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OFFICE OF THE GOVERNOR

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



# ENROLLED

*Committee Substitute for*

SENATE BILL NO. 117

(By Mr. *McShaw, Jr. President et al*)

*March 12,*

PASSED ..... 1983

In Effect ..... *from* ..... Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 117**

(BY MR. MCGRAW, MR. PRESIDENT, MR. BOETTNER, MR. NELSON, MR. TONKOVICH, MS. LUCHT, MS. CHACE, MR. CRAIGO, MRS. SPEARS, MR. HOLLIDAY, MR. CHERNENKO, MR. LOEHR, MR. HECK, MR. BURDETTE, MR. HOLMES, MR. COOK, MR. SACCO, MR. KAUFMAN, MR. CHAFIN, MR. JONES AND MR. STACY, *original sponsors*)

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[Passed March 12, 1983; in effect from passage.]

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AN ACT to amend article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven; to amend and reenact sections one and seven, article one, chapter twenty-four of said code; to amend and reenact sections three, four-a, four-b and eleven, article two of said chapter; to further amend said article by adding thereto two new sections, designated sections four-c and sixteen; to amend and reenact sections two and seven, article three of said chapter; and to further amend said article by adding thereto two new sections, designated sections three-a and eight; to amend said chapter by adding thereto two new articles, designated articles two-a and two-b, all relating to corporate net income tax; credit for reducing electric and natural gas utility rates for low-income residential customers; legislative purpose and policy of the public service commission; regulation of utilities and the powers, duties and authority of the public service commission with respect thereto; open meetings of the commission and exceptions thereto; audits and investigations of utility

management practices; requiring that the commission review transactions between utilities and their affiliates; limiting the amount of profit a utility may realize to just and reasonable amounts, when considering the income of an affiliate; holding rate hearings within the area served by the public utility; written reports incorporated into rate applications; procedures for changing rates of electric and telephone cooperatives and municipally operated public utilities; notice to the customers of all such cooperatives and municipal utilities of impending rate changes; removing such utilities and cooperatives from the authority of the public service commission for limited purposes; permitting the commission to allow emergency rates to take effect upon petition by such municipal utilities and electric and telephone cooperatives under certain circumstances and conditions; limitations upon and procedures for rate increases for natural gas public utilities as a result of the purchase by such utility of natural gas from its suppliers; the burden of proof upon such utilities in such cases; the powers and duties of the commission with respect thereto and requiring the commission to promulgate certain rules and regulations with respect to such cases; requiring such utility to present certain evidence in all such cases; purchase cost adjustment increases for gas utilities purchasing more than fifty percent of ~~its~~ gas from affiliates; the transportation of natural gas by intrastate and interstate gas pipelines and local distribution companies; requiring certificates of convenience and necessity in certain cases with respect thereto; providing that certain anticompetitive clauses in natural gas purchase and sale contracts are prohibited and the authority of the commission with respect to determining the reasonableness of such contracts; providing for reduced rates for low income residential customers of gas and electric utilities during certain months of the year; establishing rules for persons qualifying for such low rates and for proving one's eligibility therefor; providing a system for the recovery by the utility for the revenue deficiency resulting from such reduced rates; creating a fund to be administered by the auditor designated the "Low Income Residential Utility Assistance Fund" to be used to defray such deficiencies and providing for legislative appropriation into such fund, and authorizing the state auditor to accept in the name of the

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fund, gifts, donations, contributions, bequests of money or securities; providing for the transfer of certain funds allocated to the low income energy assistance program to be transferred into such fund; establishing procedures for taxpayers receiving an income tax refund to dedicate a certain portion of such refund for payment into such fund; establishing certain rules for the apportionment of such fund among the several utilities; temporary suspension of natural gas rate increases and exceptions thereto; emergency rate increases during period of temporary suspension; amending the provisions relating to the prohibition of discrimination with respect to rates charged by utilities to permit the commission to authorize rate designs consistent with the provisions of article two-a of said chapter; providing for the designation of intrastate gas pipelines, local distribution companies and certain interstate gas pipelines having excess or unused capacity as intrastate common carriers; providing by rule or order of the commission to require such pipelines or companies to transport natural gas sold to, used or produced by any person for designated uses; providing for rates and charges therefor; exempting certain lines, and providing a severability clause; requiring the commission to impose certain conditions upon utilities who have filed for a permit to abandon service as a condition of such abandonment; and limiting deposits of residential customers of public utilities to one-twelfth of the estimated annual charge.

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*Be it enacted by the Legislature of West Virginia:*

That article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eleven; that sections one and seven, article one, chapter twenty-four of said code be amended and reenacted; that sections three, four-a, four-b and eleven, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections four-c and sixteen; that sections two and seven, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections three-a and eight; and that said chapter be amended by adding thereto two new articles, designated articles two-a and two-b, all to read as follows:

**CHAPTER 11. TAXATION.**

**ARTICLE 24. CORPORATE NET INCOME TAX.**

**§11-24-11. Credit for reducing electric and natural gas utility rates for low-income residential customers.**

1 (a) *General.*—A credit shall be allowed under the  
2 provisions of this section against the primary tax liability of  
3 the eligible taxpayer under this article, for the cost of  
4 providing electric or natural gas utility service, or both, at  
5 reduced rates to qualified low-income residential  
6 customers during the preceding heating season.

7 (b) *Definitions.*—For purposes of this section the term:

8 (1) “Eligible taxpayer” means a utility which provides  
9 electric or natural gas service, or both, to qualified low-  
10 income residential customers at special reduced rates  
11 ordered by the public service commission of West Virginia  
12 pursuant to the authority of section one, article two-a,  
13 chapter twenty-four of this code.

14 (2) “Cost incurred by the public utility” means the  
15 difference between actual utility charges to qualified low-  
16 income residential customers under the special reduced  
17 rate schedule and what those charges would have been if the  
18 special reduced rate schedule had not applied.

