WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED
Committee Substitute for
SENATE BILL NO. 117

(By Mr. [Signed by President])

PASSED March 12, 1983
In Effect from Passage
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 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
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.

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.

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

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

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

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

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

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

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

(6) "Special reduced rates" means the rates ordered by the public service commission of West Virginia under
authority of section one, article two-a, chapter twenty-four of this code.

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

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

(e) Copy of certification letter.—A copy of the certification from the public service commission of West Virginia, shall be attached to the annual return under this 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.

(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 (1) Ensure fair and prompt regulation of public utilities in the interest of the using and consuming public;
2 (2) Provide the availability of adequate, economical and reliable utility services throughout the state;
3 (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 (4) Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference, applied in a manner consistent with the
purposes and policies set forth in article two-a of this chapter, 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 authority 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 directs the public service commission to identify, explore and consider the potential benefits or risks associated with emerging and state-of-the-art concepts in utility management, rate design and conservation. The commission may conduct inquiries and hold hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other interested persons the opportunity to comment, and shall report to the governor and the Legislature regarding its findings and policies to each of these areas not later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty-five, and every two years thereafter.

(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
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
subdivisions (1) and (2) of this subsection upon rates
theretofore 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
advocate 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 performance 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 subdivisions (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 subcommittee 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 entitled "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 committee 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 adjournment, 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.

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

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

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

(i) The Legislature further finds that transactions between utilities and affiliates are a contributing factor to the increase in natural gas and electricity prices and tend to
confuse consideration of a proper rate of return calculation. The Legislature therefore finds that it is imperative that the public service commission have the opportunity to properly study the issue of proper rate of return for lengthy periods of time and to limit the return of a utility to a proper level when compared to return or profit that affiliates earn on 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 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 evidence, 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 wherein the sole purpose is to decide or deliberate toward a decision on any matter are exempt from the requirements of article nine-a, chapter six of this code, any other provision of this code to the contrary notwithstanding.

All orders of the commission shall set forth separately
findings of facts 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 commission shall direct. All courts shall 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, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities: **Provided, That**

2. 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.

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

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

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
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 may either upon complaint or upon its own
initiative without complaint enter upon a hearing
concerning the propriety 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,
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regulation or practice, but not for a longer period than two hundred seventy 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, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation 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, classification, 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 otherwise 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 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 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, classification, regulation or practice goes into effect, the commission 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, regulation or practice had become effective: Provided, however, That if any such hearing and decision thereon is not concluded within 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 commission to reach a decision, the same shall not preclude the commission 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 the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation or practice shall be upon the public utility making application for such change. The commission shall, whenever practicable and within budgetary constraints, conduct one or more public hearings
within the area served by the public utility making application for such increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.

Each public utility subject to the provisions of this section shall be required to establish, in a written report which shall be incorporated into each general rate case application, that it has thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility management, rate design, and conservation as reported by the commission under section one-c of article one of this chapter, as alternatives to, or in mitigation of, any rate increase. The utility report shall contain as to each concept considered the reasons for adoption or rejection of each. 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 therefor 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 a 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 nonresidents, 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 commission 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 determined 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 Virginia supreme court of appeals.

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

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

(b) All rates and charges set by electric cooperatives,
telephone cooperatives and municipally operated public
utilities shall be just, reasonable, applied without unjust
discrimination or preference and based primarily on the
costs of providing these services. Such rates and charges
shall be adopted by the electric or telephone cooperative's
governing board and in the case of the municipally operated
public utility by municipal ordinance to be effective not
sooner than forty-five days after adoption: Provided, That
notice of intent to effect a rate change shall be specified on
the monthly billing statement of the customers of such
utility for the month next preceding the month in which the
rate change is to become effective or the utility shall give its
customers, and in the case of a cooperative, its customers,
members and stockholders, such other reasonable notice as
will allow filing of timely objections to such rate change.
Such rates and charges shall be filed with the commission
together with such information showing the basis of such
rates and charges and such other information as the
commission considers necessary. Any change in such rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is received and the electric cooperative, telephone cooperative or municipality has failed to file with the commission such rates and charges with such information showing the basis of rates and charges and such other information as the commission considers necessary, the suspension period limitation of one hundred twenty days and the one hundred day period limitation for issuance of an order by a hearing examiner, as contained in subsection (d) and (e) of this section, is tolled until the necessary information is filed. The electric cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

