithstanding subsections (b) and (c), if a city forms an entity pursuant to this section to provide natural gas supply services, whether inside or outside of the city, the entity shall be deemed an affiliated interest of the city natural gas distribution operation, and Chapter 21 shall apply with respect to that affiliated interest. A municipal authority formed pursuant to the authorization of this section shall not exercise the power of eminent domain outside of the municipal limits of the city in which it is seated. Any entity created under this section or otherwise to own, manage, operate, lease or carry out natural gas supply and/or distribution services for or on behalf of a city or a city natural gas distribution operation shall be deemed a local agency for purposes of 42 Pa.C.S. Ch. 85 (relating to matters affecting government units).

(n) Collections.--Nothing contained in this title shall abrogate the power of a city natural gas distribution operation to collect delinquent receivables through the imposition of liens pursuant to section 3 of the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, or otherwise.

(o) Existing customer contracts.--Notwithstanding the provisions of this chapter, where an agreement for natural gas service, evidenced by a signed writing between a city natural gas distribution operation and any customer, exists prior to the date the commission assumes jurisdiction over a city natural gas distribution operation, the customer shall be bound by its terms and conditions and shall not have the right to receive natural gas service from another source until the expiration of the term of the agreement or otherwise pursuant to the terms and conditions of the agreement.

(p) License application and issuance.--A city natural gas distribution operation may apply for a license pursuant to the procedures under section 2208 (relating to requirements for natural gas suppliers). Subject to the requirement that it qualify for and obtain a natural gas supplier's license under section 2208, a city natural gas distribution operation is authorized to engage in the business of a natural gas supplier outside its municipal or corporate limits.

(q) Commission assessment.--In order to ensure that the commission will be able to carry out its obligations with respect to city natural gas operations, the chief executive officer of a city natural gas distribution operation shall file, no later than March 31, 2000, a sworn statement showing its gross intrastate operating revenues for the immediately preceding fiscal year in the same manner as required by section 510(b) (relating to assessment for regulatory expenses upon public utilities). The commission shall use such revenues in accordance with the procedures set forth in section 510(b) and shall bill, no earlier than July 1, 2000, each city natural gas distribution operation its proportional share of the commission's expenses pursuant to section 510(b)(4). A city natural gas distribution operation shall pay the resulting assessment in accordance with and subject to the provisions contained in section 510.

(r) Senior citizens.--

(1) The commission may approve a program designed to provide discounted rates for natural gas distribution and supply services to senior citizens residing in the service territory of a city natural gas distribution operation provided that such rates and the terms of such program are just and reasonable.

(2) Individual ratepayers who, as of the date the initial tariff of a city natural gas distribution operation becomes effective pursuant to subsection (d), are properly receiving discounted gas rates pursuant to the terms of a program specifically designed to provide assistance to senior citizens contained in the prior tariff shall be entitled to continue to receive such discount under the terms of the prior tariff unless and until the program is modified by ordinance of the governing body of the city, in which event such individuals shall be entitled to receive only the discount provided under the terms of the modified program, as it may be further modified by ordinance from time to time thereafter.

(3) Nothing in this title shall require the commission to approve the continuation of the program identified in paragraph (2) in whole or part for any person other than an individual identified in paragraph (2).

(s) Powers preserved.--Nothing contained in this title shall be construed to abrogate or limit the executive or legislative powers of a city that owns a city natural gas distribution operation to legislate or otherwise determine the powers, functions, budgets, activities and mission of the city natural gas distribution operation or any related entity created under subsection (m), including, but not limited to, the ownership, governance, management or control thereof. Nothing in this title shall limit or prevent the proper city officials and agencies from conducting audits and examinations of the financial affairs of the city natural gas distribution operation in accordance with their official duties.

(t) Proprietary information.--Proprietary information, trade secrets and competitively sensitive information of a city

natural gas distribution operation shall not be public records for purposes of the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, and shall not be subject to mandatory public disclosure. Nothing in this section shall exempt a city natural gas distribution operation from providing information to the commission pursuant to its obligation under sections 501 (relating to general powers), 504 (relating to reports by public utilities), 505 (relating to duty to furnish information to commission; cooperation in valuing property) and 506 (relating to inspection of facilities and records).

References in Text. The act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, referred to in subsec. (t), was repealed by the act of Feb. 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

The act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, referred to in subsec. (e), was repealed by the act of June 19, 2001 (P.L.287, No.22). The subject matter is now contained in Chapter 56 of Title 53 (Municipalities Generally).

Cross References. Section 2212 is referred to in sections 102, 2204, 2211 of this title.

CHAPTER 23
COMMON CARRIERS

Sec.
2301. Operation and distribution of facilities of common carriers.
2302. Transfers and time schedules of common carriers.
2303. Common carrier connections with other lines.
2304. Liability of common carriers for damages to property in transit; bills of lading.
2305. Full crews.

Enactment. Chapter 23 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

Cross References. Chapter 23 is referred to in section 4571 of Title 75 (Vehicles).

§ 2301. Operation and distribution of facilities of common carriers.

Every common carrier shall furnish a reasonably sufficient number of safe facilities, and run and operate the same with such motive power as may reasonably be required, in the transportation of all such passengers or property as may seek, or be offered to it, for such transportation, and shall operate its facilities with sufficient frequency, at such reasonable and proper times, and to and from such stations or points, as the commission, having regard to the accommodation, convenience, and safety of the public, may require; and, when required by the commission, shall change the time schedule for the operation of its facilities, and, generally, shall make any other arrangements and improvements in its service which the commission may require. If, at any particular time, a common carrier may not have sufficient facilities to meet the requirements for the transportation of property, then it shall lawfully distribute all available facilities among the several applicants therefor without discrimination between shippers, localities, or competitive or noncompetitive points, in accordance with such regulations as the commission may prescribe. Such regulations, in the case of common carriers

also engaged in interstate commerce, shall conform so far as practicable to those prescribed by any Federal regulatory body on the subject. Preference may always be given in the supply of facilities for transportation of fuel, livestock, or perishable matter.

§ 2302. Transfers and time schedules of common carriers.

Whenever the commission shall, after hearing had upon its own motion or upon complaint, deem it necessary or proper for the accommodation, convenience, and safety of the public in the transportation of passengers, every common carrier shall transfer such passengers to or from another part of the system of such common carrier and, to this end, shall make proper and convenient arrangement or adjustment of the time schedules of such common carrier, and shall also make such proper and convenient arrangement or adjustment of the time schedules of such common carrier with those of like adjustment of the time schedules of such common carrier with those of like, contiguous, or connecting common carriers, as the commission shall deem necessary or proper for the accommodation, convenience, and safety of the public.

§ 2303. Common carrier connections with other lines.

(a) General rule.--Every common carrier shall construct and maintain, whenever the commission may, after hearing had upon its own motion or upon complaint, require the same, such switch or other connections with or between the lines of a like common carrier, where the same is reasonably practical, to form a continuous line of transportation, and to cause the transportation of passengers or property between points within this Commonwealth to be without unreasonable interruption or delay, and shall establish through routes and service therein, and joint rates applicable thereto, and, where practicable, shall transport passengers or property over the same without transfer from the originating facilities. In case of failure of the common carriers concerned to agree among themselves upon the division of the cost of construction, maintenance, and operation of the connections thus provided for, or the allowance to be made for the interchange of service, the commission shall ascertain and, by order, prescribe and fix the equitable and just apportionment and division of the same.

(b) Limitation.--Every common carrier and motor carrier is hereby prohibited from interchanging, receiving or delivering, with, from or to any common carrier by motor vehicle which does not have in force a certificate or permit authorizing it to transport property within the jurisdiction of this part.

§ 2304. Liability of common carriers for damages to property in transit; bills of lading.

(a) General rule.--Every common carrier that receives property for transportation between points within this Commonwealth shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it, or any other common carrier to which such property may be delivered, or over whose line such property may be transported. No contract, receipt, rule or regulation shall exempt such common carrier from the liability hereby imposed. The commission may, by regulation or order, authorize or require any common carrier to establish and maintain rates related to the value of shipments declared in writing by the shipper, or agreed upon in writing as the release value of such shipments; such declaration or agreement to have no effect other than to limit liability and recovery to an amount not exceeding the value so

declared or released. Any tariff filed pursuant to such regulation or order shall specifically refer thereto.

(b) Rights of holder and common carrier.--This section does not deprive any lawful holder of such receipt or bill of lading of any remedy or right of action which such holder has under existing laws. Any common carrier issuing such receipt or bill of lading shall, in the event of a recovery of a judgment against, or of a satisfaction made by, such common carrier for such loss or damage, be entitled to recover from the common carrier on whose line the loss or damage shall have been sustained, an amount not in excess of the loss or damage to such property which the lawful holder of such bill of lading or receipt would otherwise have been entitled to recover against such last mentioned common carrier, and not in excess of the amount actually paid to the holder of such receipt or bill of lading.

§ 2305. Full crews.

After reasonable notice and hearing had upon its own motion, or upon complaint, the commission may, by order, require any common carrier to employ such number of men upon any of its facilities as, in the judgment of the commission, is requisite for the safe and efficient operation of such facilities.

CHAPTER 24
MOTOR CARRIER REGULATIONS

Sec.
2401. Regulation of taxis and limousines.

Enactment. Chapter 24 was added November 4, 2016, P.L.1222, No.164, effective immediately.

Prior Provisions. Former Chapter 24, which related to taxicabs in first class cities, was added April 4, 1990, P.L.93, No.21, and repealed July 16, 2004, P.L.758, No.94, effective March 12, 2005. The subject matter is now contained in Chapter 57 of Title 53 (Municipalities Generally).

§ 2401. Regulation of taxis and limousines.

The temporary regulations promulgated under section 1602-M of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, shall expire upon the promulgation of final-form regulations or two years following the effective date of this section, whichever is later.

CHAPTER 25
CONTRACT CARRIER BY MOTOR VEHICLE AND BROKER

Sec.
2501. Declaration of policy and definitions.
2502. Regulation and classification of contract carrier and broker.
2503. Permits required of contract carriers.
2504. Dual operation by motor carriers.
2505. Licenses and financial responsibility required of brokers.
2506. Copies of contracts to be filed with commission; charges and changes therein.
2507. Minimum rates fixed and practices prescribed on complaint.
2508. Accounts, records and reports.

2509. Temporary permits and licenses.

Enactment. Chapter 25 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

Cross References. Chapter 25 is referred to in section 4571 of Title 75 (Vehicles).

§ 2501. Declaration of policy and definitions.

(a) Declaration of policy.--It is hereby declared to be the policy of the General Assembly to regulate in this part the service of common carriers by motor vehicle and forwarders in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in such service, and among such carriers and forwarders in the public interest; to promote safe, adequate, economical, and efficient service by common carriers by motor vehicle and forwarders, and just and reasonable rates therefor, without unjust discrimination, and unfair or destructive practices; to improve the relations between, and coordinate the service and regulation of, common carriers by motor vehicle, forwarders, and other carriers; to develop and preserve a safe highway transportation system properly adapted to the needs of the commerce of this Commonwealth and insure its availability between all points of production and markets of this Commonwealth. It is hereby found as a fact, after due investigation and deliberation, that the service of common carriers by motor vehicle, forwarders, contract carriers by motor vehicle, and brokers, including the procurement and provision of motor vehicles and other facilities for the safe transportation of passengers or property over the highways, are so closely interwoven and interdependent, and so directly affect each other, that in order effectively to regulate such common carriers by motor vehicle and forwarders, and to provide a proper and safe highway transportation system in the public interest, it is necessary to regulate the service of such contract carriers by motor vehicle and brokers, including the procurement and provision of motor vehicles and other facilities for the safe transportation of passengers or property over the highways, in the manner set forth in this chapter.

(b) Definitions.--The following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"**Broker.**" Any person or corporation not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier. The term does not include a transportation network company or a transportation network company driver.

"Contract carrier by motor vehicle."

(1) The term "contract carrier by motor vehicle" includes:

(i) Any person or corporation who or which provides or furnishes transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle for

compensation, whether or not the owner or operator of such motor vehicle, or who or which provides or furnishes, with or without drivers, any motor vehicle for such transportation, or for use in such transportation, other than as a common carrier by motor vehicle.

(ii) Any person or corporation that holds itself out to provide or furnish transportation of household property between residential dwellings within this Commonwealth by motor vehicle for compensation, owns or operates the motor vehicle and provides or furnishes a driver of the motor vehicle with the transportation or use of the transportation.

(2) The term "contract carrier by motor vehicle" does not include:

(i) A lessor under a lease given on a bona fide sale of a motor vehicle where the lessor retains or assumes no responsibility for maintenance, supervision or control of the motor vehicle so sold.

(ii) Any bona fide agricultural cooperative association transporting property exclusively for the members of such association on a nonprofit basis, or any independent contractor hauling exclusively for such association.

(iii) Any owner or operator of a farm transporting agricultural products from or farm supplies to such farm, or any independent contractor hauling agricultural products or farm supplies, exclusively, for one or more owners or operators of farms.

(iv) Transportation of school children for school purposes or to and from school-related activities whether as participants or spectators, with their chaperones, or between their homes and Sunday school in any motor vehicle owned by the school district, private school or parochial school, or the transportation of school children between their homes and school or to and from school-related activities whether as participants or spectators, with their chaperones, if the person performing the school-related transportation has a contract for the transportation of school children between their homes and school, with the private or parochial school, with the school district or jointure in which the school is located, or with a school district that is a member of a jointure in which the school is located if the jointure has no contracts with other persons for the transportation of students between their homes and school, and if the person maintains a copy of all contracts in the vehicle at all times, or children between their homes and Sunday school in any motor vehicle operated under contract with the school district, private school or parochial school. Each school district shall adopt regulations regarding the number of chaperones to accompany students in connection with school-related activities.

(v) Any person or corporation who or which uses, or furnishes for use, dump trucks for the transportation of ashes, rubbish, excavated or road construction materials.

(vi) Transportation of voting machines to and from polling places by any person or corporation for or on behalf of any political subdivision of this Commonwealth for use in any primary, general or special election.

(vii) Transportation of pulpwood, chemical wood, saw logs or veneer logs from woodlots.

(viii) Transportation by towing of wrecked or disabled motor vehicles.

(ix) Any person or corporation who or which furnishes transportation for any injured, ill or dead person.

(x) A transportation network company or a transportation network company driver.

(xi) A motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely packed, loaded, unloaded or unpacked by an individual other than an employee or agent of the motor carrier.

(June 30, 1988, P.L.481, No.81, eff. 60 days; Nov. 4, 2016, P.L.1222, No.164, eff. imd.; Dec. 22, 2017, P.L.1244, No.77, eff. 60 days)

2017 Amendment. Act 77 amended subsec. (b).

Cross References. Section 2501 is referred to in sections 102, 2503, 2505, 2507, 3310 of this title; section 8401 of Title 74 (Transportation).

§ 2502. Regulation and classification of contract carrier and broker.

(a) Regulation.--The commission shall regulate:

(1) Contract carriers by motor vehicle, and to that end the commission may prescribe minimum rates which are just and reasonable, and establish requirements with respect to uniform systems of accounts, records, reports, preservation of records, safety of service and equipment and insurance.

(2) Brokers, and to that end the commission may prescribe requirements with respect to licensing, financial responsibility, accounts, reports, records, services and practices of any such brokers.

(b) Classification.--The commission may from time to time establish such classifications of contract carriers by motor vehicle, or brokers, as the special nature of the service of such carriers or brokers shall require and as deemed necessary or desirable in the public interest.

§ 2503. Permits required of contract carriers.

(a) General rule.--No person or corporation shall render service as a contract carrier by motor vehicle unless there is in force with respect to such carrier a permit issued by the commission, authorizing such person or corporation to engage in such business. The application for such permit shall be determined by the commission in accordance with the provisions of subsection (b), except as set forth in subsection (d).

(b) Application and issuance.--Every application for such permit shall be made to the commission in writing, be verified by oath or affirmation, and shall be in such form and contain such information as the commission may require by its regulations. A permit shall be issued by the commission to any qualified applicant therefor authorizing in whole or in part the service covered by the application, if it appears from the application, or from any hearing held thereon, that the applicant is fit, willing and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this chapter and the lawful orders or regulations of the commission thereunder, and that the proposed service to the extent authorized by the permit will be consistent with the public interest and the policy declared in

section 2501 (relating to declaration of policy and definitions); otherwise such application shall be denied.

(c) Special permit provisions.--The commission shall specify in the permit the business of the contract carrier by motor vehicle covered thereby, and the route and area required in serving the customers in such business, and shall attach to it, at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, flexibility and limitations consistent with the character of the holder as are necessary to carry out, with respect to the service of such carrier, the requirements of this part.

(d) Armored vehicles.--A contract carrier permit to provide the transportation of property of unusual value, including money and securities, in armored vehicles shall be granted by order of the commission upon application. Such carriers must conform to the rules and regulations of the commission.
(July 6, 1984, P.L.602, No.123, eff. imd.)

1984 Amendment. Act 123 amended subsec. (a) and added subsec. (d).

§ 2504. Dual operation by motor carriers.

No person or corporation shall at the same time hold a certificate of public convenience as a common carrier by motor vehicle and a permit as a contract carrier by motor vehicle, unless for good cause shown, the commission shall find that such certificate and permit may be held consistently with the public interest.

§ 2505. Licenses and financial responsibility required of brokers.

(a) General rule.--No person or corporation shall engage in the business of a broker in this Commonwealth unless such person holds a brokerage license issued by the commission. No such person or corporation, by virtue of a brokerage license, shall render service as a motor carrier unless he holds a certificate of public convenience or permit, as the case may be. It shall be unlawful for any broker to employ any motor carrier who or which is not the lawful holder of an effective certificate of public convenience or permit.

(b) License application and issuance.--Every application for a brokerage license shall be made to the commission in writing, be verified by oath or affirmation, and shall be in such form and contain such information as the commission may, by its regulations, require. A brokerage license shall be issued to any qualified applicant therefor, authorizing the whole or any part of the service covered by the application, if it is found that the applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this part and the lawful orders and regulations of the commission thereunder, and that the proposed service, to the extent authorized by the license, will be consistent with the public interest and the policy declared in section 2501 (relating to declaration of policy and definitions); otherwise such application shall be denied.

(c) Regulation and bond.--The commission shall prescribe reasonable regulations to be observed by any broker for the protection of passengers or property transported by motor vehicle, and no brokerage license shall be issued or remain in force unless the holder thereof shall have furnished a bond or other security approved by the commission, in such form and amount as will insure the financial responsibility of the broker and the transportation of passengers or property in accordance with contracts, agreements or arrangements therefor.

(d) Transferability of permits and licenses.--Any permit or brokerage license issued under this chapter may be transferred pursuant to such regulations as the commission may prescribe.

§ 2506. Copies of contracts to be filed with commission; charges and changes therein.

(a) General rule.--It shall be the duty of every contract carrier by motor vehicle to reduce to writing and file with the commission all contracts, or copies thereof, pertaining to the service of such carrier, and such schedules or other information pertaining to the rates of such carrier, in such form and detail, and at such times, as the commission may require. No such contract carrier shall engage in the transportation of passengers or property, unless the minimum charges for such transportation by such carrier have been filed with the commission, or copies of all contracts reduced to writing and filed with the commission. No reduction shall be made in any charge either directly or by means of any change in any rule, regulation or practice affecting such charge, except after 60 days notice of the proposed change filed in such form and manner as the commission may by regulation prescribe, but the commission may, in its discretion, allow such change upon less notice. Such notice shall plainly state the change proposed to be made and the time when such change will become effective. No such carrier shall demand, charge, or collect a less compensation for such transportation than the charges filed in accordance with this section, as affected by any rule, regulation, or practice so filed, or as prescribed by the commission from time to time, and it shall be unlawful for any such carrier, by the furnishing of special service, facilities, or privileges, or by any other device whatsoever, to charge, accept or receive less than the minimum charge so filed or prescribed.

(b) Reduced charges.--Whenever any such contract carrier shall file with the commission any schedule or contract stating a reduced charge for the transportation of passengers or property directly or by means of any rule, regulation or practice, the commission is hereby authorized and empowered, upon complaint, or upon its own motion, at once and if it so orders, without answer or other formal pleading, but upon reasonable notice, to enter upon a hearing concerning the reasonableness and justness of such charge, rule, regulation, or practice; and pending such hearing and decision thereon, the commission, by filing with such schedule or contract, and delivering to the carrier affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such schedule or contract, or defer the use of such charge, rule, regulation or practice for a period of 90 days; and if the proceeding has not been concluded and a final order made within such period, the commission may, from time to time, extend the period of suspension, but not for a longer period in the aggregate than 180 days beyond the time when it would otherwise become effective; and after hearing, whether completed before or after the charge, rule, regulation, or practice becomes effective, the commission may make such order with reference thereto, as would be proper in a proceeding instituted after it had become effective.

§ 2507. Minimum rates fixed and practices prescribed on complaint.

Whenever, after hearing upon complaint or its own motion, the commission finds that any rate of any contract carrier by motor vehicle, or any regulation or practice of any such carrier

affecting such rate for the transportation of passengers or property, contravenes the public policy as set forth in section 2501 (relating to declaration of policy and definitions), the commission may prescribe such minimum rates or such regulations or practices as in its judgment may be just and reasonable to promote the public interest. Such minimum rates or such regulations or practices so prescribed by the commission shall not be inconsistent with the policy declared in section 2501, and the commission shall give due consideration to the cost of the service of such carriers, and to the effect of such minimum rates or such regulations or practices upon the transportation of passengers or property by such carriers, and diversion of the business of any common carrier by motor vehicle to other forms of transportation. All complaints to the commission under this section shall state fully the facts complained of and the reasons for such complaints, and shall be made under oath or affirmation.

§ 2508. Accounts, records and reports.

(a) Reports.--The commission is hereby authorized to require annual, periodical, or special reports from all contract carriers by motor vehicle and brokers; to prescribe the manner and form in which such reports shall be made; and to require from such carriers and brokers, specific answers to all questions upon which the commission may deem information to be necessary. Such reports shall be under oath or affirmation whenever the commission so requires.

(b) Form of accounts and records.--The commission may prescribe the forms of any and all accounts, records, and memoranda, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, to be kept by contract carriers by motor vehicle, and brokers, and the length of time such accounts, records, and memoranda shall be preserved; and whenever the commission shall so prescribe, it shall be the duty of every contract carrier by motor vehicle, and broker, affected to comply therewith. In every case of a contract carrier by motor vehicle, or broker, subject to the jurisdiction of any Federal regulatory body, the systems of accounts, records, and memoranda prescribed by the commission shall conform, so far as practicable, to those prescribed by such regulatory body.

§ 2509. Temporary permits and licenses.

The commission, under such regulations as it shall prescribe, may, without hearing, in proper cases, consider and approve applications for permits and licenses, and in emergencies grant temporary permits and licenses under this chapter, pending action on permanent permits or licenses; but no application shall be denied without right of hearing thereon being tendered the applicant.

CHAPTER 26
TRANSPORTATION NETWORK SERVICE

Sec.

2601. Definitions.
2602. Exclusions.
2603. Applicability of certain laws and prohibition.
2603.1. Financial responsibility requirements.
2603.2. Disclosures.
2604. Licenses and regulations.
2604.1. Licensure requirements.
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2604.3. Service standards.
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2605. Transportation network company drivers.
2606. Personal vehicle requirements.
2607. Rates and forms of compensation.
2608. Nondisclosure of passenger information.
2609. Fines and penalties.
2610. Commission costs.

Enactment. Chapter 26 was added November 4, 2016, P.L.1222, No.164, effective immediately.

Cross References. Chapter 26 is referred to in sections 8508, 8509 of Title 75 (Vehicles).

§ 2601. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"License." Proof of the commission's approval authorizing a transportation network company to operate a transportation network service in this Commonwealth in accordance with this chapter. The term does not include a certificate of public convenience as described under Chapter 11 (relating to certificates of public convenience).

§ 2602. Exclusions.

(a) Ridesharing.--A transportation network company may not be considered a ridesharing arrangement or ridesharing operator under the act of December 14, 1982 (P.L.1211, No.279), entitled "An act providing for ridesharing arrangements and providing that certain laws shall be inapplicable to ridesharing arrangements."

(b) Other sources.--A transportation network company may not be considered a company or service that connects an individual through a digital network for the purpose of transportation to a common destination when the transportation service does not include the services of a driver or where a driver is compensated only for actual expenses.

§ 2603. Applicability of certain laws and prohibition.

(a) Cities of the first class.--The provisions of this chapter shall not apply to transportation network companies, transportation network company drivers or transportation network services originating within a city of the first class.

(b) Motor carrier laws.--Except as otherwise provided under this chapter, the following laws and regulations of this Commonwealth may not apply to a transportation network company or transportation network company driver:

(1) This title, except that the commission may regulate transportation network companies under Chapters 3 (relating to Public Utility Commission), 5 (relating to powers and duties), 7 (relating to procedure on complaints), 15 (relating to service and facilities) and 33 (relating to violations and penalties) and this chapter. If a subject is regulated under this chapter in addition to another chapter under this paragraph, this chapter shall apply.

(2) 53 Pa.C.S. (relating to municipalities generally).

(3) Laws and regulations containing insurance requirements for motor carriers, except as provided in section 2604.1(b)(9) (relating to licensure requirements).

(4) Laws and regulations imposing a greater standard of care on motor carriers than that imposed on other drivers or owners of motor vehicles.

(5) Laws and regulations imposing special equipment requirements and accident reporting requirements on motor carriers.

(c) Municipal licenses and taxes.--Except as otherwise provided, a municipality may not impose a tax on or require a license for a transportation network company or transportation network service.

§ 2603.1. Financial responsibility requirements.

(a) Requirements.--

(1) Upon the effective date of this section, a transportation network company driver or transportation network company on the driver's behalf shall maintain primary automobile insurance that recognizes that the driver is a transportation network company driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver when:

(i) the driver is logged on to the digital network; and

(ii) the driver is engaged in a prearranged ride.

(2) Unless otherwise required by order or regulation of the commission, the following automobile insurance requirements shall apply to the transportation network company driver or the transportation network company on the driver's behalf while a participating transportation network company driver is logged on to the digital network and is available to receive transportation requests but is not engaged in a prearranged ride:

(i) Primary automobile liability insurance in the amount of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident and $25,000 for property damage.

(ii) First-party medical benefits, including $25,000 for pedestrians and $5,000 for a driver.

(iii) The coverage requirements may be satisfied by any of the following:

(A) automobile insurance maintained by the transportation network company driver;

(B) automobile insurance maintained by the transportation network company; or

(C) any combination of clauses (A) and (B).

(3) Unless otherwise required by order or regulation of the commission, the following automobile insurance requirements shall apply while a transportation network company driver is engaged in a prearranged ride:

(i) Primary automobile liability insurance that provides at least $500,000 for death, bodily injury and property damage.

(ii) First-party medical benefits as required by 75 Pa.C.S. § 1711 (relating to required benefits) on a per-incident basis for incidents involving a transportation network company driver's operation of a personal vehicle while engaged in a prearranged ride, including $25,000 for passengers and pedestrians and $5,000 for a driver.

(iii) The coverage requirements may be satisfied by any of the following:

(A) automobile insurance maintained by the transportation network company driver;

(B) automobile insurance maintained by the transportation network company; or

(C) any combination of clauses (A) and (B).

(3.1) (Reserved).

(3.2) Notwithstanding paragraphs (1), (2) and (3), insurance coverage required for dual motor carrier drivers that are using personal vehicles to provide transportation network services shall be the same as the insurance coverage required for taxis. The commission may review and increase the insurance coverage requirements for dual motor carriers and taxis as necessary in the public interest.

(4) If insurance maintained by a driver under paragraph (2) or (3) has lapsed or does not provide the required coverage, insurance maintained by a transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim, and the transportation network company's insurer shall have the duty to defend such claim.

(5) Coverage under an automobile insurance policy maintained under this section shall be primary and not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(6) The automobile insurance required for a transportation network company under paragraph (4) shall be evidenced by the filing of a certificate of insurance. The certificate of insurance must be filed, with the commission, by the insurance carrier and must be in the form specified by the commission by order or regulation.

(7) Insurance required under this subsection shall be placed with an insurer that has obtained a certificate of authority under section 208 of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, or a surplus lines insurer eligible under section 1605 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

(8) Insurance satisfying the requirements of this section shall be deemed to satisfy the financial responsibility requirement for a motor vehicle under 75 Pa.C.S. Ch. 17 (relating to financial responsibility).

(9) A transportation network company driver shall carry proof of coverage satisfying paragraphs (2) and (3) when the driver uses a vehicle in connection with a digital network. In the event of an accident, a transportation network company driver shall provide the proof of insurance coverage to the directly interested parties, automobile insurers and investigating police officers under 75 Pa.C.S. § 1786 (relating to required financial responsibility). A transportation network company driver shall also disclose to directly interested parties, automobile insurers and investigating police officers whether the driver was logged on to the digital network or on a prearranged ride at the time of an accident.

(10) It shall be the sole and exclusive responsibility of a transportation network company to ensure that automobile insurance coverage required to be carried by the transportation network company driver under this section is in force prior to permitting a transportation network company driver to provide transportation network service.

(b) Automobile insurance provisions.--

(1) Insurers that write automobile insurance in this Commonwealth may exclude any and all coverage afforded under the policy issued to an owner or operator of a personal vehicle for any loss or injury that occurs while a driver is logged on to a digital network or while a driver provides a prearranged ride. The right to exclude all coverage may

apply to any coverage included in an automobile insurance policy, including, but not limited to:

(i) liability coverage for bodily injury and property damage;

(ii) uninsured and underinsured motorist coverage;

(iii) medical payments coverage;

(iv) comprehensive physical damage coverage;

(v) collision physical damage coverage; and

(vi) first-party medical benefits required under subsection (a)(2)(ii).

(2) Notwithstanding any requirement under 75 Pa.C.S. Ch. 17, exclusions under paragraph (1) shall apply. Nothing in this section shall require that a personal automobile insurance policy provide coverage while the driver is logged on to a digital network, while the driver is engaged in a prearranged ride or while the driver otherwise uses a vehicle to transport passengers for compensation. Nothing in this subsection shall be deemed to preclude an insurer from providing coverage for the personal vehicle if the insurer chooses to do so by contract or endorsement.

(3) Automobile insurers that exclude the coverage described in paragraph (1) shall have no duty to defend or indemnify any claim expressly excluded under the coverage. Nothing in this section shall be deemed to invalidate or limit an exclusion contained in a personal insurance policy, including any policy in use or approved for use in this Commonwealth prior to the enactment of this section, that excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public.

(4) An automobile insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of subsection (a) at the time of loss.

(5) In a claims coverage investigation, transportation network companies and any insurer potentially providing coverage under subsection (a) shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the transportation network company driver, if applicable, including the precise times that a transportation network company driver logged on and logged off of the digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident and disclose a clear description of the coverage, exclusions and limits provided under any automobile insurance maintained under subsection (a).

(c) Waiver of liability prohibited.--

(1) A transportation network company or transportation network company driver may not request or require a passenger to sign a waiver of potential liability for a loss of personal property or injury.

(2) A transportation network company may not request or require a transportation network company driver to sign a waiver of potential liability for a loss of personal property or injury.

(3) For the purposes of this subsection, signing a waiver shall include requiring a prospective customer to agree to the terms and conditions required to download a digital application as a condition for obtaining transportation network services.

Cross References. Section 2603.1 is referred to in sections 2603.2, 2604.1, 2605 of this title.

§ 2603.2. Disclosures.

(a) Requirement.--The disclosures required by this section shall be provided in writing to all transportation network company drivers prior to the designation of an individual as a transportation network company driver. Transportation network companies shall retain written or electronic verification records of the receipt of disclosures required under this section by the transportation network driver.

(b) Insurance and lienholder disclosures.--The transportation network company shall provide the following disclosures:

(1) Insurance coverage, including the types of coverage and the limits for each coverage that the transportation network company provides while the transportation network company driver uses a vehicle in connection with a digital network.

(2) Notice that the terms of the transportation network company driver's own automobile insurance policy might not provide any coverage while the driver is logged on to the digital network and available to receive transportation requests or is engaged in a prearranged ride.

(3) If a transportation network company driver does not have the type of policy required under section 2603.1 (relating to financial responsibility requirements), notice that the transportation network company will provide all required insurance.

(4) The accident protocol required under section 2605(b)(5) (relating to transportation network company drivers).

(5) Notice of lienholder and lessor requirements under section 2604.5 (relating to lienholder and lessor requirements).

(6) Notice that the driver must notify the following:

(i) The driver's auto insurance company or insurance agent that the driver will be using the vehicle to provide services under this chapter.

(ii) The lienholder or lessor that the driver will be using the vehicle to provide services under this chapter.

(iii) If the driver will not be using a vehicle owned and insured by the driver, the disclosures under paragraphs (b)(1), (2) and (3) shall be provided to the policyholder and to the owner of the vehicle.

Cross References. Section 2603.2 is referred to in section 2605 of this title.

§ 2604. Licenses and regulations.

(a) Requirements for transportation network companies.--A transportation network company may not operate in this Commonwealth unless it holds and maintains a license issued by the commission.

(b) Certificate of public convenience.--A license under this chapter shall not act as a certificate of public convenience under Chapter 11 (relating to certificates of public convenience). The commission shall provide for all licensure regulation, policies and orders necessary to regulate transportation network services under this chapter and to enforce the provisions of this chapter, including all of the following:

(1) Rights, privileges and duties of transportation network companies and drivers.

(2) Suspension, revocation or renewal requirements for transportation network companies.

(3) Conditions on a license necessary to ensure compliance with this chapter and the laws of this Commonwealth.

(4) Regulations and orders relating to procedures for customers to file complaints with the commission.

(5) Regulations and orders adopted by the commission relating to accessibility for individuals with mental or physical disabilities.

§ 2604.1. Licensure requirements.

(a) Application.--An application for a license under this chapter must be made to the commission in writing, be verified by oath or affirmation of an officer of the applicant and be in a form and contain information required by the commission, including the following:

(1) Proof that the transportation network company is registered with the Department of State to do business in this Commonwealth.

(2) Proof that the transportation network company maintains a registered agent in this Commonwealth.

(3) Proof that the transportation network company maintains a website that includes the information required under subsection (b)(10).