19 (3) “Cost of providing reduced rate electric or natural  
20 gas utility service” means the amount certified by the  
21 public service commission of West Virginia under the  
22 provisions of article two-a, chapter twenty-four of this  
23 code, as the cost incurred by the public utility in providing  
24 reduced special rates for electric or natural gas utility  
25 service to qualified low-income residential customers  
26 during the preceding heating season, as required by section  
27 one, article two-a, chapter twenty-four of this code.

28 (4) “Preceding heating season” means the period  
29 November, December, January, February, and March of the  
30 fiscal year ending on the thirtieth day of June.

31 (5) “Qualified low-income residential customers”  
32 means those utility customers lawfully receiving reduced  
33 rate electric or natural gas utility service, or both, under  
34 section one, article two-a, chapter twenty-four of this code,  
35 at a residence located in this state.

36 (6) “Special reduced rates” means the rates ordered by  
37 the public service commission of West Virginia under

38 authority of section one, article two-a, chapter twenty-four  
39 of this code.

40 (c) *When credit may be taken.*—An eligible taxpayer  
41 may claim credit for the cost of providing reduced rate  
42 electric or natural gas utility service, or both, on its annual  
43 return for the taxable year in which it receives certification  
44 of the amount thereof from the public service commission of  
45 West Virginia.

46 (d) *Application of credit.*—The credit allowable by this  
47 section for a taxable year is not subject to the fifty percent  
48 limitation specified in section nine of this article, and any  
49 unused credit may be carried over to each of the next three  
50 taxable years following the unused credit year until used or  
51 forfeited due to lapse of time.

52 (e) *Copy of certification letter.*—A copy of the  
53 certification from the public service commission of West  
54 Virginia, shall be attached to the annual return under this  
55 article, on which the credit allowed by this section is taken.

## CHAPTER 24. PUBLIC SERVICE COMMISSION.

### ARTICLE 1. GENERAL PROVISIONS.

#### §24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with joint committee on government and finance.

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

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

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

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

14 (4) Ensure that rates and charges for utility services are  
15 just, reasonable, applied without unjust discrimination or  
16 preference, applied in a manner consistent with the

17 purposes and policies set forth in article two-a of this  
18 chapter, and based primarily on the costs of providing these  
19 services; and

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

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

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30 (c) The Legislature directs the public service  
31 commission to identify, explore and consider the potential  
32 benefits or risks associated with emerging and state-of-the-  
33 art concepts in utility management, rate design and  
34 conservation. The commission may conduct inquiries and  
35 hold hearings regarding such concepts in order to provide  
36 utilities subject to its jurisdiction and other interested  
37 persons the opportunity to comment, and shall report to the  
38 governor and the Legislature regarding its findings and  
39 policies to each of these areas not later than the first day of  
40 the regular session of the Legislature in the year one  
41 thousand nine hundred eighty-five, and every two years  
42 thereafter.

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

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

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

58 (3) The current balance of supply and demand for

59 natural gas and electric utility services in the state and a  
60 forecast of the probable balance for the next ten years; and

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

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

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

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

86 (3) The cumulative effect of the practices mentioned in  
87 subdivisions (1) and (2) of this subsection upon rates  
88 theretofore and hereafter charged gas utility customers in  
89 West Virginia.

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

99 (f) No later than the first day of the regular session of the  
100 Legislature in the year one thousand nine hundred eighty,

101 the public service commission shall submit to the  
102 Legislature a plan for internal reorganization which plan  
103 shall specifically address the following:

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

110 (2) The creation of a division which shall act as an  
111 advocate for the position of and in the interest of all  
112 customers;

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

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

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

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

144 Such plan shall be based on the concept that each of the  
145 divisions mentioned in subdivisions (1), (2) and (4) of this  
146 subsection shall exist independently of the others and the  
147 plan shall discourage ex parte communications between  
148 them by such means as the commission shall direct,  
149 including, but not limited to, separate clerical and  
150 professional staffing for each division. Further, the public  
151 service commission is directed to incorporate within the  
152 said plan to the fullest extent possible the recommendations  
153 presented to the subcommittee on the public service  
154 commission of the joint committee on government and  
155 finance in a final report dated February, one thousand nine  
156 hundred seventy-nine and entitled "A Plan For Regulatory  
157 Reform and Management Improvement."

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

172 Upon the filing of a certified copy of such order and rule,  
173 the clerk of each house of the Legislature shall report the  
174 same to their respective houses and the presiding officer  
175 thereof shall refer the same to appropriate standing  
176 committee or committees.

177 Within the limits of funds appropriated therefor, the rule  
178 of the public service commission shall be effective upon the  
179 date specified in the order of the commission promulgating  
180 it unless an alternative plan be adopted by general law or  
181 unless the rule is disapproved by a concurrent resolution of  
182 the Legislature adopted prior to adjournment sine die of the  
183 regular session of the Legislature to be held in the year one  
184 thousand nine hundred eighty: *Provided*, That if such rule  
185 is approved in part and disapproved in part by a concurrent

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186 resolution of the Legislature adopted prior to such  
187 adjournment, such rule shall be effective to the extent and  
188 only to the extent that the same is approved by such  
189 concurrent resolution.

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

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

200 (h) (1) The Legislature hereby finds that rates for  
201 natural gas charged to customers of all classes have risen  
202 dramatically in recent years to the extent that such  
203 increases have adversely affected all customer classes. The  
204 Legislature further finds that it must take action necessary  
205 to mitigate the adverse consequences of these dramatic rate  
206 increases.

207 (2) The Legislature further finds that the practices of  
208 natural gas utilities in purchasing high-priced gas supplies,  
209 in purchasing gas supplies from out-of-state sources when  
210 West Virginia possesses abundant natural gas, and in  
211 securing supplies, directly or indirectly by contractual  
212 agreements including take-or-pay provisions, indefinite  
213 price escalators, or most-favored nation clauses have  
214 contributed to the dramatic increase in natural gas prices. It  
215 is therefore the policy of the Legislature to discourage such  
216 purchasing practices in order to protect all customer  
217 classes.

