

No. 216

AN ACT

SB 1217

Amending the act of March 31, 1937 (P.L. 160, No.43), entitled "An act creating a commission to be known as the Pennsylvania Public Utility Commission; defining in part the powers and duties of such commission; abolishing The Public Service Commission of the Commonwealth of Pennsylvania, terminating the terms of the members thereof, and transferring to the Pennsylvania Public Utility Commission the records, employes, property, and equipment of The Public Service Commission of the Commonwealth of Pennsylvania; authorizing the Pennsylvania Public Utility Commission to appear in and complete all pending proceedings, legal or otherwise, instituted before, by or against The Public Service Commission of the Commonwealth of Pennsylvania; providing that all certificates of public convenience, contracts, orders, and rules and regulations of the latter commission shall remain effective until repealed, changed or modified by the Pennsylvania Public Utility Commission, and transferring and appropriating to the Pennsylvania Public Utility Commission any unexpended balance of any existing appropriation to The Public Service Commission of the Commonwealth of Pennsylvania," further providing for the compensation, nomination and confirmation of members of the Public Utility Commission; further providing for certain powers and duties of commissioners and employes, and as to employes in certain cases compensation, and providing for hearing and investigative procedures.

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

Section 1. Subsections (c) and (d) of section 1, act of March 31, 1937 (P.L.160, No.43), entitled "An act creating a commission to be known as the Pennsylvania Public Utility Commission; defining in part the powers and duties of such commission; abolishing The Public Service Commission of the Commonwealth of Pennsylvania, terminating the terms of the members thereof, and transferring to the Pennsylvania Public Utility Commission the records, employes, property, and equipment of The Public Service Commission of the Commonwealth of Pennsylvania; authorizing the Pennsylvania Public Utility Commission to appear in and complete all pending proceedings, legal or otherwise, instituted before, by or against The Public Service Commission of the Commonwealth of Pennsylvania; providing that all certificates of public convenience, contracts, orders, and rules and regulations of the latter commission shall remain effective until repealed, changed or modified by the Pennsylvania Public Utility Commission, and transferring and appropriating to the Pennsylvania Public Utility Commission any unexpended balance of any existing appropriation to The Public Service Commission of the Commonwealth of Pennsylvania," subsection (c) amended August 16, 1968 (P.L.1038, No.317), are amended and a subsection is added to read:

Section 1. * * *

(c) Each of the commissioners shall receive an annual salary of **[twenty-four thousand dollars (\$24,000)]** *thirty-five thousand dollars*

(\$35,000) as of January 1, 1977, and forty thousand dollars (\$40,000) as of January 1, 1978, except the chairman, who shall receive an annual salary of [twenty-five thousand dollars (\$25,000)] thirty-seven thousand five hundred dollars (\$37,500) as of January 1, 1977, and forty-two thousand five hundred dollars (\$42,500) as of January 1, 1978.

(d) [Three] A majority of the members of the commission serving in accordance with law, [shall constitute a quorum who, for all purposes, including the making of any order or the ratification of any act done or order made by one or more of the commissioners, must act unanimously] shall constitute a quorum, and such majority, acting unanimously, shall be required for any action, including the making of any order or the ratification of any act done or order made by one or more of the commissioners. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission.

(e) The Governor shall nominate to the Senate a proper person to fill a vacancy within ninety days of the first day of the vacancy and not thereafter. The Senate shall act on such nomination within twenty-five legislative days of its submission. If the Senate has not voted upon a nomination within fifteen legislative days following such submission, any five members of the Senate may, in writing, request the presiding officer of the Senate to place the nomination before the entire Senate body whereby the nomination must be voted upon prior to the expiration of five legislative days or twenty-five legislative days following submission by the Governor, whichever occurs first. If the nomination is made during a recess or after adjournment sine die, the Senate shall act upon it within twenty-five legislative days after its return or reconvening. If the Senate for any reason fails to act upon a nomination submitted to it within the required twenty-five legislative days, the nominee shall take office as if the appointment had been consented to by the Senate.

Section 2. Section 2 of the act is repealed.

