WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

ENROLLED
Committee Substitute for
HOUSE BILL No. 1280

(By Mr. Martin (35th Dist.), Mr. Cardle)

Passed March 10, 1979

In Effect from Passage
AN ACT to amend and reenact article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, three, four, seven, eight, eleven, thirteen and fifteen, article two of said chapter twenty-four be amended and reenacted; that said article two be further amended by adding thereto three new sections, designated sections three-a, four-a and four-b; that sections six and seven, article three of said chapter twenty-four be amended and reenacted; that section one, article five of said chapter twenty-four be amended and reenacted; that section five, article two, chapter twenty-four-a of said code be amended and reenacted; that said article two be further amended by adding thereto a new section designated section two-a: that section six, article six of said chapter twenty-four-a be amended and reenacted; that section six; article four, chapter twenty-four-b of said code be amended and reenacted; and that sections one, two and three, article five of said chapter twenty-four-b be amended and reenacted, all relating to reorganization, composition, authority and operations of the public service commission; providing a legislative purpose and policy for regulating the operations of public utilities; requiring annual reports to the Legislature; creating a legislative oversight committee to monitor the public service commission; requiring that certain
studies be made relating to natural gas and electric utilities; requiring the public service commission to submit a reorganization plan to the Legislature; mandating certain items to be included in such plan; requesting information on whether certain staff members of public service commission should be exempt from present civil service pay plans; providing for the reorganization plan to be effective unless disapproved by the Legislature; definitions; defining customers; reconstituting the public service commission; providing for the appointment and reappointment of the public service commissioners and their qualifications and salaries; providing grounds for their removal from office; allowing the public service commission chairman to serve as chairman at the will and pleasure of the governor; requiring the general office of the commission to be located anywhere in the seat of government; deleting specified office hours for the commission; removing the decision making meetings of the public service commission from the state open meetings law; requiring that the orders of the commission include findings of fact and conclusions of law; allowing the commission to hire its own legal counsel; requiring hearing examiners to submit recommended orders to parties; allowing parties to a hearing before the commission an opportunity to submit proposed findings of fact, conclusions of law and briefs; allowing said parties the opportunity to file exceptions to the recommended orders and permitting oral arguments thereon; providing that the recommended order become the order of the commission if no exceptions have been timely filed; permitting pre-trial conferences, stipulations and depositions; limiting the authority of the commission to review and approve the rates and charges of municipally operated utilities; providing that a single hearing examiner decide public service district rate cases; requiring public utilities to give thirty days notice prior to filing for a rate increase unless the commission waives the requirement; providing a new procedure for public utilities to change rates including elimination of rates being put into effect subject to refund except in limited, specific situations; providing a procedure of receivership for utilities and the appointment of a receiver; providing for the return of the utility after receivership and for the liquidation of the assets in certain cases; mandating the establishment of a uniform
system of accounts and accounting for all public service
districts and municipally owned utilities; requiring the public
service commission to render a decision on applications for
a certificate of public convenience and necessity within a certain
time period; providing for the enforcement of certain federal
acts; prohibiting rate increases based on automatic fuel adjust­
ment clause; allowing the governor to designate the public
service commission as the responsible or enforcing agency in
this state for the enforcement of certain future federal acts;
increasing the special license fees; requiring a permit from
the public service commission prior to abandoning service;
revising procedures for appeal; providing that all service penal­
ties collected for violation of the gas pipeline safety provisions
be paid into the state treasury; removing specific organizing
references in the supervision of gas pipeline safety; prohibiting
the filing for a rate increase when a previous application for
an increase is still pending before the commission; and provid­
ing for certain penalties.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-four of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be amended and
reenacted; that sections one, three, four, seven, eight, eleven, thir­
ten and fifteen, article two of said chapter twenty-four be amended
and reenacted; that said article two be further amended by adding
thereto three new sections, designated sections three-a, four-a and
four-b; that sections six and seven, article three of said chapter twen­
ty-four be amended and reenacted; that section one article five of said
chapter twenty-four be amended and reenacted; that section five,
article two, chapter twenty-four-a of said code be amended and re­
nenacted; that said article two be further amended by adding thereto
a new section designated section two-a; that section six, article six
of said chapter twenty-four-a be amended and reenacted; that section
six, article four, chapter twenty-four-b of said code be amended and
reenacted; and that sections one, two and three, article five of said
chapter twenty-four-b be amended and reenacted, all to read as
follows:
CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1. Legislative purpose and policy; reports to the Legislature.

(a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the public service commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:

(1) Ensure fair and prompt regulation of public utilities in the interest of the using and consuming public;

(2) Provide the availability of adequate, economical and reliable utility services throughout the state;

(3) Encourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state's energy resources, such as coal;

(4) Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services; and

(5) Encourage energy conservation and the effective and efficient management of regulated utility enterprises.

(b) The Legislature creates the public service commission to exercise the legislative powers delegated to it. The public service commission is charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state's economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions.

(c) The Legislature encourages the public service commission to explore and consider the potential benefits or risks associated with the adoption in this state of emerging concepts in utility rate making, service standards and rate design. The commission is directed to conduct inquiries and hearings into such concepts as cost of service, declining block rates,
time-of-day rates, peak load pricing, seasonal rates, lifeline rates, interruptible rates, load management techniques, master metering automatic adjustment clauses, information to consumers concerning rate schedules, procedures for termination of service and advertising.

The public service commission shall report to the governor and the Legislature regarding its policies and approach to each of these areas not later than the first day of January, one thousand nine hundred eighty-two.

(d) It is legislative policy to ensure that the Legislature and the general public become better informed regarding the regulation of public utilities in this state and the conduct of the business of the public service commission. To aid in the achievement of this policy, the public service commission annually shall present to the joint committee on government and finance, created by article three, chapter four of this code, or a subcommittee designated by the joint committee, a management summary report which describes in a concise manner:

(1) The major activities of the commission for the year especially as such activities relate to the implementation of the provisions of this chapter;

(2) Important policy decisions reached and initiatives undertaken during the year;

(3) The current balance of supply and demand for natural gas and electric utility services in the state and a forecast of the probable balance for the next ten years; and

(4) Other information considered by the commission to be important including recommendations for statutory reform and the reasons for such recommendations.

(e) In addition to any other studies and reports required to be conducted and made by the public service commission pursuant to any other provision of this section, the commission shall study and initially report to the Legislature no later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty upon:

1. The extent to which natural gas wells or wells heretofore
supplying gas utilities in this state have been capped off or shut in; the number of such wells, their probable extent of future production and the reasons given and any justification for, capping off or shutting in such wells, the reasons if any, why persons engaged or heretofore engaged in the development of gas wells in this state or the Appalachian areas have been discouraged from drilling, developing or selling the production of such wells and whether there are fixed policies by any utility or group of utilities to avoid the purchase of natural gas produced in the Appalachian region of the United States generally and in West Virginia specifically.