218 (3) The Legislature further finds that it is in the best  
219 interests of the citizens of West Virginia to encourage the  
220 transportation of natural gas in intrastate commerce by  
221 interstate or intrastate pipelines or by local distribution  
222 companies in order to provide competition in the natural  
223 gas industry and in order to provide natural gas to  
224 consumers at the lowest possible price.

225 (i) The Legislature further finds that transactions  
226 between utilities and affiliates are a contributing factor to  
227 the increase in natural gas and electricity prices and tend to

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228 confuse consideration of a proper rate of return calculation.  
229 The Legislature therefore finds that it is imperative that the  
230 public service commission have the opportunity to properly  
231 study the issue of proper rate of return for lengthy periods  
232 of time and to limit the return of a utility to a proper level  
233 when compared to return or profit that affiliates earn on  
234 transactions with sister utilities.

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

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

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27 Meetings of the commission wherein the sole purpose is to  
28 decide or deliberate toward a decision on any matter are  
29 exempt from the requirements of article nine-a, chapter six  
30 of this code, any other provision of this code to the contrary  
31 notwithstanding.

32 All orders of the commission shall set forth separately

33 findings of facts and conclusions of law, which findings of  
34 fact shall make specific reference to the evidence in the  
35 record which supports such findings.

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

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

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

1 The commission shall have power to enforce, originate,  
2 establish, change and promulgate tariffs, rates, joint rates,  
3 tolls and schedules for all public utilities: *Provided*, That  
4 the commission may exercise such rate authority over  
5 municipal utilities only under the circumstances set forth in  
6 section four-b of this article. And whenever the commission  
7 shall, after hearing, find any existing rates, tolls, tariffs,  
8 joint rates or schedules unjust, unreasonable, insufficient  
9 or unjustly discriminatory or otherwise in violation of any  
10 of the provisions of this chapter, the commission shall by an  
11 order fix reasonable rates, joint rates, tariffs, tolls or  
12 schedules to be followed in the future in lieu of those found  
13 to be unjust, unreasonable, insufficient or unjustly  
14 discriminatory or otherwise in violation of any provisions  
15 of law, and the said commission, in fixing the rate of any  
16 railroad company, may fix a fair, reasonable and just rate to  
17 be charged on any branch line thereof, independent of the  
18 rate charged on the main line of such railroad.

19 In determining just and reasonable rates, the commission  
20 may audit and investigate management practices and  
21 policies, or have performed an audit and investigation of  
22 such practices and policies, in order to determine whether  
23 the utility is operating with efficiency and is utilizing sound  
24 management practices. The commission shall adopt rules  
25 and regulations setting forth the scope, frequency and  
26 application of such audits and investigations to the various  
27 utilities subject to its jurisdiction. The commission may  
28 include the cost of conducting the management audit in the  
29 cost of service of the utility.

30 In determining just and reasonable rates, the commission

31 shall investigate and review transactions between utilities  
32 and affiliates. The commission shall limit the total return of  
33 the utility to a level which, when considered with the level  
34 of profit or return the affiliate earns on transactions with  
35 the utility, is just and reasonable.

**§24-2-4a. Procedure for changing rates after June 30, 1981.**

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

20 Whenever there shall be filed with the commission any  
21 schedule stating a change in the rates or charges, or joint  
22 rates or charges, or stating a new individual or joint rate or  
23 charge or joint classification or any new individual or joint  
24 regulation or practice affecting any rate or charge the  
25 commission may either upon complaint or upon its own  
26 initiative without complaint enter upon a hearing  
27 concerning the propriety of such rate, charge,  
28 classification, regulation or practice; and, if the  
29 commission so orders, it may proceed without answer or  
30 other form of pleading by the interested parties, but upon  
31 reasonable notice, and, pending such hearing and the  
32 decisions thereon, the commission, upon filing with such  
33 schedule and delivering to the public utility affected  
34 thereby a statement in writing of its reasons for such  
35 suspension, may suspend the operation of such schedule  
36 and defer the use of such rate, charge, classification,

37 regulation or practice, but not for a longer period than two  
38 hundred seventy days beyond the time when such rate,  
39 charge, classification, regulation or practice would  
40 otherwise go into effect; and after full hearing, whether  
41 completed before or after the rate, charge, classification,  
42 regulation or practice goes into effect, the commission may  
43 make such order in reference to such rate, charge,  
44 classification, regulation or practice as would be proper in a  
45 proceeding initiated after the rate, charge, classification,  
46 regulation or practice had become effective: *Provided*, That  
47 in the case of a public utility having two thousand five  
48 hundred customers or less and which is not principally  
49 owned by any other public utility corporation or public  
50 utility holding corporation, the commission may suspend  
51 the operation of such schedule and defer the use of such  
52 rate, charge, classification, regulation or practice, but not  
53 for a longer period than one hundred twenty days beyond  
54 the time when such rate, charge, classification, regulation  
55 or practice would otherwise go into effect; and in the case of  
56 a public utility having more than two thousand five  
57 hundred customers, but not more than five thousand  
58 customers, and which is not principally owned by any other  
59 public utility corporation or public utility holding  
60 corporation, the commission may suspend the operation of  
61 such schedule and defer the use of such rate, charge,  
62 classification, regulation or practice, but not for a longer  
63 period than one hundred fifty days beyond the time when  
64 such rate, charge, classification, regulation or practice  
65 would otherwise go into effect; and in the case of a public  
66 utility having more than five thousand customers, but not  
67 more than seven thousand five hundred customers, and  
68 which is not principally owned by any other public utility  
69 corporation or public utility holding corporation, the  
70 commission may suspend the operation of such schedule  
71 and defer the use of such rate, charge, classification,  
72 regulation or practice, but not for a longer period than one  
73 hundred eighty days beyond the time when such rate,  
74 charge, classification, regulation or practice would  
75 otherwise go into effect; and after full hearing, whether  
76 completed before or after the rate, charge, classification,  
77 regulation or practice goes into effect, the commission may  
78 make such order in reference to such rate, charge,

