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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*)

PASSED March 12, 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*)

[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 ~~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.

ok
 ok

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 ^{powers} ~~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.

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.

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:

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 *of Gov*
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

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

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.

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.

u/s

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 rates service shall be on the customer requesting the
27 service. To meet that burden, individuals requesting
28 residential reduced 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 *n after*
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

only

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.

Frederic C. Wachs
.....
Clerk of the Senate

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

Warner R. McBrat
.....
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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SECY. OF STATE