(4) Proof that the transportation network company has secured the insurance policies required under and otherwise complied with section 2603.1 (relating to financial responsibility requirements) in the form of a certificate of insurance.

(5) A license shall be issued to a transportation network company applicant if the commission determines that the applicant will comply with this chapter and any conditions imposed by the commission and meets all the requirements of subsection (b). The commission may impose conditions that are reasonably related to a licensee's obligations as set forth in this chapter.

(6) Proof that the transportation network company meets all the requirements of subsection (b).

(b) Requirements.--An applicant seeking a license under this section must do all of the following as a condition of receipt and maintenance of a license:

(1) Establish and maintain the following:

(i) An agent for service of process in this Commonwealth.

(ii) Records required under this chapter and make them available for inspection by the commission, at a location within this Commonwealth or electronically, upon request as necessary for the commission to investigate complaints.

(2) Maintain accurate records of each transportation network company driver providing transportation network services and the vehicles used to provide the service for no less than three years or for another period as determined by the commission. Records retained under this paragraph must include:

(i) Proof of valid personal automobile insurance.

(ii) Criminal history records checks.

(iii) Driving history reports.

(iv) Copies of valid driver's licenses for each driver and vehicle registration and proof of vehicle

inspections for all personal vehicles affiliated with the transportation network company.

(v) Records of consumer complaints.

(vi) Records of suspension or deactivation of drivers.

(vii) Records of disclosures required to be provided to drivers under this chapter.

(3) Maintain vehicle records, including the make, model and license plate number of each personal vehicle used by a transportation network company driver to provide transportation network service.

(4) Implement a zero-tolerance policy on the use of drugs or alcohol while a transportation network company driver provides transportation network service. A transportation network company driver who is the subject of a reasonable passenger complaint alleging a violation of the zero-tolerance policy shall be immediately suspended. The suspension shall last until the time the complaint investigation is complete. The following information shall be provided on a transportation network company's publicly accessible Internet website:

(i) Notice of the zero-tolerance policy.

(ii) Procedures to report a complaint about a transportation network company driver with whom the passenger was matched and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the ride.

(5) Prior to permitting a person to act as a transportation network company driver on its digital network, a transportation network company shall do all of the following:

(i) Conduct or have a third party conduct a local and national criminal background check for each driver applicant. The background check shall include a multistate or multijurisdictional criminal records locator or other similar commercial nationwide database with primary source search validation and a review of the United States Department of Justice National Sex Offender Public Website. The transportation network company shall disqualify an applicant convicted of certain crimes in accordance with the following:

(A) An applicant convicted of any of the following within the preceding seven years:

(I) Driving under the influence of drugs or alcohol.

(II) A felony conviction involving theft.

(III) A felony conviction for fraud.

(IV) A felony conviction for a violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(B) An applicant convicted of any of the following within the preceding 10 years:

(I) Use of a motor vehicle to commit a felony.

(II) Burglary or robbery.

(C) An applicant convicted of any of the following at any time:

(I) A sexual offense under 42 Pa.C.S. § 9799.14(c) or (d) (relating to sexual offenses and tier system) or similar offense under the

laws of another jurisdiction or under a former law of this Commonwealth.

(II) A crime of violence as defined in 18 Pa.C.S. § 5702 (relating to definitions).

(III) An act of terror.

(ii) Obtain and review a driving history research report for the person from the Department of Transportation and other relevant sources. A person with more than three moving violations in the three-year period prior to the check or a major violation in the three-year period prior to the check may not be a transportation network company driver.

(iii) One year after engaging a transportation network company driver and every second year thereafter, conduct the criminal background and driving history checks required by this subsection and verify that a transportation network company driver continues to be eligible to be a driver.

(6) (Reserved).

(7) Establish and provide, in writing or electronically, driver training program materials designed to ensure that each driver understands safety and driving requirements while logged on to a digital network or providing a prearranged ride. Driver program materials shall contain information related to providing service to people with disabilities. Drivers shall be required to acknowledge receipt of program materials.

(8) Display, on the digital network, a picture of the transportation network company driver and a description of the individual's vehicle used in providing transportation network service, including the make, model and license plate number of the vehicle.

(9) Maintain insurance as required under section 2603.1 as memorialized by the filing of the appropriate certificates of insurance with the commission.

(10) Establish and maintain a publicly accessible Internet website that provides:

(i) At least two of the following:

(A) A customer service telephone number.

(B) An e-mail address.

(C) A hyperlink.

(D) Any other communication method that allows a person to communicate directly with the customer service department of a transportation network company.

(ii) The telephone number to file a consumer complaint with the commission and the commission's Internet website address.

(11) Comply with the commission's regulations and orders regarding the reporting of motor carrier accidents for any accidents involving a personal vehicle. Accident reports shall be maintained for a period of three years from the date of the accident.

(12) Maintain verifiable records regarding its operations and obligations under this chapter for a minimum period of three years or as may be required by the commission by regulation or order.

(13) Provide written notice to a driver of the scope and levels of insurance coverage required under section 2603.1.

(14) Provide to transportation network company drivers a placard or decal for the vehicle that has been approved

by the commission. The decal shall be displayed at any time the driver is logged on to the digital network or is providing a prearranged ride under this chapter.

Cross References. Section 2604.1 is referred to in sections 2603, 2605, 2609 of this title.

§ 2604.2. Records.

The commission shall be authorized to inspect, audit and investigate any books, records and facilities of the transportation network company and any affiliated entities as necessary to ensure compliance with this chapter. Documents or records marked as confidential will be treated according to the commission's practices and regulations regarding confidential and trade secret information. Information disclosed to the commission under this chapter shall be exempt from disclosure to a third person, including through a request submitted under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

§ 2604.3. Service standards.

(a) General.--Where transportation network services are offered, a transportation network company must take reasonable steps to ensure that the service provided by each transportation network company driver who utilizes the digital network is safe, reasonable and adequate. A transportation network company may not unlawfully discriminate against a prospective passenger or unlawfully refuse to provide service to a certain class of passengers or certain localities.

(b) Disabled individuals.--Each licensed transportation network company must:

(1) Adopt a policy of nondiscrimination regarding individuals with disabilities in accordance with this subsection. The following information shall be provided on the transportation network company's publicly accessible Internet website:

(i) Notice of the nondiscrimination policy.

(ii) Procedures to report a complaint to the commission about a transportation network company driver's alleged violation of this subsection.

(2) Within one year of the effective date of this section, the digital network used by a transportation network company to connect drivers and passengers must be accessible to consumers who are blind, visually impaired, deaf and hard of hearing.

(3) A transportation network company driver must transport a service animal when accompanying a passenger with a disability for no additional charge unless the transportation network company driver has a documented medical allergy on file with the transportation network company. Service animals shall be permitted to ride in the passenger compartment of a vehicle. It shall be a violation of this chapter for a transportation network company driver to place a service animal in any part of a vehicle other than the passenger compartment.

(4) A transportation network company may not impose additional charges for service to an individual with a disability.

(5) A transportation network company shall, in an area where wheelchair-accessible service is available, provide passengers with disabilities requiring the use of mobility equipment an opportunity to indicate on its digital network whether they require a wheelchair-accessible vehicle. A transportation network company or an affiliated entity must,

if wheelchair-accessible service is available, facilitate transportation service for passengers who require a wheelchair-accessible vehicle by doing one of the following:

(i) connecting the passenger to an available transportation network company driver or other driver operating a wheelchair-accessible vehicle; or

(ii) if connection under subparagraph (i) is not available, directing the passenger to an alternative provider with the legal authority and ability to dispatch a wheelchair-accessible vehicle to the passenger.

§ 2604.4. Dual motor carrier authority.

A dual motor carrier that provides call or demand service under a certificate of public convenience and that has obtained a license from the commission to provide transportation network service may dispatch either a call or demand vehicle or a personal vehicle driven by a dual motor carrier driver to provide service in its authorized service territory. The certificate holder shall ensure, in the same manner used for call or demand fleet vehicles, that personal vehicles used to provide service under this section are in continuous compliance with Department of Transportation inspection standards and the commission's vehicle standards.

§ 2604.5. Lienholder and lessor requirements.

(a) Acknowledgment of lien and lease obligations.--

(1) A transportation network company shall disclose the following prominently and with a separate acknowledgment of acceptance to all prospective transportation network company drivers in its written terms of service for drivers. The disclosure shall be provided before a driver is allowed to offer prearranged rides on a transportation network company's digital network:

> (Name of transportation network company) will provide you with a notice explaining whether it provides insurance to repair your personal vehicle if you have an accident when using your vehicle in a transportation network. If (name of transportation network company) does not provide coverage for damage to your car, your personal automobile insurance policy might not provide the coverage and you may be required to pay all costs to repair the vehicle yourself in the event of an accident unless you purchase extra insurance. If you financed the purchase of the vehicle or lease the vehicle, you must notify your lender or lessor that you will use your vehicle to provide transportation network service. Your lender or lessor may require you to purchase extra insurance coverage or, if you do not do so, may purchase insurance on your behalf and bill you for the costs of the policy. The failure to notify a lender or lessor or to have insurance to cover the cost of damage to the vehicle may cause your vehicle to be repossessed or your lease to be revoked. If you have questions about this notice, you should contact your insurance agent, your lender or lessor or the Pennsylvania Insurance Department.

(2) A transportation network company shall provide the notice required under paragraph (1) upon any subsequent material reduction in insurance coverage by the company. For purposes of this paragraph, "material reduction in insurance coverage" shall not include the replacement of insurance coverage with substantially similar insurance coverage from a different insurer by a transportation network company.

(3) A transportation network company shall notify drivers in writing whether it is providing comprehensive and collision coverage during service.

(b) Payment of damage claims.--If a transportation network company's insurer makes a payment for a claim covered under comprehensive or collision coverage, the transportation network company shall cause its insurer to issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder or lessor.

(c) Direct placement of insurance.--If a driver of a personal vehicle used in transportation network service that is subject to a lien or lease fails to maintain comprehensive or collision damage coverage required by the lienholder or lessor, or to show evidence to the lienholder or lessor of the coverage upon reasonable request, the lienholder or lessor may obtain the coverage at the expense of the driver without prior notice to the driver.

Cross References. Section 2604.5 is referred to in section 2603.2 of this title.

§ 2605. Transportation network company drivers.

(a) Separate licenses prohibited.--A separate license may not be required for a transportation network company driver to provide transportation network service by an approved transportation network company. Except as otherwise specifically provided, a transportation network company driver shall not be subject to other chapters in this title or 53 Pa.C.S. (relating to municipalities generally).

(b) Requirements for transportation network company drivers.--A transportation network company driver must:

(1) Be at least 21 years of age.

(2) Satisfy the criminal history record check and driving history record check requirements of section 2604.1 (relating to licensure requirements).

(3) Possess a valid driver's license and proof of the driver's motor vehicle insurance.

(4) Carry proof, either a paper copy or electronic copy, of the transportation network company's liability insurance required under section 2603.1(b) (relating to financial responsibility requirements) for any personal vehicle used by the driver.

(5) In the case of an accident:

(i) Provide the insurance coverage information required under paragraph (4) to any other party involved in the accident and, if applicable, to the law enforcement officer who responds to the scene of the accident.

(ii) Report the accident to the transportation network company.

(iii) Report the accident to the following:

(A) the transportation network company driver's personal automobile insurer if required by the driver's policy;

(B) the owner of the automobile if the driver is not the owner of the automobile;

(C) the insurer providing insurance required under section 2603.1; and

(D) the holder of the insurance policy covering the automobile if the driver is not the holder of the policy.

(6) Notify the transportation network company immediately upon conviction for any offense listed under

section 2604.1(b)(5) which would disqualify the transportation network company driver from being eligible to provide transportation network service.

(7) Only accept a ride arranged through a digital network. Transportation network company drivers may not solicit or accept street hails or telephone calls requesting transportation network service.

(7.1) (i) Not operate or cause to be operated a personal vehicle affiliated with the transportation network company in any area where the operation of the vehicle is prohibited by law, including any area at a commercial service airport.

(ii) Nothing in this paragraph shall be construed to limit the ability of a municipality or other governing authority that owns or operates a commercial service airport from adopting contracts or regulations relating to the duties and responsibilities of a transportation network company, transportation network company driver or transportation network service on airport property.

(iii) For purposes of this paragraph, the term "commercial service airport" shall have the same meaning as provided under 49 U.S.C. § 47102 (relating to definitions).

(8) Display a commission-approved removable placard or decal provided by the transportation network company on the automobile at any time the driver is logged on to the digital network or is offering or providing a prearranged ride under this chapter. Placards or other markings must be clearly distinguishable to identify that a particular vehicle is associated with a particular transportation network company and be sufficiently large and color contrasted to be readable during daylight hours at a distance of at least 50 feet.

(9) Not smoke while engaging in a prearranged ride.

(c) Driver verification.--

(1) A driver shall provide affirmation to the transportation network company of the following:

(i) That the driver is the owner or authorized user of the vehicle and has received all of the disclosures required by section 2603.2 (relating to disclosures).

(ii) That the driver has notified the driver's personal insurance company or policyholder that the driver will be using the vehicle to provide transportation network services to the public for compensation.

(iii) If the driver will not be using a vehicle owned by the driver, that the driver has notified the owner of the vehicle.

(iv) That the driver has received notification of all requirements under subsection (b) and has complied with those requirements.

(2) The affirmation required under paragraph (1) may be contained in a written or an electronic form and shall include the driver's electronic or written signature.

Cross References. Section 2605 is referred to in sections 2603.2, 2606 of this title.

§ 2606. Personal vehicle requirements.

(a) Authorized vehicles.--Personal vehicles used by a transportation network company driver to provide transportation network service may be a coupe, sedan or other light-duty vehicle, including a van, minivan, sport utility vehicle, hatchback, convertible or pickup truck that is equipped and

licensed for use on a public highway. At no time may a vehicle used to provide transportation network service transport a greater number of individuals, including the driver, than the number of seat belts factory installed in the vehicle.

(b) Vehicle requirements.--No vehicle being used to provide transportation network service may be older than 10 model years old or 12 model years if the vehicle is an alternative fuel vehicle as defined in section 2 of the act of November 29, 2004 (P.L.1376, No.178), known as the Alternative Fuels Incentive Act, and has been driven no more than 350,000 miles. The commission may adjust the requirements of this subsection by regulation or order. All vehicles shall be marked as required by the commission under section 2605(b)(8) (relating to transportation network company drivers).

(c) Inspections required.--

(1) An annual certificate of inspection under 75 Pa.C.S. Ch. 47 (relating to inspection of vehicles) must be obtained from an inspection station approved by the Department of Transportation under 67 Pa. Code Ch. 175 (relating to vehicle equipment and inspection) for each personal vehicle. A valid certificate of inspection shall be maintained in all vehicles. For a vehicle registered outside this Commonwealth, inspection must be conducted by a facility approved by the Department of Transportation.

(2) The transportation network company shall ensure that its drivers' vehicles remain in continuous compliance with this section and the commission's vehicle standards and are subject to periodic inspections according to Department of Transportation inspection standards.

(3) A commission officer may inspect a personal vehicle if there is reason to believe that the vehicle is not in compliance with the commission's vehicle standards to ensure compliance with this section.

§ 2607. Rates and forms of compensation.

(a) Passenger receipt.--Upon completion of transportation under this chapter, each transportation network company shall transmit an electronic receipt to the passenger's e-mail address or account on a digital network documenting:

(1) The origination, destination, mileage and time estimated of the trip.

(2) The driver's first name.

(3) The total amount paid, if any.

(b) Tariff and fares.--A transportation network company shall file and maintain with the commission a tariff that sets forth the terms and conditions of service, including the basis for its fares and its policies regarding dynamic pricing. A transportation network company may offer transportation network service at no charge, suggest a donation or charge a fare. If a fare is charged, a transportation network company must disclose the fare calculation method prior to providing an arranged ride.

(c) Estimates.--The transportation network company must provide estimates upon request for the cost of a trip.

(d) Dynamic pricing.--A transportation network company shall provide notice to potential passengers prior to accepting a ride through its digital network any time dynamic pricing is in effect.

(e) Limitation.--When a state of disaster emergency is declared under 35 Pa.C.S. § 7301 (relating to general authority of Governor), a transportation network company that engages in dynamic pricing shall limit the multiplier by which its base rate is multiplied to the next highest multiple below the three

highest multiples set on different days in the 60 days preceding the declaration of emergency. It shall be a violation of the act of October 31, 2006 (P.L.1210, No.133), known as the Price Gouging Act, for a transportation network company to charge a price that exceeds the limits of this subsection during a state of disaster emergency.

(f) Review.--The amount of a donation, charge, fare or other compensation provided or received for transportation network service shall not be subject to review or approval by the commission under Chapter 13 (relating to rates and distribution systems).

§ 2608. Nondisclosure of passenger information.

(a) Prohibition on disclosure.--A transportation network company shall not disclose to a third party any personally identifiable or financial information of a transportation network company passenger unless one of the following applies:

(1) The customer knowingly consents. As used in this paragraph, the term "knowingly consents" means:

(i) The customer is not required to consent to the disclosure of personally identifiable or financial information to a third party in order to use a digital network or receive a prearranged ride.

(ii) The customer consents to disclosure of personally identifiable or financial information in a document that is separate from the transportation network company's terms of service agreement.

(2) The information is disclosed under subpoena, court order or other legal obligation.

(3) The disclosure is to the commission in the context of an investigation regarding a complaint filed with the commission against a transportation network company or a transportation network company driver and the commission treats the information as proprietary and confidential.

(4) The disclosure is required to protect or defend the terms of use of the service or to investigate violations of those terms. In addition to the foregoing, a transportation network company shall be permitted to share a passenger's name or telephone number with the transportation network company driver providing transportation network company service to the passenger in order to:

(i) facilitate correct identification of the passenger by the transportation network company driver; or

(ii) facilitate communication between the passenger and the transportation network company driver.

(b) Prohibition on sales.--A transportation network company shall not sell the personally identifiable or financial information of a transportation network company passenger. The prohibition under this subsection shall not apply to the sale, merger or acquisition of a transportation network company by another entity.

(c) Definitions.--As used in this section, the term "third party" shall not include vendors of a transportation network company who must access a passenger's personally identifiable or financial information to carry out contracted work on behalf of a transportation network company.

§ 2609. Fines and penalties.

(a) Imposition.--The commission may, after notice and opportunity to be heard, impose civil penalties under section 3301 (relating to civil penalties for violations) and nonmonetary penalties, including license suspensions, revocations and other appropriate remedies for violations of

this chapter and commission regulations and orders. The commission shall adopt a schedule of penalties to be imposed for specific violations, including multiple violations. The schedule shall delineate offenses deemed to be serious and the corresponding penalties.

(b) Violations for operation without commission authority.--A person or entity which, as determined by the commission, operated as a transportation network company prior to the effective date of this section without proper authority from the commission shall be subject to a penalty not to exceed $1,000 per day or a maximum penalty not to exceed $250,000, notwithstanding the number of violations that occurred during the period in which the person or entity operated without authority.

(c) Disqualification.--

(1) The commission may issue an order to a transportation network company requiring disqualification of a driver from being a transportation network company driver if:

(i) during any three-year period the driver commits five or more violations under this title; or

(ii) at any time after the date of enactment of this act, the driver is convicted of any criminal offense described under section 2604.1(b)(5) (relating to licensure requirements).

(2) A commission directive to the transportation network company to disqualify a driver from being a transportation network company driver may occur only after the filing and adjudication of a formal complaint pursuant to Chapter 7 (relating to procedure on complaints) and commission regulations. A transportation network company shall be afforded full due process, including notice and opportunity to be heard.

(3) The commission may adopt regulations to allow for the reinstatement of a driver following an appropriate disqualification period and compliance with any conditions imposed by the commission.

Cross References. Section 2609 is referred to in section 512.1 of this title.

§ 2610. Commission costs.

The program costs for commission implementation and enforcement of this chapter shall be included in the commission's proposed budget and shall be assessed upon transportation network companies in accordance with section 510 (relating to assessment for regulatory expenses upon public utilities). For the purposes of section 510 only, the definition of public utility shall include a transportation network company and, for purposes of assessment only, may be grouped with other utilities furnishing the same kind of service. The transportation network company shall report annually to the commission the gross intrastate receipts derived from all fares charged to customers for the provision of transportation network service, provided under this chapter, regardless of the entity that collects the revenues.

CHAPTER 27
RAILROADS

Sec.

2701. Railroad connections with sidetracks and laterals.

2702. Construction, relocation, suspension and abolition of crossings.
2703. Ejectment in crossing cases.
2704. Compensation for damages occasioned by construction, relocation or abolition of crossings.
2705. Speedometers and speed recorders.
2706. Flag protection.
2707. Inspection of highway crossing safety devices (Expired).
2708. Alternative compliance (Expired).
2709. Disposition of real property by public utility engaged in railroad business.

Enactment. Chapter 27 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

Construction. Section 308(e) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that nothing in Act 18 shall be construed to be grounds for the imposition of responsibility by the Pennsylvania Public Utility Commission for maintenance or costs of any railroad crossing or abandoned railroad crossing under Chapter 27.

§ 2701. Railroad connections with sidetracks and laterals.

(a) General rule.--Every public utility engaged in a railroad business shall, upon application of any owner or operator of any lateral railroad, or any private sidetrack, or of any shipper tendering property for transportation, or of any consignee, construct, maintain, and operate, at a reasonable place and upon reasonable terms, a switch connection with any such lateral railroad or private sidetrack which may be constructed to connect with its railroad, where such connection may be reasonably practicable and can be put in with safety, and will furnish sufficient business to justify the construction and maintenance of the same.

(b) Additional connections and use.--Whenever any lateral line of railroad or private sidetrack has been so connected with a line of any railroad, or whenever any owner of such lateral railroad or private sidetrack has at any time heretofore sold or leased, or shall hereafter sell or lease, such lateral railroad or sidetrack to any public utility engaged in a railroad business, any person or corporation, including a municipal corporation, shall be entitled to connect therewith, or to use the same upon payment to the party incurring the primary expense thereof of a reasonable proportion of the cost of such lateral railroad or private sidetrack, and of the maintenance thereof, which shall be determined, in case of disagreement among the parties, by the commission, after notice to the interested parties, and a hearing. Such connection and use shall be made without unreasonable interference with the use thereof by the party incurring the primary expense of owning or leasing such lateral railroad or sidetrack.

§ 2702. Construction, relocation, suspension and abolition of crossings.

(a) General rule.--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) Acquisition of property and regulation of crossing.--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 Department of Transportation for projects financed entirely by the Commonwealth and 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," in which case the provisions of that statute 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 200 feet of such crossing on both sides and in both directions so as to insure proper visibility by motorists.

(c) Mandatory relocation, alteration, suspension or abolition.--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 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 or an established nonprofit organization with a recreational or conservation purpose.

(d) Procedure for appropriation of property.--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. Unless otherwise recorded, 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 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 or recording by the commission. 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 subsection.

(e) Reactivation.--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) Danger to safety.--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 part.

(g) Suspensions.--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.

(2) (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.

(h) Assignment of crossing responsibilities to certain nonprofit organizations.--

(1) The commission may order the work of abolition of any crossing in whole or in part, including any future obligations, to be performed by a municipal authority created to advance recreation or conservation purposes or a nonprofit organization with a recreation or conservation purpose if:

(i) the municipal authority or nonprofit organization provides adequate security for the work or demonstrates financial responsibility to the satisfaction of the commission; and

(ii) the commission does not order any Commonwealth agency to bear ancillary responsibility for the work of abolition of any crossing, or the cost associated with the work, without the prior written consent of the head of the Commonwealth agency.

(2) In accordance with the provisions of section 2704 (relating to compensation for damages occasioned by construction, relocation or abolition of crossings), the commission may order the municipal authority or nonprofit organization assuming responsibility for the abolition of the crossing to bear all or a portion of the costs associated with the work. This section shall not apply to any proceeding wherein the commission has issued a final order prior to the effective date of its enactment.

(Dec. 3, 1998, P.L.920, No.113, eff. 60 days)

1998 Amendment. Act 113 amended subsec. (c) and added subsec. (h).

Cross References. Section 2702 is referred to in sections 102, 2704 of this title; section 1511 of Title 15 (Corporations and Unincorporated Associations).

§ 2703. Ejectment in crossing cases.

When any real property is appropriated by the commission in connection with a crossing improvement under this part, the commission may direct the removal of all structures within the lines of such appropriation.

Cross References. Section 2703 is referred to in section 102 of this title.

§ 2704. Compensation for damages occasioned by construction, relocation or abolition of crossings.

(a) General rule.--The compensation for damages which the owners of adjacent property taken, injured, or destroyed may sustain in the construction, relocation, alteration, protection, or abolition of any crossing under the provisions of this part, shall, after due notice and hearing, be ascertained and determined by the commission. Such compensation, as well as the cost of construction, relocation, alteration, protection, or abolition of such crossing, and of facilities at or adjacent to such crossing which are used in any kind of public utility service, shall be borne and paid, as provided in this section, by the public utilities, municipal corporations, municipal authority or nonprofit organization authorized under section 2702(h) (relating to construction, relocation, suspension and abolition of crossings) concerned, or by the Commonwealth, in such proper proportions as the commission may, after due notice and hearing, determine, unless such proportions are mutually agreed upon and paid by the interested parties.

(b) Judicial review.--Any party to the proceeding dissatisfied with the determination of the commission may appeal therefrom, as provided by law, and for this purpose is hereby authorized to sue the Commonwealth. The commission may, of its own motion, or upon application of any party in interest, submit to the court of common pleas of the county wherein the property affected is located, the determination of the amount of damages to any property owner due to such condemnation, for which purpose such court shall appoint viewers, from whose award of damages an appeal to said court shall lie on the part of any person or party aggrieved thereby, under the general law applicable to the appointment of viewers, for the ascertainment of damages due to the condemnation of private property for public use.

(c) Payment of compensation.--The amount of damages or compensation determined and awarded to be paid the owners of adjacent property by the Commonwealth shall, in each instance, be paid by the State Treasurer, on a warrant drawn by the State Treasurer, upon the presentation to that officer of a statement setting forth the amount determined to be paid as aforesaid, duly certified by the commission; such payment to be paid out of any funds specifically appropriated for the improvement of the roads or highways of this Commonwealth; and in case of a verdict and judgment thereon for the damages or compensation, recorded by any such adjacent property owners upon appeal, the same shall be paid out of any funds appropriated as aforesaid; and any court of common pleas hearing and determining such appeal is hereby authorized and empowered to issue a writ of mandamus to such commission and the State Treasurer, or either of them, as the case may require, for the payment of such judgment.

(d) Recovery of compensation.--The commission shall have the right to recover, for and on behalf of the Commonwealth, by due process of law, as debts of like amount are now by law recoverable, from the public utility or municipal corporation concerned, in such amounts or proportions against each as may be determined by the commission, as hereinbefore provided in this section, the amount of the damages or compensation awarded to the owners of adjacent property by the commission, or by the court, and the amounts so received shall be paid into the State

Treasury, through the Department of Revenue, to the credit of the Motor License Fund.
(Dec. 3, 1998, P.L.920, No.113, eff. 60 days)

1998 Amendment. Act 113 amended subsec. (a).
Cross References. Section 2704 is referred to in sections 102, 2702 of this title.

§ 2705. Speedometers and speed recorders.

(a) General rule.--No railroad locomotive shall be operated in excess of 30 miles per hour in this Commonwealth without a device or devices making a record of the speed at which the locomotive is traveling and providing the engineer or operator of the locomotive with a view of such speed. Both devices shall be functioning correctly within four miles per hour.

(b) Exceptions.--Locomotives operated or used exclusively within designated yard limits in switching or transfer service need not be equipped in accordance with the provisions of this section. Locomotives while being used in commuter passenger service need not be equipped with a speed recording device.

(c) Notification of compliance.--Each railroad shall notify the commission of the date that each locomotive comes into compliance with the provisions of this section. The notification shall state the serial number or other identification of the locomotive.

(d) Schedule of regulated locomotives.--Each railroad affected by the provisions of this section shall maintain at a designated location a list or schedule of the locomotives referred to in this section. It shall set forth, along with other information, the date that the device or devices referred to in subsection (a) were calibrated and found to be functioning in accordance with the provisions of this section. It shall advise the commission as to such location. In the event of an accident during the operation of a locomotive or in the event of a disciplinary proceeding in which a railroad employee is charged with excessive speed, the record required by this section showing the speed at the time and place involved shall be retained by the railroad, at a location made known to the Public Utility Commission, until permission to destroy them has been granted by the commission or otherwise permitted in accordance with a rule, regulation or order of the commission. In any disciplinary proceeding in which a railroad employee is charged with excessive speed in the operation of a locomotive equipped with a speed recorder the railroad may not introduce other evidence of such speed unless the record has been retained in compliance with this subsection.

(e) Enforcement.--The commission shall enforce the provisions of this section and may issue such order or orders as may be proper to require compliance therewith.
(Nov. 26, 1978, P.L.1241, No.294, eff. 60 days)

1978 Amendment. Act 294 amended subsec. (d).

§ 2706. Flag protection.

(a) General rule.--All railroads operating in this Commonwealth shall promulgate and maintain appropriate operating rules and special instructions for the government of their respective employees in conformity with the following:

(1) When a train stops under circumstances in which it may be overtaken by another train, a member of the crew must provide flagging protection by going back immediately with a red flag, torpedoes and fusees by day and with a red and/or white light, torpedoes and fusees by night, a sufficient

distance to insure full protection, placing two torpedoes on the rail and also, when necessary, display lighted fusees.

(2) When recalled and safety to the train will permit, he may return.

(3) When conditions require, he will leave the torpedoes and a lighted fusee.

(4) The front of the train must be protected in the same way, when necessary, by a member of the crew.

(5) When a train is moving under circumstances in which it may be overtaken by another train, a member of the crew must take such action as may be necessary to insure full protection. By night, or by day, when the view is obscured, lighted fusees must be dropped off the moving train or displayed at proper intervals.

(6) When day signals cannot be plainly seen, owing to weather or other conditions, night signals must also be used.

(7) Conductors and enginemen are responsible for the protection of their trains.

(8) When a pusher engine is assisting a train, coupled behind the cabin or caboose car, and the member of the crew who protects the rear-end of the train is riding in the cabin or caboose car, the requirements as to the fusees will be met by dropping them off between the cabin or caboose car and pusher engine on the track the train is using, and not between that track and an adjacent track.

(b) Exceptions.--Unless specific circumstances indicate to the contrary, it will be presumed that trains stopping under the following circumstances will not be overtaken by another train:

(1) Passenger trains making normal station stops.

(2) All trains stopping in manual block territory protected by absolute block.

(3) All trains stopping so as to be completely within the limits of classification or storage yards at the usual place to change crews or remove power.

(c) Construction of section.--For the purposes of this section a "train" means a movement on which the air brakes must be connected and functioning under Federal law. This section is not intended to require the employment of additional employees or restrict the use of crew members in any manner.

(d) Enforcement.--The commission shall enforce the provisions of this section.

§ 2707. Inspection of highway crossing safety devices (Expired).

1990 Expiration Note. Section 2707 expired June 30, 1990. See Act 81 of 1988.

§ 2708. Alternative compliance (Expired).

1990 Expiration Note. Section 2708 expired June 30, 1990. See Act 81 of 1988.

§ 2709. Disposition of real property by public utility engaged in railroad business.

(a) Notice.--Before a public utility engaged in a railroad business disposes of real property previously used as a roadbed right-of-way, it must notify the county, city, borough, incorporated town or township in which the real property is located, and it must notify the Department of Transportation, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission and the Department of Environmental Resources. Notifications shall be in writing.

(b) Procedure after notice.--

(1) If a municipality or any authority created by a municipality or group of municipalities makes an offer to purchase the real property within 60 days of receiving notice under subsection (a), the public utility shall accept or reject the offer.

(2) If a municipality or any authority created by a municipality or group of municipalities does not make an offer to purchase the real property within 60 days of receiving notice under subsection (a) or if the public utility rejects the offer of a municipality, the administrative agencies specified in subsection (a) have 60 days to decide on making an offer for the real property. If an administrative agency makes an offer under this paragraph, the public utility shall consider the offer and make a decision on the offer before making other disposition of the property. If more than one administrative agency makes an offer, the public utility shall consider the offers in the following order: the Department of Transportation, the Department of Environmental Resources, the Pennsylvania Game Commission and the Pennsylvania Fish and Boat Commission.

(c) Violation.--If a public utility engaged in a railroad business disposes of real property previously used as a roadbed right-of-way without complying with this section, the disposition is voidable.

(d) Compliance.--The notification requirements of this section shall be deemed to have been complied with if the executed, notarized and recorded deed conveying the property contains a recital affirming that the notifications required under this section were made. A copy of each notice shall be appended to the deed when it is recorded.

(Nov. 29, 1990, P.L.600, No.151, eff. 60 days; Mar. 19, 1992, P.L.18, No.7, eff. imd.)

1992 Amendment. Act 7 amended subsecs. (a) and (b).

1990 Amendment. Act 151 added section 2709.

Transfer of Powers. Section 304(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Department of Conservation and Natural Resources shall exercise the powers and duties conferred upon the Department of Environmental Resources by section 2709 as added by Act 151 of 1990.

CHAPTER 28
RESTRUCTURING OF ELECTRIC UTILITY INDUSTRY

Sec.

2801. Short title of chapter.
2802. Declaration of policy.
2803. Definitions.
2804. Standards for restructuring of electric industry.
2805. Regionalism and reciprocity.
2806. Implementation, pilot programs and performance-based rates.
2806.1. Energy efficiency and conservation program.
2806.2. Energy efficiency and conservation.
2807. Duties of electric distribution companies.
2808. Competitive transition charge.
2809. Requirements for electric generation suppliers.
2810. Revenue-neutral reconciliation.

2811. Market power remediation.
2812. Approval of transition bonds.
2813. Procurement of power.
2814. Additional alternative energy sources.
2815. Carbon dioxide sequestration network.

Enactment. Chapter 28 was added December 3, 1996, P.L.802, No.138, effective January 1, 1997.

§ 2801. Short title of chapter.

This chapter shall be known and may be cited as the Electricity Generation Customer Choice and Competition Act.

§ 2802. Declaration of policy.

The General Assembly finds and declares as follows:

(1) Over the past 20 years, the Federal Government and State government have introduced competition in several industries that previously had been regulated as natural monopolies.