79 classification, regulation or practice as would be proper in a  
80 proceeding initiated after the rate, charge, classification,  
81 regulation or practice had become effective: *Provided,*  
82 *however,* That if any such hearing and decision thereon is  
83 not concluded within the periods of suspension, as above  
84 stated, such rate, charge, classification, regulation or  
85 practice shall go into effect at the end of such period not  
86 subject to refund: *Provided further,* That if any such rate,  
87 charge, classification, regulation or practice goes into effect  
88 because of the failure of the commission to reach a decision,  
89 the same shall not preclude the commission from rendering  
90 a decision with respect thereto which would disapprove,  
91 reduce or modify any such proposed rate, charge,  
92 classification, regulation or practice, in whole or in part,  
93 but any such disapproval, reduction or modification shall  
94 not be deemed to require a refund to the customers of such  
95 utility as to any rate, charge, classification, regulation or  
96 practice so disapproved, reduced or modified. The fact of  
97 any rate, charge, classification, regulation or practice going  
98 into effect by reason of the commission's failure to act  
99 thereon shall not affect the commission's power and  
100 authority to subsequently act with respect to any such  
101 application or change in any rate, charge, classification,  
102 regulation or practice. Any rate, charge, classification,  
103 regulation or practice which shall be approved,  
104 disapproved, modified or changed, in whole or in part, by  
105 decision of the commission shall remain in effect as so  
106 approved, disapproved, modified or changed during the  
107 period or pendency of any subsequent hearing thereon or  
108 appeal therefrom. Orders of the commission affecting rates,  
109 charges, classifications, regulations or practices which  
110 have gone into effect automatically at the end of the  
111 suspension period are prospective in effect only.

112 At any hearing involving a rate sought to be increased or  
113 involving the change of any rate, charge, classification,  
114 regulation or practice, the burden of proof to show the  
115 justness and reasonableness of the increased rate or  
116 proposed increased rate, or the proposed change of rate,  
117 charge, classification, regulation or practice shall be upon  
118 the public utility making application for such change. The  
119 commission shall, whenever practicable and within  
120 budgetary constraints, conduct one or more public hearings

121 within the area served by the public utility making  
122 application for such increase or change, for the purpose of  
123 obtaining comments and evidence on the matter from local  
124 ratepayers.

125 Each public utility subject to the provisions of this  
126 section shall be required to establish, in a written report  
127 which shall be incorporated into each general rate case  
128 application, that it has thoroughly investigated and  
129 considered the emerging and state-of-the-art concepts in  
130 the utility management, rate design, and conservation as  
131 reported by the commission under section one-c of article  
132 one of this chapter, as alternatives to, or in mitigation of,  
133 any rate increase. The utility report shall contain as to each  
134 concept considered the reasons for adoption or rejection of  
135 each. When in any case pending before the commission all  
136 evidence shall have been taken and the hearing completed,  
137 the commission shall render a decision in such case. The  
138 failure of the commission to render a decision with respect  
139 to any such proposed change in any such rate, charge,  
140 classification, regulation or practice within the various  
141 time periods specified in this section after the application  
142 therefor shall constitute neglect of duty on the part of the  
143 commission and each member thereof.

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

154 The commission may order rates into effect subject to  
155 refund, plus interest in the discretion of the commission, in  
156 cases in which the commission determines that a temporary  
157 or interim rate increase is necessary for the utility to avoid  
158 financial distress, or in which the costs upon which these  
159 rates are based are subject to modification by the  
160 commission or another regulatory commission and to  
161 refund to the public utility. In such case the commission  
162 may require such public utility to enter into a bond in an

163 amount deemed by the commission to be reasonable and  
164 conditioned upon the refund to the persons or parties  
165 entitled thereto of the amount of the excess if such rates so  
166 put into effect are subsequently determined to be higher  
167 than those finally fixed for such utility.

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

**§24-2-4b. Procedures for changing rates of electric and  
telephone cooperatives and municipally  
operated water utilities.**

1 (a) Electric cooperatives, telephone cooperatives and  
2 municipally operated public utilities are not subject to the  
3 rate approval provisions of section four or four-a of this  
4 article but are subject to the limited rate provisions of this  
5 section.

6 (b) All rates and charges set by electric cooperatives,  
7 telephone cooperatives and municipally operated public  
8 utilities shall be just, reasonable, applied without unjust  
9 discrimination or preference and based primarily on the  
10 costs of providing these services. Such rates and charges  
11 shall be adopted by the electric or telephone cooperative's  
12 governing board and in the case of the municipally operated  
13 public utility by municipal ordinance to be effective not  
14 sooner than forty-five days after adoption: *Provided*, That  
15 notice of intent to effect a rate change shall be specified on  
16 the monthly billing statement of the customers of such  
17 utility for the month next preceding the month in which the  
18 rate change is to become effective or the utility shall give its  
19 customers, and in the case of a cooperative, its customers,  
20 members and stockholders, such other reasonable notice as  
21 will allow filing of timely objections to such rate change.  
22 Such rates and charges shall be filed with the commission  
23 together with such information showing the basis of such  
24 rates and charges and such other information as the

25 commission considers necessary. Any change in such rates  
26 and charges with updated information shall be filed with  
27 the commission. If a petition, as set out in subdivision (1), (2)  
28 or (3), subsection (c) of this section, is received and the  
29 electric cooperative, telephone cooperative or municipality  
30 has failed to file with the commission such rates and  
31 charges with such information showing the basis of rates  
32 and charges and such other information as the commission  
33 considers necessary, the suspension period limitation of one  
34 hundred twenty days and the one hundred day period  
35 limitation for issuance of an order by a hearing examiner, as  
36 contained in subsection (d) and (e) of this section, is tolled  
37 until the necessary information is filed. The electric  
38 cooperative, telephone cooperative or municipality shall set  
39 the date when any new rate or charge is to go into effect.

