

No. 33

AN ACT

HB 1180

Amending the act of May 28, 1937 (P.L.1053), entitled "An act relating to the regulation of public utilities; defining as public utilities certain corporations, companies, associations, and persons; providing for the regulation of public utilities, including, to a limited extent, municipalities engaging in public utility business, by prescribing, defining, and limiting their duties, powers, and liabilities, and regulating the exercise, surrender or abandonment of their powers, privileges, and franchises; defining and regulating contract carriers by motor vehicle and brokers in order to regulate effectively common carriers by motor vehicle; conferring upon the Pennsylvania Public Utility Commission the power and duty of supervising and regulating persons, associations, companies, and corporations, including, to a limited extent, municipal corporations subject to this act, and administering the provisions of this act; authorizing the commission to fix temporary rates; placing the burden of proof on public utilities to sustain their rates and certain other matters; authorizing a permissive or mandatory sliding scale method of regulating rates; providing for the supervision of financial and contractual relations between public utilities and affiliated interests, and supervision and regulation of accounts and securities or obligations issued, assumed, or kept by persons, associations, companies, corporations or municipal corporations subject to this act; conferring upon the commission power to vary, reform, or revise certain contracts; conferring upon the commission the exclusive power to regulate or order the construction, alteration, relocation, protection, or abolition of crossings of facilities of public utilities, and of such facilities by or over public highways, to appropriate property for the construction or improvement of such crossings, and to award or apportion resultant costs and damages; authorizing owners of such property to sue the Commonwealth for such damages; providing for ejectment proceedings in connection with the appropriation of property for crossings; conferring upon the commission power to control and regulate budgets of public utilities; imposing upon persons, associations, companies, and corporations (except municipal corporations) subject to regulation, the cost of administering this act; prescribing and regulating practice and procedure before the commission and procedure for review by the courts of commission action; giving the court of common pleas of Dauphin County exclusive original jurisdiction over certain proceedings; prescribing penalties, fines, and imprisonment for violations of the provisions of this act and regulations and orders of the commission, and the procedure for enforcing such fines and penalties; and repealing legislation supplied and superseded by or inconsistent with this act," further providing for the assessment of Pennsylvania Public Utility Commission expenditures upon public utilities and the disposition, appropriation and disbursement of assessments and fees collected under Article XII of said act.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Subsections (a), (b), (c), (d) and (f) of section 1201, act of May 28, 1937 (P.L.1053), known as the "Public Utility Law," subsections (a), (b) and (c) amended July 8, 1941 (P.L.280), are amended to read:

Section 1201. Assessment of Regulatory Expenses Upon Public Utilities.—(a) **[Whenever the commission, in the performance of its duties under this act, shall conduct an investigation of the affairs of any public utility,**

involving an examination of the records or facilities thereof, such public utility shall pay to the commission a sum equal to the salaries paid to commission employes while engaged in such examination, together with such traveling and subsistence expenses of said employes as may be directly attributable to such examination: Provided, however, That the amount so assessed against any public utility during any one calendar year shall not exceed one per centum of the gross intrastate operating revenues thereof during the next preceding calendar year: And provided further, That whenever the commission shall conduct an investigation of the affairs of two or more utilities jointly, the assessment under this subsection shall be prorated among such utilities upon the basis of their gross intrastate operating revenues.] *Before July first of each year, the commission shall estimate its total expenditures in the administration of this act for the fiscal year beginning that date, which estimate shall not exceed two-tenths of one per centum of the total gross intrastate operating revenues of the public utilities under its jurisdiction for the preceding calendar year. Such estimate shall be submitted to the Governor, and to the Appropriation Committees of the House and Senate through their respective chairmen, for their respective approvals of such estimate in the amount submitted or such lesser amount as each of them may determine: Provided, That if the Governor or either committee, through its chairman, shall not notify the commission in writing of his or its action within thirty days after such submission, the estimate as submitted shall be deemed approved by him or by such committee, as the case may be. The least of the amounts so approved by the three approving authorities shall be the final estimate; and approval of such least amount shall constitute compliance with section 604 of the act of April 9, 1929 (P.L.177), known as "The Administrative Code of 1929." The commission shall subtract from the final estimate (1) the estimated fees to be collected pursuant to sections 1202 and 1203 during such fiscal year and (2) the estimated balance of the appropriation, specified in section 1204, to be carried over into such fiscal year from the preceding one. The remainder so determined, herein called the total assessment, shall be allocated to, and paid by, such public utilities in the manner hereafter prescribed. The commission or its designated representatives shall, when requested, appear before the Senate and House Appropriation Committees.*