(2) Many state governments are implementing or studying policies that would create a competitive market for the generation of electricity.

(3) Because of advances in electric generation technology and Federal initiatives to encourage greater competition in the wholesale electric market, it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market as long as safe and affordable transmission and distribution service is available at levels of reliability that are currently enjoyed by the citizens and businesses of this Commonwealth.

(4) Rates for electricity in this Commonwealth are on average higher than the national average, and significant differences exist among the rates of Pennsylvania electric utilities.

(5) Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.

(6) The cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth.

(7) This Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs.

(8) In moving toward greater competition in the electricity generation market, the Commonwealth must resolve certain transitional issues in a manner that is fair to customers, electric utilities, investors, the employees of electric utilities, local communities, nonutility generators of electricity and other affected parties.

(9) Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.

(10) The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.

(11) In order to ensure the safety and reliability of the electric system, ensure the continued provision of high-quality customer service and avoid economic dislocation, utilities shall consider the experience and expertise of their work force in moving towards competition.

(12) The purpose of this chapter is to modify existing legislation and regulations and to establish standards and procedures in order to create direct access by retail customers to the competitive market for the generation of electricity while maintaining the safety and reliability of the electric system for all parties. Reliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Electric industry restructuring should ensure the reliability of the interconnected electric system by maintaining the efficiency of the transmission and distribution system.

(13) Under current law and regulation there exists some competition in the wholesale market for the generation of electricity, but the generation, transmission, distribution and retail sale of electricity is provided generally by public utilities under bundled rates regulated by the commission. The procedures established under this chapter provide for a fair and orderly transition from the current regulated structure to a structure under which retail customers will have direct access to a competitive market for the generation and sale or purchase of electricity.

(14) This chapter requires electric utilities to unbundle their rates and services and to provide open access over their transmission and distribution systems to allow competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth. The generation of electricity will no longer be regulated as a public utility function except as otherwise provided for in this chapter. Electric generation suppliers will be required to obtain licenses, demonstrate financial responsibility and comply with such other requirements concerning service as the commission deems necessary for the protection of the public.

(15) In establishing the standards for the transition to and creation of a competitive electric market, heretofore, public utilities generally have had an obligation to serve customers within their defined service territories; consistent with that obligation, have undertaken long-term investments in generation, transmission and distribution facilities in order to meet the needs of their customers; and have entered into long-term power supply agreements as required by Federal law. In many instances, these investments and agreements have created costs which may not be recoverable in a competitive market. The commission is empowered under this chapter to determine the level of transition or stranded costs for each electric utility and to provide a mechanism, the competitive transition charge, for recovery of an appropriate amount of such costs in accordance with the standards established in this chapter.

(16) It is in the public interest for the transmission and distribution of electricity to continue to be regulated as a natural monopoly subject to the jurisdiction and active supervision of the commission. Electric distribution companies should continue to be the provider of last resort in order to ensure the availability of universal electric service in this Commonwealth unless another provider of last resort is approved by the commission.

(17) There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy

conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

(18) There are certain changes to a utility which will create transition costs to accomplish the move to a competitive market. These changes may entail the closure of facilities or reduction in employee levels. If such actions are to be undertaken, the utility must fully inform the commission of the impact of such decisions on local communities and on social services and of any tax implications of the actions. The utility is expected to discuss the transition to competition with its employees or their certified representatives and may provide severance, retraining, early retirement and outplacement services. Such transition costs may be recoverable under the competitive transition charge in section 2808 (relating to competitive transition charge).

(19) All participants in the restructured electric industry are encouraged to coordinate their plans and transactions through an independent system operator or its functional equivalent.

(20) Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the independent system operator or its functional equivalent should set, and the commission shall set through regulations, inspection, maintenance, repair and replacement standards and enforce those standards.

(21) Under Federal and State clean air laws and regulations, electricity generators located in states to the west and south of this Commonwealth are not subject to requirements as stringent as those which apply to generators and other "persons" as defined in section 3 of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, operating in this Commonwealth and that different regions within this Commonwealth are subject to varying air emission requirements. Under some scenarios, competition among electricity generators located in different states and different regions within this Commonwealth could make it more difficult for areas in this Commonwealth to demonstrate attainment with Federal and State air quality standards. Since this result may be caused by the disparate requirements imposed by Federal and State law on generators and other "persons" as defined in section 3 of the Air Pollution Control Act in this Commonwealth and generators located in other states, the General Assembly supports changes to Federal clean air laws and regulations that will protect Pennsylvania's environment and ensure that electricity generators and other "persons" as defined in section 3 of the Air Pollution Control Act located in this Commonwealth are not placed at an undue competitive disadvantage. The commission will consult with the Department of Environmental Protection regarding this issue during the transition to retail competition.

Cross References. Section 2802 is referred to in section 2806 of this title.

§ 2803. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"**Aggregator**" or "**market aggregator.**" An entity, licensed by the commission, that purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

"**Bilateral contract.**" An agreement, as approved by the commission, reached by two parties, each acting in its own independent self-interest, as a result of negotiations free of undue influence, duress or favoritism, in which the electric energy supplier agrees to sell and the electric distribution company agrees to buy a quantity of electric energy at a specified price for a specified period of time under terms agreed to by both parties, and which follows a standard industry template widely accepted in the industry or variations thereto accepted by the parties. Standard industry templates may include the EEI Master Agreement for physical energy purchases and sales and the ISDA Master Agreement for financial energy purchases and sales.

"**Broker**" or "**marketer.**" An entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

"**Competitive transition charge.**" A nonbypassable charge applied to the bill of every customer accessing the transmission or distribution network which (charge) is designed to recover an electric utility's transition or stranded costs as determined by the commission under sections 2804 (relating to standards for restructuring of electric industry) and 2808 (relating to competitive transition charge).

"**Consumer.**" A retail electric customer.

"**Customer.**" A retail electric customer.

"**Default service provider.**" An electric distribution company within its certified service territory or an alternative supplier approved by the commission that provides generation service to retail electric customers who:

(1) contract for electric power, including energy and capacity, and the chosen electric generation supplier does not supply the service; or

(2) do not choose an alternative electric generation supplier.

"**Direct access.**" The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies' own use of the system to transport electricity from any generator of electricity to any end-use customer.

"**Electric distribution company.**" The public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers, except building or facility owners/operators that manage the internal distribution system serving such building or facility and that supply electric power and other related electric power services to occupants of the building or facility.

"**Electric generation supplier**" or "**electricity supplier.**" A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company or that purchases, brokers, arranges or markets electricity or

related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company. The term excludes building or facility owner/operators that manage the internal distribution system serving such building or facility and that supply electric power and other related power services to occupants of the building or facility. The term excludes electric cooperative corporations except as provided in 15 Pa.C.S. Ch. 74 (relating to generation choice for customers of electric cooperatives).

"**End-use customer.**" A retail electric customer.

"**Reliability.**" Includes adequacy and security. As used in this definition, "adequacy" means the provision of sufficient generation, transmission and distribution capacity so as to supply the aggregate electric power and energy requirements of consumers, taking into account scheduled and unscheduled outages of system facilities; and "security" means designing, maintaining and operating a system so that it can handle emergencies safely while continuing to operate.

"**Renewable resource.**" Includes technologies such as solar photovoltaic energy, solar thermal energy, wind power, low-head hydropower, geothermal energy, landfill and mine-based methane gas, energy from waste and sustainable biomass energy.

"**Retail customer.**" A retail electric customer.

"**Retail electric customer.**" A direct purchaser of electric power. The term excludes an occupant of a building or facility where the owners/operators manage the internal distribution system serving such building or facility and supply electric power and other related power services to occupants of the building or facility; where such owners/operators are direct purchasers of electric power; and where the occupants are not direct purchasers.

"**Transition or stranded costs.**" An electric utility's known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which traditionally would be recoverable under a regulated environment but which may not be recoverable in a competitive electric generation market and which the commission determines will remain following mitigation by the electric utility. This term includes:

(1) Regulatory assets and other deferred charges typically recoverable under current regulatory practice, the unfunded portion of the utility's projected nuclear generating plant decommissioning costs and cost obligations under contracts with nonutility generating projects which have received a commission order, the recoverability of which shall be determined under section 2808(c)(1) (relating to competitive transition charge).

(2) Prudently incurred costs related to cancellation, buyout, buydown or renegotiation of nonutility generating projects consistent with section 527 (relating to cogeneration rules and regulations), the recoverability of which shall be determined pursuant to section 2808(c)(2).

(3) The following costs, the recoverability of which shall be determined pursuant to section 2808(c)(3):

(i) Net plant investments and costs attributable to the utility's existing generation plants and facilities.

(ii) The utility's disposal of spent nuclear fuel.

(iii) The utility's long-term purchase power commitments other than the costs defined in paragraphs (1) and (2).

(iv) Retirement costs attributable to the utility's existing generating plants other than the costs defined in paragraph (1).

(v) Other transition costs of the utility, including costs of employee severance, retraining, early retirement, outplacement and related expenses, at reasonable levels, for employees who are affected by changes that occur as a result of the restructuring of the electric industry occasioned by this chapter.

The term includes any costs attributable to physical plants no longer used and useful because of the transition to retail competition. The term excludes any amounts previously disallowed by the commission as imprudently incurred. To the extent that the recoverability of amounts that are sought to be included as transition or stranded costs are subject to appellate review as of the time of the commission determination, any determination to include such costs shall be reversed to the extent required by the results of that appellate review.

"Transmission and distribution costs." All costs directly or indirectly incurred to provide transmission and distribution services to retail electric customers. This includes the return of and return on facilities and other capital investments necessary to provide transmission and distribution services and associated operating expenses, including applicable taxes.

"Universal service and energy conservation." Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.

(Oct. 15, 2008, P.L.1592, No.129, eff. 30 days)

2008 Amendment. Act 129 added the defs. of "bilateral contract" and "default service provider." See the preamble to Act 129 of 2008 in the appendix to this title for special provisions relating to legislative findings and declarations.

References in Text. Chapter 74 of Title 15, referred to in the def. of "electric generation supplier" or "electricity supplier," is expired.

Cross References. Section 2803 is referred to in section 1403 of this title.

§ 2804. Standards for restructuring of electric industry.

The following interdependent standards shall govern the commission's assessment and approval of each public utility's restructuring plan, oversight of the transition process and regulation of the restructured electric utility industry:

(1) The commission shall ensure continuation of safe and reliable electric service to all consumers in the Commonwealth, including:

(i) The maintenance of adequate reserve margins by electric suppliers in conformity with the standards required by the North American Electric Reliability Council (NERC) and the regional reliability council appropriate to each supplier, or any successors to those reliability entities, and in conformity with established industry standards and practices.

(ii) The installation and maintenance of transmission and distribution facilities in conformity with established industry standards and practices,

including the standards set forth in the National Electric Safety Code.

(2) Consistent with the time line set forth in section 2806 (relating to implementation, pilot programs and performance-based rates), the commission shall allow customers to choose among electric generation suppliers in a competitive generation market through direct access. Customers should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternate generation sources, including reasonable and fair opportunities to self-generate and interconnect. These alternatives may be provided by different electric generation suppliers.

(3) The commission shall require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution. The commission may require the unbundling of other services.

(4) The following caps on electric utility rates shall apply:

(i) For a period of 54 months from the effective date of this chapter or until an electric distribution utility is no longer recovering its transition or stranded costs through a competitive transition charge or intangible transition charge and all the customers of an electric distribution utility can choose an alternative provider of electric generation, whichever is shorter:

(A) the total charges of an electric distribution utility for service to any customer who purchases generation from that utility shall not exceed the total charges that have been approved by the commission for such service as of the effective date of this chapter; and

(B) for customers who purchase generation from a supplier other than the electric distribution utility, the charges of the utility for non-generation services that are regulated as of the effective date of this chapter, exclusive of the competitive transition charge and intangible transition charge, shall not exceed the non-generation charges that have been approved by the commission for such service as of the effective date of this chapter.

(ii) In addition to the rate cap set forth in subparagraph (i), for a period of nine years from the effective date of this chapter or until an electric distribution utility is no longer recovering its transition or stranded costs through a competitive transition charge or intangible transition charge and all customers of an electric distribution utility can choose an alternative provider of electric generation, whichever is shorter, the generation component of a utility's charges to customers who purchase generation from the utility, including the competitive transition charge and intangible transition charge, shall not exceed the generation component charged to the customers that has been approved by the commission for such service as of the effective date of this chapter.

(iii) An electric distribution utility may seek, and the commission may approve, an exception to the

limitations set forth in subparagraphs (i) and (ii) only in any of the following circumstances:

(A) The electric distribution utility meets the requirements for extraordinary rate relief under section 1308(e) (relating to voluntary changes in rates).

(B) Either the electric distribution utility is required to begin payment under contracts with nonutility generation projects that have received commission orders, has been unable to mitigate such costs, such costs are not recoverable in a competitive generation market and such costs were not previously covered in the competitive transition charge or intangible transition charge, or the utility prudently incurs costs related to cancellation, buyout, buydown or renegotiation of nonutility generating project obligations of the utility consistent with section 527 (relating to cogeneration rules and regulations) and such costs were not previously covered in the competitive transition charge or intangible transition charge. Costs related to cancellation, buyout, buydown or renegotiation shall be recovered from ratepayers over a period not to exceed three years, unless the commission determines within its discretion to require a longer recovery period due to the magnitude of such costs, but shall be accounted for by the utility on a levelized basis over the total period in which the generation portion of the utility's rates are capped.

(C) The electric distribution utility is subject to significant increases in the rates of Federal or State taxes or other significant changes in law or regulations that would not allow the utility to earn a fair rate of return.

(D) The electric distribution utility is subject to significant increases in the unit rate of fuel for utility generation or the price of purchased power that are outside of the control of the utility and that would not allow the utility to earn a fair rate of return.

(E) The electric distribution utility is directed by the commission or an independent system operator or its functional equivalent to make expenditures to repair or upgrade its transmission or distribution system.

(F) The electric distribution utility seeks to increase its allowance for nuclear decommissioning costs to reflect new information not available at the time the utility's existing rates were determined, and such costs are not recoverable in the competitive generation market and are not covered in the competitive transition charge or intangible transition charge, and such costs would not allow the utility to earn a fair rate of return.

(G) As permitted by paragraph (16).

(iv) Consistent with the requirements of due process, the commission may expedite proceedings that invoke the provisions of subparagraph (iii).

(v) If an electric distribution utility rolls its energy cost rate into base rates at a combined level that does not exceed its combined level of such rates

which have been approved by the commission as of the effective date of this chapter, the utility shall not be required to reduce its capped rates below the capped level upon the complaint of any party if the commission determines that any excess earnings achieved under the cap are being utilized to mitigate transition or stranded costs for the benefit of ratepayers or to offset other known and measurable cost increases that would be recoverable under traditional ratemaking but are not included within the capped rates.

(vi) This paragraph shall not apply to new services offered for the first time after the effective date of this chapter.

(5) The commission may permit, but shall not require, an electric utility to divest itself of facilities or to reorganize its corporate structure.

(6) Consistent with the provision of section 2806, the commission shall require that a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utility's own use of its system.

(7) The commission shall require that restructuring of the electric utility industry be implemented in a manner that does not unreasonably discriminate against one customer class to the benefit of another.

(8) The commission shall establish for each electric utility an appropriate cost-recovery mechanism which is designed to fully recover the electric utility's universal service and energy conservation costs over the life of these programs.

(9) The commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory. Policies, activities and services under this paragraph shall be funded in each electric distribution territory by nonbypassable, competitively neutral cost-recovery mechanisms that fully recover the costs of universal service and energy conservation services. The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income customers to afford electric service. Programs under this paragraph shall be subject to the administrative oversight of the commission which will ensure that the programs are operated in a cost-effective manner.

(10) The commission shall establish rates for jurisdictional transmission and distribution services and shall continue to regulate distribution services for new and existing customers in accordance with this chapter and Chapter 13 (relating to rates and rate making).

(11) The time line for the transition to and phase-in of direct access to competitive electric generation shall be in accordance with section 2806.

(12) The commission has the authority to order utility participation in retail access pilot programs as set forth in section 2806 and as further implemented or modified by

the commission, with direct access to begin on April 1, 1997. The commission shall conduct milestone reviews of the transition to retail electric generation competition to assure a technically workable and equitable transition period.

(13) Consistent with section 2808 (relating to competitive transition charge), the commission has the power and duty to approve a competitive transition charge for the recovery of transition or stranded costs it determines to be just and reasonable to recover from ratepayers.

(14) The transition to a competitive generation market shall be orderly, protect electric system reliability, be fair to ratepayers and provide the investors in Pennsylvania electric utilities with a fair opportunity to fully recover the amount of transition or stranded costs that the commission determines to be just and reasonable.

(15) At the time each utility files its restructuring plan with the commission, the utility shall submit an initial plan that sets forth how it shall meet its universal service and energy conservation obligations.

(16) The following shall apply:

(i) The commission shall issue regulations that permit the electric distribution company to recover any change in its State tax liability under sections 2806(h), 2809(c) (relating to requirements for electric generation suppliers) and 2810 (relating to revenue-neutral reconciliation) or in its liability under 52 Pa. Code §§ 69.51 through 69.56 (relating to inclusion of State taxes and gross receipts taxes in base rates) to the extent that the resulting rate does not exceed the rate cap established in this section except as provided in this chapter.

(ii) With regard to any portion of the change in an electric distribution company's tax liability under section 2810 which would cause it to exceed the rate cap, the electric distribution company may file a single issue rate proceeding under section 1308(a) to recover that amount. The commission shall adjudicate, within 60 days, whether the resulting rates are just and reasonable.

(iii) With regard to any portion of the change in an electric distribution company's tax liability under sections 2806(h) and 2809(c) which would cause it to exceed the price cap, upon certification to the commission by affidavit that the electric distribution company has not collected the taxes due pursuant to the tariff indemnification provisions required by section 2810(m) and that the electric distribution company and the Department of Revenue have not collected the taxes due pursuant to the other means set forth in sections 2806(g)(3)(i) and (ii) and 2809(c) to recover the taxes due and any interest thereon, the electric distribution utility shall be permitted to recover that amount in the State Tax Adjustment Surcharge.

Cross References. Section 2804 is referred to in sections 2803, 2806, 2807, 2812 of this title.

§ 2805. Regionalism and reciprocity.

(a) Other states.--The commission shall take all necessary and appropriate steps to encourage interstate power pools to enhance competition and to complement industry restructuring on a regional basis. The Commonwealth, the commission and

Pennsylvania electric utilities shall work with the Federal Government, other states in the region and interstate power pools to accomplish the goals of restructuring and to establish independent system operators or their functional equivalents to operate the transmission system and interstate power pools. The commission, Pennsylvania electric utilities and all electricity suppliers shall work with the Federal Government, other states in the region, the North American Electric Reliability Council and its regional coordinating councils or their successors, interstate power pools, and with the independent system operator or its functional equivalent to ensure the continued provision of adequate, safe and reliable electric service to the citizens and businesses of this Commonwealth.

(b) Electric cooperatives, municipalities and other electric generation suppliers.--

(1) In order to make the benefits of competition in the generation and sale of electricity as widely available as possible to retail customers and to provide open, fair and nondiscriminatory access to all electric generation suppliers:

(i) Consistent with 15 Pa.C.S. Ch. 74 (relating to generation choice for customers of electric cooperatives), no electric cooperative or municipality which distributes electricity to end-use customers may utilize the transmission or distribution system of an electric utility regulated by the commission for the purpose of supplying electricity to an end-use customer unless the electric cooperative or municipality provides open and nondiscriminatory access and allows other electric generation suppliers to utilize its facilities, including any facilities it is entitled to provide to third parties pursuant to contract, to make sales to the end-use customers it serves. A borough may prohibit electric generation suppliers from serving end-use customers within its borough limits; however, such a borough shall be prohibited from providing generation service to end-use customers outside of its borough limits which it did not serve prior to the effective date of this chapter.

(ii) The commission shall require any electric cooperative seeking a certificate under 15 Pa.C.S. Ch. 74 to provide open and nondiscriminatory access to its transmission and distribution facilities as a condition to the granting of the certificate.

(iii) The reliability of the transmission service provided to electric cooperative corporations must be comparable to the reliability which the transmission supplier provides at the wholesale level.

(2) No electric utility regulated by the commission and no affiliate of such electric utility may use the distribution system of another electric utility regulated by the commission or make sales to end-use customers in another electric utility's service territory unless the commission has approved a restructuring plan for the supplying electric utility which provides for direct access comparable to the direct access provided under the approved plan of the electric utility operating the distribution system in the location where the supplying electric utility seeks to sell electricity to an end-use customer. No electric utility regulated by the commission and no affiliate of such electric utility may use the distribution system of an

electric cooperative corporation or make sales to end-use customers in the territory of an electric cooperative corporation unless the commission has approved a restructuring plan for the supplying electric utility.

References in Text. Chapter 74 of Title 15, referred to in subsec. (b), is expired.

§ 2806. Implementation, pilot programs and performance-based rates.

(a) General rule.--The generation of electricity shall no longer be regulated as a public utility service or function except as otherwise provided for in this chapter at the conclusion of a transition and phase-in period beginning on the effective date of this chapter and ending, consistent with the commission's discretion under this section, January 1, 2001. As of January 1, 2001, consistent with the commission's discretion under this section, all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers. The ultimate choice of the electric generation supplier is to rest with the consumer.

(b) Schedule.--Recognizing that approximately 5% of the peak load will have retail access through pilot programs, the following schedule for phased implementation of retail access shall be adhered to unless a determination is made by the commission under subsection (c):

(1) As of January 1, 1999, a maximum of 33% of the peak load of each customer class shall have the opportunity for direct access.

(2) As of January 1, 2000, a maximum of 66% of the peak load of each customer class shall have the opportunity for direct access.

(3) As of January 1, 2001, all customers of electric distribution companies in this Commonwealth shall have the opportunity for direct access.

(4) The commission shall establish regulations specifying that, within each customer class, the customers that are eligible for direct access prior to full direct access shall be determined on a first-come-first-served basis unless otherwise determined by the commission through regulation, in the context of restructuring plans, or in other appropriate administrative proceedings, to prevent competitive disadvantages among similarly situated customers within a customer class.

(c) Additional time.--

(1) The commission may determine that an additional six-month transition period is necessary prior to the January 1, 1999, implementation date. A determination under this subsection must be made at least 45 days in advance of the scheduled date for implementation and must be based on one or more of the following considerations:

(i) Implementation would materially affect the reliability of the electric system.

(ii) Federal approvals necessary for the implementation of the provisions of this chapter have not been granted.

(iii) Communications and information systems necessary for the implementation of retail access have not been installed for reasons beyond the utility's control, as measured by appropriate industry standards.

(iv) Pennsylvania generators would be disadvantaged due to lack of regional reciprocity with respect to direct access.

(v) The interests of Pennsylvania consumers and the competitive position of Pennsylvania business and industry would be materially affected.

(vi) Such other consideration as would materially affect the orderly implementation of the legislative purpose of this chapter under section 2802(12) through (21) (relating to declaration of policy).

(2) Consistent with the considerations listed in paragraph (1), the commission may determine that an additional six-month transition period is necessary. This determination must be made by the commission by May 15, 1999.

(d) Filing of restructuring plans.--All electric utilities in this Commonwealth shall submit to the commission, pursuant to a schedule to be determined by the commission in consultation with the electric utilities, beginning on April 1, 1997, but in no event later than September 30, 1997, a restructuring plan to implement direct access to a competitive market for the generation of electricity.

(e) Contents of restructuring plans.--A restructuring plan under subsection (d) must include, consistent with the determinations of the commission, unbundled prices or rates for generation, jurisdictional transmission, distribution and other services; a proposed competitive transition charge; a proposed universal service and energy conservation cost-recovery mechanism; procedures for ensuring direct access to all licensed electric generation suppliers; a discussion of the impacts of the proposed plan on the utility's employees; and revised tariffs and rate schedules implementing the above.

(f) Commission review.--The commission shall review the restructuring plan filed by each electric utility and shall, after open evidentiary hearings with proper notice and opportunity for all parties to cross-examine witnesses, issue an order accepting, modifying or rejecting such plan at the earliest date possible, but no later than nine months from the filing of such restructuring plan. If the commission rejects a restructuring plan, it shall state the specific reasons for rejection and direct the electric utility to file an alternative plan addressing these objections within 30 days of the entry date of the commission order rejecting the plan. The commission shall review the alternative plan, solicit comments from interested parties and issue a final order within 45 days of the filing of the revised plan.

(g) Retail access pilot programs.--As of the effective date of this chapter, the commission has authority to order electric utilities to submit proposals for retail access pilot programs to begin April 1, 1997. The commission shall provide guidelines for retail access pilot programs by order.

(1) In order to determine whether all customers classes can benefit from competitive markets, utilities shall tailor proposed retail access pilot programs to accommodate the specific geographic, demographic and socioeconomic characteristics of their customer base. Retail access pilot programs must include an equal opportunity for the broadest practical direct access by all customer classes to electric generation suppliers.

(2) The minimum period of time for a retail access pilot program shall be one year and shall include an evaluation process as directed by the commission.

(3) In order to ensure the safety and reliability of the generation of electricity in this Commonwealth, participation in the retail access pilot programs shall be limited to electricity suppliers subject to commission licensure or certification.

(i) Each participating electricity supplier shall do all of the following:

(A) Certify to the commission that it will pay and in subsequent years has paid the full amount of taxes imposed by Articles II and XI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and any tax imposed by this chapter.

(B) Provide the commission with the address of the participant's principal office in this Commonwealth or the address of the participant's registered agent in this Commonwealth, the latter being the address at which the participant may be served process.

(C) Agree that it shall be subject to all taxes imposed by the Tax Reform Code of 1971 and any tax imposed by this chapter.

(ii) Failure of an electricity supplier to pay a tax referred to in subparagraph (i) or to otherwise comply with the provisions of this paragraph shall be cause for the commission to revoke the license of the electricity supplier.

(iii) If an electricity supplier, other than an electric distribution company, does not pay the tax imposed upon gross receipts under section 1101 of the Tax Reform Code of 1971 or this chapter, the electric distribution company to whose retail customer the electricity supplier provided generation service shall remit the unpaid tax, as a tax on the use of electricity in this Commonwealth, to the Department of Revenue and may collect or seek reimbursement of the tax so paid from the electricity provider or any other appropriate party that used the electricity in this Commonwealth. The department shall collect and enforce the use tax herein provided under section 1102 of the Tax Reform Code of 1971. Failure of the electric distribution company to pay the amount within 30 days after notice provided by the department shall cause interest to be imposed on the electric distribution company in accordance with Article XI of the Tax Reform Code of 1971. Interest shall be calculated from the 31st day after the department gives the notice required in this subparagraph. An electric distribution company or other appropriate person may challenge the imposition of the tax and interest by filing a petition with the department not later than 30 days after the date on which the tax became due.

(4) The percentage of utility load committed to a retail access pilot program must be approximately 5% of utility's peak load for each customer class. Waivers of this condition may be considered by the commission for economic development purposes or special circumstances.

(h) Flexible pricing.--In addition to the implicit authority of the commission under section 501 (relating to general powers), the commission has the authority to approve flexible pricing and flexible rates, including negotiated, contract-based tariffs designed to meet the specific needs of a utility customer and to address competitive alternatives.

(i) Performance-based rates and alternative regulation.--The commission has authority to use performance-based rates as an alternative to existing rate base/rate of return ratemaking, subject to the restrictions pertaining to rate caps in section 2804(4) (relating to standards for restructuring of electric industry).

Cross References. Section 2806 is referred to in sections 2804, 2807, 2810, 2812 of this title.

§ 2806.1. Energy efficiency and conservation program.

(a) Program.--The commission shall, by January 15, 2009, adopt an energy efficiency and conservation program to require electric distribution companies to adopt and implement cost-effective energy efficiency and conservation plans to reduce energy demand and consumption within the service territory of each electric distribution company in this Commonwealth. The program shall include:

(1) Procedures for the approval of plans submitted under subsection (b).

(2) An evaluation process, including a process to monitor and verify data collection, quality assurance and results of each plan and the program.

(3) An analysis of the cost and benefit of each plan submitted under subsection (b) in accordance with a total resource cost test approved by the commission.

(4) An analysis of how the program and individual plans will enable each electric distribution company to achieve or exceed the requirements for reduction in consumption under subsections (c) and (d).

(5) Standards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers.

(6) Procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption under subsections (c) and (d).

(7) Procedures to require that electric distribution companies competitively bid all contracts with conservation service providers.

(8) Procedures to review all proposed contracts prior to the execution of the contract with conservation service providers to implement the plan. The commission may order the modification of a proposed contract to ensure that the plan meets the requirements for reduction in demand and consumption under subsections (c) and (d).

(9) Procedures to ensure compliance with requirements for reduction in consumption under subsections (c) and (d).

(10) A requirement for the participation of conservation service providers in the implementation of all or part of a plan.

(11) Cost recovery to ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits.

(b) Duties of electric distribution companies.--

(1) (i) By July 1, 2009, each electric distribution company shall develop and file an energy efficiency and conservation plan with the commission for approval to meet the requirements of subsection (a) and the requirements for reduction in consumption under subsections (c) and (d). The plan shall be implemented

upon approval by the commission. The following are the plan requirements:

(A) The plan shall include specific proposals to implement energy efficiency and conservation measures to achieve or exceed the required reductions in consumption under subsections (c) and (d).

(B) A minimum of 10% of the required reductions in consumption under subsections (c) and (d) shall be obtained from units of Federal, State and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.

(C) The plan shall explain how quality assurance and performance will be measured, verified and evaluated.

(D) The plan shall state the manner in which the plan will achieve the requirements of the program under subsection (a) and will achieve or exceed the required reductions in consumption under subsections (c) and (d).

(E) The plan shall include a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan as approved by the commission.

(F) The plan shall include estimates of the cost of implementation of the energy efficiency and conservation measures in the plan.

(G) The plan shall include specific energy efficiency measures for households at or below 150% of the Federal poverty income guidelines. The number of measures shall be proportionate to those households' share of the total energy usage in the service territory. The electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another Federal or State agency. The expenditures of an electric distribution company under this clause shall be in addition to expenditures made under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

(H) The plan shall include a proposed cost-recovery tariff mechanism, in accordance with section 1307 (relating to sliding scale of rates; adjustments), to fund the energy efficiency and conservation measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs, as approved by the commission.

(I) The electric distribution company shall demonstrate that the plan is cost effective using a total resource cost test approved by the commission and provides a diverse cross section of alternatives for customers of all rate classes.

(J) The plan shall require an annual independent evaluation of its cost-effectiveness and a full review of the results of each five-year plan required under subsection (c)(3) and, to the extent practical, how the plan will be adjusted on a going-forward basis as a result of the evaluation.

(K) The plan shall include an analysis of the electric distribution company's administrative costs.

(ii) A new plan shall be filed with the commission every five years or as otherwise required by the commission. The plan shall set forth the manner in which the company will meet the required reductions in consumption under subsections (c) and (d).

(iii) No more than 2% of funds available to implement a plan under this subsection shall be allocated for experimental equipment or devices.

(2) The commission shall direct an electric distribution company to modify or terminate any part of a plan approved under this section if, after an adequate period for implementation, the commission determines that an energy efficiency or conservation measure included in the plan will not achieve the required reductions in consumption in a cost-effective manner under subsections (c) and (d).

(3) If part of a plan is modified or terminated under paragraph (2), the electric distribution company shall submit a revised plan describing actions to be taken to offer substitute measures or to increase the availability of existing measures in the plan to achieve the required reductions in consumption under subsections (c) and (d).

(c) Reductions in consumption.--The plans adopted under subsection (b) shall reduce electric consumption as follows:

(1) By May 31, 2011, total annual weather-normalized consumption of the retail customers of each electric distribution company shall be reduced by a minimum of 1%. The 1% load reduction in consumption shall be measured against the electric distribution company's expected load as forecasted by the commission for June 1, 2009, through May 31, 2010, with provisions made for weather adjustments and extraordinary loads that the electric distribution company must serve.

(2) By May 31, 2013, the total annual weather-normalized consumption of the retail customers of each electric distribution company shall be reduced by a minimum of 3%. The 3% load reduction in consumption shall be measured against the electric distribution company's expected load as forecasted by the commission for June 1, 2009, through May 31, 2010, with provisions made for weather adjustments and extraordinary loads that the electric distribution company must serve.

(3) By November 30, 2013, and every five years thereafter, the commission shall evaluate the costs and benefits of the program established under subsection (a) and of approved energy efficiency and conservation plans submitted to the program. The evaluation shall be consistent with a total resource cost test or a cost-benefit analysis determined by the commission. If the commission determines that the benefits of the program exceed the costs, the commission shall adopt additional required incremental reductions in consumption.

(d) Peak demand.--The plans adopted under subsection (b) shall reduce electric demand as follows:

(1) By May 31, 2013, the weather-normalized demand of the retail customers of each electric distribution company shall be reduced by a minimum of 4.5% of annual system peak demand in the 100 hours of highest demand. The reduction shall be measured against the electric distribution company's peak demand for June 1, 2007, through May 31, 2008.

(2) By November 30, 2013, the commission shall compare the total costs of energy efficiency and conservation plans implemented under this section to the total savings in energy

and capacity costs to retail customers in this Commonwealth or other costs determined by the commission. If the commission determines that the benefits of the plans exceed the costs, the commission shall set additional incremental requirements for reduction in peak demand for the 100 hours of greatest demand or an alternative reduction approved by the commission. Reductions in demand shall be measured from the electric distribution company's peak demand for the period from June 1, 2011, through May 31, 2012. The reductions in consumption required by the commission shall be accomplished no later than May 31, 2017.

(e) Commission approval.--

(1) The commission shall conduct a public hearing on each plan and allow for the submission of recommendations by the Office of Consumer Advocate and the Office of Small Business Advocate and by members of the public as to how the electric distribution company could improve its plan or exceed the required reductions in consumption under subsections (c) and (d).

(2) The commission shall approve or disapprove a plan filed under subsection (b) within 120 days of submission. The following shall apply to an order disapproving a plan:

(i) The commission shall describe in detail the reasons for the disapproval.

(ii) The electric distribution company shall have 60 days to file a revised plan to address the deficiencies identified by the commission. The revised plan shall be approved or disapproved by the commission within 60 days.