40 (c) The commission shall review and approve or modify  
41 such rates upon the filing of a petition within thirty days of  
42 the adoption of the ordinance or resolution changing said  
43 rates or charges by:

44 (1) Any customer aggrieved by the changed rates or  
45 charges who presents to the commission a petition signed by  
46 not less than twenty-five percent of the customers served by  
47 such municipally operated public utility, or twenty-five  
48 percent of the membership of the electric or telephone  
49 cooperative residing within the state; or

50 (2) Any customer who is served by a municipally  
51 operated public utility and who resides outside the  
52 corporate limits and who is affected by the change in said  
53 rates or charges and who presents to the commission a  
54 petition alleging discrimination between customers within  
55 and without the municipal boundaries. Said petition shall  
56 be accompanied by evidence of discrimination; or

57 (3) Any customer or group of customers who are  
58 affected by said change in rates who reside within the  
59 municipal boundaries and who present a petition to the  
60 commission alleging discrimination between said customer  
61 or group of customers and other customers of the municipal  
62 utility. Said petition shall be accompanied by evidence of  
63 discrimination.

64 (d) (1) The filing of a petition with the commission  
65 signed by not less than twenty-five percent of the customers  
66 served by the municipally operated public utility, or

67 twenty-five percent of the membership of the electric or  
68 telephone cooperative residing within the state, under  
69 subdivision (1), subsection (c) of this section, shall suspend  
70 the adoption of the rate change contained in the ordinance  
71 or resolution for a period of one hundred twenty days from  
72 the date said rates or charges would otherwise go into  
73 effect, or until an order is issued as provided herein.

74 (2) Upon sufficient showing of discrimination by  
75 customers outside the municipal boundaries, or a customer  
76 or a group of customers within the municipal boundaries,  
77 under a petition filed under subdivision (2) or (3),  
78 subsection (c) of this section, the commission shall suspend  
79 the adoption of the rate change contained in the ordinance  
80 for a period of one hundred twenty days from the date said  
81 rates or charges would otherwise go into effect or until an  
82 order is issued as provided herein.

83 (e) The commission shall forthwith appoint a hearing  
84 examiner from its staff to review the grievances raised by  
85 the petitioners. Said hearing examiner shall conduct a  
86 public hearing, and shall within one hundred days from the  
87 date the said rates or charges would otherwise go into  
88 effect, unless otherwise tolled as provided in subsection (b)  
89 of this section, issue an order approving, disapproving or  
90 modifying in whole or in part, the rates or charges imposed  
91 by the electric or telephone cooperative or by the  
92 municipally operated public utility pursuant to this section.

93 (f) Upon receipt of a petition for review of the rates  
94 under the provisions of subsection (c) of this section, the  
95 commission may exercise the power granted to it under the  
96 provisions of section three of this article. The commission  
97 may determine the method by which such rates are  
98 reviewed and may grant and conduct a de novo hearing on  
99 the matter if the customer, electric or telephone cooperative  
100 or municipality requests such a hearing.

101 (g) The commission may, upon petition by a  
102 municipality or electric or telephone cooperative, allow an  
103 interim or emergency rate to take effect, subject to future  
104 modification, if it is determined that such interim or  
105 emergency rate is necessary to protect the municipality  
106 from financial hardship and if that financial hardship is  
107 attributable solely to the purchase of the utility commodity  
108 sold. In such cases, the commission may waive the forty-

109 five-day waiting period provided for in subsection (b) of  
110 this section and the one hundred twenty-day suspension  
111 period provided for in subsection (d) of this section.

112 (h) Notwithstanding any other provision, the  
113 commission shall have no authority or responsibility with  
114 regard to the regulation of rates, income, services or  
115 contracts by municipally operated public utilities for  
116 services which are transmitted and sold outside of the state  
117 of West Virginia.

**§24-2-4c. Rate increases for natural gas public utilities relating  
to purchase of natural gas from suppliers.**

1 Before granting any rate increase to a natural gas public  
2 utility the commission must determine that dependable  
3 lower-priced supplies of natural gas are not readily  
4 available to the applicant from other sources.

5 At any hearing involving a rate increase for a natural gas  
6 public utility, the burden of proof to demonstrate that  
7 dependable lower-priced supplies of natural gas are not  
8 readily available from other sources and that contracts  
9 between the public utility and its suppliers for purchase of  
10 natural gas are negotiated at arm's length and are not  
11 detrimental to the customers of the utility's services shall be  
12 upon the public utility making application for such change.  
13 Should the applying public utility not satisfactorily meet  
14 this burden, then the commission may not authorize an  
15 increase greater than that which reflects the reasonable  
16 cost of natural gas which is determined to be readily  
17 available.

18 If a gas utility purchases from an affiliate more than fifty  
19 percent of its gas supplied to its customers, any purchase  
20 cost adjustment increase shall be based on actual costs and  
21 may be subject to the general rate case requirements and  
22 review of section four-a of this article.

23 Before the first day of January, one thousand nine  
24 hundred eighty-four, the commission shall promulgate  
25 rules and regulations detailing what an applying natural  
26 gas utility must show in providing that dependable, lower-  
27 priced supplies of natural gas are not readily available to  
28 the applicant from other sources. Such rules and  
29 regulations shall include a requirement that each such  
30 utility let out bids for the purchase of a substantial quantity  
31 of natural gas supplied to its customers and that each such

32 public utility present evidence demonstrating that all  
33 available sources of gas have been thoroughly investigated  
34 and that the utility's purchases were at the lowest available  
35 price among reliable sources at the time of the purchase.  
36 Such evidence shall include a list of all persons, firms and  
37 corporations which were investigated as sources of gas; the  
38 price per thousand cubic feet at which each investigated  
39 person, firm or corporation offered gas for sale; the  
40 availability and cost of transporting such gas and the  
41 amount of gas potentially available each month by such  
42 person, firm or corporation. Such list shall also include the  
43 same information resulting from investigation of all "shut-  
44 in" wells.