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

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

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

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

(d) (1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the municipally operated public utility, or
twenty-five percent of the membership of the electric or telephone cooperative residing within the state, under subdivision (1), subsection (c) of this section, shall suspend the adoption of the rate change contained in the ordinance or resolution for a period of one hundred twenty days from the date said rates or charges would otherwise go into effect, or until an order is issued as provided herein.

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

(e) 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 days from the date the said rates or charges would otherwise go into effect, unless otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving or modifying in whole or in part, the rates or charges imposed by the electric or telephone cooperative or by the municipally operated public utility pursuant to this section.

(f) Upon receipt of a petition for review of the rates under the provisions of subsection (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, electric or telephone cooperative or municipality requests such a hearing.

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

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

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

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

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

At any hearing involving a rate increase for a natural gas public utility, the burden of proof to demonstrate that dependable lower-priced supplies of natural gas are not readily available from other sources and that contracts between the public utility and its suppliers for purchase of natural gas are negotiated at arm’s length and are not detrimental to the customers of the utility’s services shall be upon the public utility making application for such change.

Should the applying public utility not satisfactorily meet this burden, then the commission may not authorize an increase greater than that which reflects the reasonable cost of natural gas which is determined to be readily available.

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

Before the first day of January, one thousand nine hundred eighty-four, the commission shall promulgate rules and regulations detailing what an applying natural gas utility must show in providing that dependable, lower-priced supplies of natural gas are not readily available to the applicant from other sources. Such rules and regulations shall include a requirement that each such utility let out bids for the purchase of a substantial quantity of natural gas supplied to its customers and that each such
public utility present evidence demonstrating that all available sources of gas have been thoroughly investigated and that the utility's purchases were at the lowest available price among reliable sources at the time of the purchase. Such evidence shall include a list of all persons, firms and corporations which were investigated as sources of gas; the price per thousand cubic feet at which each investigated person, firm or corporation offered gas for sale; the availability and cost of transporting such gas and the amount of gas potentially available each month by such person, firm or corporation. Such list shall also include the same information resulting from investigation of all "shut-in" wells.

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

(a) 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 the commission, after it gives proper notice and if no protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of protest, made within thirty days, to the 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. The publication area shall be the proposed area of operation. 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:
Provided, That the commission may modify or waive the
thirty-day notice requirement. 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, however, 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.

(b) Pursuant to the requirements of subsection (a) of this
section the commission may issue a certificate of public
convenience and necessity to any intrastate pipeline,
interstate pipeline, or local distribution company for the
transportation in intrastate commerce of natural gas used
by any person for one or more uses, as defined, by rule, by
the commission in the case of
(1) Natural gas sold by a producer, pipeline or other
seller to such person; or
(2) Natural gas produced by such person.

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

(a) Unenforceable clauses: Any provision of any
contract for the sale of natural gas, which is or becomes
utility natural gas, including any contract in existence on or
before the date of enactment of this section, is hereby
declared against public policy and unenforceable to the extent that such clause requires the utility to buy more than a reasonable amount of gas at a greater than reasonable price if such provision includes:

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

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

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

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

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

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

The commission shall order a special reduced rate schedule for the provision of gas and electric service for the billing months of November, December, January, February and March of each year; to residential utility customers receiving (a) Social Security Supplemental Security Income (SSI), (b) Aid to Families with Dependent Children (AFDC), (c) Aid to Families with Dependent Children — Unemployed (AFDC-U), or (d) food stamps, if such food stamp recipients are sixty years of age or older.
The rate to be established for each gas and electric utility shall be twenty percent less than the rate applicable to other residential customers obtaining similar service. Before any individual may qualify for this reduced rate service the following requirements must be met:

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

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

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


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

(1) There is hereby created a special fund in the office of the auditor to be known as the "Low Income Residential Utility Assistance Fund." The Legislature may appropriate into such fund such sums of general or special revenues as it
may deem appropriate. The auditor is hereby authorized and empowered to accept for the state, in the name of the fund, gifts, donations, contributions, bequests of money or securities and such sums as may become available as a result of a voluntary check-off and contribution of state tax refunds on state corporate and personal income tax return forms designed by the state tax commissioner. Also, there may be transferred into such fund, upon the requisition of the governor, any unexpended balance in any year remaining after distribution of funds allocated to and received by the state pursuant to the “Low Income Energy Assistance Program” established by and pursuant to the Omnibus Budget Reconciliation Act of 1981, (Title 42, U.S.C. §§8621 et seq.) to the extent and only to the extent such transfers may be permitted by applicable statute, rule or regulation of the United States: Provided, That nothing herein shall be construed to permit, require or authorize any discontinuance or reduction of assistance to any person now or hereafter eligible for assistance from the “Low Income Energy Assistance Program.”

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

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

(3) After payment by the auditor under this section, the remaining revenue deficiency, if any, shall be allowed as a tax credit against the liability of the utility pursuant to the provisions of section eleven, article twenty-four of chapter eleven.
ARTICLE 2B. TEMPORARY SUSPENSION OF RATE INCREASES.

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

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

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

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

During the period of temporary suspension of rates generally, as provided herein, the commission may upon petition by a utility allow an emergency rate to take effect, subject to future modification by the commission and subject to refund to the customers of such utility, if it is determined that such emergency rate is necessary to protect the utility from extreme financial hardship and if that financial hardship is attributable solely to the temporary suspension of rate increases. The commission shall provide by rule and regulation criteria for determination of extreme
financial hardship within the meaning of this section. Such petition shall be subject to the same notice requirements as 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.

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

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

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

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

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

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

(2) "Interstate pipeline" means any person, firm or corporation engaged in natural gas transportation subject to the jurisdiction of the FERC under the Natural Gas Act or the Natural Gas Policy Act of 1978.
(3) "Local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption.

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

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

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

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

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

(2) Natural gas produced by such person.

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

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

(2) The rates and charges of any intrastate pipeline with respect to any transportation authorized and required under subsection (b) of this section shall be fair and reasonable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service. The computation
of such rates and charges by the public service commission
shall be in accordance with the guidelines set forth by the
FERC and in effect upon the date of application by the
commission for the transportation of natural gas by any
intrastate pipeline in behalf of any interstate pipeline or
any local distribution company served by any interstate
pipeline.
(e) The provisions of this article and each section,
subsection, subdivision, paragraph and subparagraph
thereof shall be severable from the provisions of each other
subsection, paragraph, subdivision, section, article or chapter of this code so that if any provision of this
article be held void, the remaining provisions of this act and
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
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 commission an order stating that the present and
future public convenience and necessity permits such
abandonment.
2 In the event the commission determines that an
application to abandon gas service or any part thereof is in
the public interest and required by the present and future
public convenience and necessity, it shall include in its
order, as a condition of releasing any such utility from its
public service obligation to provide gas service, a provision
requiring the utility, prior to discontinuing service, to pay
the cost reasonably necessary to convert each customer to
an alternate fuel source.

§24-3-8. Deposits.
1 No public utility shall require any deposit of any
residential customer which shall exceed one twelfth of the
estimated annual charge to the customer for such service:
Provided, That the provisions of this section shall not apply
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.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 25th day of March, 1983. 

[Signature]
Governor