2. The extent of the export and import of natural gas utility supplies in West Virginia.

3. The cumulative effect of the practices mentioned in subparagraphs (1) and (2) of this section upon rates heretofore and hereafter charged gas utility customers in West Virginia.

In carrying out the provisions of this section the commission shall have jurisdiction over such persons, whether public utilities or not, as may be in the opinion of the commission necessary to the exercise of its mandate and may compel attendance before it, take testimony under oath and compel the production of papers or other documents. Upon reasonable request by the commission, all other state agencies shall cooperate with the commission in carrying out the provisions and requirements of this subsection.

(f) No later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty, the public service commission shall submit to the Legislature a plan for internal reorganization which plan shall specifically address the following:

(1) A division within the public service commission which shall include the office of the commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decision making and general supervision of the commission, which functions shall not include advocacy in cases before the commission;

(2) The creation of a division which shall act as an advo-
cate for the position of and in the interest of all customers;

(3) The means and procedures by which the division to be created pursuant to the provisions of subdivision (2) of this subsection shall protect the interests of each class of customers and the means by which the commission will assure that such division will be financially and departmentally independent of the division created by subdivision (1) of this subsection;

(4) The creation of a division within the public service commission which shall assume the duties and responsibilities now charged to the commissioners with regard to motor carriers which division shall exist separately from those divisions set out in subdivisions (1) and (2) of this subsection and which shall relieve the commissioners of all except minimal administrative responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve the commissioners from hearing motor carrier cases;

(5) Which members of the staff of the public service commission shall be exempted from the salary schedules or pay plan adopted by the civil service commission and identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation;

(6) The manner in which the commission will strengthen its knowledge and independent capacity to analyze key conditions and trends in the industries it regulates extending from general industry analysis and supply-demand forecasting to continuing and more thorough scrutiny of the capacity planning, construction management, operating performing and financial condition of the major companies within these industries.

Such plan shall be based on the concept that each of the divisions mentioned in subparagraphs (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage ex parte communications between them by such means as the commission shall direct, including, but not limited to, separate clerical and professional staffing for each division. Further, the public service commission is directed to incorporate within the said plan to the fullest
extent possible the recommendations presented to the sub-
committee on the public service commission of the joint
committee on government and finance in a final report dated
February, one thousand nine hundred seventy-nine and en-
titled “A Plan For Regulatory Reform and Management
Improvement.”

The commission shall before the fifth day of January, one
thousand nine hundred eighty, adopt said plan by order which
order shall promulgate the same as a rule of the commission to
be effective upon the date specified in said order, which date
shall be no later than the thirty-first day of December, one
thousand nine hundred eighty. Certified copies of such order
and rule shall be filed on the first day of the regular session
of the Legislature, one thousand nine hundred eighty, by the
chairman of the commission with the clerk of each house of
the Legislature, the governor and the secretary of state. The
chairman of the commission shall also file with the office of
the secretary of state the receipt of the clerk of each house and
of the governor, which receipt shall evidence compliance with
this section.

Upon the filing of a certified copy of such order and rule,
the clerk of each house of the Legislature shall report the
same to their respective houses and the presiding officer
thereof shall refer the same to appropriate standing com-
mittee or committees.

Within the limits of funds appropriated therefor, the rule
of the public service commission shall be effective upon the
date specified in the order of the commission promulgating it
unless an alternative plan be adopted by general law or unless
the rule is disapproved by a concurrent resolution of the
Legislature adopted prior to adjournment sine die of the
regular session of the Legislature to be held in the year one
thousand nine hundred eighty: Provided, That if such rule is
approved in part and disapproved in part by a concurrent
resolution of the Legislature adopted prior to such adjourn-
ment, such rule shall be effective to the extent and only to the
extent that the same is approved by such concurrent resolution.

The rules promulgated and made effective pursuant to this
section shall be effective notwithstanding any other provisions of this code for the promulgation of rules or regulations.

(g) The public service commission is hereby directed to cooperate with the joint committee on government and finance of the Legislature in its review, examination and study of the administrative operations and enforcement record of the railroad safety division of the public service commission and any similar studies.

§24-1-2. Definitions.

Except where a different meaning clearly appears from the context the words “public utility” when used in this chapter shall mean and include any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service. Whenever in this chapter the words “commission” or “public service commission” occur such word or words shall, unless a different intent clearly appears from the context, be taken to mean the public service commission of West Virginia. Whenever used in this chapter, “customer” shall mean and include any person, firm, corporation, municipality, public service district or any other entity who purchases a product or services of any utility and shall include any such person, firm, corporation, municipality, public service district or any other entity who purchases such services or product for resale.

§24-1-3. Reconstitution and composition of the public service commission; appointment, qualifications, and disqualification of commissioners; removal from office; terms of office; vacancies.

(a) The public service commission of West Virginia, herefore established, is continued and directed as provided by this chapter, chapter twenty-four-a and chapter twenty-four-b. The public service commission may sue and be sued by that name. Such public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate. The commissioners shall be citizens and
residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, of not less than ten years' actual experience at the bar. No more than two of said commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article four of the constitution, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office, or violation of subsection (c) of this section.

(b) The unexpired terms of members of the public service commission at the time this subsection becomes effective are continued through the thirtieth day of June, one thousand nine hundred seventy-nine. In accordance with the provisions of subsection (a) of this section, the governor shall appoint three commissioners, one for a term of two years, one for a term of four years and one for a term of six years, all the terms beginning on the first day of July, one thousand nine hundred seventy-nine. All future appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter, or holding any stocks or bonds thereof, or who is pecuniarily interested therein, may serve as a member of the commission or as an employee thereof. Nor may any such commissioners be a candidate for or hold public office, or be a member of any political committee, while acting as such commissioner; nor may any commissioner or employee of said commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the
governor shall remove him from office and shall appoint a new commissioner to fill the vacancy created.

(d) For the administration of this chapter, chapter twenty-four-a and chapter twenty-four-b of this code, each commissioner shall receive a salary of twenty-six thousand five hundred dollars a year payable in equal monthly installments for the duration of the terms expiring the thirtieth day of June one thousand nine hundred seventy-nine. Effective the first day of July, one thousand nine hundred seventy-nine, for the administration of this chapter, chapter twenty-four-a and chapter twenty-four-b of this code, each commissioner shall receive a salary of thirty-two thousand five hundred dollars a year to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, twenty-five thousand one hundred forty dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, six thousand one hundred thirty-five dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand two hundred twenty-five dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive two thousand five hundred dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter.