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

1 (a) No public utility, person or corporation shall begin  
2 the construction of any plant, equipment, property or  
3 facility for furnishing to the public any of the services  
4 enumerated in section one, article two of this chapter, nor  
5 apply for, nor obtain any franchise, license or permit from  
6 any municipality or other governmental agency, except  
7 ordinary extensions of existing systems in the usual course  
8 of business, unless and until it shall obtain from the public  
9 service commission a certificate of public convenience and  
10 necessity requiring such construction, franchise, license or  
11 permit. Upon the filing of any application for such  
12 certificate, and after hearing, the commission may, in its  
13 discretion, issue or refuse to issue, or issue in part and refuse  
14 in part, such certificate of convenience and necessity:  
15 *Provided*, That the commission, after it gives proper notice  
16 and if no protest is received within thirty days after the  
17 notice is given, may waive formal hearing on the  
18 application. Notice shall be given by publication which  
19 shall state that a formal hearing may be waived in the  
20 absence of protest, made within thirty days, to the  
21 application. The notice shall be published as a Class I legal  
22 advertisement in compliance with the provisions of article  
23 three, chapter fifty-nine of this code. The publication area  
24 shall be the proposed area of operation. Any public utility,  
25 person or corporation subject to the provisions of this  
26 section shall give the commission at least thirty days' notice

27 of the filing of any such application for a certificate of  
28 public convenience and necessity under this section:  
29 *Provided*, That the commission may modify or waive the  
30 thirty-day notice requirement. The commission shall  
31 render its final decision on any application filed after the  
32 thirtieth day of June, one thousand nine hundred eighty-  
33 one, under the provisions of this section or section eleven-a  
34 of this article within two hundred seventy days of the filing  
35 of the application and within ninety days after final  
36 submission of any such application for decision following a  
37 hearing: *Provided, however*, That if the projected total cost  
38 of the project is greater than fifty million dollars, the  
39 commission shall render its final decision on any such  
40 application filed under the provisions of this section or  
41 section eleven-a of this article within four hundred days of  
42 the filing of the application and within ninety days after  
43 final submission of any such application for decision after a  
44 hearing. If such decision is not rendered within the  
45 aforementioned two hundred seventy days, four hundred  
46 days or ninety days, the commission shall issue a certificate  
47 of convenience and necessity as applied for in the  
48 application. The commission shall prescribe such rules and  
49 regulations as it may deem proper for the enforcement of  
50 the provisions of this section; and, in establishing that  
51 public convenience and necessity do exist, the burden of  
52 proof shall be upon the applicant.

53 (b) Pursuant to the requirements of subsection (a) of this  
54 section the commission may issue a certificate of public  
55 convenience and necessity to any intrastate pipeline,  
56 interstate pipeline, or local distribution company for the  
57 transportation in intrastate commerce of natural gas used  
58 by any person for one or more uses, as defined, by rule, by  
59 the commission in the case of

60 (1) Natural gas sold by a producer, pipeline or other  
61 seller to such person; or

62 (2) Natural gas produced by such person.

**§24-2-16. Anticompetitive clauses in natural gas contracts prohibited.**

1 (a) Unenforceable clauses: Any provision of any  
2 contract for the sale of natural gas, which is or becomes  
3 utility natural gas, including any contract in existence on or  
4 before the date of enactment of this section, is hereby

5 declared against public policy and unenforceable to the  
6 extent that such clause requires the utility to buy more than  
7 a reasonable amount of gas at a greater than reasonable  
8 price if such provision includes:

9 (1) A take-or-pay clause which commits the purchaser  
10 to take delivery of a minimum volume of natural gas; or

11 (2) An indefinite price escalator clause which has been  
12 defined in the Natural Gas Policy Act, section 105(b)(3)(B),  
13 15 U.S.C.A., section 3315(b)(3)(B), as any provision of any  
14 contract:

15 (i) which provides for the establishment or adjustment  
16 of the price for natural gas delivered under such contract by  
17 reference to other prices for natural gas, for crude oil, or for  
18 refined petroleum products; or

19 (ii) which allows for the establishment or adjustment of  
20 the price of natural gas delivered under such contract by  
21 negotiation between the parties; or

22 (3) A most favored nation clause which accords to the  
23 transaction, presently or in the future, the highest price  
24 prevailing in the region for similar transactions.

25 (b) Commission review: Upon application made by the  
26 utility, or upon its own motion, the commission may hold  
27 hearings after notice as to the reasonableness of the  
28 quantity and price of gas purchased pursuant to such  
29 contracts.

**ARTICLE 2A. REDUCED RATES FOR LOW-INCOME RESIDENTIAL  
CUSTOMERS OF ELECTRICITY AND GAS.**

**§24-2A-1. Special rates for gas and electric utility customers  
receiving Social Security Supplemental Security  
Income (SSI), Aid to Families with Dependent  
Children (AFDC), Aid to Families with  
Dependent Children—Unemployed (AFDC-U),  
or food stamps.**

1 The commission shall order a special reduced rate  
2 schedule for the provision of gas and electric service for the  
3 billing months of November, December, January,  
4 February and March of each year; to residential utility  
5 customers receiving (a) Social Security Supplemental  
6 Security Income (SSI), (b) Aid to Families with Dependent  
7 Children (AFDC), (c) Aid to Families with Dependent  
8 Children — Unemployed (AFDC-U), or (d) food stamps, if  
9 such food stamp recipients are sixty years of age or older.

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10 The rate to be established for each gas and electric utility  
11 shall be twenty percent less than the rate applicable to other  
12 residential customers obtaining similar service. Before any  
13 individual may qualify for this reduced rate service the  
14 following requirements must be met:

15 (a) The residential reduced rate service shall apply only  
16 to current customers or to those persons who subsequently  
17 become customers in their own right. If an SSI, AFDC,  
18 AFDC-U or food stamp recipient is living in a household  
19 which is served under the name of a non-SSI, AFDC,  
20 AFDC-U, or food stamp recipient, that service may not be  
21 changed or have been changed subsequent to the twelfth  
22 day of March, one thousand nine hundred eighty-three, to  
23 the name of the SSI, AFDC, AFDC-U or food stamp  
24 recipient in order to qualify for the reduced rate service.