(b) On or before March thirty-first of each year, every public utility shall file with the commission a statement under oath showing its gross intrastate operating revenues for the preceding calendar year: Provided, however, That if any public utility shall fail to file such statement on or before March thirty-first as aforesaid the commission shall estimate such revenues, which estimate shall be binding upon the public utility for the purposes of this section. [Periodically, the commission shall determine the aggregate of its expenditures, less (1) amounts assessable under paragraph (a) hereof; (2) expenditures for equipment, furniture, and machinery; (3) the

estimated cost of regulating municipal corporations furnishing public service; and (4) the estimated cost of regulating contract carriers by motor vehicle. The remaining balance shall be so allocated to the groups of public utilities furnishing the various types of service that each group shall have allocated to it—(1) an amount equal to the expenditures of the commission directly attributable to the regulation of that group; and (2) an amount equal to such proportion of the expenditures of the commission not directly attributable to any group, as the gross intrastate operating revenues of the group bear to the total gross intrastate operating revenues of all public utilities; Provided, however, That there shall be deducted from the allocations to each group an amount equal to the fees paid to the commission by the public utilities in such group under the provisions of sections twelve hundred two and twelve hundred three of this act. Every public utility shall then pay to the commission an amount equal to such proportion of the allocation to its group as the gross intrastate operating revenues of the public utility bear to the total gross intrastate operating revenues of the group.] *For the fiscal year beginning July 1, 1971, the total assessment shall be allocated to and paid by each public utility in the proportion that the general assessment charged to it for commission expenditures for the calendar year 1970 bears to the total amount of such general assessment charged to all public utilities. For each subsequent fiscal year, the allocation shall be made as follows: (1) The commission shall determine for the preceding calendar year the amount of its expenditures directly attributable to the regulation of each group of utilities furnishing the same kind of service, and debit the amount so determined to such group. (2) The commission shall also determine for the preceding calendar year the balance of its expenditures, not debited as aforesaid, and allocate such balance to each group in the proportion which the gross intrastate operating revenues of such group for that year bear to the gross intrastate operating revenues of all groups for that year. (3) The commission shall then allocate the total assessment prescribed by subsection (a) to each group in the proportion which the sum of the debits made to it bears to the sum of the debits made to all groups. (4) Each public utility within a group shall then be assessed for and shall pay to the commission such proportion of the amount allocated to its group as the gross intrastate operating revenues of the public utility for the preceding calendar year bear to the total gross intrastate operating revenues of its group for that year.*

(c) The commission shall give notice by registered or certified mail to each [person or corporation] public utility of the amount lawfully charged against [him or] it under the provisions of this section, *which amount shall be paid by the public utility within thirty days of receipt of such notice, unless the commission specifies on the notices sent to all public utilities an installment plan of payment, in which case each public utility shall pay each installment on or before the date specified therefor by the commission.* Within fifteen days after receipt of such notice, the [party]

public utility against which such assessment has been made may file with the commission objections setting out in detail the grounds upon which the objector regards such assessment to be excessive, erroneous, unlawful or invalid. The commission, after notice to the objector, shall hold a hearing upon such objections. After such hearing, the commission shall record upon its minutes its findings on the objections and shall transmit to the objector, by registered *or certified* mail, notice of the amount, if any, charged against [him] *it* in accordance with such findings, *which amount or any installment thereof then due*, [Each person or corporation shall pay the amount of any such assessment to the commission within thirty days after receipt of notice of such assessment, unless objections are filed thereto, in which case such assessment] shall be paid *by the objector* within ten days after receipt of notice of the findings of the commission with respect to such objections. If *any* payment *prescribed by this subsection* is not made as aforesaid, the commission may suspend or revoke certificates of public convenience, certify automobile registrations to the Secretary of [Revenue] *Transportation* for suspension or revocation or, through the Department of Justice, may institute an appropriate action at law for the amount lawfully assessed, together with any additional cost incurred by the commission or the Department of Justice by virtue of such failure to pay.