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

Section 3. No person shall be appointed a member of the commission, or hold any place, position or office under it, who occupies any official relation to any public service company or public utility, or who holds any other appointive or elective office of the Commonwealth, or any political subdivision thereof. [No commissioner, and no employe, appointee or official engaged in the service of, or in any manner connected with, the commission, shall hold any office or position, or be engaged in any business, employment or vocation, the duties of which are incompatible with the duties of his office as commissioner, or his employment in the service, or in connection with the work of the commission.] *Commencing July 1, 1977, commissioners shall devote full time to their official duties. No commissioner shall hold any office or position, the duties of which are incompatible with the duties of his office as commissioner, or be engaged in any business, employment, or vocation, for which he shall receive any remuneration, except as provided in section 3.1. No employe, appointee, or*

official engaged in the service of, or in any manner connected with the commission, shall hold any office or position, or be engaged in any employment, or vocation, the duties of which are incompatible with his employment in the service of, or in connection with the work of the commission. No commissioner shall be paid or accept for any service connected with the office, any fee, emolument other than the salary and expenses provided by law. No commissioner shall participate in any hearing or proceeding in which he has any direct or indirect pecuniary interest. Ninety days after the effective date of this act or on July 1, 1976, whichever is later, and thereafter within ninety days of confirmation, each commissioner shall disclose, at that time and thereafter annually, the existence of all security holdings in any public utility or its affiliates held by such commissioner, his or her spouse and any minor or unemancipated children and must either divest or place in a blind trust such securities. As used in this act, blind trust shall mean a trust over which neither the commissioners, their spouses, nor any minor or unemancipated children shall exercise any managerial control, and from which neither the commissioners, their spouses, nor any minor or unemancipated children shall receive any income from the trust during the commissioner's tenure of office. Such disclosure statement shall be filed with the executive director of the commission and shall be open to inspection by the public during the normal business hours of the commission during the tenure of the commissioner. Every commissioner, and every individual or official, employed or appointed to office under, in the service of, or in connection with, the work of the commission, is hereby forbidden, directly or indirectly, to solicit or request from, or to suggest or recommend to any public service company or public utility, or to any officer, attorney, agent or employe thereof, the appointment of any individual to any office, place or position in, or the employment of any individual in any capacity by, such public service company or public utility. Every commissioner, every bureau director, and every administrative law judge employed or appointed to office under, in the service of, or in connection with, the work of the commission, is prohibited from accepting employment with any public utility subject to the rules and regulations of the commission for a period of one year after terminating employment or service with the commission. If any person employed or appointed in the service of the commission shall violate any provision of this section, the commission shall forthwith remove him from the office or employment held by him.

Section 4. The act is amended by adding a section to read:

Section 3.1. (a) Each commissioner and each administrative law judge shall conform to the following code of ethics for the Public Utility Commission.

A commissioner and an administrative law judge must:

(1) avoid impropriety and the appearance of impropriety in all activities;

(2) perform all duties impartially and diligently;

- (3) avoid all ex-parte communications prohibited in this act;*
- (4) abstain publicly from expressing, other than in executive or public session, his personal views on the merits of a matter pending before the commission and require similar abstention on the part of commission personnel subject to his direction and control;*
- (5) require staff and personnel subject to his direction to observe the standards of fidelity and diligence that apply to the commissioner and administrative law judge;*
- (6) initiate appropriate disciplinary measures against commission personnel for unprofessional conduct;*
- (7) disqualify himself from proceedings in which his impartiality might be reasonably questioned;*
- (8) inform himself about his personal and fiduciary interests and make a reasonable effort to inform himself about the personal financial interests of his spouse and children;*
- (9) regulate his extra-curricular activities to minimize the risk of conflict with his official duties. He may speak, write or lecture and any reimbursed expenses, honorariums, royalties, or other moneys received in connection therewith shall be disclosed annually. Such disclosure statement shall be filed with the executive director of the commission and shall be open to inspection by the public during the normal business hours of the commission during the tenure of the commissioner or of the administrative law judge;*
- (10) refrain from solicitation of funds for any political, educational, religious, charitable, fraternal or civic purposes, although he may be an officer, director or trustee of such organizations;*
- (11) refrain from financial or business dealing which would tend to reflect adversely on impartiality, although the commissioner or administrative law judge may hold and manage investments which are not incompatible with the duties of his office; and*
- (12) conform to such additional rules as the commission may prescribe.*

(b) Any commissioner who violates the provisions of subsection (a) shall be removed from office in the manner provided in section 4.

(c) Any administrative law judge who violates the provisions of subsection (a) shall be removed from office in the manner provided by the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."