(f) Penalties.--

(1) The following shall apply for failure to submit a plan:

(i) An electric distribution company that fails to file a plan under subsection (b) shall be subject to a civil penalty of $100,000 per day until the plan is filed.

(ii) An electric distribution company that fails to file a revised plan under subsection (e)(2)(ii) shall be subject to a civil penalty of $100,000 per day until the plan is filed.

(iii) Penalties collected under this paragraph shall be deposited in the low-income electric customer assistance program of the energy distribution company for the respective service territory.

(2) The following shall apply to an electric distribution company that fails to achieve the reductions in consumption required under subsection (c) or (d):

(i) The electric distribution company shall be subject to a civil penalty not less than $1,000,000 and not to exceed $20,000,000 for failure to achieve the required reductions in consumption under subsection (c) or (d). Any penalty paid by an electric distribution company under this subparagraph shall not be recoverable from ratepayers.

(ii) If an electric distribution company fails to achieve the required reductions in consumption under subsection (c) or (d), responsibility to achieve the reductions in consumption shall be transferred to the commission. The commission shall do all of the following:

(A) Implement a plan to achieve the required reductions in consumption under subsection (c) or (d).

(B) Contract with conservation service providers as necessary to implement any portion of the plan.

(g) Limitation on costs.--The total cost of any plan required under this section shall not exceed 2% of the electric distribution company's total annual revenue as of December 31, 2006. The provisions of this paragraph shall not apply to the cost of low-income usage reduction programs established under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs).

(h) Costs.--The commission shall recover from electric distribution companies the costs of implementing the program established under this section.

(i) Report.--The following shall apply:

(1) Each electric distribution company shall submit an annual report to the commission relating to the results of the energy efficiency and conservation plan within each electric distribution service territory. The report shall include all of the following:

(i) Documentation of program expenditures.

(ii) Measurement and verification of energy savings under the plan.

(iii) Evaluation of the cost-effectiveness of expenditures.

(iv) Any other information required by the commission.

(2) Beginning five years following the effective date of this section and annually thereafter, the commission shall submit a report to the Consumer Protection and Professional Licensure Committee of the Senate and the Consumer Affairs Committee of the House of Representatives.

(j) Existing funding sources.--Each electric distribution company shall, upon request by any person, provide a list of all eligible Federal and State funding programs available to ratepayers for energy efficiency and conservation. The list shall be posted on the electric distribution company's Internet website.

(k) Recovery.--

(1) An electric distribution company shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a plan provided under this section. This paragraph shall apply to all electric distribution companies, including electric distribution companies subject to generation or other rate caps.

(2) Except as set forth in paragraph (3), decreased revenues of an electric distribution company due to reduced energy consumption or changes in energy demand shall not be a recoverable cost under a reconcilable automatic adjustment clause.

(3) Decreased revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding filed by an electric distribution company under section 1308 (relating to voluntary changes in rates).

(l) Applicability.--This section shall not apply to an electric distribution company with fewer than 100,000 customers.

(m) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"**Conservation service provider.**" An entity that provides information and technical assistance on measures to enable a

person to increase energy efficiency or reduce energy consumption and that has no direct or indirect ownership, partnership or other affiliated interest with an electric distribution company.

"Electric distribution company total annual revenue." Amounts paid to the electric distribution company for generation, transmission, distribution and surcharges by retail customers.

"Energy efficiency and conservation measures."

(1) Technologies, management practices or other measures employed by retail customers that reduce electricity consumption or demand if all of the following apply:

(i) The technology, practice or other measure is installed on or after the effective date of this section at the location of a retail customer.

(ii) The technology, practice or other measure reduces consumption of energy or peak load by the retail customer.

(iii) The cost of the acquisition or installation of the measure is directly incurred in whole or in part by the electric distribution company.

(2) Energy efficiency and conservation measures shall include solar or solar photovoltaic panels, energy efficient windows and doors, energy efficient lighting, including exit sign retrofit, high bay fluorescent retrofit and pedestrian and traffic signal conversion, geothermal heating, insulation, air sealing, reflective roof coatings, energy efficient heating and cooling equipment or systems and energy efficient appliances and other technologies, practices or measures approved by the commission.

"Peak demand." The highest electrical requirement occurring during a specified period. For an electric distribution company, the term shall mean the sum of the metered consumption for all retail customers over that period.

"Quality assurance." All of the following:

(1) The auditing of buildings, equipment and processes to determine the cost-effectiveness of energy efficiency and conservation measures using nationally recognized tools and certification programs.

(2) Independent inspection of completed energy efficiency and conservation measures completed by third-party entities to evaluate the quality of the completed measure.

"Real-time price." A rate that directly reflects the different cost of energy during each hour.

"Time-of-use rate." A rate that reflects the costs of serving customers during different time periods, including off-peak and on-peak periods, but not as frequently as each hour.

"Total resource cost test." A standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures.
(Oct. 15, 2008, P.L.1592, No.129, eff. 30 days)

2008 Amendment. Act 129 added section 2806.1. See the preamble to Act 129 of 2008 in the appendix to this title for special provisions relating to legislative findings and declarations.

Cross References. Section 2806.1 is referred to in section 1330.

§ 2806.2. Energy efficiency and conservation.

(a) Registry.--The commission shall, by March 1, 2009, establish a registry of approved persons qualified to provide conservation services to all classes of customers. In order to be included in the registry, a conservation service provider must meet experience and other qualifications determined by the commission.

(b) Application.--The commission shall develop an application for registration under subsection (a) and may charge a reasonable registration fee.

(Oct. 15, 2008, P.L.1592, No.129, eff. 30 days)

2008 Amendment. Act 129 added section 2806.2. See the preamble to Act 129 of 2008 in the appendix to this title for special provisions relating to legislative findings and declarations.

§ 2807. Duties of electric distribution companies.

(a) General rule.--Each electric distribution company shall maintain the integrity of the distribution system at least in conformity with the National Electric Safety Code and such other standards practiced by the industry in a manner sufficient to provide safe and reliable service to all customers connected to the system consistent with this title and the commission's regulations. In performing such duties, the electric distribution company shall implement procedures to require all electric generation suppliers to deliver energy to the electric distribution company at locations and in amounts which are adequate to meet the energy supplier's obligations to its customers. Subject to commission approval, the electric distribution company may require that the customer install, at the customer's expense, enhanced metering capability sufficient to match the energy delivered by the electric generation suppliers with consumption by the customer.

(b) Procedures for review by the commission.--There shall be a rebuttable presumption that the electric distribution company has the ability to receive energy at all points on its system sufficient to meet the needs of all electric generation suppliers' customers on its system. The electric distribution company shall not have an obligation to install nonstandard facilities, either as to type or location, for the purpose of receiving energy from the energy supplier unless the energy supplier or its customer pays the full cost of these facilities. Nothing in this chapter shall prevent the electric distribution company from upgrading its system to meet changing customer requirements consistent with the requirements of section 1501 (relating to character of service and facilities), and the commission may establish incentive programs to encourage such system upgrades. Disputes concerning facilities shall be subject to the jurisdiction of the commission and may be initiated by the filing of a complaint under section 701 (relating to complaints) by the electric generation supplier or the customer.

(c) Customer billing.--Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier, the electric distribution company may be responsible for billing customers for all electric services, consistent with the regulations of the commission, regardless of the identity of the provider of those services.

(1) Customer bills shall contain unbundled charges sufficient to enable the customer to determine the basis for those charges.

(2) If services are provided by an entity other than the electric distribution company, the entity that provides those services shall furnish to the electric distribution

company billing data sufficient to enable the electric distribution company to bill customers.

(3) The electric distribution company shall not be required to forward payment to entities providing services to customers, and on whose behalf the electric distribution company is billing those customers, before the electric distribution company has received payment for those services from customers.

(d) Consumer protections and customer service.--The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.

(1) The commission shall establish regulations to ensure that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier.

(2) The commission shall establish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.

(3) Prior to the implementation of any restructuring plan under section 2806 (relating to implementation, pilot programs and performance-based rates), each electric distribution company, in conjunction with the commission, shall implement a consumer education program informing customers of the changes in the electric utility industry. The program shall provide consumers with information necessary to help them make appropriate choices as to their electric service. The education program shall be subject to approval by the commission.

(e) Obligation to serve.--A default service provider's obligation to provide electric generation supply service following the expiration of a generation rate cap specified under section 2804(4) (relating to standards for restructuring of electric industry) or a restructuring plan under section 2806(f) is revised as follows:

(1) While an electric distribution company collects either a competitive transition charge or an intangible transition charge or until 100% of its customers have choice, whichever is longer, the electric distribution company shall continue to have the full obligation to serve, including the connection of customers, the delivery of electric energy and the production or acquisition of electric energy for customers.

(2) (Deleted by amendment).

(3) (Deleted by amendment).

(3.1) Following the expiration of an electric distribution company's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service

to that customer pursuant to a commission-approved competitive procurement plan. The electric power acquired shall be procured through competitive procurement processes and shall include one or more of the following:

(i) Auctions.

(ii) Requests for proposal.

(iii) Bilateral agreements entered into at the sole discretion of the default service provider which shall be at prices which are:

(A) no greater than the cost of obtaining generation under comparable terms in the wholesale market, as determined by the commission at the time of execution of the contract; or

(B) consistent with a commission-approved competition procurement process. Any agreement between affiliated parties shall be subject to review and approval of the commission under Chapter 21 (relating to relations with affiliated interests). In no case shall the cost of obtaining generation from any affiliated interest be greater than the cost of obtaining generation under comparable terms in the wholesale market at the time of execution of the contract.

(3.2) The electric power procured pursuant to paragraph (3.1) shall include a prudent mix of the following:

(i) Spot market purchases.

(ii) Short-term contracts.

(iii) Long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years. The default service provider shall have sole discretion to determine the source and fuel type. Long-term purchase contracts under this subparagraph may not constitute more than 25% of the default service provider's projected default service load unless the commission, after a hearing, determines for good cause that a greater portion of load is necessary to achieve least cost procurement. This subparagraph shall not apply to contracts executed under paragraph (5).

(3.3) The commission may determine that a contract is required to be extended for a longer term of up to 20 years, if the extension is necessary to ensure adequate and reliable service at least cost to customers over time.

(3.4) The prudent mix of contracts entered into pursuant to paragraphs (3.2) and (3.3) shall be designed to ensure:

(i) Adequate and reliable service.

(ii) The least cost to customers over time.

(iii) Compliance with the requirements of paragraph (3.1).

(3.5) Except as set forth in paragraph (5)(ii), the provisions of this section shall apply to any type of energy purchased by a default service provider to provide electric generation supply service, including energy or alternative energy portfolio standards credits required to be purchased under the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act. The commission shall apply paragraph (3.4) to comparable types of energy sources.

(3.6) The default service provider shall file a plan for competitive procurement with the commission and obtain commission approval of the plan considering the standards

in paragraphs (3.1), (3.2), (3.3) and (3.4) before the competitive process is implemented. The commission shall hold hearings as necessary on the proposed plan. If the commission fails to issue a final order on the plan within nine months of the date that the plan is filed, the plan shall be deemed to be approved and the default service provider may implement the plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time as required under paragraph (3.4)(ii).

(3.7) At the time the commission evaluates the plan and prior to approval, in determining if the default electric service provider's plan obtains generation supply at the least cost, the commission shall consider the default service provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis and shall make specific findings which shall include the following:

(i) The default service provider's plan includes prudent steps necessary to negotiate favorable generation supply contracts.

(ii) The default service provider's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

(iii) Neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

(3.8) Notwithstanding sections 508 (relating to power of the commission to vary, reform and revise contracts) and 2102 (relating to approval of contracts with affiliated interests), the commission may modify contracts or disallow costs only when the party seeking recovery of the costs of a procurement plan is, after hearing, found to be at fault for the following:

(i) not complying with the commission-approved procurement plan; or

(ii) the commission of fraud, collusion or market manipulation with regard to these contracts.

(3.9) The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan.

(4) If a customer that chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service.

(5) (i) Notwithstanding paragraph (3.1), the electric distribution company or commission-approved alternative supplier may, in its sole discretion, offer large customers with a peak demand of 15 megawatts or greater at one meter at a location in its service territory any negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the electric distribution company or commission-approved alternative supplier and the large customer. The commission shall permit, but shall not require, an electric distribution company or

commission-approved alternative supplier to provide service to large customers under this paragraph. Contract rates entered into under this paragraph shall be subject to review by the commission in order to ensure that all costs related to the rates are borne by the parties to the contract and that no costs related to the rates are borne by other customers or customer classes. If no costs related to the rates are borne by other customers or customer classes, the commission shall approve the contract within 90 days of its filing, or it shall be deemed approved by operation of law upon expiration of the 90 days. Information submitted under this paragraph shall be subject to the commission's procedures for the filing of confidential and proprietary information.

(ii) For purposes of providing service under this paragraph to customers with a peak demand of 20 megawatts or greater at one meter at a location within that distribution company's service territory, an electric distribution company that has completed its restructuring transition period as of the effective date of this paragraph may, in its sole discretion, acquire an interest in a generation facility or construct a generation facility specifically to meet the energy requirements of the customers, including the electric requirements of the customers' other billing locations within its service territory. The electric distribution company must commence construction of the generation facility or contract to acquire the generation interest within three years after the effective date of this paragraph, except that the electric distribution company may add to the generation facilities it commenced construction or contracted to acquire after this three-year period to serve additional load of customers for whom it commenced construction or contracted to acquire generation within three years. Nothing in this paragraph requires or authorizes the commission to require an electric distribution company to commence construction or acquire an interest in a generation facility. The electric distribution company's interest in the generation facility it built or contracted to acquire shall be no larger than necessary to meet peak demand of customers served under this subparagraph. During times when the customer's demand is less than the electric distribution company's generation interest, the electric distribution company may sell excess power on the wholesale market. At no time shall the costs associated with the generating facility interests be included in rate base or otherwise reflected in rates. The generation facility interests shall not be commission-regulated assets.

(6) A default service plan approved by the commission prior to the effective date of this section shall remain in effect through its approved term. At its sole discretion, the default service provider may propose amendments to its approved plan that are consistent with this section, and the commission shall issue a decision whether to approve or disapprove the proposed amendments within nine months of the date that the amendments are filed. If the commission fails to issue a final order within nine months, the amendments shall be deemed to be approved and the default service provider may implement the amendments as filed.

(7) The default service provider shall offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis. All default service rates shall be reviewed by the commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.

(f) Smart meter technology and time of use rates.--

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a smart meter technology procurement and installation plan with the commission for approval. The plan shall describe the smart meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

(3) Electric distribution companies shall, with customer consent, make available direct meter access and electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services.

(4) In no event shall lost or decreased revenues by an electric distribution company due to reduced electricity consumption or shifting energy demand be considered any of the following:

(i) A cost of smart meter technology recoverable under a reconcilable automatic adjustment clause under section 1307(b), except that decreased revenues and reduced energy consumption may be reflected in the revenue and sales data used to calculate rates in a distribution rate base rate proceeding filed under section 1308 (relating to voluntary changes in rates).

(ii) A recoverable cost.

(5) By January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. The default service provider shall submit an annual report to the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.

(6) The provisions of this subsection shall not apply to an electric distribution company with 100,000 or fewer customers.

(7) An electric distribution company may recover reasonable and prudent costs of providing smart meter technology under paragraph (2)(ii) and (iii), as determined by the commission. This paragraph includes annual depreciation and capital costs over the life of the smart meter technology and the cost of any system upgrades that the electric distribution company may require to enable the

use of the smart meter technology which are incurred after the effective date of this paragraph, less operating and capital cost savings realized by the electric distribution company from the installation and use of the smart meter technology. Smart meter technology shall be deemed to be a new service offered for the first time under section 2804(4)(vi). An electric distribution company may recover smart meter technology costs:

(i) through base rates, including a deferral for future base rate recovery of current basis with carrying charge as determined by the commission; or

(ii) on a full and current basis through a reconcilable automatic adjustment clause under section 1307.

(g) Definition.--As used in this section, the term "smart meter technology" means technology, including metering technology and network communications technology capable of bidirectional communication, that records electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology. The technology shall provide customers with direct access to and use of price and consumption information. The technology shall also:

(1) Directly provide customers with information on their hourly consumption.

(2) Enable time-of-use rates and real-time price programs.

(3) Effectively support the automatic control of the customer's electricity consumption by one or more of the following as selected by the customer:

(i) the customer;

(ii) the customer's utility; or

(iii) a third party engaged by the customer or the customer's utility.

(July 17, 2007, P.L.120, No.36, eff. imd.; Oct. 15, 2008, P.L.1592, No.129, eff. 30 days)

2008 Amendment. Act 129 amended subsec. (e) and added subsecs. (f) and (g).

Cross References. Section 2807 is referred to in section 1330.

§ 2808. Competitive transition charge.

(a) General rule.--To provide each electric utility with an opportunity to recover its transition or stranded costs following the commission's determination under subsection (c), every customer accessing the transmission or distribution network shall pay a competitive transition charge to the electric distribution company in whose certificated territory that customer is located. The costs to be recovered shall be allocated to customer classes in a manner that does not shift interclass or intraclass costs and maintains consistency with the allocation methodology for utility production plant accepted by the commission in the electric utility's most recent base rate proceeding. If a customer installs on-site generation which operates in parallel with other generation on the public utility's system and which significantly reduces the customer's purchases of electricity through the transmission and distribution network, the customer's fully allocated share of transition or stranded costs shall be recovered from the customer through a competitive transition charge. The recovery of transition or stranded costs associated with existing generating facilities is contingent on continued operation at

reasonable availability levels of the generation facilities for which recovery has been approved, except when the generation facility is uneconomic on a production cost basis because of the transition to a competitive market.

(b) Period for collecting competitive transition charge.--The competitive transition charge shall be included on bills to customers for a period not to exceed nine years from the effective date of this chapter unless an alternative payment methodology is mutually agreed upon by the customer and the utility or unless the commission in its discretion and for good cause shown orders an alternative payment period. In establishing the length of the period for collection of the competitive transition charge, the commission shall consider the effect on the ability of the Commonwealth to compete in attracting industry and jobs, on the financial health of electric utilities and other relevant factors.

(c) Determination of competitive transition charge.--In determining the level of transition or stranded costs that an electric utility may recover through the competitive transition charge, the commission shall apply the following principles:

(1) The commission shall allow recovery of regulatory assets and other deferred charges typically recoverable under current regulatory practice, the unfunded portion of the utility's projected nuclear generating plant decommissioning costs and cost obligations under contracts with nonutility generating projects that have received a commission order. Nothing in this chapter shall be construed as requiring an electric utility or a nonutility generating project to enter into an arrangement to buy down, buy out and terminate or otherwise restructure a contract or as authorizing the commission to require a utility to pursue such an arrangement with a nonutility generating project.

(2) The commission shall allow recovery of an electric utility's prudently incurred costs related to cancellation, buyout, buydown or renegotiation of nonutility generating projects consistent with section 527 (relating to cogeneration rules and regulations).

(3) The commission shall determine the level of other generation-related transition or stranded costs that may be recovered through the competitive transition charge.

(4) The commission shall consider the extent to which the electric utility has undertaken efforts to mitigate generation-related transition or stranded costs by appropriate means in a manner that is reasonable under all of the circumstances, including consideration of whether mitigation has been commensurate with the magnitude of the electric utility's generation-related transition or stranded costs. During the transition period, electric utilities shall have the duty to mitigate generation-related transition or stranded costs to the extent practicable. Efforts may include the following:

(i) Acceleration of depreciation and amortization of existing rate base generation assets.

(ii) Minimization of new capital spending for existing rate base generation assets.

(iii) Reallocation of depreciation reserves to existing rate base generation assets.

(iv) Reduction of book assets by application of new proceeds of any sale of idle or underutilized existing rate base generation assets.

(v) Maximization of market revenues from existing rate base generation assets.

(vi) Issuance of securitized debt pursuant to the provisions of section 2812 (relating to approval of transition bonds).

(5) Of equal importance to the mitigation efforts under paragraph (4), the commission shall consider efforts undertaken over time, prior to the enactment of this chapter, to reduce or moderate customer rate levels while maintaining safe and efficient operations.

(d) Commission review.--As a component of its restructuring plan, each electric utility shall file with the commission a recovery plan, including a proposed competitive transition charge and supporting documentation. In evaluating a recovery plan and any proposed competitive transition charge, the commission shall schedule open evidentiary hearings with proper notice and opportunity for all parties to cross-examine witnesses as necessary.

(e) Use of transition bonds.--After the effective date of this chapter, a utility may apply to the commission for a qualified rate order under section 2812 for some or all of its transition or stranded costs.

(1) In evaluating a utility application under this subsection, the commission shall schedule hearings, as necessary.

(2) If the commission issues a qualified rate order under section 2812 and if the transition bonds approved by that order are successfully issued, then:

(i) the utility shall impose and collect through its customer bills the intangible transition charges approved by that qualified rate order; and

(ii) simultaneously, either the utility's rates for electric service or the utility's competitive transition charges shall be reduced by an amount equal to the revenue requirement of the transition or stranded costs for which transition bonds have been successfully issued.

(f) Annual revenue.--Consistent with section 1307(e) (relating to sliding scale of rates; adjustments), the commission shall establish procedures for the annual review of the competitive transition charge. The review shall reconcile the annual revenues received from the charge with the annual amortization of transition or stranded costs approved by the commission under this section. The commission shall adjust the competitive transition charge based upon underrecovery or overrecovery of the annual amortization amount.

Cross References. Section 2808 is referred to in sections 2802, 2803, 2804, 2812 of this title.

§ 2809. Requirements for electric generation suppliers.

(a) License requirement.--No person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators and other entities, shall engage in the business of an electric generation supplier in this Commonwealth unless the person or corporation holds a license issued by the commission. Consistent with 15 Pa.C.S. Ch. 74 (relating to generation choice for customers of electric cooperatives), electric cooperative corporations must possess a certificate for service to supply generation services beyond their territorial limits.

(b) License application and issuance.--An application for an electric generation supplier license must be made to the commission in writing, be verified by oath or affirmation and

be in such form and contain such information as the commission may by its regulations require. A license shall be issued to any qualified applicant, authorizing the whole or any part of the service covered by the application, if it is found that the applicant is fit, willing and able to perform properly the service proposed and to conform to the provisions of this title and the lawful orders and regulations of the commission under this title, including the commission's regulations regarding standards and billing practices, and that the proposed service, to the extent authorized by the license, will be consistent with the public interest and the policy declared in this chapter; otherwise, such application shall be denied.

(c) Financial responsibility.--

(1) In order to ensure the safety and reliability of the generation of electricity in this Commonwealth, no energy supplier license shall be issued or remain in force unless the holder complies with all of the following:

(i) Furnishes a bond or other security approved by the commission in form and amount to ensure the financial responsibility of the electric generation supplier and the supply of electricity at retail in accordance with contracts, agreements or arrangements.

(ii) Certifies to the commission that it will pay and in subsequent years has paid the full amount of taxes imposed by Articles II and XI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and any tax imposed by this chapter.

(iii) Provides the commission with the address of the participant's principal office in this Commonwealth or the address of the participant's registered agent in this Commonwealth, the latter being the address at which the participant may be served process.

(iv) Agrees that it shall be subject to all taxes imposed by the Tax Reform Code of 1971 and any tax imposed by this chapter.

Failure of an electricity supplier to pay a tax referred to in this paragraph or to otherwise comply with the provisions of this paragraph shall be cause for the commission to revoke the license of the electricity supplier.

(2) If an electricity supplier other than an electric distribution company does not pay the tax imposed upon gross receipts under section 1101 of the Tax Reform Code of 1971 or this chapter, the electric distribution company to whose retail customer the electricity supplier provided generation service shall remit the unpaid tax, as a tax on the use of electricity in this Commonwealth, to the Department of Revenue and may collect or seek reimbursement of the tax so paid from the electricity provider or any other appropriate party that used the electricity in this Commonwealth. The department shall collect and enforce the use tax herein provided under section 1102 of the Tax Reform Code of 1971. Failure of the electric distribution company to pay the amount within 30 days after notice provided by the department shall cause interest to be imposed on the electric distribution company in accordance with Article XI of the Tax Reform Code of 1971. Interest shall be calculated from the 31st day after the department gives the notice required in this paragraph. An electric distribution company or other appropriate person may challenge the imposition of the tax and interest by filing a petition with the department not later than 30 days after the date on which the tax became due.

(d) Transferability of licenses.--No license issued under this chapter may be transferred without prior commission approval.

(e) Form of regulation of electric generation suppliers.--The commission may forbear from applying requirements of this part which it determines are unnecessary due to competition among electric generation suppliers. In regulating the service of electric generation suppliers, the commission shall impose requirements necessary to ensure that the present quality of service provided by electric utilities does not deteriorate, including assuring that adequate reserve margins of electric supply are maintained and assuring that 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service) are maintained.

(f) Availability of the services of brokers and marketers or aggregators.--Prior to approving the licensure of any broker and marketer or aggregator, the commission shall set forth standards to ensure that all retail customer classes may choose to purchase electricity through a broker and marketer or aggregator. The commission shall also ensure that brokers, marketers and aggregators comply with 52 Pa. Code Ch. 56.

(g) Annual fees.--The commission may establish, by order or rule, on a reasonable cost basis, fees to be charged for annual activities related to the oversight of electric generation suppliers.

(Oct. 22, 2014, P.L.2545, No.155, eff. 60 days)

2014 Amendment. Act 155 added subsec. (g). See section 1 of Act 155 in the appendix to this title for special provisions relating to legislative findings and declarations.

References in Text. Chapter 74 of Title 15, referred to in subsec. (a), is expired.

Cross References. Section 2809 is referred to in sections 102, 2804, 2810 of this title.

§ 2810. Revenue-neutral reconciliation.

(a) General intent of revenue-neutral reconciliation.--It is the intention of the General Assembly that the restructuring of the electric industry be accomplished in a manner that allows Pennsylvania to enjoy the benefits of competition, promotes the competitiveness of Pennsylvania's electric utilities and maintains revenue neutrality to the Commonwealth. This section is not intended to cause a shift in proportional tax obligations among customer classes or individual electric distribution companies. It is the intention of the General Assembly to establish this revenue replacement at a level necessary to recoup losses that may result from the restructuring of the electric industry and the transition thereto.

(b) Imposition.--

(1) For tax periods beginning on or after January 1, 1999, a tax at the rate provided in subsection (c) is imposed upon the gross receipts of electric distribution companies and electric generation suppliers.

(2) A tax at the rate provided in subsection (c) is imposed upon the gross receipts of any municipality owned or operated public utility or of any public utility service furnished by any municipality. Gross receipts shall be exempt from the tax to the extent that gross receipts are derived from sales of electric energy inside the limits of the municipality owning or operating the public utility or furnishing the public utility service.

(3) A tax at the rate provided in subsection (c) is imposed upon the gross receipts derived from any electric

cooperative owned or operated public utility or from any public utility service furnished by any electric cooperative. Gross receipts shall be exempt from the tax to the extent that gross receipts are derived from sales for resale or sales of electric energy within the limits of its service territory as set forth in 15 Pa.C.S. § 7406 (relating to competition by electric cooperatives).

(c) Rate.--

(1) By December 1, 1998, and each October 1 thereafter until and including October 1, 2002, the Secretary of Revenue shall publish the rate of tax as provided in paragraph (2) in the form of a notice in the Pennsylvania Bulletin and the rate shall apply to the tax imposed by subsection (b) for the period beginning the next January 1. The tax rate published on October 1, 2002, shall continue in force without further adjustment. If the commission determines under section 2806(c) (relating to implementation, pilot programs and performance-based rates) to extend the transition period by more than six months, the requirement for an annual adjustment of the tax rate shall be extended by one additional year. The secretary shall also certify the rate calculated to the majority and minority chairs of the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives and detail the calculations of the rate.

(2) The secretary shall calculate the rate for the periods beginning on and after January 1, 1999, in the manner set forth in this paragraph:

(i) Multiply the 1995-1996 fiscal tax revenue base by a fraction, the numerator of which is the total kilowatt hours of electricity distributed for ultimate consumption in Pennsylvania in the preceding calendar year as certified by the commission and the denominator of which is the total kilowatt hours of electricity distributed for ultimate consumption in Pennsylvania in the calendar year 1995 as certified by the commission.

(ii) From the product derived under subparagraph (i), subtract the total cash payments made to the department during the Commonwealth's preceding fiscal year on account of affected taxes actually paid by each electric distribution company and electric generation supplier and by any other entity, including a successor, whose affected taxes are contained in the 1995-1996 fiscal tax revenue base.

(iii) Divide the difference derived under subparagraph (ii) by the total gross receipts in the preceding calendar year as certified by the commission to determine the tax rate. The tax rate under this subparagraph shall be a decimal rounded to three places.

(3) On August 1, 2000, August 1, 2001, and August 1, 2002, the department shall deliver a report to the General Assembly and the Governor that shall describe the dynamic economic effect upon the affected taxes due to electric utility restructuring. It is the purpose of this report to provide the General Assembly and the Governor with information to determine whether it is appropriate to consider modifying the calculation described in paragraph (2) to reflect additional tax revenues, if any, resulting from the dynamic economic effects upon the affected taxes.

(4) If the effective rate for any affected tax is different from the effective rate for such affected tax in the 1995-1996 fiscal tax revenue base, an adjustment shall

be made to the computation of the rate of tax under paragraph (2) by multiplying that portion of the 1995-1996 fiscal tax revenue base attributable to the affected tax by a fraction, the numerator of which is the effective rate of the affected tax for the preceding fiscal year and the denominator of which is the effective rate of tax of the affected tax in the base fiscal year.

(5) For negative rates:

(i) If the rate of tax calculated for a tax year prior to the tax year beginning January 1, 2004, or January 1, 2005, in the event of an extension by more than six months by the commission as provided in section 2806(c) is negative, a credit equal to the negative tax rate for such tax year multiplied by the taxable gross receipts for that tax year shall be allowed against the taxpayer's liability for any tax for that tax year imposed under Article XI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(ii) If the rate of tax calculated as the final adjustment is negative for the tax period beginning January 1, 2003, or January 1, 2004, in the event of an extension by more than six months by the commission as provided in section 2806(c), the rate of tax imposed by section 1101(b) of the Tax Reform Code of 1971 for the tax years beginning January 1, 2004, and thereafter, or January 1, 2005, and thereafter, in the event of an extension by more than six months, shall be adjusted and set as follows: the tax rate expressed as a decimal rounded to three positions shall be subtracted from .044 or the current rate imposed under section 1101(b) of the Tax Reform Code of 1971 to determine the adjusted tax rate. The adjusted tax rate shall be published in the Pennsylvania Bulletin.

(6) Information to be provided to the department or the commission shall be as follows:

(i) To ensure the identification of cash payments for purposes of subsection (d), the commission shall require any licensee, electric distribution company, electric generation supplier or other person affected to disclose on its license application, renewal or transfer its State tax account or similar number relative to any of the taxes specified.

(ii) The commission shall report and certify to the secretary of the department by August 1, 1998, and each August 1 thereafter the total amount of electricity distributed for ultimate consumption in this Commonwealth during the previous two calendar years and the total gross receipts for the past year.

(iii) As a condition of licensure, the commission shall require each electric distribution company and electric generation supplier to report their annual gross receipts in this Commonwealth.

(iv) For purposes of enforcing sections 2806 and 2809 (relating to requirements for electric generation suppliers) as they relate to the payment of State taxes, an applicant for the grant, renewal or transfer of a license issued under this title shall, by filing an application with the commission, waive confidentiality with respect to State tax information regarding the applicant in the possession of the department, regardless of the source of the information, and shall consent to

the department providing that information to the commission.

(7) (Repealed).

(d) Payment of tax and reports.--The tax imposed under subsection (b) shall be paid within the time prescribed by law. For the purpose of ascertaining the amount of the tax, the treasurer or other appropriate officer of the taxpayer shall transmit to the department by March 15 an annual report, and under oath or affirmation, of the amount of gross receipts received by the taxpayer during the prior calendar year. The treasurer or other appropriate officer of the taxpayer liable to report or pay taxes imposed under subsection (b), except municipalities and cooperatives, shall transmit to the department by March 15 a tentative report for the prior calendar year. The tentative report shall set forth all of the following:

(i) The amount of gross receipts received in the period of 12 months next preceding and reported in the annual report.

(ii) The gross receipts received in the first three months of the current calendar year.

(iii) Other information as the department may require.

(e) Tax computation.--Upon the date its tentative report is required to be made, the taxpayer making a tentative report shall transmit the report to the department on account of the tax due for the current calendar year and compute and make payment of the tentative tax with the report under section 3003 of the Tax Reform Code of 1971.

(f) Time to file reports.--The time for filing annual reports may be extended, estimated settlements may be made by the department if reports are not filed, and the penalties for failing to file reports and pay the taxes imposed under subsection (b) shall be as prescribed by the laws defining the powers and duties of the department. If the works of a taxpayer are operated by another taxpayer, the taxes imposed under subsection (b) shall be apportioned between the taxpayers in accordance with the terms of their respective leases or agreements. For the payment of the apportioned taxes, the Commonwealth shall first look to the taxpayer operating the works. Upon payment by that taxpayer, no other taxpayer shall be held liable for any tax imposed under subsection (b).

(g) Timely mailing treated as timely filing and payment.--Notwithstanding the provisions of any State tax law to the contrary, whenever payment of all or any portion of a State tax is required by law to be received by the department or other agency of the Commonwealth by a day certain, the taxpayer shall be deemed to have complied with that law if the letter transmitting payment of the tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

(h) Procedure, enforcement and penalties.--Parts III, IV, VI and VII of Article IV and Article XXX of the Tax Reform Code of 1971 shall apply to this section insofar as they are consistent with this section and applicable to the tax imposed under subsection (b). Notwithstanding the provisions of section 403(d) of the Tax Reform Code of 1971, if the officers of any corporation subject to tax under this chapter neglect or refuse to make a report as required in this chapter or knowingly make a false report, the department shall add to the tax determined to be due a penalty of 5% of the amount of tax due for each month or fraction of a month until the penalty has reached 25%

and thereafter a penalty of 1% of the amount of tax due for each month or fraction of a month. Penalties added to the tax shall not bear interest.

(i) Electric light, waterpower and hydroelectric utilities.--The terms "electric light company," "waterpower company" and "hydro-electric company," as used in section 1101(b) of the Tax Reform Code of 1971, shall be deemed to include electric distribution companies and electric generation suppliers.

