WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED
SENATE BILL NO. 110

(By Mr. ________ )

PASSED __________________________ 1984
In Effect __________________________
ENROLLED

Senate Bill No. 110

(By Mr. Boettner and Mr. Holliday)

[Passed March 10, 1984; in effect from passage.]

AN ACT to amend and reenact article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-f; to further amend said chapter by adding thereto a new article, designated article thirteen-f; to amend and reenact section eleven, article twenty-four of said chapter; to amend and reenact sections one and two, article two-a, chapter twenty-four of said code; and to further amend said article by adding thereto two new sections, designated sections three and four, all relating to reducing electric and natural gas utility rates for low-income residential customers; business and occupation tax and a credit thereto; corporate net income tax and a credit thereto; providing for special reduced rates for low-income residential customers of gas and electric utilities, except municipal utilities, during certain months of the year; establishing rules for persons qualifying for such special reduced rates and for proving one's eligibility therefor; limiting municipalities as to the amounts relating to the special reduced rates on which local business and occupation or privilege taxes and local public utilities excise taxes can be levied; and prohibiting municipalities from levying such taxes on utilities' recoveries of revenue deficiencies resulting from the special reduced rates.
Be it enacted by the Legislature of West Virginia:

That article thirteen, 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 three-f; that said chapter be further amended by adding thereto a new article, designated article thirteen-f; that section eleven, article twenty-four of said chapter be amended and reenacted; that sections one and two, article two-a, chapter twenty-four of said code be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections three and four, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3f. Tax credit for reducing electric and natural gas utility rates for low-income residential customers; regulations.

1 (a) There shall be allowed as a credit against the tax imposed by this article, the cost of providing electric or natural gas utility service, or both, at reduced rates to qualified low-income residential customers which has not been reimbursed by any other means.

2 (b) The tax commissioner may prescribe such regulations as may be necessary to carry out the purposes of this section, article thirteen-f of this chapter, and section eleven, article twenty-four of this chapter.

ARTICLE 13F. BUSINESS AND OCCUPATION TAX CREDIT FOR REDUCING ELECTRIC AND NATURAL GAS UTILITY RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS.

§11-13F-1. Legislative purpose.

1 In order to reimburse public utilities for the revenue deficiencies which they incur in providing special reduced electric and natural gas utility rates to low-income residential customers in accordance with the provisions of article two-a of chapter twenty-four, there is hereby provided a business and occupation tax credit for reducing electric and natural gas utility rates for low-income residential customers.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in article thirteen of this chapter, unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purposes of this article, the term:

(1) "Eligible taxpayer" means a utility which has provided electric or natural gas service, or both, to qualified low-income residential customers at special reduced rates.

(2) "Cost of providing electric or natural gas utility service, or both, at special reduced rates" means the amount certified by the public service commission under the provisions of section three, article two-a, chapter twenty-four of this code as the revenue deficiency incurred by a public utility in providing special reduced rates for electric or natural gas utility service as required by section one, article two-a, chapter twenty-four of this code.

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

(4) "Qualified low-income residential customers" means those utility customers eligible to receive electric or natural gas utility service, or both, under special reduced rates.

§11-13F-3. Amount of credit.

There shall be allowed to any eligible taxpayer a credit against the business and occupation taxes imposed by article thirteen of this chapter, for reducing electric and natural gas utility rates. The amount of the credit available to any eligible taxpayer shall be equal to its cost of providing electric or natural gas service, or both, at special reduced rates to qualified residential customers, less any reimbursement of said cost which the taxpayer has received through any other means.

§11-13F-4. When credit may be taken.

An eligible taxpayer may claim a credit allowed under this article against its business and occupation tax liability for the year in which it receives certification of the amount
of its revenue deficiency from the public service commission.

Notwithstanding the provisions of section four, article thirteen of this chapter to the contrary, in determining the amount of estimated business and occupation taxes reported on any monthly or quarterly estimate of business and occupation taxes that is due for any portion of the calendar year prior to the first day of July of such year, no estimated credit may be claimed or considered.

In estimating the amount of monthly or quarterly tax due for the months of July and succeeding months in any calendar year, the eligible taxpayer may divide the amount certified as its revenue deficiency by the public service commission, by the number of returns (estimated and annual) that will become due for the period July through December of each year. The resultant quotient shall be the maximum amount allowed to be taken as credit on each said return: Provided, That in no event may application of this credit reduce the tax liability below zero.

§11-13F-5. Application of credit.

(a) Any unused portion of a credit allowed under this article may be taken as a credit against corporation net income taxes due for the taxable year, as provided in section eleven, article twenty-four of this chapter.

(b) If any portion of the amount certified as its revenue deficiency by the public service commission is not recovered under subsection (a), it may be carried over to the subsequent year for business and occupation tax purposes and shall be applied as a credit before any other credits for that year are applied.

(c) In no event shall an eligible taxpayer be allowed to recover more than one hundred percent of its certified revenue deficiency.