Section 5. Section 4 of the act is amended to read:

Section 4. The Governor, by and with the consent of two-thirds of all the members of the Senate, *shall remove from office any commissioner who violates the provisions of section 3 requiring commissioners to devote full time to their official duties and* may remove any commissioner for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges against him, and affording him an opportunity to be publicly heard in person or by counsel in his own defense upon not less than ten days' notice. If such commissioner shall be removed, the Governor shall file

with the Department of State a complete statement of all charges made against such commissioner and his finding thereon, together with a complete record of the proceedings.

Section 6. Subsection (b) of section 6 of the act is repealed.

Section 7. The act is amended by adding sections to read:

Section 6.1. (a) The commission shall have the power to appoint, fix the compensation of, authorize and delegate such officers, consultants, experts, engineers, statisticians, accountants, inspectors, clerks and employes as may be appropriate for the proper conduct of the work of the commission: Provided, That the total compensation paid to consultants in any fiscal year shall not exceed four per centum of the commission's budget. The commission shall keep records of the names of each consultant, the services performed for the commission, and the amounts expended for each consultant's services. The commission shall submit these records as a part of its annual budget submission. Such records shall be a matter of public record open for inspection at the office of the commission during the normal business hours of the commission. The commission shall establish, after consultation with the Civil Service Commission, standardized qualifications for employment and advancement, and all titles, and establish different standards for different kinds, grades, and classes of similar work or service: Provided, That the employes of the commission shall be afforded employment security as provided by the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act," or the appropriate collective bargaining agreement, whichever is applicable, but that the commission shall set the salaries of all employes, in accordance with the employment standards established herein.

(b) The proceedings of the commission shall be conducted in accordance with the provisions of the act of July 19, 1974 (P.L.486, No.175), entitled "An act requiring public agencies to hold certain meetings and hearings open to the public and providing penalties."

(c) Each commissioner shall be responsible for monitoring specified cases as shall be assigned to him in a manner determined by the commission. All proceedings properly before the commission shall be assigned immediately upon filing.

Section 6.2. (a) The office of administrative law judge to the Pennsylvania Public Utility Commission is hereby created. The commission shall have the power to appoint as many qualified and competent administrative law judges as may be necessary for proceedings pursuant to this act, and who shall devote full time to their official duties and who shall perform no duties inconsistent with their duties and responsibilities as administrative law judges. Administrative law judges shall be afforded employment security as provided by the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act." Compensation for administrative law judges shall be established by the commission within a range of twenty-five thousand dollars (\$25,000) to thirty-five thousand dollars (\$35,000). If the commission is occasionally and temporarily

understaffed of administrative law judges, the commission may appoint qualified and competent persons who meet the minimum standards established by this act to temporarily serve as such judges, who shall serve at the pleasure of the commission and shall receive such compensation as the commission may establish.

(b) The commission may appoint secretaries and legal or technical advisors to assist each judge in performance of his duties, or may assign personnel from any of the other bureaus within the commission.

(c) All judges must meet the following minimum requirements:

(1) An attorney in good standing before the Pennsylvania Supreme Court.

(2) Three years of practice before administrative agencies or equivalent experience.

(3) Such other requirements as shall be established by the commission.

(d) The commission shall appoint one of the administrative law judges as chief administrative law judge who shall be responsible for assigning a hearing judge to every proceeding before the commission which may require the utilization of an administrative law judge and who shall receive remuneration above that of any other administrative law judge. The position of chief administrative law judge may not be withdrawn from a person so appointed, nor his salary diminished, except for good cause shown. The chief administrative law judge shall have such other responsibilities as the commission may by rule prescribe.

Section 6.3. There shall hereby be established within the commission the following bureaus and functions: the Law Bureau, the Bureau of Conservation, Economics and Energy Planning and the Bureau of Consumer Services.

(a) The Law Bureau herein established shall be a multi-function legal staff, consisting of a prosecutory function and an advisory function. Prosecutory counsel shall be responsible for and shall assist in the development of, challenge of, and representation on the record of all matters in the public's interest. Advisory counsel shall advise the commission on any and all matters. The counsel shall appear on behalf of the commission in all courts of record and before district magistrates. No counsel shall in the same case or a factually related case perform duties in the prosecutory and advisory functions, if such performance would represent a conflict of interest.