§24-1-4. Appointment, duties and compensation of secretary and other employees; hearings generally; outside employment by certain employees prohibited.

The commission shall appoint a secretary and such other employees as may be necessary to carry out the provisions of this chapter and shall fix their respective salaries or compen-
It shall be the duty of the secretary to keep a full and true record of all proceedings, acts, orders and judgments of the commission, to issue all necessary process, returns and notices, to keep all books, maps, documents and papers ordered filed by the commission, and all orders made by the commission or approved and confirmed by it and ordered to be filed; and he shall be responsible to the commission for the safe custody and preservation of all such documents in his office. He may administer oaths in all parts of the state, so far as the exercise of such power is properly incidental to the performance of his duty or that of the commission.

The commission may designate such of its employees as it deems necessary to hold hearings, held or required by this chapter, and to take evidence at such hearings, which employees are hereby empowered to subpoena witnesses, administer oaths, take testimony, require the production of documentary evidence and exercise such other powers and perform such other duties as may be delegated to them and required by the commission, in any proceeding or examination instituted or conducted by the commission under this chapter, at any designated place of hearing within the state.

Any commissioner or person employed by the commission other than on a part-time basis shall devote full time to the performance of his duties as such commissioner or employee during the regular working hours as set by the commission.

§24-1-5. Seal to be adopted; collection and disposition of fees.

The commission shall adopt a seal which shall be affixed to all papers under such regulations as the commission may prescribe. The commission shall likewise prescribe a schedule of fees to be charged for the certification of all records and papers, and sums to be paid witnesses and other costs necessary and incident to hearings before it and order the same paid by the unsuccessful party. All sums collected by the secretary, except witness fees, shall be paid by him into the state treasury and be credited to the public service commission fund provided for in section six, article three of this chapter. The witness fees shall be paid to the person to whom they are al-
lowed. The sums to be paid into the public service commission fund representing the collection of any month shall be so paid on or before the tenth of the following month.

§ 24-1-6. Office of commission; time and place of hearings; number of commissioners required for taking action.

The general office of the commission shall be kept at the seat of government and in charge of the secretary or his deputy. Hearings and the taking of evidence may be had at such times and places and in such manner in each particular case as the commission may designate.

The concurrent judgment of two of the commissioners, when in session as the commission, shall be deemed the action of the commission, and a vacancy in the commission shall not affect the right or duty of the remaining commissioners to function as a commission.

§ 24-1-7. Rules of procedure; commission not bound by rules of evidence or pleadings; deliberations private; inscription on, use of and judicial notice of seal.

The commission shall prescribe such rules and regulations as may be necessary to carry out the provisions of this chapter, including rules of procedure and for taking evidence in all matters that may come before it, and enter such orders as may be just and lawful: Provided, That no such rule or regulation shall be effective unless promulgated pursuant to the provisions of sections one through ten, article three, chapter twenty-nine-a of this code: Provided, however, That no such rule or regulation shall become effective until sixty days after its final adoption or until the effective date proposed by the commission, whichever is later: Provided further, That any rules and regulations promulgated prior to the effective date of this section shall remain in full force and effect unless changed, modified or repealed in accordance herewith. The rules and regulations promulgated hereunder by the public service commission shall not be subject to the legislative rule-making review procedures established in sections eleven through fifteen, article three, chapter twenty-nine-a of this code. In the investigations, preparations and hearings of cases, the commission
shall not be bound by the technical rules of pleading and evi-
dence, but in that respect it may exercise such discretion as
will facilitate its efforts to understand and learn all the facts
bearing upon the right and justice of the matters before it.

Meetings of the commission during which it makes a deci-
sion or deliberates toward a decision on any matter are exempt
from the requirements of article nine-a, chapter six of this
code, notwithstanding any other provisions of this code to the
contrary.

All orders of the commission shall set forth separately
findings of fact and conclusions of law, which findings of fact
shall make specific reference to the evidence in the record
which supports such findings.

The commission shall have a seal bearing the following
inscription: "The Public Service Commission of West Virginia."
The seal shall be affixed to all writs and authentications of
copies of records, and to such other instruments as the com-
mission shall direct. All courts shall take judicial notice of
said seal.

§24-1-8. Legal counsel for the commission.

The commission may employ counsel to represent it in
proceedings before it on application, complaint, or other-
wise, and proceedings of any nature in any and all courts
or before administrative or executive boards and to act as
legal advisers to the commission in all matters for which their
services, in the opinion of the commission, are required.
The compensation of such counsel shall be fixed by the
commission and shall be paid as are other employees of the
commission. The commission shall notify the attorney general
of any action or suit brought against the commission.

§24-1-9. Recommended decision by hearing commissioner, hearing
examiner or panel.

(a) Any order recommended by a single hearing commis-

sioner, a hearing examiner or a panel consisting of a hearing
examiner and a single commissioner with respect to any matter
referred for hearing shall be in writing and shall set forth
separately findings of fact and conclusions of law, which
findings of fact shall make specific reference to the evidence
in the record which supports such findings, and shall be filed
with the commission. A copy of such recommended order
shall be served upon the parties who have appeared in the
proceeding.

(b) Before any order is recommended, the parties shall be
afforded an opportunity to submit, within the time prescribed
by the hearing commissioner, hearing examiner or panel
proposed findings of fact and conclusions of law and briefs.

(c) Within the time prescribed, the parties shall be af-
forded an opportunity to file exceptions to the recommended
order and a brief in support thereof, provided the time so fixed
shall be not less than fifteen days from the date of mail-
ing by certified mail of such recommended order to the
parties.

(d) In all proceedings in which exceptions have been filed
to a recommended order, the commission, before issuing its
final order, may afford the parties an opportunity for oral
argument. When exceptions are filed, as herein provided, it
shall be the duty of the commission to consider the same and
if sufficient reason appears therefor, to grant such review or
make such order or hold or authorize such further hearing
or proceeding as may be necessary or proper to carry out
the purposes of this chapter. The commission, after review,
upon the whole record, or as supplemented by a further hear-
ing, shall decide the matter in controversy and make ap-
propriate order thereon.

(e) When no exceptions are filed within the time specified,
such recommended order shall become the order of the com-
mission five days following the expiration of the period for
filing exceptions unless the order is stayed or postponed by the
commission: Provided, That the commission may, on its own
motion before such order becomes the order of the com-
mission, review any such matter and take action thereon as if
exceptions thereto had been filed.