ARTICLE 24. CORPORATION 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 against the primary tax liability of an eligible taxpayer under this article for the cost of providing electric or natural gas utility service, or both, at special reduced rates to qualified low-
income residential customers which has not been reimbursed by any other means.

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

1. "Eligible taxpayer" means a utility which has provided electric or natural gas service, or both, to qualified low-income residential customers at special reduced rates.
2. "Cost of providing electric or natural gas utility service, or both, at special reduced rates" means the amount certified by the public service commission under the provisions of section three, article two-a, chapter twenty-four of this code, as the revenue deficiency incurred by a public utility in providing special reduced rates for electric or natural gas utility service, or both, as required by section one, article two-a, chapter twenty-four of this code.
3. "Special reduced rates" means the rates ordered by the public service commission under the authority of section one, article two-a, chapter twenty-four of this code.
4. "Qualified low-income residential customers" means those utility customers eligible to receive electric or natural gas utility service, or both, under special reduced rates.

(c) **Amount of credit.**—The amount of the credit available to any eligible taxpayer shall be equal to its cost of providing electric or natural gas service, or both, at special reduced rates to qualified residential customers, less any reimbursement of said cost which the taxpayer has received through any other means.

(d) **When credit may be taken.**—An eligible taxpayer may claim a credit allowed under this section on its annual return for the taxable year in which it receives certification of the amount of its revenue deficiency from the public service commission.

Notwithstanding the provisions of section sixteen of this article to the contrary, no credit may be claimed on any declaration of estimated tax filed for such taxable year prior to the first day of July of such taxable year. Such credit may be claimed on a declaration or amended declaration filed on or after that date but only if the amount certified will not be recovered by application of the business and occupation tax credit allowed by section three-f, article thirteen of this chapter. In such event, only that amount not recovered by that credit may be considered
or taken as a credit when estimating the tax due under this article. In no event may the eligible taxpayer recover more than one hundred percent of its revenue deficiency as certified by the public service commission.

(e) 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. Notwithstanding the provisions of section four, article thirteen-f of this chapter, any unused credit may be carried over and applied against business and occupation taxes in the manner specified in section five, article thirteen-f of this chapter.

(f) Copy of certification order.—A copy of a certification order from the public service commission shall be attached to any annual return under this article on which a credit allowed by this section is taken.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

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 each gas and electric utility subject to its jurisdiction, except municipal or cooperative gas or electric utilities, to offer special reduced rates applicable to gas and electric service for the billing months of December, January, February, March and April of each year (beginning with the billing month of December, one thousand nine hundred eighty-three), 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 special reduced rate offered by each gas and electric utility to its eligible customers shall be twenty percent less than the rate which would be applicable to such customers
if they were not receiving any of the four forms of assistance which confer eligibility for the special reduced rates. A customer of a utility offering special reduced rates shall be eligible to receive such rates for each of the billing months of December, January, February, March and April that correlates to a calendar month during which that customer is eligible to participate in one or more of the qualifying programs specified in this section, except as otherwise provided in this section. The correlation of billing months to calendar months of eligibility to participate in a qualifying program is as follows: A December billing month correlates to the calendar month of November; a January billing month correlates to the calendar month of December; a February billing month correlates to the calendar month of January; a March billing month correlates to the calendar month of February; and an April billing month correlates to the calendar month of March. After the billing month of April, one thousand nine hundred eighty-four, no customer shall be eligible to receive the special reduced rates until the billing month in which that customer applies for such rates. For the billing months of December, one thousand nine hundred eighty-three, and January, February, March and April, one thousand nine hundred eighty-four, a customer shall be eligible to receive a utility's special reduced rates for any of said billing months which correlates to a calendar month during which that customer is eligible to participate in one or more of the qualifying programs specified in this section, regardless of the date on which that customer applies for such rates: Provided, That the date of application falls on or prior to the fifteenth day of May, one thousand nine hundred eighty-four. No customer who applies for the special reduced rates after the fifteenth day of May, one thousand nine hundred eighty-four, shall be eligible to receive such rates for any of the billing months of December, one thousand nine hundred eighty-three, or January, February, March or April, one thousand nine hundred eighty-four. Before any individual may qualify to receive the special reduced rates, the following requirements must be met:

(a) The special reduced rates 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
58 food stamp recipient is living in a household which is served
59 under the name of a person who is not an SSI, AFDC, AFDC-U or food stamp recipient, that service may not be
60 changed or have been changed subsequent to the twelfth
61 day of March, one thousand nine hundred eighty-three, to
62 the name of the SSI, AFDC, AFDC-U or food stamp
63 recipient in order to qualify for service under the special
64 reduced rates.
65 (b) The burden of proving eligibility for the special
66 reduced rates shall be on the customer requesting such
67 rates. The department of human services shall establish by
68 rules and regulations procedures (1) to inform persons
69 receiving any of the four forms of assistance which confer
70 eligibility for the special reduced rates about the
71 availability of the special reduced rates, (2) to assist
72 applicants for the special reduced rates in proving their
73 eligibility therefor, and (3) to assist gas and electric utilities
74 offering the special reduced rates in determining on a
75 continuing basis the eligibility therefor of persons receiving
76 or applying for such rates. The commission shall establish
77 by rules and regulations procedures for the application for
78 and provision of service under the special reduced rates and
79 for the determination and certification of revenue
80 deficiencies resulting from the special reduced rates.
81 Within ten days of the effective date of this article, the
82 commission and the department of human services shall
83 adopt temporary rules and regulations, as required by this
84 section, which rules and regulations shall not be subject to
85 the requirements of chapter twenty-nine-a and section
86 seven, article one of chapter twenty-four except that they
87 shall be filed with the secretary of state and published in the
88 state register. These temporary rules and regulations shall
89 remain in effect until supplanted by permanent rules and
90 regulations, which shall be adopted by the commission and
91 the department of human services within one hundred
92 eighty days of the effective date of this article. No customer
93 who is a recipient of more than one of the four forms of
94 assistance which confer eligibility for the special reduced
95 rates shall be eligible for more than one twenty percent
96 discount for gas service and one twenty percent discount for
97 electric service during each billing month that said
98 customer is eligible to receive the special reduced rates.
(c) In order to provide each eligible residential utility customer the special reduced rates for the billing months of December, one thousand nine hundred eighty-three, through April, one thousand nine hundred eighty-four, (hereinafter referred to as the first special-reduced-rate season), each utility providing the special reduced rates shall credit against the amount otherwise owed by each such customer an amount equal to the difference between the total amount that each such customer was actually billed during the first special-reduced-rate season and the total amount that each customer would have been entitled to be billed under the special reduced rates. Each such credit shall be fully reflected on the first bill issued to each such customer after approval of each such customer's application for the special reduced rates, except in cases where the interval between the approval and the issuance of the next bill is so short that it is administratively impracticable to do so, in which cases such credits shall be fully reflected on the second bill issued to each such customer after approval of that customer's application. If the interval between the approval and the issuance of the next bill is fifteen days or more, it shall not be deemed administratively impracticable to reflect such credit on the customer's first such bill.


In order to provide the special reduced rates mandated by section one of this article and still maintain the integrity of the earnings of the utilities offering service under these rates, the commission shall each year, beginning in the year one thousand nine hundred eighty-four, determine, upon application by any affected utility, that utility's revenue deficiency resulting from the special reduced rates. Upon determining any utility's revenue deficiency, the commission shall issue an order certifying the amount of that deficiency. Certified revenue deficiencies shall be recovered by the affected utilities as follows:

(1) A utility's certified revenue deficiency, if any, resulting from the special reduced rates shall be allowed as a tax credit against the liability of the utility pursuant to the provisions of article thirteen-f of chapter eleven.

(2) After allowance of a tax credit pursuant to the
provisions of article thirteen-f of chapter eleven, a utility's
remaining revenue deficiency, if any, resulting from the
special reduced rates, 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.

§24-2A-3. Limitation on and exemption from local business
and occupation or privilege taxes and local public
utility excise taxes.

(a) Any municipality which presently or hereafter
imposes a business and occupation or privilege tax under
section five, article thirteen of chapter eight or a public
utilities excise tax under section five-a, article thirteen of
chapter eight shall be restricted, in the case of utility
services rendered to a customer under the special reduced
rates, to levying such taxes on (1) in the case of a local
business and occupation or privilege tax, the gross revenues
derived under the special reduced rates for any period
during which that customer receives service under the
special reduced rates, and (2) in the case of a local public
utilities excise tax, to the gross amount of that customer's
utility bill as calculated under the special reduced rates.

(b) No recovery of revenue deficiencies provided in
section three of this article shall be subject to tax under
sections five or five-a, article thirteen of chapter eight.


(a) "Billing cycle" shall mean a period of time during
the course of which a utility either bills for or measures, by
meter-reading or any other means, the usage of its utility
services by all of its customers a single time. A utility may
elect whether it wishes to determine its billing cycles by
date of measurement or by date of billing. A utility which
employs twelve billing cycles per year shall be deemed to
employ monthly billing cycles. A utility which employs
more or fewer than twelve billing cycles per year shall be
deemed to employ non-monthly billing cycles. For a utility
employing monthly billing cycles, a billing cycle identified
by the name of a particular calendar month must include at
least twelve days of that calendar month.

(b) "Billing month" shall have two meanings:
(1) As applied to a utility employing non-monthly billing cycles and to its customers, a particular "billing month" shall mean the calendar month to which that billing month correlates under section one of this article.

(2) As applied to a utility employing monthly billing cycles and to its customers, a particular "billing month" shall mean the period of customer usage reflected on any bill which, in the case of a utility with billing-date billing cycles, is issued during that particular monthly billing cycle, or for which, in the case of a utility with measurement-date billing cycles, the measurement of usage is made during that particular monthly billing cycle.
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 .................. this the ............... day of ........., 1984.

[Signature]
Governor