(j) Sales of electric energy.--Retail sales of electric generation, transmission, distribution or supply of electric energy, dispatching services, customer services, competitive transition charges, intangible transition charges and universal service and energy conservation charges and such other retail sales in this Commonwealth the receipts of which, if bundled, would have been deemed to be sales of electric energy prior to the effective date of this chapter shall be deemed sales of electric energy for purposes of section 1101 of the Tax Reform Code of 1971. The phrases "doing business in this Commonwealth" and "engaged in electric light and power business, waterpower business and hydro-electric business in this Commonwealth," as such terms are used in section 1101(b) of the Tax Reform Code of 1971 and in this chapter, shall be construed to include the direct or indirect engaging in, transacting or conducting of activity in this Commonwealth for the purpose of establishing or maintaining a market for the sales of electric energy and include obtaining a license or certification from the commission to supply electric energy. Retail sales of generation shall be deemed to occur at the meter of the retail consumer.

(k) Electric cooperatives.--Section 1101(b) of the Tax Reform Code of 1971 shall apply to electric cooperatives and impose a tax upon the gross receipts derived from any electric cooperative owned or operated public utility or from any public utility service furnished by any electric cooperative. Gross receipts shall be exempt from the tax to the extent that the gross receipts are derived from sales for resale or sales of electric energy within the limits of its service territory as set forth in 15 Pa.C.S. § 7406.

(l) Provisions to be construed with utilities gross receipts tax.--Subsections (i), (j) and (k) shall be construed in conjunction with Article XI of the Tax Reform Code of 1971 and shall be effective for tax years beginning January 1, 1997, and thereafter.

(m) Indemnification.--The electric distribution utility company's tariff shall provide that, if an electric distribution company becomes liable under sections 2806(g) and 2809(c) for State taxes not paid by an electric generation supplier, that electric generation supplier shall indemnify the electric distribution company for the amount of the liability so imposed upon the electric distribution utility.

(n) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Affected taxes." The taxes imposed under Articles II, IV, VI and XI and section 2301(f) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

"Base fiscal year." The year beginning on July 1, 1995, and ending on June 30, 1996.

"Department." The Department of Revenue of the Commonwealth.

"Effective rate." The tax rate applicable during the fiscal year or, if more than one rate is applicable, the average of the rates that were in effect for each month of the fiscal year.

"Fiscal year." A year beginning on July 1 and ending on the subsequent June 30.

"Gross receipts." The gross receipts from the retail sales of electric energy as defined in section 1101(b) of the Tax Reform Code of 1971.

"1995-1996 fiscal tax revenue base." The receipts from affected taxes from the fiscal year 1995-1996, such amount being $984,141,837.

"Portion of the 1995-1996 fiscal tax revenue base attributable to the affected tax." The following amounts for the tax indicated:

Tax	Amount
Corporate net income tax	$181,628,433
Capital stock-franchise tax	$117,495,605
Sales and use tax	$187,401,632
Public utility realty tax	$ 43,883,573
Utilities gross receipts tax	$453,732,594

"Total utilities gross receipts." The total gross receipts for a calendar year for all electric distribution companies and electric generation suppliers which are derived from the sales of electric energy and required to be reported to the commission under subsection (c)(6)(iii).

(Dec. 23, 2003, P.L.250, No.46, eff. imd.)

2003 Repeal. Act 46 repealed subsec. (c)(7).

References in Text. Section 7406 of Title 15, referred to in subsec. (b)(3), expired.

Cross References. Section 2810 is referred to in sections 102, 2804 of this title.

§ 2811. Market power remediation.

(a) Monitoring competitive conditions.--The commission shall monitor the market for the supply and distribution of electricity to retail customers and take steps as set forth in this section to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power.

(b) Initiation of investigations.--Upon complaint or upon its own motion for good cause shown, the commission shall conduct an investigation of the impact on the proper functioning of a fully competitive retail electricity market, including the effect of mergers, consolidations, acquisition or disposition of assets or securities of electricity suppliers, transmission congestion and anticompetitive or discriminatory conduct affecting the retail distribution of electricity.

(c) Conduct of investigations.--

(1) The commission may require an electricity supplier to provide information, including documents and testimony, in accordance with the commission's regulations regarding the discovery of information from any electricity supplier.

(2) Confidential, proprietary or trade secret information provided under this subsection shall not be disclosed to any person not directly employed or retained by the commission to conduct the investigation without the consent of the party providing the information.

(3) Notwithstanding the prohibition on disclosure of information in paragraph (2), the commission shall disclose information obtained under this subsection to the Office of Consumer Advocate and the Office of Small Business Advocate under an appropriate confidentiality agreement. The commission may disclose the information to appropriate Federal or State law enforcement officials if it determines that the disclosure of the information is necessary to prevent or restrain a violation of Federal or State law and

it provides the party that provided the information with reasonable notice and opportunity to prevent or limit disclosure.

(d) Referrals and intervention.--If, as a result of an investigation conducted under this section, the commission has reason to believe that anticompetitive or discriminatory conduct, including the unlawful exercise of market power, is preventing the retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market, the commission, pursuant to its regulations, shall:

(1) Refer its findings to the Attorney General, the United States Department of Justice, the Securities and Exchange Commission or the Federal Energy Regulatory Commission.

(2) Subject to subsection (c)(3), disclose any information it has obtained in the course of its investigation to the agency or agencies to which it has made a referral under paragraph (1).

(3) Intervene, as provided and permitted by law or regulation, in any proceedings initiated as a result of a referral made under paragraph (1).

(e) Approval of proposed mergers, consolidations, acquisitions or dispositions.--

(1) In the exercise of authority the commission otherwise may have to approve the mergers or consolidations by electric utilities or electricity suppliers, or the acquisition or disposition of assets or securities of other public utilities or electricity suppliers, the commission shall consider whether the proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market.

(2) Upon request for approval, the commission shall provide notice and an opportunity for open, public evidentiary hearings. If the commission finds, after hearing, that a proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market, the commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary to preserve the benefits of a properly functioning and workable competitive retail electricity market.

(e.1) Market misconduct.--

(1) If an electric distribution company or any of its affiliated companies or any company that an electric distribution company has purchased generation from is found guilty of market manipulation, exercising market power or collusion by the Federal Energy Regulatory Commission or any Federal or State court or, if an electric distribution company or any one of its affiliated companies or any company that an electric distribution company has purchased generation from settles a claim of market manipulation, exercising market power or collusion that is brought by a regional transmission operator's market monitoring unit, the

Federal Energy Regulatory Commission or another entity, the commission:

(i) Shall direct the electric distribution company to take any and all reasonable action to quantify the effect of the market misconduct upon Pennsylvania ratepayers.

(ii) Following public hearing on the matter and a finding of public interest, may direct the electric distribution company to take any and all reasonable legal action, including the filing of a lawsuit as may be necessary, to recover the quantified damages which shall be used to recompense Pennsylvania ratepayers affected by the market misconduct.

(2) If the electric distribution company fails to pursue reasonable action to quantify or seek recovery of damages for Pennsylvania ratepayers affected by market manipulation, the exercise of market power or collusion, the commission is authorized, following notice and an opportunity of the electric distribution company to comply or contest, to assess a civil penalty, which shall not be recovered in rates, of not more than $10,000 per day for failure or neglect to obey an order of the commission, the continuance of the failure or neglect being a separate offense.

(3) Any monetary damages recovered by the electric distribution company shall be paid to affected Pennsylvania ratepayers in the form of a credit to their electric bills or as refunds.

(4) The provisions of this subsection shall be held to be in addition to and not in substitution for or limitation of any other provision of this title.

(f) Preservation of rights.--Nothing in this section shall restrict the right of any party to pursue any other remedy available to it under this part.

(Oct. 15, 2008, P.L.1592, No.129, eff. 30 days)

2008 Amendment. Act 129 added subsec. (e.1).

§ 2812. Approval of transition bonds.

(a) Qualified rate orders.--Notwithstanding any other provision of law, the commission is authorized to issue qualified rate orders in accordance with the provisions of this subsection to facilitate the recovery or financing of qualified transition expenses of an electric utility or assignee.

(1) A qualified rate order may be adopted by the commission only upon the application of an electric utility and shall become effective in accordance with its terms. After the issuance of a qualified rate order, the electric utility retains sole discretion regarding whether to assign, sell or otherwise transfer intangible transition property or to cause the transition bonds to be issued, including the right to defer or postpone such assignment, sale, transfer or issuance.

(2) After the effective date of this chapter, an electric utility may file an application for a qualified rate order pursuant to the following procedures:

(i) Each application for a qualified rate order shall contain a complete accounting of the utility's transition or stranded costs, detailed information regarding the utility's proposal for the sale of intangible transition property or the issuance of transition bonds and information regarding the electric utility's planned use of the proceeds of the sale or issuance. After the utility has filed its restructuring

plan under section 2806 (relating to implementation, pilot programs and performance-based rates), the utility may incorporate by reference the information in the restructuring plan in providing the information.

(ii) An electric utility may file an application for a qualified rate order concurrently with, prior to, during or following the filing of its restructuring plan under section 2806. If an electric utility requests expedited review under subsection (b)(1)(i) or (ii), it shall designate in its application the portion of its total claimed transition or stranded costs for which it requests such expedited review.

(iii) After notice and an opportunity to be heard, the commission may issue a final qualified rate order for all or a portion of the amount of transition or stranded costs that it finds would be just and reasonable for the utility to recover from ratepayers under sections 2804 (relating to standards for restructuring of electric industry) and 2808 (relating to competitive transition charge). The commission shall issue a final qualified rate order only for the amounts for which it finds such issuance to be in the public interest. The commission shall complete its review of the application and issue its final determination by the later of nine months from the filing, unless the electric utility requests expedited treatment under subsection (b), or 15 days following the filing of the electric utility's restructuring plan under section 2806.

(b) Expedited review procedures.--

(1) The commission shall provide for expedited review of applications for qualified rate orders upon request of the electric utility pursuant to the following procedures:

(i) If the utility elects to file an application prior to the filing of its restructuring plan and requests expedited review, the commission, after notice and an opportunity to be heard, may issue a final qualified rate order approving the issuance of transition bonds for a portion of the utility's transition or stranded costs that the commission finds would be just and reasonable to recover from ratepayers under sections 2804 and 2808. The commission shall consider only the portion of the transition or stranded costs for which the utility requests approval to issue transition bonds. Consideration of all remaining amounts and amounts not resolved by the commission shall be deferred for consideration in the electric utility's restructuring plan proceeding under section 2806. The commission shall complete its review of the application and issue its final determination within 120 days after the request for expedited review but in no event earlier than 15 days after the utility has filed its restructuring plan under section 2806.

(ii) If the electric utility files an application for a qualified rate order concurrently with its restructuring plan or during the course of the restructuring plan proceeding, the electric utility may request, and the commission may allow, an accelerated determination of the application. After notice and an opportunity to be heard, the commission may issue a final qualified rate order approving the issuance of transition bonds for a portion of the utility's stranded or transition costs that the commission finds would be just

and reasonable to recover from ratepayers under sections 2804 and 2808. The commission shall consider only the portion of the utility's transition or stranded costs for which the utility seeks expedited review. Consideration of all remaining amounts and amounts not resolved by the commission shall be deferred for consideration in a final order regarding the utility's restructuring plan under section 2806. The commission shall complete its review of the application and issue its final determination within 120 days after the request for expedited review.

(iii) If the electric utility files an application for a qualified rate order after the commission enters a final order regarding the utility's restructuring plan, and requests expedited treatment, the commission shall complete its review and issue its final determination within 120 days of the request for expedited review.

(2) The qualified rate order shall require that the proceeds from the assignment, sale or transfer or other financing of intangible transition property shall be used principally to reduce the electric utility's transition or stranded costs and to reduce the related capitalization, pursuant to a plan submitted by the electric utility in its application for a qualified rate order and approved by the commission.

(3) Notwithstanding any other provision of law, the commission has the power to specify that all or a portion of a qualified rate order shall be irrevocable. To the extent so specified, neither the order nor the intangible transition charges authorized to be imposed and collected under the order shall be subject to reduction, postponement, impairment or termination by any subsequent action of the commission. Nothing in this paragraph is intended to supersede the right of any party to judicial review of the qualified rate order.

(4) The commission shall provide in any qualified rate order for a procedure for the expeditious approval by the commission of periodic adjustments to the intangible transition charges that are the subject of the pertinent qualified rate order. Such adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition or redemption premium and for other fees, costs and charges in respect of transition bonds approved by the commission as part of or in conjunction with a qualified rate order. The commission shall determine whether the adjustments are required on each anniversary of the issuance of the qualified rate order and at the additional intervals as may be provided for in the qualified rate order. The adjustments, if required, shall be approved within 90 days of each anniversary of the issuance of the qualified rate order or of each additional interval provided for in the qualified rate order.

(5) Notwithstanding any other provision of law, on such conditions as the commission may approve, all or portions of the interest of an electric utility in intangible transition property may be assigned, sold or transferred to an assignee and may be pledged or assigned as security by an electric utility or assignee to or for the benefit of a financing party. To the extent that an interest is assigned, sold or transferred or is pledged or assigned as security, the commission shall authorize the electric utility to contract with the assignee or financing party that the electric utility will continue to operate its system to

provide service to its customers, will impose and collect the applicable intangible transition charges for the benefit and account of the assignee or financing party and will account for and remit the applicable intangible transition charge to or for the account of the assignee or financing party. If the qualified rate order so provides, the obligations of the electric utility:

(i) shall be binding upon the electric utility, its successors and assigns; and

(ii) shall be required by the commission to be undertaken and performed by the electric utility and any other entity which provides electric service to a person that was a customer of an electric utility located within the certificated territory of the electric utility on the effective date of this chapter or that became a customer of electric services within such territory after the effective date of this chapter and is still located within such territory, as a condition to the provision of service to such customer by such electric utility or other entity, unless the customer has paid a termination charge in the manner and on the basis specified in the qualified rate order.

(6) The irrevocable status of any portion of a qualified rate order under paragraph (3) shall lapse and terminate to the extent that an assignment, sale or transfer of the intangible transition property resulting from the rate order or the issuance of the related transition bonds is not effected within the period specified in the qualified rate order.

(7) The effect of any subsequent refinancing of transition bonds upon the rates authorized in a qualified rate order shall be as provided in such order.

(8) In its qualified rate order, the commission shall afford flexibility in establishing the terms and conditions of the transition bonds, including repayment schedules, interest rates and other financing costs. The electric utility shall file the final terms of issuance with the commission.

(c) Intangible transition property.--

(1) Any right that an electric utility has in the intangible transition property prior to its sale or transfer or any other right created under this section or created in the qualified rate order and assignable under this section or assignable pursuant to a qualified rate order shall be only a contract right.

(2) The Commonwealth pledges to and agrees with the holders of any transition bonds issued under this section and with any assignee or financing party who may enter into contracts with an electric utility under this section that the Commonwealth will not limit or alter or in any way impair or reduce the value of intangible transition property or intangible transition charges approved by a qualified rate order until the transition bonds and interest on the transition bonds are fully paid and discharged or the contracts are fully performed on the part of the electric utility. Subject to other requirements of law, nothing in this paragraph shall preclude limitation or alteration if adequate compensation is made by law for the full protection of the intangible transition charges collected pursuant to a qualified rate order and of the holder of this transition bond and any assignee or financing party entering into contract with the electric utility.

(d) Security interests in intangible transition property.--

(1) Neither intangible transition property nor any right, title or interest of a utility or assignee described in paragraph (1) of the definition of "intangible transition property" in subsection (g), whether before or after the issuance of the qualified rate order, shall constitute "an account" or "general intangibles" under 13 Pa.C.S. § 9102 (relating to definitions and index of definitions) nor shall any such right, title or interest pertaining to a qualified rate order, including the associated intangible transition property and any revenues, collections, claims, payments, money or proceeds of or arising from intangible transition charges pursuant to such order, be deemed proceeds of any right or interest other than in the order and the intangible transition property arising from the order.

(2) The granting, perfection and enforcement of security interests in intangible transition property to secure transition bonds is governed by this section rather than by Title 13 (relating to commercial code).

(3) A valid and enforceable security interest in intangible transition property shall attach and be perfected only by means of a separate filing with the commission, under regulations the commission prescribes. For this purpose:

(i) If the transition bonds are issued to finance any qualified transition expenses, as specified in the applicable qualified rate order, the lien of the bonds shall attach automatically to the intangible transition property relating to the expenses from the time of issuance of the bonds.

(ii) The lien under subparagraph (i) shall be deemed a valid and enforceable security interest in the intangible transition property securing the qualified transition bonds and shall be continuously perfected if, before the date of issuance specified in subparagraph (i) or within no more than ten days after the date, a filing has been made by or on behalf of the financing party to protect that security interest in accordance with the procedures prescribed by the commission under this subsection. Any filing in respect to such transition bonds shall take precedence over any other filing.

(iii) The lien under subparagraph (i) is enforceable against the assignee and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the intangible transition property previously perfected in the manner described in this subsection if value has been given by the purchasers of transition bonds. A perfected lien in intangible transition property is a continuously perfected security interest in all revenues and proceeds arising with respect to the associated intangible transition property, whether or not revenues have accrued. Intangible transition property constitutes property for the purposes of contracts securing transition bonds, whether or not the related revenues have accrued. The lien created under this paragraph is perfected and ranks prior to any other lien, including any judicial lien, which subsequently attaches to the intangible transition property, to the intangible transition charges and to the qualified rate order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this paragraph is not defeated or adversely affected by

changes to the qualified rate order or to the intangible transition charges payable by any customer.

(iv) The relative priority of a lien created under this paragraph is not defeated or adversely affected by the commingling of revenues arising with respect to intangible transition property with funds of the electric utility or other funds of the assignee.

(v) If an event of default occurs under approved transition bonds, the holders of transition bonds or their authorized representatives, as secured parties, may foreclose or otherwise enforce the lien in the intangible transition property securing the transition bonds, subject to the rights of any third parties holding prior security interests in the intangible transition property perfected in the manner provided in this subsection. Upon application by the holders or their representatives, without limiting their other remedies, the commission shall order the sequestration and payment to the holders or their representatives of revenues arising with respect to the intangible transition property pledged to the holders. An order under this subparagraph shall remain in full force and effect notwithstanding any bankruptcy, reorganization or other insolvency proceedings with respect to the electric utility or assignee.

(4) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this subsection and may provide that transfers of intangible transition property to an assignee be filed in accordance with the same system.

(e) True sale.--A transfer of intangible transition property by an electric utility to an assignee which the parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in a qualified rate order, shall be treated as an absolute transfer of all of the transferor's right, title and interest, as in a true sale, and not as a pledge or other financing, of the intangible transition property, other than for Federal and State income and franchise tax purposes. Granting to holders of transition bonds a preferred right to the intangible transition property or the provision by the electric utility of any credit enhancement with respect to transition bonds shall not impair or negate the characterization of any transfer as a true sale, other than for Federal and State income and franchise tax purposes. A transfer of intangible transition property shall be deemed perfected as against third persons, including any judicial lien creditors, when all of the following have taken place:

(1) The commission has issued the qualified rate order creating intangible transition property.

(2) A sale or transfer of the intangible transition property in writing has been executed and delivered to the assignee.

(f) Actions with respect to intangible transition charges.--

(1) Nothing in this chapter shall entitle any person to bring an action against a retail electric customer for nonpayment of intangible transition charges, other than the electric utility, its successor or any other entity which provides electric service to a person that was a customer of an electric utility located within the certificated territory of the electric utility on the effective date of this chapter or that became a customer of electric services

within such territory after the effective date of this chapter and is still located within such territory.

(2) The commission has exclusive jurisdiction over any dispute arising out of the obligations to impose and collect intangible transition charges of an electric utility, its successor or any other entity which provides electric service to a person that was a customer of an electric utility located within the certificated territory of the electric utility on the effective date of this chapter or that became a customer of electric services within such territory after the effective date of this chapter and is still located within such territory.

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Assignee." An entity, including a corporation, public authority, trust or financing vehicle, to which an electric utility assigns, sells or transfers other than as security all or a portion of its interest in or right to intangible transition property. The term includes an entity, including a corporation, public authority, trust or financing vehicle to which a direct assignee of an electric utility may assign, sell or transfer other than as security its interest in or right to intangible transition property.

"Financing party." A holder of transition bonds, including trustees, collateral agents and other entities acting for the benefit of such a holder.

"Intangible transition charges." The amounts authorized to be imposed on all customer bills and collected, through a nonbypassable mechanism by the electric utility or its successor or by any other entity which provides electric service to a person that was a customer of an electric utility located within the certificated territory of the electric utility on the effective date of this chapter or that, after this effective date of this chapter, became a customer of electric services within such territory and is still located within such territory, to recover qualified transition expenses pursuant to a qualified rate order. The amounts shall be allocated to customer classes in a manner that does not shift interclass or intraclass costs and maintains consistency with the allocation methodology for utility production plant accepted by the commission in the electric utility's most recent base rate proceeding.

"Intangible transition property."

(1) The property right created under this section representing the irrevocable right of the electric utility or an assignee to receive through intangible transition charges amounts sufficient to recover all of its qualified transition expenses. The term includes all right, title and interest of the electric utility or assignee in the qualified rate order and in all revenues, collections, claims, payments, money or proceeds of or arising from intangible transition charges pursuant to the order to the extent that, in accordance with this chapter, the order and the rates and other charges authorized under the order are declared to be irrevocable.

(2) Intangible transition property shall arise and exist only when, as and to the extent that an electric utility or assignee has qualified transition expenses for which intangible transition charges are authorized in a qualified rate order that has become effective in accordance with

subsection (a) and shall thereafter continuously exist to the extent provided in the order.

"Qualified rate order." An order of the commission adopted in accordance with this section, authorizing the imposition and collection of intangible transition charges.

"Qualified transition expenses." The transition or stranded costs of an electric utility approved by the commission for recovery under sections 2804 (relating to standards for restructuring of electric industry) and 2808 (relating to competitive transition charge) through the issuance of transition bonds; the costs of retiring existing debt or equity capital of the electric utility or its holding company parent, including accrued interest and acquisition or redemption premium, costs of defeasance, and other related fees, costs and charges relating to, through the issuance of transition bonds or the assignment, sale or other transfer of intangible transition property; and the costs incurred to issue, service or refinance the transition bonds, including accrued interest and acquisition or redemption premium, and other related fees, costs and charges, or to assign, sell or otherwise transfer intangible transition property.

"Transition bonds." Bonds, debentures, notes, certificates of participation or of beneficial interest or other evidences of indebtedness or ownership which:

(1) are issued by or on behalf of the electric utility or assignee pursuant to a qualified rate order;

(2) are secured by or payable from intangible transition property; and

(3) reach final maturity in no longer than ten years.

(June 8, 2001, P.L.123, No.18, eff. July 1, 2001)

2001 Amendment. Act 18 amended subsec. (d)(1).

Cross References. Section 2812 is referred to in section 2808 of this title; section 9109 of Title 13 (Commercial Code).

§ 2813. Procurement of power.

Except as provided under the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act, the commission may not order a default service provider to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only.

(Oct. 15, 2008, P.L.1592, No.129, eff. 30 days)

2008 Amendment. Act 129 added section 2813. See the preamble to Act 129 of 2008 in the appendix to this title for special provisions relating to legislative findings and declarations.

§ 2814. Additional alternative energy sources.

(a) Alternative energy sources.--The term "alternative energy sources" as defined under section 2 of the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act, shall also include low-impact hydropower consisting of any technology that produces electric power and that harnesses the hydroelectric potential of moving water impoundments if one of the following applies:

(1) (i) the hydropower source has a Federal Energy Regulatory Commission licensed capacity of 21 megawatts or less; and

(ii) the license for the hydropower source was issued by the Federal Energy Regulatory Commission on or prior to January 1, 1984, and held on July 1, 2007, in whole or in part by a municipality located wholly

within this Commonwealth or by an electric cooperative incorporated in this Commonwealth.

(2) The incremental hydroelectric development:

(i) does not adversely change existing impacts to aquatic systems;

(ii) meets the certification standards established by the Low Impact Hydropower Institute and American Rivers, Inc., or their successors;

(iii) provides an adequate water flow for protection of aquatic life and for safe and effective fish passage;

(iv) protects against erosion; and

(v) protects cultural and historic resources.

(b) Biomass.--The term "biomass energy" as defined under section 2 of the Alternative Energy Portfolio Standards Act shall also include the generation of electricity utilizing by-products of the pulping process and wood manufacturing process, including bark, wood chips, sawdust and lignins in spent pulping liquors. Electricity from biomass energy under this subsection generated inside this Commonwealth shall be eligible as a Tier I alternative energy source. Electricity from biomass energy under this subsection generated outside this Commonwealth shall be eligible as a Tier II alternative energy source.

(c) Increase in Tier I.--The commission shall at least quarterly increase the percentage share of Tier I alternative energy sources required to be sold by an electric distribution company or electric generation supplier under section 3(b)(1) of the Alternative Energy Portfolio Standards Act to reflect any new biomass energy or low-impact hydropower resources that qualify as a Tier I alternative energy source under this section. No new resource qualifying as biomass energy or low-impact hydropower under this section shall be eligible to generate Tier I alternative energy credits until the commission has increased the percentage share of Tier I to reflect these additional resources.

(Oct. 15, 2008, P.L.1592, No.129, eff. 30 days)

2008 Amendment. Act 129 added section 2814. See the preamble to Act 129 of 2008 in the appendix to this title for special provisions relating to legislative findings and declarations.

§ 2815. Carbon dioxide sequestration network.

(a) Assessment.--

(1) By April 1, 2009, the department shall complete a study to identify suitable geological formations, including sites within or in proximity to the Medina, Tuscarora or Oriskany Sandstone formation for the location of a State network.

(2) By June 1, 2009, the department, in consultation with the commission, shall hire one or more independent experts pursuant to 62 Pa.C.S. Pt. I (relating to Commonwealth Procurement Code), as necessary, to conduct an assessment of the following:

(i) Estimates of capital requirements and expenditures necessary for the establishment, operation and maintenance of a State network.

(ii) The collection of data to allow a safety assessment.

(iii) An assessment of all potential risk to individuals, property and the environment associated with the geological sequestration of carbon dioxide in a State network. The assessment, which shall be completed

by October 1, 2009, shall include an analysis of the following:

(A) Existing Federal and State regulatory standards for the storage of carbon dioxide.

(B) Factors contained in the United States Environmental Protection Agency's Vulnerability Evaluation Framework for Geologic Sequestration of Carbon Dioxide (EPA 430-R-08-009, dated July 10, 2008).

(C) The different types of insurance, bonds, other instruments and recommended levels of insurance which should be carried by the operator of the State network during the construction and operation of the State network.

(D) The availability of commercial insurance.

(E) Models for the establishment of a Commonwealth fund to provide protection against risk to be funded by the operator.

(b) Transmission of study and assessment.--

(1) The department shall submit the study conducted under subsection (a)(1) to the Governor, the chairman and minority chairman of the Environmental Resources and Energy Committee of the Senate, the chairman and minority chairman of the Environmental Resources and Energy Committee of the House of Representatives and the department no later than May 1, 2009.

(2) The independent expert shall submit the final assessment under subsection (a)(2) to the Governor, the chairman and minority chairman of the Environmental Resources and Energy Committee of the Senate, the chairman and minority chairman of the Environmental Resources and Energy Committee of the House of Representatives and the department no later than November 1, 2009.

(c) Department.--The following shall apply:

(1) The department shall review the assessment submitted under subsection (a)(2) and all geologic sequestration requirements associated with a State network, including geological site characterization, modeling and verification of fluid movement, corrective action, well construction, operation, mechanical integrity testing, monitoring and site closure.

(2) Following the review under paragraph (1), the department may conduct a pilot project to determine the viability of establishing a State network in this Commonwealth.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Carbon dioxide sequestration." The storage of carbon dioxide in a supercritical phase within a geological subsurface formation such as a deep saline aquifer with suitable cap rock, sealing faults and anticlines that includes compression, dehydration and leak detection monitoring equipment and pipelines to transport carbon dioxide captured by an advanced coal combustion with limited carbon emissions plant to an underground storage site. The term shall not include use of the carbon dioxide for enhanced oil recovery.

"Department." The Department of Conservation and Natural Resources of the Commonwealth.

"State network." A carbon dioxide sequestration network established on lands owned by the Commonwealth, or lands on which the Commonwealth has acquired the right to store carbon

dioxide, that have been designated by the Department of Conservation and Natural Resources for the storage of carbon dioxide.
(Oct. 15, 2008, P.L.1592, No.129, eff. 30 days)

2008 Amendment. Act 129 added section 2815. See the preamble to Act 129 of 2008 in the appendix to this title for special provisions relating to legislative findings and declarations.

CHAPTER 29
TELEPHONE AND TELEGRAPH WIRES

Subchapter

A. General Provisions
B. Regulation of Coin Telephone Service

Enactment. Chapter 29 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

2901. Definitions.
2902. Private wire for gambling information prohibited.
2903. Written contract for private wire.
2904. Joint use of telephone and telegraph facilities.
2905. Telephone message services.
2906. Dissemination of telephone numbers and other identifying information.
2907. State correctional institutions.

Subchapter Heading. The heading of Subchapter A was added July 10, 1986, P.L.1238, No.114, effective immediately.

§ 2901. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Dissemination." The act of transmitting, distributing, advising, spreading, communicating, conveying or making known.

"Private wire." Any and all service equipment, facilities, conduits, poles, wires, circuits, systems by which or by means of which service is furnished for communication purposes, either through the medium of telephone, telegraph, Morse, teletypewriter, loudspeaker or any other means, or by which the voice or electrical impulses are sent over a wire, and which services are contracted for or leased for service between two or more points specifically designated, and are not connected to or available for general telegraphic or telephonic exchange or toll service, and shall include such services known as "special contract leased wire service," "leased line," "private line," "private system," "Morse line," "private wire," but shall not include the usual and customary telephone service by which the subscriber may be connected at each separate call to any other telephone designated by him only through the general telephone exchange system or toll service, and shall not include private wires used for fire or burglar alarm purposes, nor telegraph messenger call boxes and circuits used in connection therewith, time clock circuits used for furnishing correct time service, nor telegraph teleprinters when these teleprinters

terminate in the telegraph companies' offices and are not directly connected between two customers.

"Public utility." A person, partnership, association or corporation, now or hereafter owning or operating in this Commonwealth, equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

§ 2902. Private wire for gambling information prohibited.

(a) General rule.--It is unlawful for any public utility knowingly to furnish to any person or corporation any private wire for use or intended for use in the dissemination of information in furtherance of gambling or for gambling purposes. Any contract shall constitute prima facie evidence that such private wire will be used in furtherance of gambling or for gambling purposes if it shall appear in such contract, or otherwise, that such private wire will be used, is intended to be used or has been used for the dissemination of information pertaining to any horse-racing, race track, race horse, betting, betting odds or any information relative thereto.

(b) Burden of proof.--In any proceeding before the commission under this chapter and in any hearing or proceeding on appeal, the burden of proof shall be on the public utility and the person or corporation contracting for such private wire to show that the private wire has not been used, or is not being used, or is not intended for use in the furtherance of gambling or for gambling purposes.

§ 2903. Written contract for private wire.

(a) General rule.--It is unlawful for any public utility to furnish to any person or corporation any private wire, except in pursuance of a written contract signed by the public utility, by the person or corporation contracting for said private wire and responsible under the terms of the contract for the payment for the service, and by the person or corporation in possession or control of any place or location designated in the contract for installation or connection of said private wire, which contract shall include a detailed written statement of the purpose for which such private wire is intended to be used.

(b) Exceptions.--This section does not apply to:

(1) The furnishing of any private wire in case of public emergency, or where the furnishing of the said private wire is for a temporary purpose not to exceed 48 hours.

(2) Any private wire furnished for use in radio broadcasting, or to any private wire furnished for use by any protective service operating under a franchise granted by any municipality, or to any private wire furnished for use in interstate commerce, or to any private wire furnished for use of newspapers of general circulation.

(c) Action by commission.--It is unlawful for any public utility to furnish to any person or corporation any private wire without first furnishing to the commission a duplicate original of the written contract required by this section. The commission shall examine the same forthwith and conduct such investigation as it may deem necessary, and, if upon examination of the contract, or after investigation, or otherwise at any time, the commission shall find that the said private wire is intended for or has been used for or is being used for the transmission of information or advice in furtherance of gambling, the commission shall disapprove the said contract and give notice of such disapproval to the contracting parties. Thereafter it shall be unlawful for any public utility to furnish the said private wire provided for in the said contract. This subsection does not apply to the furnishing of any private

wire in case of public emergency, or where the furnishing of the said private wire is for a temporary purpose not to exceed 48 hours.

(d) Hearing.--Any public utility or other person or corporation party to the contract who shall feel aggrieved at the action of the commission in disapproving any contract for any private wire shall be entitled to a hearing before the commission upon written request.

(e) Illegal use.--It is unlawful for any person or corporation, who has been furnished a private wire by any public utility in accordance with the provisions of this chapter, to use such private wire for any purpose other than that specified in the contract.

§ 2904. Joint use of telephone and telegraph facilities.

(a) Through lines for continuous service.--The commission may, upon complaint or upon its own motion, after reasonable notice and hearing, by order, require any two or more public utilities, whose lines or wires form a continuous line of communication, or could be made to do so by the construction and maintenance of suitable connections or the joint use of facilities, or the transfer of messages at common points, between different localities which cannot be communicated with, or reached by, the lines of either public utility alone, where such service is not already established or provided, to establish and maintain through lines within this Commonwealth between two or more such localities. The rate for such service shall be just and reasonable and the commission shall have power to establish the same, and declare the portion thereof to which each company affected thereby is entitled and the manner in which the same must be secured and paid. All facilities necessary to establish such service shall be constructed and maintained in such manner and under such rules, with such division of expense and labor, as may be required by the commission.

(b) Trunk line connections.--The commission may, upon complaint or upon its own motion, after reasonable notice and hearing, by order, require any one or more public utilities to connect their facilities, through the medium of suitable trunk lines, with such manual or automatic inter-communicating telephone or telegraph systems as may be wholly owned or leased by such public utilities, or by any other person or corporation. Rates for such trunk line connections and service shall be in accordance with tariffs filed with and approved by the commission.