(b) The Bureau of Conservation, Economics and Energy Planning shall conduct studies and research all matters within the commission's jurisdiction and advise the commission of the results thereof in order to enable the commission to provide prospective regulation in the best interest of all parties concerned. Such studies and research shall include long range forecasting of energy needs and development, research into the use of new, efficient and economic methods of energy production; the review of the efficiency of the present generating systems operated within the Commonwealth and the development of an effective program of energy

conservation. The bureau shall review all proposals for electric and gas public utility plant expansion and shall submit, for consideration of the commission, its findings on what impact, if any, the electric and gas public utility plant expansion will have on rates charged by the public utility.

The commission shall require all electric and gas public utilities subject to its jurisdiction to file with it an annual conservation report which shall show the plans and progress achieved on programs of energy conservation. The commission shall, by rule, prescribe guidelines for the form and manner of such annual conservation report which report shall describe the current and proposed programs of each such utility designed to educate and encourage its customers in the optimum, effective, and efficient use by them of electric and gas energy. Such report shall include an accounting of the monetary and personnel resources actually or proposed to be expended or devoted to and the actual or anticipated results of such programs.

(c) The Bureau of Consumer Services shall investigate and have prepared replies to all informal consumer complaints and shall advise the commission as to the need for formal commission action on any matters brought to its attention by the complaints. The bureau shall on behalf of the commission keep records of all complaints received, the matter complained of, the utility involved, and the disposition thereof and shall at least annually report to the commission on such matters. The commission may take official notice of all complaints and the nature thereof in any proceeding before the commission in which the utility is a party. The commission shall adopt, publish and generally make available rules by which a consumer may make informal complaints. The bureau shall also assist and advise the commission on matters of safety compliance by public utilities.

(d) The commission shall establish such bureau or bureaus to perform such duties as the commission may prescribe regarding all matters respecting rates of public utilities and all matters respecting common carriers and contract carriers.

(e) The establishment of these bureaus shall not be construed to prohibit the commission from establishing any additional bureaus which the commission finds necessary to protect the interests of the people of this Commonwealth.

(f) The bureaus may perform such other duties not inconsistent with law as the commission may direct.

(g) Members of the staff of the commission shall appear and present testimony in any proceeding before the commission when called by the commission or any of the parties to the proceeding.

Section 8. Section 7 of the act is repealed.

Section 9. The act is amended by adding sections to read:

Section 7.2. Any investigation, inquiry, or hearing which the commission has power to undertake or hold, shall be conducted pursuant to the provisions of this act.

(a) There shall preside at the taking of evidence (1) the commission, (2) one or more commissioners, or (3) one or more administrative law judges appointed as provided in this act. The functions of all presiding officers shall be conducted in an impartial manner. Any such officer may at any time withdraw from a proceeding if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the commission shall determine the matter as a part of the record and decision in the proceeding.

(b) In addition to any administrative rules of procedure contained in this act, the commission shall have the authority to adopt and publish such additional rules of procedure as are not inconsistent herewith. Officers presiding at hearings shall have authority subject to the published rules of the commission and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken whenever the ends of justice would be served thereby, (4) regulate the course of the hearing, (5) hold conferences for settlement or simplification of the issues by consent of the parties, (6) dispose of procedural requests or similar matters, (7) make decisions or recommend decisions in conformity within this act, and (8) take any other action authorized by commission rule consistent within this act.

(c) A presiding officer may certify to the commission, or allow the parties an interlocutory appeal to the commission on any material question arising in the course of a proceeding, where he finds that it is necessary to do so to prevent substantial prejudice to any party or to expedite the conduct of the proceeding. The presiding officer or the commission may thereafter stay the proceeding if necessary to protect the substantial rights of any of the parties therein. The commission shall determine the question forthwith and the hearing and further decision shall thereafter be governed accordingly. No interlocutory appeal to the commission shall otherwise be allowed, except as may be allowed by the commission.

(d) The commission, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

(e) As used in this act the term "official notice" shall mean a method by which the commission may notify all parties that no further evidence will be heard on a material fact and that unless the parties prove to the contrary, the commission's findings will include that particular fact.

Section 7.3. (a) Except as may be otherwise provided by this or other relevant statute, the proponent of a rule or order has the burden of proof, nor shall anything herein affect in any way the burden of proof described in section 921 of the act of May 28, 1937 (P.L.1053, No.286), known as the "Public Utility Law."

(b) Any oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. No sanction shall be

imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence.

(c) Every party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, to conduct such cross-examination as may be required for a full and true disclosure of the facts. The commission may, by rule, adopt procedures for the submission of all or part of the evidence in written form.