25 (b) The burden of proving eligibility for the residential  
26 reduced rate service shall be on the customer requesting the  
27 service. To meet that burden, individuals requesting  
28 residential reduce rate service must demonstrate that they  
29 are actual customers of the utility and must produce either  
30 their SSI, AFDC, AFDC-U or food stamp identification  
31 card. No customer who is a recipient of both SSI and either  
32 AFDC, AFDC-U, or food stamps, shall be eligible for more  
33 than one discount for each kind of utility service.

34 The commission shall establish reasonable standards  
35 regarding proof of continuing eligibility for the residential  
36 reduced rate schedule set forth in this article. Such  
37 standards shall be established by rules and regulations.

**§24-2A-2. Recovery of revenue deficiency.**

1 In order to provide the residential reduced rate schedule  
2 and still maintain the integrity of the various gas or electric  
3 utilities' earnings, at the end of the billing period for the  
4 month of March, one thousand nine hundred eighty-four,  
5 and each year thereafter the commission shall conduct such  
6 proceedings as necessary to determine the revenue  
7 deficiency resulting from the reduced rates, and the  
8 deficiency shall be recovered by each affected utility as  
9 follows:

10 (1) There is hereby created a special fund in the office of  
11 the auditor to be known as the "Low Income Residential  
12 Utility Assistance Fund." The Legislature may appropriate  
13 into such fund such sums of general or special revenues as it

14 may deem appropriate. The auditor is hereby authorized  
15 and empowered to accept for the state, in the same of the <sup>n. after)</sup>  
16 fund, gifts, donations, contributions, bequests of money or  
17 securities and such sums as may become available as a  
18 result of a voluntary check-off and contribution of state tax  
19 refunds on state corporate and personal income tax return  
20 forms designed by the state tax commissioner. Also, there  
21 may be transferred into such fund, upon the requisition of  
22 the governor, any unexpended balance in any year  
23 remaining after distribution of funds allocated to and  
24 received by the state pursuant to the "Low Income Energy  
25 Assistance Program" established by and pursuant to the  
26 Omnibus Budget Reconciliation Act of 1981, (Title 42,  
27 U.S.C. §§8621 et seq.) to the extent and only to the extent  
28 such transfers may be permitted by applicable statute, rule  
29 or regulation of the United States: *Provided*, That nothing  
30 herein shall be construed to permit, require or authorize  
31 any discontinuance or reduction of assistance to any person  
32 now or hereafter eligible for assistance from the "Low  
33 Income Energy Assistance Program."

34 (2) At the end of the billing period for the month of  
35 March, one thousand nine hundred eighty-four, and each  
36 year thereafter the commission shall ascertain from the  
37 auditor the total amount available for distribution in that  
38 fiscal year, if any, from the low income residential utility  
39 assistance fund created under this section. Such fund shall  
40 be allocated among the various gas and electric utilities  
41 according to the proportionate share of each such utility's  
42 revenue deficiency resulting from reduced rates mandated  
43 by section one of this article bears to the total aggregate  
44 deficiency of all such utilities. The commission shall  
45 transmit to the auditor its requisition drawn to the order of  
46 each affected utility for the proportion of its revenue  
47 deficiency to be paid from the fund.

48 Such payments may be made as frequently during any  
49 fiscal year as may be deemed appropriate by the  
50 commission.

51 (3) After payment by the auditor under this section, the  
52 remaining revenue deficiency, if any, shall be allowed as a  
53 tax credit against the liability of the utility pursuant to the  
54 provisions of section eleven, article twenty-four of chapter  
55 eleven.

**ARTICLE 2B. TEMPORARY SUSPENSION OF RATE INCREASES.**

**§24-2B-1. Temporary suspension of rate increases.**

1 Pursuant to the findings contained in subsections (h) and  
2 (i) of section one, article one of this chapter and in order to  
3 permit the public service commission to implement the  
4 provisions of Enrolled Committee Substitute for S. B. 117  
5 enacted by the Legislature during the regular session  
6 thereof in the year one thousand nine hundred eighty-three  
7 and notwithstanding any other provision of this chapter,  
8 upon the effective date of this article, the commission shall  
9 authorize no increase of rates charged by any utility for  
10 natural gas to any customer of any class for a period of  
11 twelve months. With respect to cases for rate increases  
12 which are pending before the commission on the effective  
13 date of this section, such cases may be suspended by the  
14 commission and held in abeyance by the commission during  
15 the pendency of the period of suspension mandated by this  
16 section or any such cases may proceed to completion and the  
17 commission may rule thereon upon the same to the same  
18 extent as if this section had not been enacted, all within the  
19 sound discretion of the commission.

20 The commission may authorize such gas rate increases  
21 during the period of suspension of rate increases mandated  
22 by this section as it may deem proper by reason of increased  
23 costs of purchased gas. The commission may consider in  
24 determining whether to authorize such rate increases the  
25 purchase and use of West Virginia gas by such utilities if  
26 such gas were available at a cheaper rate than other gas  
27 actually purchased by such utilities.

**§24-2B-2. Emergency rate increase; financial hardship procedure.**

1 During the period of temporary suspension of rates  
2 generally, as provided herein, the commission may upon  
3 petition by a utility allow an emergency rate to take effect,  
4 subject to future modification by the commission and  
5 subject to refund to the customers of such utility, if it is  
6 determined that such emergency rate is necessary to protect  
7 the utility from extreme financial hardship and if that  
8 financial hardship is attributable solely to the temporary  
9 suspension of rate increases. The commission shall provide  
10 by rule and regulation criteria for determination of extreme

11 financial hardship within the meaning of this section. Such  
12 petition shall be subject to the same notice requirements as  
13 set forth in article two, section four-a of this chapter.