§ 2905. Telephone message services.

(a) Notice.--Any telephone message service that provides a commercial, informational, public service or other message for a specific charge billed to the caller by a local phone company, prior to the presentation of the message, shall warn the caller that the cost of the call will be charged and that the charge will be itemized on the caller's telephone bill. In the event the message requested contains explicit sexual material, the warning preceding the message shall also inform the caller the message contains explicit sexual material.

(b) Intrastate services.--Before any call can be completed to any telephone message service containing explicit sexual material, the caller shall have first obtained an access code number or other personal identification number consisting of not less than nine digits from the telephone message service through written application to the telephone message service. This access code number or personal identification number must

be presented to the telephone message service after the warning message and in order to complete the call.

(c) Dissemination to minors.--Access codes or personal identification numbers obtained to complete calls containing explicit sexual material as defined in 18 Pa.C.S. § 5903 (relating to obscene and other sexual materials) shall not be issued to a minor. Telephone message services shall exercise all reasonable methods to ascertain that the applicant is not a minor.

(d) Telephone company duties.--Every local telephone company and competitive interexchange telephone service shall list all telephone message service calls on the customer telephone bill and shall designate the type or title of message obtained. In addition, the telephone company shall provide, upon request, at no cost to the consumer, the name and address of any telephone service provider. All telephone companies shall include in their telephone message service tariffs, whether provided through the 976 exchange or otherwise, or in any contract with such telephone message service sponsor, a clause requiring compliance with this section as a condition for continuation of the service.

(e) Costs of service.--

(1) All costs relating to this section shall be borne solely by the telephone message service.

(2) All telephone message services shall provide, in writing, to all telephone companies and competitive interexchange telephone companies providing service in this Commonwealth, their complete telephone number or numbers, including area codes and type or title of service provided. This information shall be provided at the time of newly established service, change in service and annually.

(f) Blocking access.--Every telephone company shall, except to the extent that written authorization is required by a customer for availability of access to all or certain types of telephone message services, provide to customers the option of having access to such telephone message services blocked. The telephone company may not charge the customer any fee or other cost for blocking access to availability of telephone message services unless such telephone company has already provided such blocking to the customer without fee.

(g) Enforcement.--

(1) The commission shall promulgate rules or regulations to ensure the compliance of telephone companies providing messages covered by this section.

(2) The failure of a telephone company to comply with this section shall be a violation of this section and the telephone company shall be subject to enforcement proceedings pursuant to section 502 (relating to enforcement proceedings by commission).

(3) Failure of a telephone message service to comply with this section shall be a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, and 18 Pa.C.S. Ch. 39 (relating to theft and related offenses).

(Mar. 30, 1988, P.L.301, No.37, eff. 60 days)

1988 Amendment. Act 37 added section 2905.

§ 2906. Dissemination of telephone numbers and other identifying information.

(a) General rule.--Notwithstanding any other provision of law, but subject to the provisions of this title, any telephone call identification service offered in this Commonwealth by a

public utility or by any other person, partnership, association or corporation that makes use of the facilities of a public utility shall be lawful if it allows a caller to withhold display of the caller's telephone number and other identifying information on both a per-call and per-line basis from the telephone instrument of the individual receiving the telephone call.

(b) Charge prohibited.--There shall be no charge to the caller who requests that the caller's telephone number and other identifying information be withheld on a per-call basis. The commission may approve a charge to the caller who requests that the caller's telephone number and other identifying information be withheld on a per-line basis if the commission finds, after notice to all customers and an opportunity for hearing, that the charge is just and reasonable and that the charge should be imposed on the caller. Tariff rates shall not apply to victims of domestic violence receiving services from a domestic violence program or protected by a court order nor to social welfare agencies, such as women's shelters, health and counseling centers, public service hotlines and their staffs. In addition, the commission shall direct that the tariff rates shall not apply to customers who order the per-line blocking service within 60 days of its introduction or within 60 days of any request for new telephone service or transfer of existing telephone service. The commission shall also direct that, as soon as practicable, any public utility or any other person, partnership, association or corporation that makes use of the facilities of a public utility which provides this service shall also provide to the calling party only the ability to selectively unblock at no charge on a per-call basis a blocked line using a means which differs from the means to activate per-call blocking. The commission, in the interest of balancing respective privacy interests, shall also permit a tariffed service that automatically prevents the completion of telephone calls to customers who do not wish to receive calls from callers that withhold their telephone number or other identifying information; the terms and conditions of such a tariff shall be subject to commission approval.

(c) Notice.--A public utility offering a call identification service shall notify its subscribers that their calls may be identified to a called party at least 60 days before the service is offered and shall clearly advise its subscribers of their ability to withhold their telephone number and other identifying information on both a per-call and a per-line basis. The form of the required notices must be approved by the commission.

(d) Exceptions.--Notwithstanding any other provision of law, but subject to the provisions of this title, provision of any of the following caller identification services shall be lawful even if the caller cannot withhold display of the caller's telephone number and other identifying information from the instrument of the individual receiving the telephone call:

(1) An identification service which is used within the same limited system, including a Centrex or private branch exchange (PBX) system, as the recipient telephone.

(2) An identification service which is used on a public agency's emergency telephone line or on the line which receives the primary emergency telephone number 911.

(3) An identification service provided in connection with any "800" or "900" access code telephone service until the public utility develops the technical capability to comply with subsection (a), as determined by the commission.

Until such capability is developed, telephone subscribers shall be notified annually by the public utility that use of an "800" or "900" number may result in the disclosure of the subscriber's telephone number or other identifying information to the called party.

(4) An identification service for which the identification information is a necessary component of the communication being conveyed and for which, without such information, the called party would not reasonably be able to act upon or otherwise use the other portions of the communication. This exception is intended to cover services, such as health alert, home monitoring and other similar telemetry services.

(Dec. 22, 1993, P.L.565, No.83, eff. imd.)

1993 Amendment. Act 83 added section 2906.

§ 2907. State correctional institutions.

(a) Identification of calls.--Telecommunication service providers which provide telecommunication services to State correctional institutions shall identify to the called party any call made by an inmate as originating from a correctional institution.

(b) Payment of calls.--

(1) The Department of Corrections may direct that calls made by an inmate shall be collect calls.

(2) The Department of Corrections may provide guidelines for alternative payment methods for telephone calls made by inmates, provided that the alternative methods are consistent with security needs, orderly operation of the prison and the public interest.

(c) No cause of action created.--This section shall not be construed to create any cause of action or any legal right in any person or entity. In addition, this section is not intended to create any right of an inmate to make a telephone call or to compel a particular method of payment.

(Dec. 18, 1996, P.L.1061, No.156, eff. 60 days; Apr. 2, 2002, P.L.218, No.23, eff. imd.)

SUBCHAPTER B
REGULATION OF COIN TELEPHONE SERVICE

Sec.

2911. Legislative findings and declarations.
2912. Availability of adequate coin telephone service.
2913. Minimum service requirement.
2914. Establishment of just and reasonable rates.
2915. Duty of commission.

Enactment. Subchapter B was added July 10, 1986, P.L.1238, No.114, effective immediately.

§ 2911. Legislative findings and declarations.

The General Assembly finds and declares as follows:

(1) It is in the public interest of the citizens of this Commonwealth to maintain and promote the availability and affordability of public coin telephone service.

(2) The public safety, health and welfare requires that public coin telephone stations shall, except in extraordinary circumstances, have the capability of making and receiving local and toll calls in order to provide adequate service.

§ 2912. Availability of adequate coin telephone service.

(a) General rule.--All public utilities, as defined in this chapter, shall maintain a sufficient number of public coin telephone stations within its service territory to provide adequate access to emergency telephone service, to ensure that there is adequate access to the telephone network for individuals who do not subscribe to telephone service and for any other purpose determined to be appropriate by the commission.

(b) Definition.--As used in this subchapter the term "public coin telephone stations" means those stations which are readily accessible to the public 24 hours per day or are designated as public telephones pursuant to tariffs approved by the commission.

§ 2913. Minimum service requirement.

(a) General rule.--All public and semipublic coin telephone stations maintained by a public utility or provided, maintained or sold in this Commonwealth by any other person, partnership, association or corporation shall, except in extraordinary circumstances, provide two-way service. The commission shall permit public coin telephones to be converted so that they are technically capable of placing, but not receiving, calls only when such conversion is necessary to protect the public safety, health and welfare and would be in the best interests of the public.

(b) Public coin telephone service by nonpublic utilities.--No public utility shall provide telephone service to any person, partnership, association or corporation for the purpose of providing public and semipublic coin service unless the coin telephone complies with subsection (a).

(c) Definition.--As used in this section the term "two-way service" means the technical capability to place and receive local and intrastate telephone calls, the conspicuous display of a telephone number at which the public coin telephone can be reached and the ability to recognize when a call is incoming.

§ 2914. Establishment of just and reasonable rates.

The commission shall ensure that all public and semipublic coin telephone service rates for local and intrastate calls are just and reasonable.

§ 2915. Duty of commission.

The commission shall ensure that the provisions of this subchapter are implemented by all public utilities, coin telephone station manufacturers, vendors, owners and lessors doing business in this Commonwealth. The commission shall, within 120 days after the effective date of this subchapter, promulgate regulations implementing the provisions of this subchapter.

CHAPTER 30

ALTERNATIVE FORM OF REGULATION
OF TELECOMMUNICATIONS SERVICES

Sec.

3001. Declaration of policy (Repealed).
3002. Definitions (Repealed).
3003. Local exchange telecommunications company request for alternative regulation and network modernization implementation plan (Repealed).
3004. Commission review and approval of petition and plan (Repealed).
3005. Competitive services (Repealed).
3006. Streamlined form of rate regulation (Repealed).

3007. Determination of access charges (Repealed).
3008. Interexchange telecommunications carrier (Repealed).
3009. Additional powers and duties (Repealed).
3010. (Reserved).
3011. Declaration of policy.
3012. Definitions.
3013. Continuation of commission-approved alternative regulation and network modernization plans.
3014. Network modernization plans.
3015. Alternative forms of regulation.
3016. Competitive services.
3017. Access charges.
3018. Interexchange telecommunications carriers.
3019. Additional powers and duties.

Enactment. Chapter 30 was added July 8, 1993, P.L.456, No.67, effective immediately.

Cross References. Chapter 30 is referred to in section 1202 of Title 8 (Boroughs and Incorporated Towns).

§ 3001. Declaration of policy (Repealed).

2004 Repeal. Section 3001 was repealed November 30, 2004, P.L.1398, No.183, effective immediately.

§ 3002. Definitions (Repealed).

2004 Repeal. Section 3002 was repealed November 30, 2004, P.L.1398, No.183, effective immediately.

§ 3003. Local exchange telecommunications company request for alternative regulation and network modernization implementation plan (Repealed).

2004 Repeal. Section 3003 was repealed November 30, 2004, P.L.1398, No.183, effective immediately.

§ 3004. Commission review and approval of petition and plan (Repealed).

2004 Repeal. Section 3004 was repealed November 30, 2004, P.L.1398, No.183, effective immediately.

§ 3005. Competitive services (Repealed).

2004 Repeal. Section 3005 was repealed November 30, 2004, P.L.1398, No.183, effective immediately.

§ 3006. Streamlined form of rate regulation (Repealed).

2004 Repeal. Section 3006 was repealed November 30, 2004, P.L.1398, No.183, effective immediately.

§ 3007. Determination of access charges (Repealed).

2004 Repeal. Section 3007 was repealed November 30, 2004, P.L.1398, No.183, effective immediately.

§ 3008. Interexchange telecommunications carrier (Repealed).

2004 Repeal. Section 3008 was repealed November 30, 2004, P.L.1398, No.183, effective immediately.

§ 3009. Additional powers and duties (Repealed).

2004 Repeal. Section 3009 was repealed November 30, 2004, P.L.1398, No.183, effective immediately.

§ 3010. (Reserved).

2004 Amendment. Section 3010 (Reserved) was added November 30, 2004, P.L.1398, No.183, effective immediately.

§ 3011. Declaration of policy.

The General Assembly finds and declares that it is the policy of this Commonwealth to:

(1) Strike a balance between mandated deployment and market-driven deployment of broadband facilities and advanced services throughout this Commonwealth and to continue alternative regulation of local exchange telecommunications companies.

(2) Maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas, including deployment of broadband facilities in or adjacent to public rights-of-way abutting public schools, including the administrative offices supporting public schools, industrial parks and health care facilities.

(3) Ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis.

(4) Ensure that rates for protected services do not subsidize the competitive ventures of telecommunications carriers.

(5) Provide diversity in the supply of existing and future telecommunications services and products in telecommunications markets throughout this Commonwealth by ensuring that rates, terms and conditions for protected services are reasonable and do not impede the development of competition.

(6) Ensure the efficient delivery of technological advances and new services throughout this Commonwealth in order to improve the quality of life for all Commonwealth residents.

(7) Encourage the provision of telecommunications products and services that enhance the quality of life of people with disabilities.

(8) Promote and encourage the provision of competitive services by a variety of service providers on equal terms throughout all geographic areas of this Commonwealth without jeopardizing the provision of universal telecommunications service at affordable rates.

(9) Encourage the competitive supply of any service in any region where there is market demand.

(10) Encourage joint ventures between local exchange telecommunications companies and other entities where such joint ventures accelerate, improve or otherwise assist a local exchange telecommunications company in implementing its network modernization plan.

(11) Establish a bona fide retail request program to aggregate and make advanced services available in areas where sufficient market demand exists and to supplement existing network modernization plans.

(12) Promote and encourage the provision of advanced services and broadband deployment in the service territories of local exchange telecommunications companies without jeopardizing the provision of universal service.

(13) Recognize that the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers.

(Nov. 30, 2004, P.L.1398, No.183, eff. imd.)

2004 Amendment. Act 183 added section 3011.

§ 3012. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Advanced service." A retail telecommunications service that, regardless of transmission medium or technology, is capable of supporting a minimum speed of 200 kilobits per second (Kbps) in at least one direction at the network demarcation point of the customer's premises.

"Aggregator telephone." A telephone which is made available to the transient public, customers or patrons, including, but not limited to, coin telephones, credit card telephones and telephones located in hotels, motels, hospitals and universities.

"Alternative form of regulation." A form of regulation of telecommunications services other than the traditional rate base or rate of return regulation, including a streamlined form of regulation, as approved by the commission.

"Alternative service provider." An entity that provides telecommunications services in competition with a local exchange telecommunications company.

"Bona fide retail request." A written request for service which meets the requirements of section 3014(c) (relating to network modernization plans), is received by a local exchange telecommunications company and through which end users commit to subscribe to an advanced service.

"Bona fide retail request program." A program established by a local exchange telecommunications company pursuant to section 3014(c) (relating to network modernization plans).

"Broadband." A communication channel using any technology and having a bandwidth equal to or greater than 1.544 megabits per second (Mbps) in the downstream direction and equal to or greater than 128 kilobits per second (Kbps) in the upstream direction.

"Broadband availability." Access to broadband service by a retail telephone customer of a local exchange telecommunications company.

"Broadband Outreach and Aggregation Program." A program established by the Department of Community and Economic Development pursuant to section 3014(i) (relating to network modernization plans).

"Business Attraction or Retention Program." A program established by a local exchange telecommunications company pursuant to section 3014(d) (relating to network modernization plans).

"Central office." A local exchange telecommunications company switch used to provide local exchange telecommunications service.

"Community." Those customers of a local exchange telecommunications company served by an existing or planned remote terminal or, where no remote terminal exists or is planned, a central office switch.

"Competitive service." A service or business activity determined to be competitive by the commission on or prior to December 31, 2003, and a service or business activity determined or declared to be competitive pursuant to section 3016 (relating to competitive services).

"Department." The Department of Community and Economic Development of the Commonwealth.

"Education Technology Fund" or **"E-Fund."** The fund established under section 3015(d) (relating to alternative forms of regulation).

"Education Technology Program." The program established by the Department of Education pursuant to section 3014(j) (relating to network modernization plans).

"Eligible telecommunications carrier." A carrier designated by the Pennsylvania Public Utility Commission pursuant to 47 CFR 54.201 (relating to definition of eligible telecommunications carriers, generally) or successor regulation as eligible to receive support from the Federal Universal Service Fund.

"Eligible telecommunications customer." A customer of an eligible telecommunications carrier who qualifies for Lifeline service discounts pursuant to the requirements of 47 CFR 54.409 (relating to consumer qualification for Lifeline) or successor regulation.

"Fund." The Broadband Outreach and Aggregation Fund established under section 3015(c) (relating to alternative forms of regulation).

"Gross Domestic Product Price Index" or **"GDP-PI."** The Gross Domestic Product Fixed Weight Price Index as calculated by the United States Department of Commerce or a successor price index.

"Health care facility." The term shall have the same meaning given to it in the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

"Industrial development agency." An industrial development agency under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, that has been certified by the Pennsylvania Industrial Development Authority under section 5.2 of that act.

"Inflation offset." The part of the price change formula in the price stability mechanism that reflects an offset to the Gross Domestic Product Price Index or Successor Price Index.

"Interexchange services." The transmission of interLATA or intraLATA toll messages or data outside the local calling area.

"Interexchange telecommunications carrier." A carrier other than a local exchange telecommunications company authorized by the commission to provide interexchange services.

"Lifeline service." A discounted rate local service offering, as defined in 47 CFR 54.401 (relating to Lifeline defined) or successor regulation, but excluding any offering funded in part by Federal Universal Service Fund Tier Three funding under 47 CFR 54.403 (relating to Lifeline support amount) or successor regulation.

"Local development district." A multicounty economic and community development organization established to provide regional planning and development services to improve the economy and quality of life in a particular region through a variety of activities, including, but not limited to, the fostering of public and private partnerships and providing assistance to businesses.

"Local exchange telecommunications company." An incumbent carrier authorized by the commission to provide local exchange telecommunications services. The term includes a rural telecommunications carrier and a nonrural telecommunications carrier.

"Local exchange telecommunications service." The transmission of messages or communications that originate and terminate within a prescribed local calling area.

"Network modernization plan." A plan for the deployment of broadband service by a local exchange telecommunications company under this chapter or any prior law of this Commonwealth.

"Noncompetitive service." A regulated telecommunications service or business activity that has not been determined or declared to be competitive.

"Nonprotected service." Any telecommunications service provided by a local exchange telecommunications company that is not a protected service.

"Nonrural telecommunications carrier." A local exchange telecommunications company that is not a rural telephone company as defined in section 3 of the Telecommunications Act of 1996 (Public Law 104-104, 110 Stat. 56).

"Optional calling plan." A discounted toll plan offered by either a local exchange telecommunications company or an interexchange telecommunications carrier.

"Political subdivision." Any county, city, borough, incorporated town, township, municipality, municipal authority or county institution district.

"Price stability mechanism." A formula which may be included in a commission-approved alternative form of regulation plan that permits rates for noncompetitive services to be adjusted upward or downward.

"Protected service." The following telecommunications services provided by a local exchange telecommunications company unless the commission has determined the service to be competitive:

(1) Service provided to residential consumers or business consumers that is necessary to complete a local exchange call.

(2) Touch-tone service.

(3) Switched access service.

(4) Special access service.

(5) Ordering, installation, restoration and disconnection of these services.

"Remote terminal." A structure located outside of a central office which houses electronic equipment and which provides transport for telecommunications services to and from a central office.

"Rural telecommunications carrier." A local exchange telecommunications company that is a rural telephone company as defined in section 3 of the Telecommunications Act of 1996 (Public Law 104-104, 110 Stat. 56).

"School entity." An intermediate unit, school district, joint school district, area vocational-technical school, independent school, licensed private academic school, accredited school and any other public or nonpublic school serving students in any grade from kindergarten through 12th grade.

"Special access service." Service provided over dedicated, nonswitched facilities by local exchange telecommunications companies to interexchange telecommunications carriers or other large volume users which provides connection between an interexchange telecommunications carrier or private network and a customer's premises.

"Switched access service." A service which provides for the use of common terminating, switching and trunking facilities of a local exchange telecommunications company's public switched network. The term includes, but is not limited to, the rates

for local switching, common and dedicated transport and the carrier charge.

"**Telecommunications Act of 1996.**" The Telecommunications Act of 1996 (Public Law 104-104, 110 Stat. 56).

"**Telecommunications carrier.**" An entity that provides telecommunications services subject to the jurisdiction of the commission.

"**Telecommunications service.**" The offering of the transmission of messages or communications for a fee to the public.

"**Universal broadband availability.**" Access to broadband service by each telephone customer of a local exchange telecommunications company.

(Nov. 30, 2004, P.L.1398, No.183, eff. imd.)

2004 Amendment. Act 183 added section 3012.

References in Text. Section 27 of Act 16 of 2019 provided that a reference in statute or regulation to "area vocational-technical school" shall be deemed a reference to "area career and technical school," and a reference in statute or regulation to "vocational curriculums" shall be deemed a reference to "career and technical curriculums."

§ 3013. Continuation of commission-approved alternative regulation and network modernization plans.

(a) General rule.--An alternative form of regulation plan and network modernization plan approved by the commission for a local exchange telecommunications company as of December 31, 2003, shall remain valid and effective except as may be amended at the election of the local exchange telecommunications company as authorized by this chapter. The commission shall allow a previously approved plan to be amended to conform to any changes made under this chapter and shall not require any other changes to the plan.

(b) Limitation on changes to plans.--Except for changes to existing alternative form of regulation and network modernization plans as authorized by this chapter, no change to any alternative form of regulation or network modernization plan may be made without the express agreement of both the commission and the local exchange telecommunications company.

(c) Grandfather provision.--All services previously determined to be competitive as of December 31, 2003, shall remain competitive services unless reclassified by the commission under section 3016(c) (relating to competitive services).

(d) Commission oversight.--The commission will continue to exercise oversight of alternative form of regulation and network modernization plans for local exchange telecommunications companies as provided in this chapter.

(Nov. 30, 2004, P.L.1398, No.183, eff. imd.)

2004 Amendment. Act 183 added section 3013.

Cross References. Section 3013 is referred to in section 3014 of this title.

§ 3014. Network modernization plans.

(a) Continuation of approved plan.--A local exchange telecommunications company that does not elect an option under subsection (b) shall remain subject to its network modernization plan in effect as of December 31, 2003, without revision or modification except by agreement under section 3013(b) (relating to continuation of commission-approved alternative regulation and network modernization plans) and as provided in this section through December 31, 2015.

(b) Options for amendment of network modernization plan.--Local exchange telecommunications companies shall have the following options:

(1) (i) A rural telecommunications carrier that elects to amend its network modernization plan pursuant to this subsection shall remain subject to the carrier's network modernization plan in effect as of December 31, 2003, as amended pursuant to this subsection, through December 31, 2008. Prior to implementation of such election, the rural telecommunications carrier shall comply with the notification requirements of subsection (e).

(ii) The rural telecommunications carrier shall commit to accelerate 100% broadband availability by December 31, 2008, in its amended network modernization plan. Any rural telecommunications carrier electing this option shall not be required to offer a bona fide retail request program or a business attraction or retention program.

(2) (i) A rural telecommunications carrier that elects to amend its network modernization plan pursuant to this subsection shall remain subject to the carrier's network modernization plan in effect as of December 31, 2003, as amended pursuant to this subsection, through December 31, 2013, or December 31, 2015, as applicable. Prior to implementation of such election, the rural telecommunications carrier shall comply with the notification requirements of subsection (e).

(ii) The rural telecommunications carrier shall commit:

(A) to accelerate broadband availability to at least 80% of its total retail access lines in its distribution network by December 31, 2010, and 100% of its total retail access lines in its distribution network by December 31, 2013; or

(B) to accelerate broadband availability to at least 80% of its total retail access lines in its distribution network by December 31, 2010, and 100% of its total retail access lines in its distribution network by December 31, 2015; and

(C) to offer a bona fide retail request program and a business attraction or retention program pursuant to subsections (c) and (d). Under no circumstances may the rural telecommunications carrier reduce its existing broadband availability commitment.

(3) (i) A nonrural telecommunications carrier that elects to amend its network modernization plan pursuant to this subsection shall remain subject to such carrier's network modernization plan in effect as of December 31, 2003, as amended pursuant to this subsection, including meeting its 100% broadband availability commitment. Prior to implementation of such election, the nonrural telecommunications carrier shall comply with the notification requirements of subsection (e).

(ii) The nonrural telecommunications carrier shall commit:

(A) to provide broadband availability to 100% of its total retail access lines in its distribution network by December 31, 2013, or December 31, 2015; and

(B) to offer a bona fide retail request program and a business attraction or retention program

pursuant to subsections (c) and (d). Under no circumstances may such nonrural telecommunications carrier reduce its existing broadband availability commitment.

(4) A local exchange telecommunications company that elects under paragraph (1), (2) or (3) shall also commit to universal broadband deployment in or adjacent to public rights-of-way abutting all public schools, including the administration offices supporting public schools, industrial parks and health care facilities in its service territory on or before December 31, 2005, except that a local exchange telecommunications company serving more than ten exchanges in this Commonwealth may elect to extend this commitment from December 31, 2005, to December 31, 2006, for any exchange with less than 4,000 access lines.

(5) A local exchange telecommunications company that elects under paragraph (1), (2) or (3) may amend its network modernization plan to extend the period of time within which broadband service must be made available to a customer to up to ten business days after the customer's request for broadband service.

(6) A local exchange telecommunications company operating under an amended network modernization plan may subsequently petition the commission for approval of further modification of its amended network modernization plan, which the commission may grant upon good cause shown.

(7) A rural telecommunications carrier serving less than 50,000 access lines in this Commonwealth making an election pursuant to paragraph (1) and filing its amended network modernization plan with the commission pursuant to subsection (e) shall be granted by the commission a suspension of section 251(c)(2), (3), (4), (5) and (6) obligations under the Telecommunications Act of 1996. This suspension of obligations shall expire December 31, 2008, unless extended by the commission. Should the commission, following a hearing, determine that the rural telecommunications carrier has failed to timely meet its commitments pursuant to this paragraph, the suspension of obligations shall expire upon entry of the commission order making such determination. Expiration of the suspension of obligations shall not impact the rural telephone company exemption of the rural telecommunications carrier under section 251(f)(1) of the Telecommunications Act of 1996.

(8) A local exchange telecommunications company may accelerate its broadband availability commitment by electing an additional option pursuant to paragraph (1), (2) or (3), as applicable, at a later date. The local exchange telecommunications company shall be subject to the applicable modified inflation offset in its price stability mechanism as set forth in section 3015(a)(1) (relating to alternative forms of regulation) effective upon the filing of an amended network modernization plan under subsection (e).

(c) Bona fide retail request program.--A local exchange telecommunications company that elects to amend its network modernization plan pursuant to subsection (b)(2) or (3) shall no later than 90 days after the effective date of its amended plan implement a bona fide retail request program in areas where it does not provide broadband. Not later than 30 days in advance of program implementation, the local exchange telecommunications company shall file with the commission and provide the department with a written description of the program, a sample request for advanced services form for use in the program and

the form of any advanced services term subscription agreements customers will be required to execute in connection with receiving the requested services. A bona fide retail request program shall consist of the following:

(1) Any person, business, local development district, industrial development agency or other entity seeking advanced services pursuant to a bona fide retail request program shall submit a written request for such services to the local exchange telecommunications company or to the department in accordance with subsection (d). The written request may be in the form of a petition which includes the information required by paragraph (2), in the form provided by the department under subsection (d) which includes the information required by paragraph (2) or in the form of individual requests each of which includes the information required by paragraph (2). If individual requests are received, the local exchange telecommunications company shall aggregate requests for the same service and initiate appropriate action pursuant to this subsection when the required number of requests have been received.

(2) To be considered a bona fide retail request, the written request must include:

(i) a request that a minimum of 50 retail access lines or 25% of retail access lines within a community, whichever is less, each be provided the same advanced service or comparable advanced services having a bandwidth within 100 kilobits per second (Kbps) of each other. Notwithstanding the foregoing comparable bandwidth limitation, where a request includes individual customer requests for advanced services having equal to or less than 1.544 megabits per second (Mbps) bandwidth in the downstream direction, all lines in the request shall be counted in meeting the minimum line requirement of this subparagraph;

(ii) the name, address, telephone number and signature of each existing retail customer requesting the advanced service, the advanced service being requested and the number of access lines for which the advanced service is being requested;

(iii) the name, address and telephone number of a designated contact person where the request is made by or on behalf of more than one person or business; and

(iv) a commitment by each customer who signs the request to subscribe to the requested service for one year, subject to the local exchange telecommunications company's identification of the price and terms of the service and the customer's agreement to the price and terms.

(3) In administering the bona fide retail request program, the local exchange telecommunications company shall:

(i) establish an Internet website and toll-free telephone number to address customer inquiries regarding the program;

(ii) mail a request form to a customer upon request;

(iii) confirm its receipt of any completed request in writing to the customer and identify the service requested;

(iv) as part of the written confirmation, if available, or in a subsequent written communication to the customer, provide the customer the applicable rate, the contract term, the status of the request and a term subscription agreement for execution; and

(v) notify the customers in a community, within 30 days of receipt of a bona fide request, of the expected date of the availability of the requesters' service.

(4) When a bona fide retail request has been received that meets the requirements of paragraph (2), the local exchange telecommunications company shall provide the requested advanced service, or other reasonably comparable service having a bandwidth within 100 kilobits per second (Kbps) of the requested service, to the community as soon as practicable, but in no event later than 365 days of the date the requirements of paragraph (2) have been met or within the period approved by the commission under paragraph (5) or (6) where:

(i) the local exchange telecommunications company provides the requested advanced service to other customers in its service territory;

(ii) no service is available to the requesting customers from an alternative service provider at or within 100 kilobits per second (Kbps) of the data speed requested or such service is available at a price that exceeds the then current price offered by the local exchange telecommunications company by more than 50%;

(iii) the community is situated within the service territory of the local exchange telecommunications company; and

(iv) the local exchange telecommunications company does not have to provide fiber to the customer's premises to furnish the requested advanced service.

(5) Where, as a result of property acquisition, including acquiring rights-of-way, or new construction, a local exchange telecommunications company is unable to provide the requested advanced service within the one-year period set forth in paragraph (4), the company may petition the commission for an extension of up to six months, with service upon the customer or customers who made the bona fide retail request and the department if the department submitted the request on behalf of the customer or customers. The commission may delegate its authority to rule on such petitions to a bureau director or other appropriate employee who shall grant the petition for good cause shown.

(6) Where the total number of bona fide retail requests received by any local exchange telecommunications company or affiliated companies that meet the requirements of paragraphs (2) and (4) exceed 40 requests in any 12-month period or where there are more than 20 such requests that require property acquisition, including acquiring rights-of-way, or new construction in any 12-month period, the local exchange telecommunications company or companies may provide a verified certification to the commission that one or both of the previously stated criteria are met, with service upon the customer or customers who made the additional requests and upon the department if the department submitted any such requests. Upon receipt of the certification, the commission or the commission through its designated staff shall permit the local exchange telecommunications company or companies to extend the time for such deployments for a period of no more than 12 months unless the commission determines an additional time period to be just and reasonable. If a deployment is extended, it shall be counted in determining the maximum number of deployments provided for under this subsection in any 12-month period covering the month to which it is extended.

(7) No advanced service requested and deployed by a local exchange telecommunications company under the bona fide retail request program which has a bandwidth of less than 1.544 megabits per second (Mbps) in the downstream direction shall be counted as a credit toward the local exchange telecommunications company's broadband deployment obligation under its network modernization plan amended pursuant to subsection (b)(2) or (3).

(8) With regard to requests submitted under this subsection, a retail customer may challenge the action of a local exchange telecommunications company pursuant to section 701 (relating to complaints).

(9) Local exchange telecommunications companies with bona fide retail request programs shall provide semiannual reports to the commission and the department of the number of requests for advanced services received during the reporting period by exchange or density cell and the action taken on requests meeting the requirements of this subsection.

(10) A local exchange telecommunication company's bona fide retail request program established under this subsection shall continue through December 31, 2015, or such earlier date as the local exchange telecommunications company achieves 100% broadband availability throughout its service territory.

(11) In addition to adjudicating any complaints brought by customers under paragraph (8), the commission shall monitor and enforce the compliance of participating local exchange telecommunications companies with their obligations under this subsection.

(d) Business attraction or retention program.--

(1) Not later than 90 days after amending its network modernization plan under subsection (b)(2) or (3), the local exchange telecommunications company shall establish a business attraction or retention program to permit the department to aggregate customer demand where necessary and facilitate the deployment of advanced or broadband services to qualifying businesses which the department seeks to attract to or retain in this Commonwealth and whose requests for such services are submitted by or through the department.

(2) Each local exchange telecommunications company which amends its network modernization plan under subsection (b)(2) or (3) not later than 90 days after the effective date of its amended plan shall designate a single point of contact to receive all written advanced or broadband service requests forwarded by the department, provide associated contact information to the department and provide the department and the commission with a written description of its participation in the program and a sample request for advanced or broadband services form for use in the program.

(3) The department may submit a request to the applicable local exchange telecommunications company by or on behalf of qualifying businesses in areas that the department deems priority areas for economic development, including and giving preference to keystone opportunity zones, keystone opportunity expansion zones, enterprise zones, keystone opportunity improvement zones and other areas identified by the department as lacking adequate access to advanced or broadband services which would be important in order to promote economic development projects in those areas.

(4) The department shall establish an advisory committee that shall consist of representatives of each local exchange telecommunications company with a business attraction or retention program, local development districts and other local economic and industrial development agencies to assist the department in developing protocols and procedures for implementing these programs pursuant to this subsection.

(5) Qualifying business or businesses' requests for advanced services submitted by the department that are provisioned through the bona fide retail request program shall be processed in accordance with subsection (c) and shall be allocated 50% of the maximum number of annual deployments referenced in subsection (c)(6). Other requests shall be allocated 50% of the number of such deployments, provided, however, that any allocated deployments that are unused may be utilized by the department or nondepartment applicants, as applicable.

(6) For qualifying business or businesses whose request for advanced services is determined by the local exchange telecommunications company to be better processed outside of the bona fide retail request program, the local exchange telecommunications company shall make a proposal to the requesting business or businesses to provide the requested advanced or broadband service and subsequently shall provision such service. The local exchange telecommunications company shall advise the department and the business or businesses within 30 days of the date the contract is signed of the date by which the requested advanced or broadband service will be provided, which date shall be not later than one year after the date the contract is signed unless the business or businesses agree to a longer period or the local exchange telecommunications company obtains commission approval of an extension under the same procedure set forth in subsection (c)(5).