(f) The commission, a hearing commissioner, a hearing
examiner or panel to whom a matter is referred may expedite
the hearing and decision of any case if the public interest so
ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission.

1 The jurisdiction of the commission shall extend to all public utilities in this state, and shall include any utility engaged in any of the following public services:

2 Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; and any other public service: Provided, That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the commission in section four-b of this article: Provided, however, That the decision making authority granted to the commission in sections four and four-a of this chapter shall, in respect to an application filed by a public service district, be delegated to a single hearing examiner appointed from the commission staff, which hearing examiner shall be authorized to carry out all decision making duties assigned to the commission by said sections, and to issue orders having the full force and effect of orders of the commission.
The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the state of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial.

The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction.

The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

§24-2-3. General power of commission with respect to rates.

The commission shall have power to enforce, originate, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities: Provided, That the commission may exercise such rate authority over municipal utilities only under the circumstances set forth in section four-b of this article. And whenever the commission shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provisions of law, and the said commission, in fixing the rate of any railroad company, may fix a fair, reasonable and just rate to be charged on any branch line thereof, independent of the rate charged on the main line of such railroad.
§24-2-3a. Advance notice of filing of general rate case required.  

All public utilities subject to the provisions of sections four  
or four-a of this article, intending to institute a general rate  
case, shall give the commission not less than thirty days'  
notice before proceeding under the provision of those sections  
unless the commission modifies or waives such notice re-  
quirement.


No public utility subject to this chapter, except those  
utilities subject to the provisions of section four-b of this  
article, shall change, suspend or annul any rate, joint rate,  
charge, rental or classification except after thirty days' notice  
to the commission and the public, which notice shall plainly  
state the changes proposed to be made in the schedule then  
in force and the time when the changed rates or charges  
shall go into effect; but the commission may enter an order  
suspending the proposed rate as hereinafter provided. The  
proposed changes shall be shown by printing new schedules,  
or shall be plainly indicated upon the schedules in force at  
the time, and kept open to public inspection: Provided, That  
the commission may, in its discretion, and for good cause  
shown, allow changes upon less time than the notice herein  
specified, or may modify the requirements of this section in  
respect to publishing, posting and filing of tariffs, either by  
particular instructions or by general order.

Whenever there shall be filed with the commission any  
schedule stating a change in the rates or charges, or joint  
rates or charges, or stating a new individual or joint rate  
or charge or joint classification or any new individual or  
joint regulation or practice affecting any rate or charge,  
the commission shall have authority, either upon complaint  
or upon its own initiative without complaint, to enter upon  
a hearing concerning the propriety of such rate, charge, classi-  
fication, regulation or practice; and, if the commission so  
orders, it may proceed without answer or other form of  
pleading by the interested parties, but upon reasonable notice,  
and, pending such hearing and the decision thereon, the  
commission, upon filing with such schedule and delivering to
the public utility affected thereby a statement in writing of
its reasons for such suspension, may suspend the operation
of such schedule and defer the use of such rate, charge,
classification, regulation or practice, but not for a longer
period than one hundred and twenty days beyond the time
when such rate, charge, classification, regulation or practice
would otherwise go into effect; and after full hearing, whether
completed before or after the rate, charge, classification,
regulation or practice goes into effect, the commission may
make such order in reference to such rate, charge, classifica-
tion, regulation or practice as would be proper in a pro-
ceeding initiated after the rate, charge, classification, regula-
tion or practice had become effective: Provided, That if
any such hearing and decision thereon cannot be concluded
within the period of suspension, as above stated, such rate,
charge, classification, regulation or practice shall go into
effect at the end of such period. In such case the com-
mission may require such public utility to enter into a
bond in an amount deemed by the commission to be reas-
sonable and conditioned for the refund to the persons or
parties entitled thereto of the amount of the excess, plus
interest at the rate of not less than seven percent per
annum, as may be specified by the commission, if such
rate so put into effect is subsequently determined to be
higher than those finally fixed for such utility. In speci-
\fifying the applicable interest rate, the commission shall be
guided by the interest rate which such public utility would
in all probability have to agree to pay if such public
utility at that time borrowed in the marketplace a sum
of money equivalent to the amount of money the com-
mission estimates the increase in rates will produce
between the effective date of such increase and the
anticipated date the rates will be finally fixed for such public
utility, it being intended that a public utility should be dis-
couraged from imposing higher rates than it should reasonably
anticipate will be finally fixed as a means in effect of bor-
rowing money at a rate of interest less than such public
utility would have to agree to pay if it borrowed money in the
marketplace. No such accrued interest paid on any such
refund shall be deemed part of the cost of doing business in
a subsequent application for changing rates or any decision thereon. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice is just and reasonable shall be upon the public utility making application for such change. When in any case pending before the commission all evidence shall have been taken, and the hearing completed, the commission shall, within three months, render a decision in such case.

Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provision of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state. The provisions of this section shall expire on and be of no further force and effect after the thirtieth day of June, one thousand nine hundred eighty-one, except that as to any case pending on said date in which the suspension period has expired and rates are in effect under bond such case shall be proceeded with in accordance with this section; as to any other case pending on said date, the commission shall treat the case as filed anew on the first day of July, one thousand nine hundred eighty-one, except that it shall not be necessary for any new process or notice to be served or published.

§24-2-4a. Procedure for changing rates.

After the thirtieth day of June, one thousand nine hundred eighty-one, no public utility subject to this chapter except those utilities subject to the provisions of section four-b of this article, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule.
then in force and the time when the changed rates or charges
shall go into effect; but the commission may enter an order
suspending the proposed rate as hereinafter provided. The
proposed changes shall be shown by printing new schedules,
or shall be plainly indicated upon the schedules in force at the
time, and kept open to public inspection: Provided, That the
commission may, in its discretion, and for good cause shown,
allow changes upon less time than the notice herein specified,
or may modify the requirements of this section in respect to
publishing, posting and filing of tariffs, either by particular in-
structions or by general order.