(d) No suit or proceeding shall be maintained in any court for the purpose of restraining or in anywise delaying the collection or payment of any assessment made under [paragraphs] *subsections* (a), (b), and (c) of this section, but every [person or corporation] *public utility* against [whom or] which an assessment is made shall pay the same as provided in [paragraph] *subsection* (c) of this section. Any [person or corporation] *public utility* making any such payment may, at any time within two years from the date of payment, sue the Commonwealth in an action at law to recover the amount paid, or any part thereof, upon the ground that the assessment was excessive, erroneous, unlawful, or invalid, in whole or in part, provided objections, as hereinbefore provided, were filed with the commission, and payment of the assessment was made under protest either as to all or part thereof. In any action for recovery of any payments made under this section, the claimant shall be entitled to raise every relevant issue of law, but the findings of fact made by the commission, pursuant to this section, shall be prima facie evidence of the facts therein stated. Any records, books, data, documents, and memoranda relating to the expenses of the commission shall be admissible in evidence in any court, and shall be prima facie evidence of the truth of their contents. If it is finally determined in any such action that all or any part of the assessment for which payment was made under protest was excessive, erroneous, unlawful, or invalid, the commission shall make a refund to the claimant *out of the appropriation specified in section 1204* as directed by the court [, which shall be made from the current appropriation of the commission].

(f) It is the intent and purpose of this section that *each public utility* [the several groups of persons and corporations] subject to this act shall [each contribute, by way of assessments, sufficient funds to the Commonwealth to reimburse the Commonwealth for the reasonable cost of regulating the respective groups.] *advance to the commission its reasonable share of the cost of administering this act.* The commission shall keep records of the costs incurred in connection with the administration and enforcement of this act, or any other act. The commission shall also keep a record of the manner in which it shall have computed the amount assessed against every [person or corporation] *public utility.* Such records shall be open to inspection by all interested parties. The determination of such costs and assessments by the commission, and the records and data upon which the same are made, shall be considered prima facie correct; and in any proceeding instituted to challenge the reasonableness or correctness of any assessment under this section, the party challenging the same shall have the burden of proof.

Section 2. Section 1201 of the act is amended by adding a subsection to read:

Section 1201. Assessment of Regulatory Expenses Upon Public Utilities.—* * *

(g) *Nothing herein contained shall be deemed to repeal any of the provisions of the act of July 31, 1968 (Act No. 240), known as the "Commonwealth Documents Law."*

Section 3. Section 1204 of the act is amended to read:

Section 1204. Disposition, *Appropriation and Disbursement* of Assessments [, Costs,] and Fees.—(a) All assessments [, costs,] and fees received, collected or recovered under this article shall be paid by the commission into the General Fund of the State Treasury through the Department of Revenue.

(b) *All such assessments and fees, having been advanced by public utilities for the purpose of defraying the cost of administering this act, shall be held in trust solely for that purpose, and shall be earmarked for the use of, and are hereby appropriated to, the commission for disbursement solely for that purpose.*

(c) *All requisitions upon such appropriation shall be signed by the chairman and secretary of the commission, or such deputies as they may designate in writing to the State Treasurer, and shall be presented to the State Treasurer and dealt with by him and the Treasury Department in the manner prescribed by The Fiscal Code.*

Section 4. This act shall be effective retroactively to July 1, 1971; the first estimate of expenditures for the fiscal year beginning that date shall be submitted to the Governor within thirty days after enactment; and the first assessment, for that fiscal year, shall be billed within sixty days after approval of the final estimate. On and after the first day of the second calendar month following such billing, all expenditures of Pennsylvania Public Utility Commission for the purpose of administering the Public

Utility Law shall be paid from the moneys earmarked for that purpose by this act; and from such moneys the commission shall reimburse the General Fund for all expenditures made therefrom for that purpose after June 30, 1971 and prior to said first day of the second calendar month following such billing, less such fees as shall have been paid by the commission into the General Fund through the Department of Revenue during that period. The assessment in reimbursement for Pennsylvania Public Utility Commission expenditures made or committed during the period January 1, 1970 to June 30, 1971 shall be made under prior law and the proceeds therefrom, as well as all fees received, collected or recovered by the commission during said period, shall be paid into the General Fund without earmarking; and all expenditures of the commission made or committed to be made prior to July 1, 1971 shall be paid from the General Fund, under prior law.

APPROVED—The 3rd day of March, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 33.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive style with a large initial "C" and "T".

Secretary of the Commonwealth.