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

**§24-3-2. Discrimination prohibited.**

1 No public utility subject to the provisions of this chapter  
2 shall, directly or indirectly, by any special rate, rebate,  
3 drawback or other device or method, charge, demand,  
4 collect or receive from any person, firm or corporation, a  
5 greater or less compensation, for any service rendered or to  
6 be rendered, than it charges, demands, collects, or receives  
7 from any other person, firm or corporation for doing a like  
8 and contemporaneous service under the same or  
9 substantially similar circumstances and conditions.

10 It shall be unlawful for any public utility subject to the  
11 provisions of this chapter to make or give any undue or  
12 unreasonable preference or advantage to any particular  
13 person, company, firm, corporation or locality, or any  
14 particular character of traffic or service, in any respect  
15 whatsoever, or to subject any particular person, firm,  
16 corporation, company or locality, or any particular  
17 character of traffic or service, to any undue or unreasonable  
18 prejudice or disadvantage in any respect whatsoever.

19 Nothing in this section shall be construed to prevent the  
20 commission from authorizing or requiring any rate design  
21 consistent with the purposes and policies set forth in article  
22 two-a of this chapter.

**§24-3-3a. Gas utility pipelines declared as common carriers;  
commission approval of certain transportation.**

1 (a) As used in this section or in section eleven, article  
2 two of this chapter:

3 (1) "Intrastate pipeline" means (i) any utility or (ii) any  
4 other person, firm or corporation engaged in natural gas  
5 transportation in intrastate commerce to or for another  
6 person, firm or corporation for compensation.

7 (2) "Interstate pipeline" means any person, firm or  
8 corporation engaged in natural gas transportation subject  
9 to the jurisdiction of the FERC under the Natural Gas Act or  
10 the Natural Gas Policy Act of 1978.

11 (3) "Local distribution company" means any person,  
12 other than any interstate pipeline or any intrastate pipeline,  
13 engaged in transportation or local distribution of natural  
14 gas and the sale of natural gas for ultimate consumption.

15 (4) "Intrastate commerce" includes the production,  
16 gathering, treatment, processing, transportation and  
17 delivery of natural gas entirely within this state.

18 (5) "Transportation" includes exchange, backhaul,  
19 displacement or other means of transportation.

20 (6) "FERC" means the Federal Energy Regulatory  
21 Commission.

22 (b) The commission may by rule or order, authorize and  
23 require the transportation of natural gas in intrastate  
24 commerce by intrastate pipelines, by interstate pipelines  
25 with unused or excess capacity not needed to meet  
26 interstate commerce demands or by local distribution  
27 companies for any person for one or more uses, as defined,  
28 by rule, by the commission in the case of:

29 (1) Natural gas sold by a producer, pipeline or other  
30 seller to such person; or

31 (2) Natural gas produced by such person.

32 (c) For reasons of safety, deliverability or operational  
33 efficiency the commission may, in its discretion, by rule or  
34 order, exclude from the requirements of this section any  
35 part of any pipeline solely dedicated to storage, or  
36 gathering, or low pressure distribution of natural gas.

37 (d) (1) The rates and charges of any interstate pipeline  
38 with respect to any transportation authorized and required  
39 under subsection (b) of this section shall be just and  
40 reasonable and computed by the public service commission  
41 in accordance with the guidelines set forth by the FERC and  
42 in effect upon the date of application by the commission for  
43 the transportation of natural gas by any interstate pipeline  
44 on behalf of any intrastate pipeline or any local distribution  
45 company.

46 (2) The rates and charges of any intrastate pipeline with  
47 respect to any transportation authorized and required  
48 under subsection (b) of this section shall be fair and  
49 reasonable and may not exceed an amount which is  
50 reasonably comparable to the rates and charges which  
51 interstate pipelines would be permitted to charge for  
52 providing similar transportation service. The computation

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53 of such rates and charges by the public service commission  
54 shall be in accordance with the guidelines set forth by the  
55 FERC and in effect upon the date of application by the  
56 commission for the transportation of natural gas by any  
57 intrastate pipeline in behalf of any interstate pipeline or  
58 any local distribution company served by any interstate  
59 pipeline.

60 (e) The provisions of this article and each section,  
61 subsection, subdivision, paragraph and subparagraph  
62 thereof shall be severable from the provisions of each other  
63 subparagraph, paragraph, subdivision, subsection, section,  
64 article or chapter of this code so that if any provision of this  
65 article be held void, the remaining provisions of this act and  
66 this code shall remain valid.

**§24-3-7. Permit to abandon service; certificate; alternative service.**

1 No railroad or other public utility shall abandon all or  
2 any portion of its service to the public or the operation of  
3 any of its lines which would affect the service it is rendering  
4 the public unless and until there shall first have been filed  
5 with the public service commission of this state an  
6 application for a permit to abandon service and obtained  
7 from the commission an order stating that the present and  
8 future public convenience and necessity permits such  
9 abandonment.

10 In the event the commission determines that an  
11 application to abandon gas service or any part thereof is in  
12 the public interest and required by the present and future  
13 public convenience and necessity, it shall include in its  
14 order, as a condition of releasing any such utility from its  
15 public service obligation to provide gas service, a provision  
16 requiring the utility, prior to discontinuing service, to pay  
17 the cost reasonably necessary to convert each customer to  
18 an alternate fuel source.

**§24-3-8. Deposits.**

1 No public utility shall require any deposit of any  
2 residential customer which shall exceed one twelfth of the  
3 estimated annual charge to the customer for such service:  
4 *Provided*, That the provisions of this section shall not apply  
5 to deposits received prior to the effective date of this act.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Harrell Holmes*  
.....  
~~Chairman Senate Committee~~

*Donald Anello*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Fred C. Wachs*  
.....  
Clerk of the Senate

*Donald L. Vogg*  
.....  
Clerk of the House of Delegates

*Waverly McBrayer*  
.....  
President of the Senate

*W. H. Lee Jr.*  
.....  
Speaker House of Delegates

The within... *it appeared* ..... this the *25* .....  
day of *March* ....., 1983.

.....  
*John A. Ralston*  
.....  
Governor



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