Whenever there shall be filed with the commission any
schedule stating a change in the rates or charges, or joint
dates or charges, or stating a new individual or joint rate or
charge or joint classification or any new individual or joint
regulation or practice affecting any rate or charge, the com-
mision may either upon complaint or upon its own initiative
without complaint, enter upon a hearing concerning the pro-
priety of such rate, charge, classification, regulation or practice;
and, if the commission so orders, it may proceed without
answer or other form of pleading by the interested parties, but
upon reasonable notice, and, pending such hearing and the
decisions thereon, the commission, upon filing with such
schedule and delivering to the public utility affected thereby
a statement in writing of its reasons for such suspension,
may suspend the operation of such schedule and defer the use
of such rate, charge, classification, regulation or practice,
but not for a longer period than two hundred and seventy days
beyond the time when such rate, charge, classification, regula-
tion or practice would otherwise go into effect; and after full
hearing, whether completed before or after the rate, charge,
classification, regulation or practice goes into effect, the com-
mision may make such order in reference to such rate, charge,
classification, regulation or practice as would be proper in a
proceeding initiated after the rate, charge, classification, regu-
lation or practice had become effective: Provided, That in the
case of a public utility having two thousand five hundred
customers or less and which is not principally owned by any
other public utility corporation or public utility holding

corporation, the commission may suspend the operation of
such schedule and defer the use of such rate, charge, classi-
fication, regulation or practice, but not for a longer period
than one hundred twenty days, beyond the time when such
rate, charge, classification, regulation or practice would other-
wise go into effect; and in the case of a public utility
having more than two thousand five hundred customers, but
not more than five thousand customers, and which is not
principally owned by any other public utility corporation or
public utility holding corporation, the commission may suspend
the operation of such schedule and defer the use of such rate,
charge, classification, regulation or practice, but not for a
longer period than one hundred fifty days, beyond the time
when such rate, charge, classification, regulation or practice
would otherwise go into effect; and in the case of a public
utility having more than five thousand customers, but not
more than seven thousand five hundred customers, and which
is not principally owned by any other public utility corpora-
tion or public utility holding corporation, the commission may
suspend the operation of schedule and defer the use of such
rate, charge, classification, regulation or practice, but not for
a longer period than one hundred eighty days, beyond the
time when such rate, charge, classification, regulation or practice
would otherwise go into effect; and after full hearing,
whether completed before or after the rate, charge, classifi-
cation, regulation or practice goes into effect, the commission
may make such order in reference to such rate, charge, classi-
fication, regulation or practice as would be proper in a pro-
ceeding initiated after the rate, charge, classification, regula-
tion or practice had become effective: Provided, however, That
if any such hearing and decision thereon is not concluded with-
in the periods of suspension, as above stated, such rate, charge,
classification, regulation or practice shall go into effect at the
end of such period not subject to refund: Provided further,
That if any such rate, charge, classification, regulation or
practice goes into effect because of the failure of the commis-
sion to reach a decision, the same shall not preclude the com-
mission from rendering a decision with respect thereto which
would disapprove, reduce or modify any such proposed rate,
charge, classification, regulation or practice, in whole or in
part, but any such disapproval, reduction or modification shall not be deemed to require a refund to the customers of such utility as to any rate, charge, classification, regulation or practice so disapproved, reduced or modified. The fact of any rate, charge, classification, regulation or practice going into effect by reason of the commission's failure to act thereon shall not affect the commission's power and authority to subsequently act with respect to any such application or change in any rate, charge, classification, regulation or practice. Any rate, charge, classification, regulation or practice which shall be approved, disapproved, modified or changed, in whole or in part, by decision of the commission shall remain in effect as so approved, disapproved, modified or changed during the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations or practices which have gone into effect automatically at the end of the suspension period are prospective in effect only.

At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation or practice is just and reasonable shall be upon the public utility making application for such change. When in any case pending before the commission all evidence shall have been taken and the hearing completed, the commission shall render a decision in such case. The failure of the commission to render a decision with respect to any such proposed change in any such rate, charge, classification, regulation or practice within the various time periods specified in this section after the application therefore shall constitute neglect of duty on the part of the commission and each member thereof.

Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be
the community where the majority of the resident members of
the public affected by such change reside or, in case of nonresi-
dents, have their principal place of business within this state.

The commission may order rates into effect subject to
refund, plus interest in the discretion of the commission, in
cases in which the commission determines that a temporary
or interim rate increase is necessary for the utility to avoid
financial distress, or in which the costs upon which these
rates are based are subject to modification by the commission
or another regulatory commission and to refund to the public
utility. In such case the commission may require such public
utility to enter into a bond in an amount deemed by the com-
mision to be reasonable and conditioned upon the refund to
the persons or parties entitled thereto of the amount of the
excess if such rates so put into effect are subsequently deter-
mined to be higher than those finally fixed for such utility.

No utility may make application for a general rate increase
while another general rate application is pending before the
commission and not finally acted upon, except pursuant to the
provisions of the next preceding paragraph of this section. The
provisions of this paragraph shall not be construed so as to
prohibit any such rate application from being made while a
previous application which has been finally acted upon by the
commission is pending before or upon appeal to the West Vir-
ginia supreme court of appeals.

§24-2-4b. Procedures for changing rates of municipally operated
public utilities; filing requirements; limited public
service commission authority.

(a) Municipally operated public utilities are not subject to
the rate approval provisions of sections four or four-a of this
chapter but are subject to the limited rate provisions of this
section.

(b) All rates and charges set by municipally operated public
utilities shall be just, reasonable, applied without unjust dis-
crimination or preference and based primarily on the costs of
providing these services. Such rates and charges shall be adept-
ed by municipal ordinance to be effective not sooner than forty-five days after adoption. Such rates and charges shall be filed with the commission together with such information showing the basis of such rates and charges as the commission considers necessary. Any change in such rates and charges with updated information shall be filed with the commission. The municipality shall set the date when any new rate or charge is to go into effect.

Any customer aggrieved by the changed rate or charge may, within thirty days of the adoption of the ordinance changing said rate or charge, present to the commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility. The filing of said petition with the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days, or until an order is issued as provided herein. The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. Said hearing examiner shall conduct a public hearing, and shall within one hundred twenty days from the date of filing of the petition, issue an order approving, disapproving or modifying in whole or in part, the rate or charge contained in the ordinance. Such an order shall have the full force and effect of an order issued by the commission.

(c) If a municipally operated public utility serves customers outside its municipal corporate limits and these customers are charged at rates different from those which customers within its corporate limits are charged, the public service commission shall review and approve or order changes in such rates if the following conditions are met:

1. The complaining customers are those who reside outside the boundaries of the municipality which set the rates;
2. These customers allege that the rates to which they object are discriminatory; and
3. The request for a review of the rate or charge to which objection has been made is received by the public service commission within thirty days of the effective date of the adoption of the ordinance changing such rate or charge.
(d) Upon receipt of a request for a review of the rates under the provisions of subsection (b) or (c) of this section, the commission may exercise the power granted to it under the provisions of section three of this article. The commission may determine the method by which such rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer or municipality requests such a hearing.

§24-2-7. Unreasonable, etc., regulations, practices and services; receivership; procedures respecting receivership; appointment and compensation of receiver; liquidation.