(7) No advanced service requested of and deployed by a local exchange telecommunications company under the Business Attraction or Retention Program which has a bandwidth of less than 1.544 megabits per second (Mbps) in the downstream direction shall be counted as a credit toward the local exchange telecommunication company's broadband deployment obligation under its network modernization plan amended under subsection (b)(2) or (3).

(8) Each local exchange telecommunications company which is required to participate in the department's Business Attraction or Retention Program shall continue its participation through December 31, 2015, or such earlier date as it achieves 100% broadband availability throughout its service territory.

(9) The department shall oversee local exchange telecommunications company participation in the Business Attraction or Retention Program, including the timely completion of qualifying advanced or broadband services requests submitted by or through the department which are processed within or outside of the participating local exchange telecommunications companies' bona fide retail request programs.

(10) The commission shall monitor and enforce the compliance of participating local exchange telecommunications companies with their obligations under the Business Attraction or Retention Program.

(e) Notice of filing of amendments.--A local exchange telecommunications company that elects to amend its network

modernization plan under subsection (b) shall notify the commission in writing of such election and, within 60 days following such notification, file its amended network modernization plan with the commission. Copies of the written notice of election and of the amended network modernization plan shall be served by the local exchange telecommunications company on the Office of Consumer Advocate and the Office of Small Business Advocate. Concurrent with the filing of the amended plan with the commission, the local exchange telecommunications company shall publish notice of such filing in a newspaper or newspapers of general circulation in its service territory or by bill message or insert. An amended plan compliant with the requirements of this chapter shall be approved by the commission within 100 days of its filing. If the commission fails to act within 100 days, the amended plan shall be deemed approved.

(f) Network modernization plan report.--

(1) A local exchange telecommunications company operating under a network modernization plan shall continue to file with the commission biennial reports on its provision of broadband availability in the form and detail required by the commission as of July 1, 2004, unless such reporting requirements are subsequently reduced by the commission.

(2) Nothing in this subsection shall be construed to impede the ability of the commission to require the submission of further information to support the accuracy of or to seek an explanation of the reports specified in this subsection.

(3) Under no circumstances shall the commission compel the public release of maps or other information describing the actual location of a local exchange telecommunications company's facilities.

(g) Assistance to political subdivisions.--A local exchange telecommunications company shall commit in its amended network modernization plan to make technical assistance available to political subdivisions located in its service territory in pursuing the deployment of additional telecommunications infrastructure or services by the local exchange telecommunications company.

(h) Prohibition against political subdivision advanced and broadband services deployment.--

(1) Except as otherwise provided for under paragraph (2), a political subdivision or any entity established by a political subdivision may not provide to the public for compensation any telecommunications services, including advanced and broadband services, within the service territory of a local exchange telecommunications company operating under a network modernization plan.

(2) A political subdivision may offer advanced or broadband services if the political subdivision has submitted a written request for the deployment of such service to the local exchange telecommunications company serving the area and, within two months of receipt of the request, the local exchange telecommunications company or one of its affiliates has not agreed to provide the data speeds requested. If the local exchange telecommunications company or one of its affiliates agrees to provide the data speeds requested, then it must do so within 14 months of receipt of the request.

(3) The prohibition in paragraph (1) shall not be construed to preclude the continued provision or offering of telecommunications services by a political subdivision

of the same type and scope as were being provided on the effective date of this section.

(i) Broadband Outreach and Aggregation Program.--

(1) The department shall establish a Broadband Outreach and Aggregation Program for the purpose of making expenditures and providing grants from the Broadband Outreach and Aggregation Fund established under section 3015(c) (relating to alternative forms of regulation) for:

(i) Outreach programs for political subdivisions, economic development entities, schools, health care facilities, businesses and residential customers concerning the benefits, use and procurement of broadband services; and

(ii) Seed grants to aggregate customer demand for broadband services in communities or political subdivisions with limited access to such services and to permit customers in such communities or political subdivisions to request such services from a telecommunications provider.

(2) The department shall annually report to the commission on all payments to and expenditures from the Broadband Outreach and Aggregation Fund, and the commission shall verify the accuracy of the contributions from the participating local exchange telecommunications companies.

(j) Education Technology Program.--

(1) The Department of Education shall establish an Education Technology Program for the purpose of providing grants to school entities from the Education Technology Fund (E-Fund) established under section 3015(d).

(2) The Department of Education shall authorize grants from the E-Fund for the following purposes:

(i) Purchase or lease of telecommunications services, infrastructure or facilities to establish and support broadband networks between, among and within school entities and not for the provision of telecommunications services to the public for compensation.

(ii) Purchase or lease of premises telecommunications network equipment and end-user equipment to enable the effective use of broadband networks between, among and within school entities and not for the provision of telecommunications services to the public for compensation.

(iii) Distance learning initiatives that use the foregoing broadband networks.

(iv) Technical support services for the activities described in subparagraphs (i) through (iii).

(3) Each applicant school entity shall be required to provide 100% matching funds to support each E-Fund grant request. Funds received from Federal technology programs such as the universal service support mechanism for schools and libraries set forth in 47 CFR Pt. 54 (relating to universal service or successor regulations), in-kind contributions and any other technology expenditures shall be applied toward the matching fund requirement.

(4) No later than 90 days after the effective date of this section, the Department of Education shall prescribe the grant process and the form and manner of the E-Fund application. Grants shall be limited to the funds available in the Education Technology Fund. In awarding grants, the Department of Education shall give priority to applications:

(i) that are submitted by school entities that seek funds for discounted broadband services under subsection (l) or for broadband infrastructure, facilities or equipment from local exchange telecommunications companies which contribute to the E-Fund;

(ii) that seek funds for regional networks that serve multiple school districts which are filed on behalf of multiple school districts and school entities; or

(iii) that are submitted by school entities that do not have broadband service, provided, however, that nothing in this subsection shall preclude the department from awarding funds to school entities for telecommunications services, infrastructure or facilities that provide bandwidths greater than 1.544 megabits per second (Mbps).

The Department of Education shall assure that the applications funded each year are geographically dispersed throughout the Commonwealth.

(k) Balanced deployment.--A local exchange telecommunications company shall reasonably balance deployment of its broadband network between rural, urban and suburban areas within its service territory, as those areas are applicable, in accordance with its approved network modernization plan.

(l) Broadband discounts to schools.--Each local exchange telecommunications company that elects to amend its network modernization plan pursuant to this section:

(1) Shall offer school customers which meet the eligibility standards described in 47 CFR 54.501 (relating to eligibility for services provided by telecommunications carriers) and which agree to enter into a minimum three-year contract a 30% discount, or greater discount at the local exchange telecommunications company's discretion, in the otherwise applicable tariffed distance-sensitive per-mile rate element and also will waive the associated nonrecurring charges for available intrastate broadband services where used for educational purposes and not for the provision of telecommunications services to the public for compensation. The discount or waiver shall not be required where application of it to a particular service would conflict with applicable law.

(2) Will assist school customers in applying for e-rate funding under 47 CFR 54.505 (relating to discounts).

(m) Inventory of available services.--

(1) The department shall compile, periodically update and publish, including at its Internet website, a listing of advanced and broadband services, by general location, available from all advanced and broadband service providers operating in this Commonwealth irrespective of the technology used.

(2) All providers of advanced and broadband services shall cooperate with the department.

(3) The department may not disclose maps or other information describing the specific location of any telecommunications carrier's or alternative service provider's facilities.

(n) Construction.--Nothing in this section shall be construed:

(1) As giving the commission the authority to require a local exchange telecommunications company to provide specific services or to deploy a specific technology to retail customers seeking broadband or advanced services.

(2) As prohibiting a local exchange telecommunications company from participating in joint ventures with other entities in meeting its advanced services and broadband deployment commitments under its network modernization plan.

(Nov. 30, 2004, P.L.1398, No.183)

2004 Amendment. Act 183 added section 3014, effective January 1, 2006, as to subsec. (h)(3) and immediately as to the remainder of the section.

Cross References. Section 3014 is referred to in sections 3012, 3015 of this title.

§ 3015. Alternative forms of regulation.

(a) Inflation offset.--

(1) Except as otherwise provided in paragraphs (2) and (3), a local exchange telecommunications company with an alternative form of regulation containing a price stability mechanism that files an amended network modernization plan under section 3014(b)(1), (2) or (3) (relating to network modernization plans) shall be subject to a modified inflation offset in its price stability mechanism in adjusting its rates for noncompetitive services, effective upon the filing of an amended network modernization plan under section 3014(e), as follows:

(i) If a nonrural telecommunications carrier files an amended network modernization plan under section 3014(b)(3) that commits to deploy 100% broadband availability by December 31, 2013, then the carrier's inflation offset shall be zero.

(ii) If a nonrural telecommunications carrier files an amended network modernization plan under section 3014(b)(3) that commits to deploy 100% broadband availability by December 31, 2015, then the carrier's inflation offset shall be equal to 0.5%.

(iii) If a rural telecommunications carrier files an amended network modernization plan under section 3014(b)(1) that commits to deploy 100% broadband availability by December 31, 2008, or under section 3014(b)(2)(ii)(A) that commits to deploy 100% broadband availability by December 31, 2013, then the carrier's inflation offset shall be zero.

(iv) If a rural telecommunications carrier files an amended network modernization plan under section 3014(b)(2)(ii)(B) that commits to deploy 100% broadband availability by December 31, 2015, then the carrier's inflation offset shall be equal to 0.5%.

(2) Utilizing network modernization plan reports filed with the commission by local exchange telecommunications companies under section 3014(f), the commission shall monitor and enforce companies' compliance with their interim and final 100% commitments for broadband availability in their amended network modernization plans. In the event that a local exchange telecommunications company is found by the commission, after notice and evidentiary hearings held on an expedited basis, to have failed to meet such an interim or final 100% commitment, then the commission shall require the local exchange telecommunications company to refund to customers in its next price stability filing an amount that is just and reasonable under the circumstances. Such amount shall not exceed an amount determined by multiplying the percentage shortfall of the broadband availability commitment on an access-line basis required to be met during the period from the start of the amended plan or from the date of the

last prior interim commitment, as applicable, times the increased revenue that was obtained during this period as a result of the modified inflation offset provided in this section that reduced the inflation offset applicable in the local exchange telecommunications company's alternative regulation plan in effect on the effective date of this section, plus interest calculated under section 1308(d) (relating to voluntary changes in rates). Any such refund required under this subsection shall be separate from and in addition to any civil or other penalties that the commission may impose on a local exchange telecommunications company under Chapter 33 (relating to violations and penalties).

(3) Where annual rate adjustments made under a nonrural telecommunications carrier's price stability mechanism are calculated using revenues from protected services, an average rate adjustment for protected residential customer local exchange telecommunications service lines shall be determined by dividing the total protected service revenues associated with such lines, as adjusted by the price stability formula, by the number of such lines, and the rate adjustment for any individual line shall not vary from this average rate adjustment by more than 20%.

(b) Rate changes for rural telecommunications carriers.--

(1) In addition to the rate change provisions in its alternative form of regulation plan, a rural telecommunications carrier operating without a price stability mechanism that files with the commission an amended network modernization plan under section 3014(b)(1) or (2) shall be permitted at any time to file proposed tariff changes with the commission, effective 45 days after filing, setting forth miscellaneous changes, including increases and decreases, in rates for noncompetitive services, excluding basic residential and business rates, provided such rate changes do not increase the rural telecommunications carrier's annual intrastate revenues by more than 3%.

(2) The commission tariff filing requirements and review associated with such proposed rate changes shall be limited to schedules submitted by the rural telecommunications carrier detailing the impact of the rate changes on the carrier's annual intrastate revenues.

(3) A rural telecommunications carrier that implements noncompetitive rate changes consistent with the procedure set forth in its alternative form of regulation plan shall be required only to file such financial and cost data with the commission to justify such changes as is required under its commission-approved alternative form of regulation plan.

(4) Notwithstanding the provisions of paragraph (1), (2) or (3), for any rural telecommunications carrier serving less than 50,000 access lines in this Commonwealth and operating under an alternative form of regulation plan, a formal complaint to deny rate changes for noncompetitive services unless signed by at least 20 customers of the rural telecommunications carrier shall not prevent implementation of the rate changes pending the adjudication of the formal complaint by the commission.

(c) Broadband Outreach and Aggregation Fund.--

(1) There is hereby established within the State Treasury a special fund to be known as the Broadband Outreach and Aggregation Fund for the purposes enumerated in section 3014(i).

(2) A local exchange telecommunications company that files an amended network modernization plan under section 3014(b)(2) or (3) shall be assessed by the commission for contribution to the fund and to the E-fund established under subsection (d) an amount of 20% of the first year's annual revenue effect:

(i) of any rate increase permitted by the elimination or reduction of the offset under subsection (a) and placed into effect; or

(ii) of any rate increase placed into effect under subsection (b)(1) if the local exchange telecommunications company is operating without a price stability mechanism.

For purposes of this paragraph, the term "first year's annual revenue effect" means the projected or actual increased revenues received by the local exchange telecommunications company during the one-year period from the effective date of its rate increase. The commission shall begin the assessments provided for in this paragraph on June 30, 2005, and thereafter shall make such assessments annually on June 30 until June 30, 2010, for assessments that include amounts for the fund and the e-fund and until June 30, 2015, for assessments that include amounts for only the fund. Each assessment shall be based on the first year's annual revenue effect of any covered rate increase effective after the date of the last annual assessment.

(3) An amount not to exceed 50% of such assessment shall be allocated to the fund. The remainder of the assessment shall be allocated to the E-fund provided for under subsection (d) until its termination on June 30, 2011. After the E-fund termination, the maximum assessment percentage shall be reduced from 20% to 10%, and contributions shall be made only to the fund until the local exchange telecommunications company achieves 100% broadband availability. Contributions of allocated amounts shall be paid to the fund and the E-fund by the local exchange telecommunications company in equal quarterly installments.

(4) In no event shall the total amount of the fund exceed $5,000,000 annually, and in the event of such overfunding the department shall credit the overcollection to the next year's contribution amount.

(5) A local exchange telecommunications company that elects to amend its network modernization plan pursuant to section 3014 (b)(1) shall not be required to contribute to the fund.

(6) The moneys in the Broadband Outreach and Aggregation Fund are hereby appropriated upon approval of the Governor to the department for the purposes enumerated in paragraph (1). The department may use up to 3% of the money in the fund for administration.

(7) The fund shall continue until July 1, 2016, at which time the fund shall terminate, and the department shall return any funds remaining in the fund on a pro rata basis to the local exchange telecommunications companies that contributed to the fund.

(d) Education Technology Fund (E-Fund).--

(1) There is hereby established within the State Treasury a special fund to be known as the Education Technology Fund (E-Fund) for the purposes enumerated in paragraph (4).

(2) All E-fund assessments imposed by the commission under subsection (c)(2) and paragraph (3), moneys

specifically appropriated by the General Assembly for the purposes of this subsection and any funds, contributions or payments which may be made available to the fund by the Federal Government, another State agency or any public or private source for the purpose of implementing this subsection shall be deposited in the E-Fund.

(3) Beginning in 2005 and continuing through 2010, the commission shall, no later than June 30, annually assess each nonrural telecommunications carrier that files an amended network modernization plan under section 3014(b)(3) an amount to be deposited in the E-Fund. Each carrier's annual assessment shall be payable in two equal installments due on October 31 of each year and January 31 of the following year and shall be based on the relative proportion of the retail access lines served by the nonrural telecommunications carrier in relation to the number of retail access lines served by all nonrural telecommunications carriers that have filed an amended network modernization plan under section 3014(b)(3). For fiscal years 2005-2006 and 2006-2007, the total annual assessment amount shall be $7,000,000. For fiscal years 2007-2008, 2008-2009, 2009-2010 and 2010-2011, the total annual assessment amount shall be the difference between $7,000,000 and any amount remaining in the E-Fund from prior fiscal years which remains unencumbered or unexpended. A nonrural telecommunications carrier's assessments required under this paragraph may not be recovered via a surcharge on customers' bills or in rates for noncompetitive services as exogenous change adjustment under the provisions of the carrier's price stability mechanism and subsection (a)(3) where applicable.

(4) Additional local exchange telecommunications company contributions to the E-fund shall be made pursuant to the provisions of subsections (c)(2) and (3).

(5) The Department of Education shall expend the moneys of the E-Fund for the purpose of providing grants to school entities as prescribed by section 3014(j).

(6) The moneys of the Education Technology Fund are hereby appropriated upon approval of the Governor to the Department of Education for the purposes enumerated in paragraph (5). The Department of Education may use up to 3% of the money for administration. Appropriations by the General Assembly to the fund shall be continuing appropriations and shall not lapse at the close of any fiscal year.

(7) The E-Fund shall continue until June 30, 2011, at which time the fund shall terminate and the Department of Education shall return any funds remaining therein on a pro rata basis to the local exchange telecommunications companies that contributed to the fund.

(e) General filing requirements.--The commission's filing and audit requirements for a local exchange telecommunications company that is operating under an amended network modernization plan shall be limited to the following:

(1) Network modernization plan reports filed pursuant to section 3014(f).

(2) An annual financial report consisting of a balance sheet and income statement.

(3) An annual deaf, speech-impaired and hearing-impaired relay information report.

(4) An annual service report.

(5) Universal service reports.

(6) An annual access line report.

(7) An annual statement of gross intrastate operating revenues for purposes of calculating assessments for regulatory expenses.

(8) An annual State tax adjustment computation for years in which a tax change has occurred, if applicable.

(9) For those companies with a bona fide retail request program, a bona fide retail request report under section 3014(c)(9). These reports shall be submitted in the form determined by the commission.

(f) Other reports.--

(1) Notwithstanding any other provision of this title to the contrary, no report, statement, filing or other document or information, except as specified in subsection (e), shall be required of any local exchange telecommunications company unless the commission, upon notice to the affected local exchange telecommunications company and an opportunity to be heard, has first made specific written findings supporting conclusions in an entered order that:

(i) The report is necessary to ensure that the local exchange telecommunications company is charging rates that are in compliance with this chapter and its effective alternative form of regulation.

(ii) The benefits of the report substantially outweigh the attendant expense and administrative time and effort required of the local exchange telecommunications company to prepare it.

(2) Nothing in this subsection shall be construed to impede the ability of the commission to require the submission of further information to support the accuracy of or to seek an explanation of the reports specified in subsection (e).

(g) Rate change limitations.--Nothing in this chapter shall be construed to limit the requirement of section 1301 (relating to rates to be just and reasonable) that rates shall be just and reasonable. The annual rate change limitations set forth in a local exchange telecommunications company's effective commission-approved alternative form of regulation plan or any other commission-approved annual rate change limitation shall remain applicable and shall be deemed just and reasonable under section 1301.

(h) Conformance of plan.--Upon approval of a local exchange telecommunications company of network modernization plan amendments pursuant to section 3014(e), the local exchange telecommunications company's alternative form of regulation plan shall be deemed amended consistent with this section.
(Nov. 30, 2004, P.L.1398, No.183, eff. imd.)

2004 Amendment. Act 183 added section 3015.

Cross References. Section 3015 is referred to in sections 3012, 3014, 3019 of this title.

§ 3016. Competitive services.

(a) Commission determination of protected, retail nonprotected and retail noncompetitive services as competitive.--

(1) A local exchange telecommunications company may petition the commission for a determination of whether a protected or retail noncompetitive service or other business activity in its service territory or a particular geographic area, exchange or group of exchanges or density cell within its service territory is competitive based on the demonstrated availability of like or substitute services or

other business activities provided or offered by alternative service providers. The commission, after notice and hearing, shall enter an order granting or denying the petition within 60 days of the filing date or within 150 days of the filing date where a protest is timely filed, or the petition shall be deemed granted.

(2) The local exchange telecommunications company shall serve a copy of its petition on the Office of Consumer Advocate, the Office of Small Business Advocate and each of the parties to the commission's proceeding in which the company's network modernization plan that was in effect on December 31, 2003, was approved by the commission.

(3) In making its determination, the commission shall consider all relevant information submitted to it, including the availability of like or substitute services or other business activities, and shall limit its determination to the service territory or the particular geographic area, exchange or group of exchanges or density cell in which the service or other business activity has been proved to be competitive.

(4) The burden of proving that a protected or retail noncompetitive service or other business activity is competitive rests on the local exchange telecommunications company.

(b) Declaration of retail nonprotected services as competitive.--Notwithstanding the provisions of subsection (a), a local exchange telecommunications company may declare any retail nonprotected service as competitive by filing its declaration with the commission and serving it on the Office of Consumer Advocate, Office of Small Business Advocate and each of the parties to the commission's proceeding in which the company's network modernization plan that was in effect on December 31, 2003, was approved by the commission, provided that a local exchange telecommunications company may not use this declaration process for any service that the commission previously has reclassified as noncompetitive under either subsection (c) or prior law. A declaration of a retail nonprotected service as competitive shall be effective upon filing by the local exchange telecommunications company with the commission.

(c) Reclassification.--

(1) A party may petition the commission for a determination of whether a service or other business activity previously determined or declared to be competitive is noncompetitive. The commission, after notice and hearing, shall enter an order deciding the petition within 60 days of the filing date or 90 days of the filing date where a protest is timely filed, or the petition shall be approved.

(2) The petitioner shall serve a copy of the petition on the affected local exchange telecommunications company if the petitioner is not the company, the Office of Consumer Advocate, the Office of Small Business Advocate and each of the parties to the commission's proceeding in which the company's network modernization plan that was in effect on December 31, 2003, was approved by the commission.

(3) In making its determination, the commission shall consider all relevant information submitted to it, including the availability of like or substitute services or other business activities, and shall limit its determination to the particular geographic area, exchange or density cell in which the service or other business activity has been proved to be noncompetitive.

(4) The burden of proving that a competitive service or other business activity should be reclassified as noncompetitive rests on the party seeking the reclassification.

(5) If the commission reclassifies a service or other business activity as noncompetitive, the commission shall determine a just and reasonable rate for the reclassified service or business activity in accordance with section 1301 (relating to rates to be just and reasonable).

(d) Additional requirements.--

(1) The prices which a local exchange telecommunications company charges for competitive services shall not be less than the costs to provide the services.

(2) The commission may not require tariffs for competitive service offerings to be filed with the commission.

(3) A local exchange telecommunications company at its option may tariff its rates subject to rules and regulations applicable to the provision of competitive services.

(4) The commission may require a local exchange telecommunications company to maintain price lists with the commission applicable to its competitive services. Price changes that are filed in a company's tariff for competitive services will go into effect on a one-day notice.

(e) Pricing flexibility and bundling.--

(1) Subject to the requirements of subsection (d)(1), a local exchange telecommunications company may price competitive services at the company's discretion.

(2) A local exchange telecommunications company may offer and bill to customers on one bill bundled packages of services which include nontariffed, competitive, noncompetitive or protected services, including services of an affiliate, in combinations and at a single price selected by the company. A local exchange telecommunications company may file an informational tariff for a bundled package effective on a one-day notice.

(3) When an alternative service provider is offering local exchange telecommunications services within an exchange of a rural telecommunications carrier, the rural telecommunications carrier may reduce its prices on services offered within the exchange below the rates set forth in its otherwise applicable tariff in order to meet such competition. A rural telecommunications carrier may not offset revenue reductions resulting from such competitive pricing by increasing rates charged to other customers through its price stability mechanism or otherwise.

(f) Prohibitions.--

(1) A local exchange telecommunications company shall be prohibited from using revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services.

(2) Paragraph (1) shall not be construed to prevent the marketing and billing of packages containing both noncompetitive and competitive services to customers.

(Nov. 30, 2004, P.L.1398, No.183, eff. imd.)

2004 Amendment. Act 183 added section 3016.

Cross References. Section 3016 is referred to in sections 3012, 3013, 3019 of this title.

§ 3017. Access charges.

(a) General rule.--The commission may not require a local exchange telecommunications company to reduce access rates except on a revenue-neutral basis.

(b) Refusal to pay access charges prohibited.--No person or entity may refuse to pay tariffed access charges for interexchange services provided by a local exchange telecommunications company.

(c) Limitation.--No telecommunications carrier providing competitive local exchange telecommunications service may charge access rates higher than those charged by the incumbent local exchange telecommunications company in the same service territory unless such carrier can demonstrate that the higher access rates are cost justified.

(Nov. 30, 2004, P.L.1398, No.183, eff. imd.)

2004 Amendment. Act 183 added section 3017.

§ 3018. Interexchange telecommunications carriers.

(a) Competitive and noncompetitive services.--Interexchange services provided by interexchange telecommunications carriers shall be competitive services.

(b) Rate regulation.--

(1) The commission may not fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return, operating margin or earnings for interexchange competitive services or otherwise regulate interexchange competitive services except as set forth in this chapter.

(2) An interexchange telecommunications carrier may file and maintain tariffs or price lists with the commission for competitive telecommunications services.

(3) Nothing in this chapter shall be construed to limit the authority of the commission to regulate the privacy of interexchange service and the ordering, installation, restoration and disconnection of interexchange service to customers.

(c) Reclassification.--The commission may reclassify telecommunications services provided by an interexchange telecommunications carrier as noncompetitive if, after notice and hearing, it determines, upon application of the criteria set forth in this chapter, that sufficient competition is no longer present.

(d) Construction.--Nothing in this chapter shall be construed:

(1) To limit the authority of the commission to resolve complaints regarding the quality of interexchange telecommunications carrier service.

(2) To limit the authority of the commission to determine whether an interexchange telecommunications carrier should be extended the privilege of operating within this Commonwealth or to order the filing of such reports, documents and information as may be necessary to monitor the market for and competitiveness of interexchange telecommunications services.

(Nov. 30, 2004, P.L.1398, No.183, eff. imd.)

2004 Amendment. Act 183 added section 3018.

§ 3019. Additional powers and duties.

(a) General rule.--The commission may certify more than one telecommunications carrier to provide local exchange telecommunications service in a specific geographic location. The certification shall be granted upon a showing that it is in the public interest and that the applicant possesses sufficient technical, financial and managerial resources.

(b) Powers and duties retained.--The commission shall retain the following powers and duties relating to the regulation of all telecommunications carriers and interexchange telecommunications carriers, including the power to seek information necessary to facilitate the exercise of these powers and duties:

(1) To audit the accounting and reporting systems of telecommunications carriers relating to their transactions with affiliates pursuant to Chapter 21 (relating to relations with affiliated interests). A telecommunications carrier shall file affiliated interest and affiliated transaction agreements unless such agreements involve services declared to be competitive. The filings shall constitute notice to the commission only and shall not require approval by the commission.

(2) To review and revise quality of service standards contained in 52 Pa. Code (relating to public utilities) that address the safety, adequacy, reliability and privacy of telecommunications services and the ordering, installation, suspension, termination and restoration of any telecommunications service. Any review or revision shall take into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand.

(3) Subject to the provisions of section 3015(e) (relating to alternative forms of regulation), to establish such additional requirements as are consistent with this chapter as the commission determines to be necessary to ensure the protection of customers.

(4) To condition the sale, merger, acquisition or other transaction required to be approved under section 1102(a)(3) (relating to enumeration of acts requiring certificate) of a local exchange telecommunications company or any facilities used to provide telecommunications services to ensure that there is no reduction in the advanced service or broadband deployment obligations for the affected property or facilities.

(c) (Reserved).

(d) Privacy of customer information.--

(1) Except as otherwise provided in this subsection, a telecommunications carrier may not disclose to any person information relating to any customer's patterns of use, equipment and network information and any accumulated records about customers with the exception of name, address and telephone number.

(2) A telecommunications carrier may disclose such information:

(i) Pursuant to a court order or where otherwise required by Federal or State law.

(ii) To the carrier's affiliates, agents, contractors or vendors and other telecommunications carriers or interexchange telecommunications carriers as permitted by Federal or State law.

(iii) Where the information consists of aggregate data which does not identify individual customers.

(e) Unreasonable preferences.--Nothing in this chapter shall be construed to limit the authority of the commission to ensure that local exchange telecommunications companies do not make or impose unreasonable preferences, discriminations or classifications for protected services and other noncompetitive services.

(f) Lifeline service.--

(1) All eligible telecommunications carriers certificated to provide local exchange telecommunications service shall provide Lifeline service to all eligible telecommunications customers who subscribe to such service.

(2) All eligible telecommunications customers who subscribe to Lifeline service shall be permitted to subscribe to any number of other eligible telecommunications carrier telecommunications services at the tariffed rates for such services.

(3) Whenever a prospective customer seeks to subscribe to local exchange telecommunications service from an eligible telecommunications carrier, the carrier shall explicitly advise the customer of the availability of Lifeline service and shall make reasonable efforts where appropriate to determine whether the customer qualifies for such service and, if so, whether the customer wishes to subscribe to the service.

(4) Eligible telecommunications carriers shall inform existing customers of the availability of Lifeline service twice annually by bill insert or message. The notice shall be conspicuous and shall provide appropriate eligibility, benefits and contact information for customers who wish to learn of the Lifeline service subscription requirements.

(5) When a person enrolls in a low-income program administered by the Department of Public Welfare that qualifies the person for Lifeline service, the Department of Public Welfare shall automatically notify that person at the time of enrollment of his or her eligibility for Lifeline service. This notification also shall provide information about Lifeline service, including a telephone number of and Lifeline subscription form for the person's current eligible telecommunications carrier or, if the person does not have telephone service, telephone numbers of eligible telecommunications carriers serving the person's area that the person can call to obtain Lifeline service. Eligible telecommunications carriers shall provide the Department of Public Welfare with Lifeline service descriptions and subscription forms, contact telephone numbers and a listing of the geographic area or areas they serve, for use by the Department of Public Welfare in providing the notifications required by this paragraph.

(6) No eligible telecommunications carrier shall be required to provide after the effective date of this section any new Lifeline service discount that is not fully subsidized by the Federal Universal Service Fund.

(g) Method for fixing rates.--The commission may not fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return or earnings of competitive services or otherwise regulate competitive services except as set forth in this chapter.

(h) Implementation.--The terms of a local exchange telecommunications company's alternative form of regulation and network modernization plans shall govern the regulation of the local exchange telecommunications company and, consistent with the provisions of this chapter, shall supersede any conflicting provisions of this title or other laws of this Commonwealth and shall specifically supersede all provisions of Chapter 13 (relating to rates and rate making) other than sections 1301 (relating to rates to be just and reasonable), 1302 (relating to tariffs; filing and inspection), 1303 (relating to adherence to tariffs), 1304 (relating to discrimination in rates), 1305 (relating to advance payment of rates; interest on deposits),

1309 (relating to rates fixed on complaint; investigation of costs of production) and 1312 (relating to refunds).

(i) Protection of employees.--

(1) No telecommunications carrier may discharge, threaten, discriminate or retaliate against an employee because the employee made a good faith report to the commission, the Office of Consumer Advocate or the Office of Attorney General regarding wrongdoing, waste or a potential violation of the commission's orders or regulations or of this title.

(2) A person who alleges a violation of this section must bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages within 180 days after the occurrence of the alleged violation. The evidentiary burdens upon such person and the person's telecommunications carrier in such action shall be as set forth in section 3316(d) and (e) (relating to protection of public utility employees), provided, however, that upon an employee's meeting the employee's burden of proof under section 3316(d), a rebuttable presumption shall arise that the alleged reprisal by the employer constitutes a violation of this section.

(Nov. 30, 2004, P.L.1398, No.183, eff. imd.)

2004 Amendment. Act 183 added section 3019.

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

SUBPART E
MISCELLANEOUS PROVISIONS

Chapter

31. Foreign Trade Zones
32. Water and Sewer Authorities in Cities of the Second Class
33. Violations and Penalties

CHAPTER 31
FOREIGN TRADE ZONES

Sec.

3101. Operation as public utility.
3102. Establishment by private corporations and municipalities.
3103. Formation and authority of private corporations (Repealed).
3104. Municipalities and corporations to comply with law; forfeiture of rights.
3105. Reports to Department of Community Affairs.

Enactment. Chapter 31 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

§ 3101. Operation as public utility.

Each foreign trade zone established and maintained within the limits of this Commonwealth as set forth in this chapter shall be operated as a public utility, and all rates and charges for all services or privileges within the zone shall be fair and reasonable, but no such rates or charges shall be subject to supervision, regulation or control by the commission. Every municipality and private corporation operating and maintaining a foreign trade zone shall afford to all who may apply for the

use of the trade zone and its facilities and appurtenances, uniform treatment under like conditions, subject to such treaties or commercial conventions as are now in force or may hereafter be made from time to time by the United States with foreign governments.

§ 3102. Establishment by private corporations and municipalities.

Any private corporation formed in this Commonwealth for the purposes expressed in this part and any municipality of this Commonwealth, is hereby authorized to make application in accordance with the provisions of the act of Congress of the United States, approved June 18, 1934, entitled "An act to provide for the establishment, operation, and maintenance of foreign trade zones in ports of entry of the United States; to expedite and encourage foreign commerce, and for other purposes," (Public Act No. 397, 73rd Congress), referred to in this chapter as "the act of Congress"; to the board consisting of the Secretary of Commerce, the Secretary of the Treasury, and the Secretary of War, thereby established, referred to in this chapter as "the board"; for the privilege of establishing, operating, and maintaining a foreign trade zone in, or adjacent to, any port of entry under the jurisdiction of the United States in order to expedite and encourage foreign commerce. If, and when, such application is granted, the grantee shall have power to establish, operate, and maintain such foreign trade zone. Any foreign trade zone established by a municipality may be operated and maintained only within the limits of such municipality, or adjacent thereto. Any such foreign trade zone shall be established, operated, and maintained by a municipality or private corporation in accordance with the provisions of the act of Congress.

§ 3103. Formation and authority of private corporations (Repealed).

1988 Repeal. Section 3103 was repealed December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 3104. Municipalities and corporations to comply with law; forfeiture of rights.

Each municipality and private corporation establishing, operating, and maintaining a foreign trade zone shall fully comply with all of the provisions of the act of Congress and the rules and regulations prescribed by the board thereunder, and shall have all the powers, rights, privileges, and authority conferred by the act of Congress and said rules and regulations, and be subject to the limitations and restrictions contained in said act and said rules and regulations. Any such municipality or private corporation shall forfeit any right and privilege to operate and maintain a foreign trade zone, under the provisions of this part or under the charter of any private corporation formed as aforesaid, if, and when, its grant of privilege is finally revoked under the authority granted in the act of Congress.

§ 3105. Reports to Department of Community Affairs.

Each municipality and private corporation operating a foreign trade zone within the limits of this Commonwealth shall file a copy of every report which it shall make, or be required to make, under the act of Congress with the Department of Community Affairs.

Transfer of Functions. Section 301(a)(9) of Act 58 of 1996 provided that the housing, community assistance and other functions of the Department of Community Affairs under section

3105 are transferred to the Department of Community and Economic Development. Section 301(a)(16) of Act 58 of 1996 provided that all other powers and duties delegated to the Department of Community Affairs not otherwise expressly transferred elsewhere by Act 58 and currently performed by the Department of Community Affairs under section 3105 are transferred to the Department of Community and Economic Development.

References in Text. The Department of Community Affairs, referred to in this section, was abolished by Act 58 of 1996 and its functions were transferred to the Department of Community and Economic Development.

CHAPTER 32
WATER AND SEWER AUTHORITIES
IN CITIES OF THE SECOND CLASS

Sec.
3201. Definitions.
3202. Application of provisions of title.
3203. Prior tariffs.
3204. Tariff filing and compliance plan.
3205. Maintenance, repair and replacement of facilities and equipment.
3206. Duties of Office of Consumer Advocate and Office of Small Business Advocate.
3207. Commission assessment.
3208. Power of authority.
3209. Proprietary information of authority.

Enactment. Chapter 32 was added December 21, 2017, P.L.1208, No.65, effective immediately.

§ 3201. Definitions.
The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Authority." A body politic or corporate established by a city of the second class, except a joint authority established by a city of the second class and a county of the second class, under 53 Pa.C.S. Ch. 56 (relating to municipal authorities), under the former act of June 28, 1935 (P.L.463, No.191), known as the Municipality Authorities Act of one thousand nine hundred and thirty-five, or under the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, which owns or operates equipment or facilities for any of the following purposes:

(1) Diverting, developing, pumping, impounding, distributing or furnishing water to customers for compensation.

(2) Wastewater collection, conveyance, treatment or disposal to customers for compensation.

(3) Storm water collection, conveyance, treatment and disposal.

§ 3202. Application of provisions of title.
(a) Application.--The following apply:

(1) Beginning on April 1, 2018, unless otherwise provided in this chapter, the provisions of this title, except Chapters 11 (relating to certificates of public convenience) and 21 (relating to relations with affiliated interests), shall apply to an authority in the same manner as a public utility.

(2) Notwithstanding paragraph (1), section 1103 (relating to procedure to obtain certificates of public

convenience) shall apply to an authority that seeks to acquire, construct or begin to operate any equipment, plant or other facility for the rendering of service beyond the areas served as of the effective date of this section.

(b) Exception.--Upon request of an authority, the commission may suspend or waive the applicability of any provision of this title to the authority, except for this section.

§ 3203. Prior tariffs.

(a) Service.--An authority shall continue to provide service to the authority's customers in accordance with a prior tariff until the effective date of a commission's order approving a new tariff. If the effective date of a commission's order approving a new tariff has been stayed by a court of competent jurisdiction, the prior tariff shall remain in effect until the stay has been dissolved.

(b) Disputes or conflicts.--In accordance with section 3208 (relating to power of authority), the commission shall resolve all disputes or conflicts arising under a prior tariff.

(c) Definition.--As used in this section, the term "prior tariff" shall mean the tariff, rate schedule and riders incorporated into the tariff, including the terms and conditions or other documents setting forth the rates and terms and conditions of service provided by an authority on the date the commission assumes jurisdiction over the authority.

§ 3204. Tariff filing and compliance plan.

(a) Filing.--An authority shall file a tariff and supporting data with the commission within 90 days of the effective date of this section. The commission shall conduct a rate proceeding in accordance with the commission's procedures for tariff filings. To the extent practical, public hearings on the tariff filing shall be held within the boundaries of an authority.

(b) Compliance plan.--Within 180 days of the effective date of this section, an authority shall file a compliance plan with the commission which shall include provisions to bring an authority's existing information technology, accounting, billing, collection and other operating systems and procedures into compliance with the requirements applicable to jurisdictional water and wastewater utilities under this title and applicable rules, regulations and orders of the commission. The compliance plan shall also include a long-term infrastructure improvement plan in accordance with Subchapter B of Chapter 13 (relating to distribution systems).

(c) Commission review.--The commission shall review the compliance plan filed by an authority under subsection (b) and may order the authority to file a new or revised compliance plan if the compliance plan fails to adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service.

§ 3205. Maintenance, repair and replacement of facilities and equipment.

(a) Authorization.--The commission may require an authority to maintain, repair and replace facilities and equipment used to provide services under this chapter to ensure that the equipment and facilities comply with section 1501 (relating to character of service and facilities).

(b) Petition.--An authority may petition the commission for the establishment of a distribution system improvement charge. An authority which establishes a distribution system improvement charge shall comply with all applicable requirements of Subchapter B of Chapter 13 (relating to distribution systems).

§ 3206. Duties of Office of Consumer Advocate and Office of Small Business Advocate.

(a) Office of Consumer Advocate.--The Office of Consumer Advocate shall represent the interests of consumers as a party, or otherwise participate for the purpose of representing the interests of consumers, in any matter properly before the commission relating to an authority.

(b) Office of Small Business Advocate.--The Office of Small Business Advocate shall represent the interests of consumers as a party, or otherwise participate for the purpose of representing the interests of small business consumers, in any matter properly before the commission relating to an authority.

(c) Authorization.--In addition to any other powers conferred upon the Office of Consumer Advocate or Office of Small Business Advocate, the Office of Consumer Advocate or Office of Small Business Advocate may represent an interest of consumers presented to it for consideration, in writing, by a substantial number of individuals who make, direct, use or are the recipients of a product or service provided by an authority.

§ 3207. Commission assessment.

(a) Sworn statement.--In order to allow the commission to carry out the commission's duties under this chapter, the chairperson, vice chairperson or executive director of an authority shall file, within 30 days of the effective date of this section and on or before March 31 of each year thereafter, a sworn statement which specifies the authority's gross intrastate revenues for the immediately preceding calendar year in the same manner as required under section 510(b) (relating to assessment for regulatory expenses upon public utilities).

(b) Billing.--The commission shall make an estimate based on the gross intrastate revenues specified under subsection (a) in accordance with the procedures set forth in section 510(b) and shall impose an assessment on an authority based on the authority's proportional share of the commission's expenses relating to the commission's utility group in accordance with section 510(b). An authority shall pay an assessment on an annual basis in accordance with section 510.

§ 3208. Power of authority.

(a) Power.--Nothing in this chapter shall be construed to rescind or limit the power of a city of the second class to establish an authority or determine the powers and functions of an authority.

(b) Audits.--Nothing in this chapter shall be construed to limit or prevent a city official of a city of the second class from conducting audits and examinations of the financial affairs of an authority in accordance with the city official's duties.

(c) Securities of authority.--Notwithstanding any provision in this title to the contrary:

(1) The commission shall permit an authority to impose, charge or collect rates or charges as necessary to permit the authority to comply with its covenants to the holders of any bonds or other financial obligations.

(2) The commission may not require an authority to take action or omit taking any action under this title if the action or omission would have the effect of causing the interest on tax-exempt bonds or other financial obligations issued by the authority to be includable in the gross income of the holders of the bonds or other financial obligations for Federal income tax purposes.

(3) An authority may continue to issue bonds or other financial obligations on behalf of the authority under 53 Pa.C.S. Ch. 56 (relating to municipal authorities) and as otherwise provided by law.

Cross References. Section 3208 is referred to in section 3203 of this title.

§ 3209. Proprietary information of authority.

Proprietary information, trade secrets and competitively sensitive information of an authority shall not be public records under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, and shall not be subject to mandatory public disclosure. Nothing in this chapter shall be construed to exempt an authority from providing information to the commission as specified under sections 501 (relating to general powers), 504 (relating to reports by public utilities), 505 (relating to duty to furnish information to commission; cooperation in valuing property) and 506 (relating to inspection of facilities and records) or any other provision of this title which requires information to be provided to the commission.

CHAPTER 33
VIOLATIONS AND PENALTIES

Sec.

3301. Civil penalties for violations.
3302. Criminal penalties for violations.
3303. Nonliability for enforcement of lawful tariffs and rates.
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3315. Disposition of fines and penalties.
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Enactment. Chapter 33 was added July 1, 1978, P.L.598, No.116, effective in 60 days.

Cross References. Chapter 33 is referred to in sections 2603, 3015 of this title.

§ 3301. Civil penalties for violations.

(a) General rule.--If any public utility, or any other person or corporation subject to this part, shall violate any of the provisions of this part, 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 part; 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 a sum not exceeding $1,000, to be recovered by an action of assumpsit instituted in the name of the Commonwealth. In construing and enforcing the provisions of this section, the violation, omission, failure, neglect, or refusal of any officer, agent, or employee 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.

(b) Continuing offenses.--Each and every day's continuance in the violation of any regulation or final direction, requirement, determination, or order of the commission, or of any order of the commission prescribing temporary rates in any rate proceeding, or of any final judgment, order or decree made by any court, shall be a separate and distinct offense. If any interlocutory order of supersedeas, or a preliminary injunction be granted, no penalties shall be incurred or collected for or on account of any act, matter, or thing done in violation of such final direction, requirement, determination, order, or decree, so superseded or enjoined for the period of time such order of supersedeas or injunction is in force.

(c) Gas pipeline safety violations.--Any person or corporation, defined as a public utility in this part, who violates any provisions of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed $200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed $2,000,000 for any related series of violations, or subject to a penalty provided under Federal pipeline safety laws, whichever is greater.

(d) Deduction from sums owing by Commonwealth.--The amount of the penalty, when finally determined, may be deducted from any sums owing by the Commonwealth to the person or corporation charged or may be recovered in a civil action.
(Apr. 16, 1992, P.L.149, No.27, eff. 60 days; Feb. 14, 2012, P.L.72, No.11, eff. 60 days)

2012 Amendment . Act 11 amended subsec. (c).

Cross References. Section 3301 is referred to in sections 2609, 3309 of this title.

§ 3302. Criminal penalties for violations.

Any person, including an officer, agent or employee 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 of the first degree.

§ 3303. Nonliability for enforcement of lawful tariffs and rates.

(a) Public utilities.--No public utility, nor any officer, agent or employee thereof, shall be liable for any penalty or forfeiture, or be subject to any prosecution, on account of demanding, collecting, or receiving any rate for any service, or for enforcing any regulation, or practice when such rate, regulation, or practice is contained in a tariff properly filed with the commission, and posted or published as herein provided, and is applicable by the terms thereof at the time to such service although such rate, regulation, method or practice may be found by the commission to be unjust or unreasonable.

(b) Contract carrier by motor vehicle.--No contract carrier by motor vehicle, nor any officer, agent or employee thereof, shall be liable for any penalty or forfeiture, or be subject to any prosecution on account of demanding, collecting or

receiving any minimum rate prescribed by the commission under the provisions of this part.

§ 3304. Unlawful issuance and assumption of securities.

Any individual who shall knowingly affix his name or attestation to any stock certificate or other evidence of equitable interest, or any bond, note, trust certificate, or other security issued or assumed by any public utility, or any director who shall knowingly assent to the issuance or assumption of any such stock certificate, or other evidence of equitable interest, or any bond, note or other evidence of indebtedness, or other security issued by any public utility, or any director who shall knowingly assent to the issue of any such certificate of stock, trust certificate, corporate bond, note, or other evidence of indebtedness, or other security of any public utility, in violation of any of the provisions or requirements of this part, or any individual who shall knowingly make or assent to any false statement in any securities certificate required to be registered with the commission under the provisions of Chapter 19 (relating to securities and obligations) or who shall by any false statements, oral or written, knowingly make, procure, or seek to procure, of the commission the registration of any such securities certificate, shall be guilty of a misdemeanor of the first degree.

§ 3305. Misapplication of proceeds of securities.

Any individual who shall knowingly make or assent to any application or disposition of any stock certificate, or other evidence of equitable interest, or any bond, note, trust certificate, or other evidence of indebtedness, or other security, or the proceeds of the sale or pledge thereof, or any part thereof, in violation of any statement or contrary to any purpose in relation thereto set forth or contained in any securities certificate required to be registered with the commission under the provisions of Chapter 19 (relating to securities and obligations) or who shall knowingly make or assent to any false statement in any report or account to the commission as to the disposition or application of the proceeds, or any part thereof, of any sale or pledge of any stock certificate, or other evidence of equitable interest, or any bond, note, trust certificate, or other evidence of indebtedness, or other security, shall be guilty of a misdemeanor of the first degree.

§ 3306. Execution of unlawful contracts.

Any individual who shall knowingly affix his name or attestation to any written contract or arrangement, or who shall enter into any written contract or arrangement, or any individual who shall knowingly assent to the entering into of any written or verbal contract, in violation of any of the provisions or requirements of this part, or any individual knowingly making or assenting to any false statement in any application for the approval of any contract or arrangement, the approval of which is required by this part, shall be guilty of a misdemeanor of the first degree.

§ 3307. Refusal to obey subpoena and testify.

If any individual who shall be subpoenaed to attend before the commission, or its representative, shall fail to obey the command of such subpoena, or if any individual in attendance before the commission, or its representative, shall refuse to be sworn or to be examined, or to answer any relevant question, or to produce any relevant data, book, record, paper, or document when ordered so to do by the commission, or its representative, such person shall be guilty of a summary offense.

§ 3308. Concealment of witnesses and records.

If any individual shall absent himself from the jurisdiction of this Commonwealth or conceal himself for the purpose of avoiding service of a subpoena issued by the commission, or its representative; or shall remove relevant data, books, records, papers, or other documents out of this Commonwealth for the purpose of preventing their examination by the commission; or shall destroy or conceal any such data, books, records, papers or other documents for such purpose, he shall be adjudged guilty of contempt; and any court of common pleas may impose a fine of not less than $100 for each day during the continuance of such refusal, neglect, concealment, or removal; and if such court shall find that the neglect, refusal, or concealment, or the removal or destruction of data, books, records, papers, or other documents by such witness, has been occasioned by the advice or consent of any party to the proceedings before the commission, or in anywise aided or abetted by such party, then, in default of payment of such fine by the individual in contempt, the same shall be paid by such party and may be recovered from such party by an action in the name of the Commonwealth, in any court of common pleas, as other like fines and penalties are now by law recoverable. Imprisonment for contempt shall be by commitment to the county jail of the county in which such hearing is held.

§ 3309. Liability for damages occasioned by unlawful acts.

(a) General rule.--If any person or corporation shall do or cause to be done any act, matter, or thing prohibited or declared to be unlawful by this part, or shall refuse, neglect, or omit to do any act, matter, or thing enjoined or required to be done by this part, such person or corporation shall be liable to the person or corporation injured thereby in the full amount of damages sustained in consequence thereof. The liability of public utilities, contract carriers by motor vehicles, and brokers for negligence, as heretofore established by statute or by common law, shall not be held or construed to be altered or repealed by any of the provisions of this part.

(b) Rights of Commonwealth unaffected.--The recovery in this section authorized shall in no manner affect a recovery by the Commonwealth of the penalty prescribed in section 3301 (relating to civil penalties for violations) for such violations of this part.

§ 3310. Unauthorized operation by carriers and brokers.

(a) General rule.--Any person or corporation operating as a motor carrier or as a common carrier by airplane, and any operator or employee 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 part, shall be guilty of a summary offense, and any subsequent offense by such person or corporation shall constitute a misdemeanor of the third degree.

(b) Transportation of household property violations.--Any person or corporation operating as a common carrier under paragraph (2)(ii) of the definition of "common carrier by motor vehicle" in section 102 (relating to definitions) or contract carrier by motor vehicle under paragraph (1)(ii) of the definition of "contract carrier by motor vehicle" in section 2501(b) (relating to declaration of policy and definitions) in violation of this title shall be ordered to pay an administrative penalty as prescribed in subsection (c).

(c) Penalties.--

(1) The amount of the administrative penalty under subsection (b) shall be $5,000 for a first violation and $10,000 for a second or subsequent violation.

(2) In addition to the penalty imposed under paragraph (1), a person or corporation under subsection (b) may also be subject to the following:

(i) Suspension of registration under 75 Pa.C.S. § 1375 (relating to suspension of registration of unapproved carriers).

(ii) Confiscation and impoundment of vehicle. A sheriff, upon an order issued by the court and having jurisdiction over the property, is empowered to confiscate and impound vehicles which have been used to provide common carrier by motor vehicle service or contract carrier by motor vehicle service in violation of subsection (b) or commission regulations. The process for the disposition of impounded vehicles shall be as set forth under 75 Pa.C.S. § 6310 (relating to disposition of impounded vehicles, combinations and loads).

(d) Deposit of costs, fines and proceeds of forfeitures.--Notwithstanding section 3315 (relating to disposition of fines and penalties), all costs and fines collected and penalties recovered under subsection (c) shall be deposited into the General Fund and shall be deemed an augmentation to any appropriation to the commission. All amounts appropriated to the commission under this section shall be used to administer and enforce this chapter and commission regulations applicable to motor carriers.

(Dec. 22, 2017, P.L.1244, No.77, eff. 60 days)

§ 3311. Bribery.

Any officer, attorney, agent, or employee of any public utility who offers to any commissioner, or to any person appointed or employed by the commission, any office, place, appointment, or position, or offers to give to any commissioner, or to any person employed in the service of the commission, any free pass or transportation, or any reduction in fares to which the public generally is not entitled, or any free carriage of property, or any present, gift, or gratuity, money, or valuable thing of any kind, shall be guilty of a misdemeanor of the third degree.

§ 3312. Evasion of motor carrier and broker regulations.

Any person, whether carrier, shipper, consignee, or broker, or any officer, employee, 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 part 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 willfully, assist, suffer or permit any person or persons, natural or artificial, to obtain transportation of property by motor carrier subject to this part, for less than the applicable rate, fare or charge, or who shall knowingly and willfully, by any such means, or otherwise seek to evade or defeat regulation in this part provided for motor carriers or brokers, shall be guilty of a summary offense for the first offense and a misdemeanor of the third degree for subsequent offenses.

Cross References. Section 3312 is referred to in sections 4107, 4704 of Title 75 (Vehicles).

§ 3313. Excessive price on resale.

Any person, corporation or other entity violating the provisions of section 1313 (relating to price upon resale of public utility services) shall be guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of $100 multiplied by the number of residential bills exceeding the maximum prescribed in section 1313.

§ 3314. Limitation of actions and cumulation of remedies.

(a) General rule.--No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

(b) Remedies and penalties cumulative.--All suits, remedies, prosecutions, penalties, and forfeitures provided for, or accruing under, this part, shall be cumulative.

§ 3315. Disposition of fines and penalties.

All fines imposed, and all penalties recovered, under the provisions of this part, shall be paid to the commission, and by it paid into the State Treasury, through the Department of Revenue, to the credit of the General Fund.

Cross References. Section 3315 is referred to in section 3310 of this title.

§ 3316. Protection of public utility employees.

(a) Persons not to be discharged.--No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee made or was about to make a good faith report, verbally or in writing, to the employer, the commission, the Office of Consumer Advocate, the Office of Small Business Advocate or the Office of Attorney General on an instance of wrongdoing or waste.

(b) Discrimination prohibited.--No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by the commission, the Office of Consumer Advocate, the Office of Small Business Advocate or the Office of Attorney General to participate in an investigation, hearing or inquiry held by the commission or the Office of Attorney General or in a court action relating to the public utility.

(c) Civil action.--A person who alleges a violation of this section may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation.

(d) Necessary showing of evidence.--An employee alleging a violation of this section must show by a preponderance of the evidence that, prior to the alleged reprisal, the employee or a person acting on behalf of the employee had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer, the commission, the Office of Consumer Advocate, the Office of Small Business Advocate or the Office of Attorney General.

(e) Defense.--It shall be a defense to an action under this section if the defendant proves by a preponderance of the

evidence that the action by the employer occurred for separate and legitimate reasons, which are not merely pretextual.

(f) Enforcement.--A court, in rendering a judgment in an action brought under this section, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court shall also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

(g) Penalties.--A person who, under color of an employer's authority, violates this section shall be liable for a civil fine of not more than $500. A civil fine which is ordered under this section shall be paid to the State Treasurer for deposit into the General Fund.

(h) Notice.--An employer shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations under this section.

(i) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Employee." A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for a public utility.

"Employer." A person supervising one or more employees, including the employee in question, a superior or an agent of a public utility.

"Good faith report." A report which is made without malice or consideration of personal benefit and which is made with reasonable cause to believe in its truth.

"Waste." An employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from a public utility.

"Wrongdoing." A violation which is not of a merely technical or minimal nature of a Federal or State statute or regulation or of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

(July 8, 1993, P.L.456, No.67, eff. imd.)

1993 Amendment. Act 67 added section 3316.

Cross References. Section 3316 is referred to in section 3019 of this title.

PART II
OTHER PROVISIONS
(Reserved)

Enactment. Part II (Reserved) was added July 1, 1978, P.L.598, No.116, effective in 60 days.

APPENDIX TO TITLE 66
PUBLIC UTILITIES

Supplementary Provisions of Amendatory Statutes

1980, JUNE 19, P.L.244, NO.69

Preamble

The General Assembly finds that the taxicab service now available in first class cities from holders of certificates of public convenience which have previously been issued by the Pennsylvania Public Utility Commission under the provisions of 66 Pa.C.S. Chapter 11 (relating to certificates of public convenience) is wholly inadequate to meet the needs of the public in that city and county. It further finds that the number of taxicabs which are necessary and proper to provide adequate service to the public in cities of the first class is 1,400 taxicabs having authority to operate throughout such cities. It further finds that in order to remedy the present inadequacy of taxicab service the Pennsylvania Public Utility Commission should be authorized and directed to issue promptly such additional certificates as are necessary to insure that 1,400 taxicabs having authority to operate throughout cities of the first class are available to the public.

Explanatory Note. Act 69 added section 1103(c) and (d) of Title 66.

§ 2. Taxicab service in first class cities.

Upon the effective date of this act, every certificate of public convenience for taxicab service in any city of the first class heretofore or hereinafter issued by the Pennsylvania Public Utility Commission shall be deemed a single, sole certificate of public convenience for taxicab service for the operation of one vehicle in such service. Every present holder of a certificate of public convenience for taxicab service in a city of the first class shall be entitled to automatically receive, from the commission, the number of individual certificates of public convenience which will correspond to the total number of vehicles permitted to be operated under their respective certificates of public convenience in effect prior to the effective date of this amendatory act. Leases of taxicabs will be covered by any existing or expiring collective bargaining agreement between the lessor-holder of franchise and any labor organization.

§ 3. Annual reports to committees of General Assembly.

The Pennsylvania Public Utility Commission shall report to the Senate and House Consumer Affairs Committees within one year after the effective date of this act, and annually thereafter, the number of certificates of public convenience to provide taxicab service in cities of the first class which are then in effect and how many applications for such certificates are then awaiting disposition by the commission.

§ 4. Effective date and applicability.

Except for 66 Pa.C.S. § 1103(c)(4), which shall take effect in 30 days, the remainder of this act shall take effect immediately. This act applies to all pending applications and those to be filed as of the effective date of this act. It is mandatory, however, that every taxi operated in the city be linked to a central radio service.

1982, DECEMBER 30, P.L.1473, NO.335

§ 2. Applicability.

This act shall take effect immediately and shall be applicable to all proceedings pending before the Public Utility Commission and the courts at this time. Nothing contained in this act shall be construed to modify or change existing law with regard to rate making treatment of investment in facilities of fixed utilities other than electric utilities.

Explanatory Note. Act 335 added section 1315 of Title 66.

1984, MAY 31, P.L.370, NO.74

§ 5. Applicability.

The provisions of this act shall be applicable to each natural gas distribution utility under commission jurisdiction. 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.
(Dec. 21, 1984, P.L.1265, No.240, eff. imd.)

1984 Repeal Note. Act 240 repealed section 5 in part. The repealed provisions have been deleted from the text.
Explanatory Note. Act 74 added or amended sections 514, 1307, 1317, 1318 and 2107 of Title 66.

1984, JULY 6, P.L.602, NO.123

§ 5. Submission of cost estimate for units not completed.

In the case of construction of an electric generating unit begun, but not completed, prior to the effective date, the affected public utility shall, within 30 days after the effective date, submit an estimate of the cost of constructing that unit which was formulated no later than 30 days from the beginning of construction. For the purposes of 66 Pa.C.S. §§ 515 and 1308(f), such estimates shall be deemed to have been filed in accordance with section 515(a). The commission shall promulgate rules and regulations to implement sections 515 and 1308(f) as added by this act.

Explanatory Note. Act 123 added or amended sections 515, 1103, 1308 and 2503 of Title 66.

1984, DECEMBER 21, P.L.1265, NO.240

§ 7. Filing of tariffs.

Each natural gas distribution utility required to file a tariff in accordance with 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments) shall file such a tariff no later than March 1, 1985. Until such tariffs become effective in accordance with 66 Pa.C.S. § 1307(f), such utilities shall remain subject to the provisions of 66 Pa.C.S. § 1307 in effect prior to this amendatory act and the regulations issued by the commission pursuant to that section for natural gas distribution utilities.

Explanatory Note. Act 240 added the def. of "rate base" in section 102 and added or amended sections 514, 1302, 1307(a) and (f), 1308(a) and (d.1) and 1311 of Title 66.

1986, JULY 10, P.L.1238, NO.114

§ 12. Terms of office of current commission members.
Persons who are members of the Pennsylvania Public Utility Commission on the effective date of this act shall serve until their current terms have expired.

Explanatory Note. Act 114 added, amended or repealed sections 301(a), (b), (c) and (e), 305, 306, 308, 331(d), 332(h), 333(d), 510(a), 515, 516, 517(e), 522, 523, 524, 525, 526, 527, 1316, 1316.1, 1319, 1320, 1321, 1322, 1323, 1324, 1325 and 1505, the heading of Subchapter A of Chapter 29 and Subchapter B of Chapter 29 of Title 66.

§ 13. Continuation of current rules and regulations.
All rules and regulations promulgated by the Pennsylvania Public Utility Commission shall remain in full force and effect until amended or repealed by the commission, provided that the commission shall immediately initiate action to repeal or amend any rule or regulation which is in conflict with the provisions of this act.

§ 14. Reestablishment of Public Utility Commission.
This act, with respect to the Pennsylvania Public Utility Commission, constitutes the legislation required to reestablish an agency pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

§ 15. Termination of Public Utility Commission.
The Pennsylvania Public Utility Commission shall continue, together with its statutory functions and duties, until December 31, 1991, when it shall terminate and go out of existence unless reestablished or continued by the General Assembly for an additional ten years. Evaluation and review, termination, reestablishment and continuation of the agency beyond December 31, 1991, and every tenth year thereafter, shall be conducted pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Explanatory Note. The termination date of December 31, 1991, is probably not effective since the Sunset Act expired December 22, 1991.

§ 16. Applicability to confirmation of commission members.
As much of the amendment to 66 Pa.C.S. § 301(a) as relates to the advice and consent of a majority of all the members of the Senate shall apply on and after the third Tuesday of January 1987.

1996, JULY 2, P.L.542, NO.94

Preamble
The General Assembly makes the following findings:
(1) Electric public utilities in Pennsylvania have entered into contracts with various nonutility project developers for the purchase of electric capacity or energy,

or both, from nonutility projects, some of which are in operation and some of which have not yet been completed. Some of these contracts have been entered into voluntarily by such utilities. Others have been entered into pursuant to orders of the Pennsylvania Public Utility Commission. Such contracts were predicated, in each case, on avoiding the estimated costs the utility would have incurred but for the nonutility project. The utilities' payments under such contracts are and should continue to be recoverable from customers, as well as the utilities' payments pursuant to other arrangements which are negotiated, as provided for herein.

(2) Some nonutility generation projects have provided benefits to utilities, consumers and the economy.

(3) Some of the existing contracts for nonutility projects not yet completed may no longer be needed or justified based on present cost estimates. This is due to unanticipated and unforeseeable changes in economic factors as a result of which either the utility no longer needs the contract's electric capacity or energy or there are less expensive alternatives by which the utility could obtain such needed electric capacity or energy.

(4) From time to time it may be in the mutual interest of a nonutility project developer, or owner of an operating nonutility project, and a public utility to voluntarily negotiate reasonable arrangements to buy down, buy out and terminate or otherwise restructure existing contracts.

(5) Negotiated arrangements to buy down, buy out and terminate or otherwise restructure contracts with operating nonutility projects and contracts for unfinished projects may be in the public interest.

(6) The costs prudently incurred by utilities under a buyout, buydown or other restructuring arrangement should be recoverable from customers.

Explanatory Note. Act 94 amended section 527 of Title 66.

§ 2. Construction of act.

Nothing in this act shall be construed as:

(1) requiring an electric utility or a nonutility generating unit project to enter into an arrangement to buy down, buy out and terminate or otherwise restructure a contract; or

(2) authorizing the Pennsylvania Public Utility Commission to require a regulated utility to pursue such an arrangement with a nonutility generating unit project.

2004, JULY 16, P.L.758, NO.94

§ 20. Pennsylvania Public Utility Commission contracts.

The following provisions shall not apply to or affect the validity of any contract otherwise within the purview of such provisions entered into by the Pennsylvania Public Utility Commission prior to the effective date of this section:

(1) The reenactment of 53 Pa.C.S. § 5505(d)(23).

(2) The reenactment of 53 Pa.C.S. § 5508.1(o).

(2.1) The reenactment of 53 Pa.C.S. § 5508.2.

(3) The reenactment of 53 Pa.C.S. §§ 5510.1 through 5510.11.

(4) The reenactment, amendment or addition of 53 Pa.C.S. §§ 5701, 5701.1, 5702, 5703, 5704, 5705, 5706, 5707, 5711,

5712, 5713, 5714, 5715, 5716, 5717, 5718, 5719, 5720, 5721, 5722, 5723, 5724, 5725, 5741, 5741.1, 5742, 5743, 5744 and 5745.

(5) Section 19 of this act.

(6) Section 21 of this act.

(7) Section 22 of this act.

(8) Section 24 of this act.

Explanatory Note. Act 94 repealed sections 510(b)(5) and 1103(c) and Chapter 24 of Title 66.

§ 21. Preservation of rights, obligations, duties and remedies.

The following provisions do not affect any act done, liability incurred or right accrued or vested or affect any civil or criminal proceeding pending or to be commenced to enforce any right or penalty or punish any offense under any provision of law repealed by section 19 of this act:

(1) The reenactment of 53 Pa.C.S. § 5508.1(o).

(2) The reenactment of 53 Pa.C.S. § 5508.2.

(3) The reenactment of 53 Pa.C.S. §§ 5510.1 through 5510.11.

(4) The reenactment, amendment or addition of 53 Pa.C.S. §§ 5701, 5701.1, 5702, 5703, 5704, 5705, 5706, 5707, 5711, 5712, 5713, 5714, 5715, 5716, 5717, 5718, 5719, 5720, 5721, 5722, 5723, 5724, 5725, 5741, 5741.1, 5742, 5743, 5744 and 5745.

(5) The provisions of 66 Pa.C.S. §§ 510(b)(5) and 1103(c) and Ch. 24.

(6) Section 20 of this act.

(7) Section 22 of this act.

(8) Section 24 of this act.

§ 24. Publication in Pennsylvania Bulletin.

The Pennsylvania Public Utility Commission shall transmit notice of the entry into the agreement under section 22(4) of this act to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

2004, NOVEMBER 30, P.L.1578, NO.201

§ 4. Applicability.

The following shall apply:

(1) The addition of 66 Pa.C.S. Ch. 14 supersedes any inconsistent requirements imposed by law on public utilities, including, but not limited to, requirements imposed by 52 Pa. Code §§ 56.32, 56.33, 56.35, 56.41, 56.51, 56.53, 56.81, 56.82, 56.83, 56.91, 56.93, 56.94, 56.95, 56.96, 56.100, 56.101, 56.111, 56.112, 56.113, 56.114, 56.115, 56.116, 56.117, 56.181 and 56.191.

(2) All other regulations are abrogated to the extent of any inconsistency with 66 Pa.C.S. Ch. 14.

(3) All ordinances of any city of the first class are abrogated to the extent they are inconsistent with 66 Pa.C.S. Ch. 14.

Explanatory Note. Act 201 amended or added sections 102 and 308.1 and Chapter 14 of Title 66.

§ 5. Expiration.

The addition of 66 Pa.C.S. Ch. 14 shall expire on December 31, 2014, unless sooner reenacted by the General Assembly.

§ 6. Administration and enforcement of chapter.

The Pennsylvania Public Utility Commission shall amend the provisions of 52 Pa. Code Ch. 56 to comply with the provisions of 66 Pa.C.S. Ch. 14 and may promulgate other regulations to administer and enforce 66 Pa.C.S. Ch. 14, but promulgation of any such regulation shall not act to delay the implementation or effectiveness of this chapter.

2008, OCTOBER 15, P.L.1592, NO.129

Preamble

The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:

(1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.

(2) It is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents.

(3) It is in the public interest to expand the use of alternative energy and to explore the feasibility of new sources of alternative energy to provide electric generation in this Commonwealth.

Explanatory Note. Act 129 amended, added or repealed sections 305, 306, 308, 308.2, 2803, 2806.1, 2806.2, 2807, 2811, 2813, 2814 and 2815 of Title 66.

2014, OCTOBER 22, P.L.2543, NO.155

§ 1. The General Assembly finds and declares as follows:

(1) Responsible utility customer protection is a fundamental goal of Title 66 of the Pennsylvania Consolidated Statutes for public utilities and licensed entities.

(2) Amendments to 66 Pa.C.S. Ch. 14 in this act are necessary to achieve the goal under paragraph (1).

(3) In order to implement paragraph (2), funding changes are necessary in:

(i) assessment for regulatory expenses under 66 Pa.C.S. § 510(a); and

(ii) fees for oversight of electric generation suppliers and natural gas suppliers.

Explanatory Note. Act 155 amended or added sections 510, 1403, 1404, 1405, 1406, 1407, 1409, 1410, 1410.1, 1411, 1415, 1417, 1418, 1419, 2208 and 2809 of Title 66.