(a) Whenever, under the provisions of this chapter, the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or shall find that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix, reasonable measurement, regulations, acts, practices or service, to be furnished, imposed, observed and followed in the state in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise in violation of this chapter, and shall make such other order respecting the same as shall be just and reasonable.

(b) If the public service commission shall determine that any utility is unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its owners, or that its management is grossly and willfully inefficient, irresponsible or unresponsive to the needs of its customers, the commission may petition to the circuit court of any county wherein the utility does business for an order attaching the assets of the utility and placing such utility under the sole control and responsibility of a receiver. If the court determines that the petition is proper in all respects and finds, after a hearing thereon, that the allegations contained in the petition are true, it shall grant the same and shall order that the utility be placed in receivership. The court, in its discretion and in consideration of the
recommendation of the commission, shall appoint a receiver who shall be a responsible individual, partnership or corporation knowledgeable in public utility affairs and who shall maintain control and responsibility for the running and management of the affairs of such utility. In so doing, the receiver shall operate the utility so as to preserve the assets of the utility and to serve the best interests of its customers. The receiver shall be compensated from the assets of said utility in an amount to be determined by the court.

Control of and responsibility for said utility shall remain in the receiver until the same can, in the best interest of the customers, be returned to the owners, transferred to other owners or assumed by another utility or public service corporation: Provided, That if the court after hearing, determines that control of and responsibility for the affairs of the utility should not, in the best interests of its customers, be returned to the legal owners thereof, the receiver shall proceed to liquidate the assets of such utility in the manner provided by law.

The laws generally applicable to receivership shall govern receiverships created pursuant to this section.

§24-2-8. System of accounts to be kept by public utilities; uniform accounting system for public service districts and municipally owned public utilities.

(a) The commission may establish a system of accounts to be kept by public utilities or classify public utilities and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept. It may also in its discretion prescribe the forms of accounts, records and memoranda to be kept by such public utilities, including the accounts, records and memoranda of the movement of traffic as well as the receipt and expenditure of moneys, and any another forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this chapter. In the case of utilities subject to the provisions of the act of Congress entitled “An act to regulate commerce,” approved February four, eighteen hundred and eighty-seven, and the acts amendatory thereof
and supplemental thereto, the system of accounts established
by the commission and the forms of accounts, records and
memoranda prescribed by it shall not be inconsistent with
the systems and forms from time to time established for
such utilities by the interstate commerce commission. But
nothing herein contained shall affect the power of the com-
mission to prescribe forms of accounts, records and memo-
randa covering information in addition to that required by
the interstate commerce commission. The commission may,
after hearing had upon its own motion or upon complaint,
preserve by order the accounts in which particular outlays
and receipts shall be entered, charged or credited.

(b) The commission shall, on or before the thirty-first day
of December, one thousand nine hundred seventy-nine, adopt
rules and regulations prescribing and establishing a uniform
system of accounts and accounting to be kept by all public
service districts and municipally owned public utilities, and,
in so doing, the commission shall confer with and seek the
assistance of the tax commissioner in order to coordinate
any such accounting systems and procedures with any such
procedures or systems adopted by the state tax department
governing the fiscal affairs of municipalities. Such rules
and regulations shall establish a date by which all utilities are
to conform with any such accounting procedures and systems
adopted by the commission. Any such rules and regulations
prescribing a system or procedure of accounting to be kept by
such public utilities may classify such utilities and establish
a system or procedure of accounts for each class and prescribe
the manner of keeping such accounts. The commission may
also ascertain, determine and prescribe what are proper and
adequate charges for depreciation of the several classes of
property for each utility and may prescribe such changes as
it may deem appropriate in charges made for depreciation
as it finds necessary.

§24-2-11. Requirements for certificate of public convenience and
necessity.

No public utility, person or corporation, shall begin the
construction of any plant, equipment, property or facility for
furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the public service commission a certificate of public convenience and necessity requiring such construction, franchise, license or permit. Upon the filing of any application for such certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, such certificate of convenience and necessity: Provided, That any public utility, person or corporation subject to the provisions of this section shall give the commission at least thirty days' notice of the filing of any such application for a certificate of public convenience and necessity under this section. The commission shall render its final decision on any application filed after the thirtieth day of June, one thousand nine hundred eighty-one under the provisions of this section or section eleven-a of this article within two hundred seventy days of the filing of the application and within ninety days after final submission of any such application for decision following a hearing: Provided, That if the projected total cost of the project is greater than fifty million dollars, the commission shall render its final decision on any such application filed under the provisions of this section or section eleven-a of this article within four hundred days of the filing of the application and within ninety days after final submission of any such application for decision after a hearing. If such decision is not rendered within the aforementioned two hundred seventy days, four hundred days or ninety days, the commission shall issue a certificate of convenience and necessity as applied for in the application. The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.


In addition to all other powers and duties conferred upon the public service commission herein, the commission shall be

charged with the duty of enforcing the provisions of the United
States “Federal Railroad Safety Act” and the “Uniform Motor
Carrier Identification Act” in this state under the federal
requirements contained therein requiring state enforcement of
such acts, in so far as the same are not repugnant to the laws
of this state or contrary to the rules and regulations of the
commission.

The commission shall also perform those duties expressly
conferred upon a state regulatory authority by the “National
Energy Conservation Policy Act of 1978,” “Power Plant and
Industrial Fuel Use Act of 1978,” and the “Public Utilities
Regulatory Policy Act of 1978,” in so far as the same are not
repugnant to the laws of this state or contrary to the rules
and regulations of the commission, unless the governor, exer-
cising authority reserved to him in said acts, designates another
agency to perform such duties, in whole or in part. The term
“state regulatory authority” as used in this paragraph shall
have the same meaning as such term is defined by said federal
acts.

In addition, the commission shall carry out other federal
acts, including appropriate portions of the “Natural Gas Policy
Act of 1978,” for which the governor designates it as the
responsible agency in this state.

§24-2-15. Automatic adjustment clauses or fuel adjustment clauses prohibited.

The commission shall not enforce, originate, continue, es-
establish, change or otherwise authorize or permit an increase
in the charge or charges for electric energy over and above the
established and published tariff, rate, joint rate, charge, toll or
schedule through any automatic adjustment clause or fuel
adjustment clause.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-6. Special license fee; “public service commission fund.”

(a) All public utilities subject to the provisions of this
chapter shall pay a special license fee in addition to those
now required by law. The amount of such fees shall be fixed
by the public service commission and such fee shall not exceed ten cents on each one hundred dollars of value and shall be levied by it upon each of such public utilities according to the value of its property as ascertained by the last assessment, and shall be apportioned among such public utilities upon the basis of such valuation, which fees shall be paid on or before the twentieth day of January in each year. Such sum, together with that provided in subsection (b) hereof shall be paid into the state treasury and kept as a special fund designated "public service commission fund," to be appropriated as provided by law for the purpose of paying the salaries of the commission, as fixed by this chapter, its expenses and salaries, compensations, costs and expenses of its employees.

(b) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to any and all fees now required by law. The amount of such fees shall be fixed by the public service commission and such fee shall not exceed forty cents on each one hundred dollars of total gross revenue and shall be levied by it upon each of such public utilities, in the proportion which the total gross revenue derived from intrastate business done by each of such public utilities in the calendar year next preceding bears to the total gross revenue derived from intrastate business done in such year by all public utilities subject to regulation by the public service commission, in addition to such fees as may be fixed by the public service commission under the provisions of subsection (a) hereof and which fees shall be paid on or before the first day of July in each year. Such sum shall be paid into the state treasury and be kept, appropriated and used as provided in subsection (a) hereof.

(c) Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury but shall remain in said fund and may be appropriated and used as provided in subsection (a) hereof in the ensuing fiscal years.

§24-3-7. Permit to abandon service: certificate.

No railroad or other public utility shall abandon all or any portion of its service to the public or the operation of any of its lines which would affect the service it is rendering the public unless and until there shall first have been filed with
the public service commission of this state an application for
a permit to abandon service and obtained from the commis-
sion an order stating that the present and future public con-
venience and necessity permits such abandonment.

§24-5-1. Review of final orders of commission.

Any party feeling aggrieved by the entry of a final order by
the commission, affecting him or it, may present a petition in
writing to the supreme court of appeals, or to a judge thereof
in vacation, within thirty days after the entry of such order,
praying for the suspension of such final order. The applicant
shall deliver a copy of such petition to the secretary of the
commission on or before the date the same is presented to the
court or the judge, and it shall be the duty of the secretary
promptly to file with the clerk of said court all papers, docu-
ments, evidence and other records constituting the complete
record in the case, or certified copies thereof, as were before
the commission at the time of the entry of the order from
which the appeal is taken. The court or judge shall fix a time
for the hearing on the application, but such hearing, unless by
agreement of the parties, shall not be held sooner than five
days after its presentation; and notice of the time and place of
such hearing shall be forthwith delivered to the secretary of
the commission, so that the commission may be represented
at such hearing by one or more of its members or by counsel.
If the court or the judge after such hearing be of the opinion
that a suspending order should issue, the court or the judge
may require bond, upon such conditions and in such penalty,
and impose such terms and conditions upon the petitioner, as
are just and reasonable. The commission shall file with the
court before the day fixed for the final hearing a written state-
ment of its reasons for the entry of such order, and after
arguments by counsel the court shall decide the matter in con-
troversy as may seem to be just and right.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS
AND PROPERTY FOR HIRE.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-2a. Certificate not required of certain carriers; other pro-
visions applicable.

(a) On and after July one, one thousand nine hundred
eighty-two, common carriers by motor vehicles engaged in the business of towing, hauling or carrying wrecked or disabled vehicles shall, notwithstanding any other provision of the laws of the state of West Virginia to the contrary, be regulated by the provisions of this section and this section shall not be applicable to said carriers until such date.

(b) No common carrier by motor vehicle engaged in the business of towing, hauling or carrying wrecked or disabled vehicles and mobile homes shall be required to obtain a common carrier certificate or other certificate of authority from the commission prior to engaging in such business, however, such carrier shall not engage in such business unless and until such carrier shall have registered as a carrier with the commission in accordance with the provisions of this section.

(c) A person may not act as a common carrier by motor vehicle by engaging in the business of towing, hauling or carrying wrecked or disabled motor vehicles for hire unless that person has registered as a carrier with the public service commission as provided in this section; nor, may a person continue to act as a carrier by engaging in the business of towing, hauling or carrying wrecked or disabled motor vehicles for hire if his registration is revoked or suspended by the commission. A person registered as a carrier under the provisions of this section may not charge, demand, collect or receive a greater remuneration for the towing, hauling or carrying of any wrecked or disabled motor vehicle than the rates, fares and charges established by the provisions of this section.

The commission shall register all carriers as may make application for registration as a common carrier by motor vehicle for the purpose of engaging in the business of towing, hauling or carrying wrecked or disabled motor vehicles for hire upon satisfactory evidence to the commission that the carrier has complied with all applicable requirements of this chapter and all applicable rules and regulations of the commission. The commission shall by general order, applicable to all carriers registered under this section, fix, alter and determine just, fair, reasonable and sufficient maximum statewide or regional schedules of rates, fares and charges, and it shall
establish reasonable classifications of carriers for which the schedules are applicable, but before the rates, fares and charges are fixed, altered or determined, the commission shall hold hearings in order to give all interested parties an opportunity to be heard, and it shall give reasonable notice of the hearings in the manner as the commission shall by rule prescribe. Carriers registered under the provisions of this section are subject to the regulatory powers of the commission as provided in section three of this article.

Upon the complaint of any aggrieved party, the commission may suspend or revoke the registration of any person registered with the commission under the provisions of this section for the violation of any rule or regulation established by the commission and applicable to that person or for the violation of any provision of this article applicable to persons registered under the provisions of this section: Provided, That for the first violation, suspension of registration shall be for a period of not more than thirty days; and, for a second violation the commission may revoke the registration for a period of one year; and, for a third violation the commission may revoke the registration permanently. But before any suspension or revocation is effected, the person registered under this section shall first be given reasonable notice of the charges against him and shall be granted an opportunity to be heard by the commission or its designee in accordance with the rules and regulations for hearings as may be by rule established by the commission.


(a) Required; application; hearing; granting.—It shall be unlawful for any common carrier by motor vehicle to operate within this state without first having obtained from the commission a certificate of convenience and necessity. Upon the filing of an application for such certificate, the commission shall set a time and place for a hearing on the application: Provided, That the commission may, after giving proper notice and if no protest is received, waive formal hearing on the application. Notice shall be by publication which shall state that a formal hearing may be waived in the absence of a
protest to such application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the proposed area of operation. The notice shall be published at least ten days prior to the date of the hearing. After the hearing or waiver by the commission of the hearing, if the commission finds from the evidence that the public convenience and necessity require the proposed service or any part thereof, it shall issue the certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require, and if the commission shall be of the opinion that the service rendered by any common carrier holding a certificate of convenience and necessity over any route or routes in this state is in any respect inadequate or insufficient to meet the public needs, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy or insufficiency before any certificate shall be granted to an applicant proposing to operate over such route or routes as a common carrier. Before granting a certificate to a common carrier by motor vehicle the commission shall take into consideration existing transportation facilities in the territory for which a certificate is sought, and in case it finds from the evidence that the service furnished by existing transportation facilities is reasonably efficient and adequate, the commission shall not grant such certificate.

CHAPTER 24A.
MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

ARTICLE 6. DUTIES AND PRIVILEGES OF MOTOR CARRIERS SUBJECT TO REGULATION OF THE COMMISSION.

§24A-6-6. Special annual assessment against motor carriers for expenses of administering chapter, "public service commission motor carrier fund."

1 In addition to the license fees, registration fees, or any other taxes required by law to be collected from motor
carriers subject to this chapter, each such motor carrier shall be subject to, and shall pay to the public service commission, a special annual assessment for the purpose of paying the salaries, compensation, costs and expenses of administering and enforcing this chapter. All proceeds or funds derived from such assessment shall be paid into the state treasury and credited to a special fund designated public service commission motor carrier fund, to be appropriated as provided by law for the purposes herein stated. Each member of the commission shall receive a salary in the amount set forth in section three, article one, chapter twenty-four of this code as compensation for the administration of this chapter in addition to all other salary or compensation otherwise provided by law, to be paid in monthly installments from said fund. The special assessment against each motor carrier shall be apportioned upon the number and capacity of motor vehicles used by said carrier, computed as hereinafter provided.

(a) For each uniform identification card \( \ldots \) \( \$ 3.00 \)

(b) Upon each power unit of such carriers of property, in accordance with its capacity as rated by its manufacturer, in addition to amount of subdivision (a):

- of one ton or less capacity \( \ldots \) \( \$ 9.00 \)
- of over one to one and one-half tons capacity \( \ldots \) \( 13.50 \)
- of over one and one-half tons to two tons capacity \( \ldots \) \( 18.00 \)
- of over two tons to three tons capacity \( \ldots \) \( 22.50 \)
- of over three tons to four tons capacity \( \ldots \) \( 27.00 \)
- of over four tons to five tons capacity \( \ldots \) \( 31.50 \)
- of over five tons to six tons capacity \( \ldots \) \( 36.00 \)
- of over six tons to seven tons capacity \( \ldots \) \( 40.50 \)
- of over seven tons to eight tons capacity \( \ldots \) \( 45.00 \)
- of over eight tons to nine tons capacity \( \ldots \) \( 49.50 \)
- of over nine tons to ten tons capacity \( \ldots \) \( 54.00 \)
- of over ten tons capacity, \$54.00 plus \$4.50 for each additional ton of capacity in excess of ten tons.

(c) Upon each trailer and semitrailer of such carriers of property, in accordance with its capacity as rated by its
manufacturer, in an amount of two thirds of the amount provided for vehicles of its capacity in subdivision (b) of this section.

(d) Upon each power unit of such carriers of passengers, in accordance with the seating capacity thereof, in addition to amount in subdivision (a):

of ten passengers or less ........................................ $13.50
of eleven to twenty passengers, inclusive .................. 22.50
of twenty-one to thirty passengers, inclusive ............. 31.50
of thirty-one to forty passengers, inclusive .............. 45.00
of over forty passengers ........................................... 54.00

(e) The annual assessment of each motor carrier shall be paid on or before the first day of July of each year. Additional assessments shall be collected upon the placing in use of any additional motor vehicle: Provided, That such additional assessments shall be subject to a reduction in the amounts shown in subdivisions (b), (c), and (d) corresponding to the unexpired quarterly periods of the fiscal year, but shall not in any event be less than one fourth of such amount plus the sum of three dollars provided in subdivision (a).

(f) Upon payment by any motor carrier of the assessment provided for, the public service commission shall advise the department of motor vehicles by notice in writing that such assessment has been paid, whereupon the department of motor vehicles may issue motor vehicle license for the vehicles described in said notice.

(g) Prior to the beginning of any fiscal year the public service commission, after taking into consideration any unexpended balance in the motor carrier fund, the probable receipts to be received in the ensuing fiscal year, and the probable costs of administering and enforcing this chapter for the ensuing fiscal year, may fix the assessments provided for in this section for the ensuing fiscal year in amounts which, in the commission's judgment, will produce sufficient revenue to administer and enforce this chapter for said fiscal year: Provided, That in no event shall such assessments exceed the amounts set up in this section.
CHAPTER 24B. GAS PIPELINE SAFETY.

ARTICLE 4. HEARINGS; BURDEN OF PROOF; ENFORCEMENT.

§24B-4-6. Penalties.

1. (a) Any person who violates any provision of this chapter or any valid regulation or order issued thereunder, shall be subject to a civil penalty to be imposed by the commission of not to exceed one thousand dollars for each violation for each day that the violation persists: Provided, That the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations.

2. (b) Any civil penalty may be compromised by the commission. In determining the amount of penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

3. (c) Civil penalties collected under this section shall be paid into the state treasury.

ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.

§24B-5-1. Employees.

1. The commission shall appoint such employees as may be necessary to carry out the provisions of this chapter, and shall fix their respective salaries or compensation. The commission may designate such employees as it deems necessary to take evidence at any hearing held or required by the provisions of this chapter, which employees are hereby empowered to administer oaths in all parts of this state so far as the exercise of such power is properly incidental to the performance of their duties in connection with the provisions of this chapter.
§24B-5-2. Compensation to commissioners.

Each member of the commission shall receive a salary in the amount set forth in section three, article one, chapter twenty-four of this code as compensation for the administration of this chapter in addition to all other salary or compensation otherwise provided for by law, to be paid in monthly installments from the public service commission gas pipeline safety fund.

§24B-5-3. Funding; property and revenue license fees.

(a) Every pipeline company shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the public service commission and levied by it upon each of such pipeline companies according to the number of three inch equivalent pipeline miles included in its pipeline facilities, and shall be apportioned among such pipeline companies upon the basis of the pipeline companies' reports submitted to the commission in such form as the commission may prescribe, so as to produce a revenue of not more than one hundred fifty thousand dollars per annum, which fees shall be paid on or before the first day of July in each year.

(b) Such sums collected under subsection (a) of this section shall be paid into the state treasury and kept as a special fund, designated "public service commission gas pipeline safety fund," to be appropriated as provided by law for the purpose of paying the salaries of the commission, as fixed by this chapter, its expenses and salaries, compensation, costs and expenses of its employees. Any balance in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and may be appropriated as provided in this subsection.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Lawrence L. Christian
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. Chilton Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. J. Bodkin
President of the Senate

Clyde M. Lee Jr.
Speaker House of Delegates

The within is approved this the 28 day of March, 1979.

Johnny R. Reynolds
Governor