(d) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision, and shall be available for inspection by the public. Briefing and oral argument shall be held in accordance with rules established by the commission.

(e) When the commission's decision rests on official notice of a material fact not appearing in the evidence in the record, upon notification that facts are about to be or have been noticed, any party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed. The commission in its discretion shall determine whether written presentations suffice, or whether oral argument, oral evidence, or cross-examination is appropriate in the circumstances: Provided, That nothing herein shall affect the application by the commission in appropriate circumstances of the doctrine of judicial notice.

(f) Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. If the actions of a party or counsel in a proceeding shall be determined by the commission, after due notice and opportunity for hearing, to be obstructive to the orderly conduct of the proceeding and inimical to the public interest, the commission may reject or dismiss any rule or order in any manner proposed by the offending party or counsel; and with respect to counsel, may bar further participation by him in any proceedings before the commission.

Section 7.4. (a) The presiding officer shall have the authority to hold one or more prehearing conferences during the course of the proceeding on his own motion or at the request of a party to the proceeding. The presiding officer shall normally hold at least one prehearing conference in proceedings where the issues are complex or where it appears likely that the hearing will last a considerable period of time. In addition to other matters which the commission shall prescribe by rule, the presiding officer at a

prehearing conference shall have the authority to direct the parties to exchange their evidentiary exhibits and witness lists prior to the hearing. Where good cause exists, the parties should have the right at any time to amend, by deletion or supplementation, their evidentiary exhibits and witness lists.

(b) A party to the proceeding shall be able to take depositions of witnesses upon oral examination or written questions for purposes of discovering relevant, unprivileged information, subject to the following conditions:

(1) the taking of depositions shall normally be deferred until there has been at least one prehearing conference;

(2) the party seeking to take a deposition shall apply to the presiding officer for an order to do so;

(3) the party seeking to take a deposition shall serve copies of the application on the other party or parties to the proceedings, who shall be given an opportunity, along with the deponent, to notify the presiding officer of any objections to the taking of the deposition;

(4) the presiding officer shall not grant an application to take a deposition if he finds that the taking of the deposition would result in undue delay;

(5) the presiding officer shall otherwise grant an application to take a deposition unless he finds that there is not good cause for doing so;

(6) the deposing of a commission employe shall only be allowed upon an order of the presiding officer based on a specific finding that the party applying to take the deposition is seeking significant, unprivileged information not discoverable by alternative means. Any such order shall be subject to an interlocutory appeal to the commission; and

(7) an order to take a deposition shall be enforceable through the issuance of a subpoena ad testificandum.

(c) At the prehearing conference or at some other reasonable time prior to the hearing, which may be established by commission rule, each party to the proceeding shall make available to the other parties to the proceeding the names of the witnesses he expects to call and the subject matter of their expected testimony. Where good cause exists, the parties shall have the right at any time to amend, by deletion or supplementation, the list of names of the witnesses they plan to call and the subject matter of the expected testimony of those witnesses.

(d) Any party to a proceeding may serve written interrogatories upon any other party for purposes of discovering relevant, unprivileged information. A party served with interrogatories may, before the time prescribed either by commission rule or otherwise for answering the interrogatories, apply to the presiding officer for the holding of a prehearing conference for the mutual exchange of evidence exhibits and other information. Each interrogatory which requests information not previously supplied at a prehearing conference or hearing shall be answered separately and fully in writing under oath, unless it is objected to,

in which event the reasons for the objection shall be stated in lieu of an answer. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections within a reasonable time, unless otherwise specified, upon the party submitting the interrogatories. The party submitting the interrogatories may petition the presiding officer for an order compelling an answer to an interrogatory or interrogatories to which there has been an objection or other failure to answer.

The commission shall designate an appropriate official on whom other parties to the proceeding may serve written interrogatories directed to the commission. That official shall arrange for agency personnel with knowledge of the facts to answer and sign the interrogatories on behalf of the commission. The attorney or employe appearing on behalf of the commission in the proceeding shall have the authority to make and sign objections to interrogatories served upon the commission. Interrogatories directed to the commission shall be allowed only upon an order of the commission based upon a specific finding that the interrogating party is seeking significant, unprivileged information not discoverable by alternative means.

(e) A party to a proceeding may serve upon any other party and upon the commission to the same extent permissible in subsection (d) a written request for the admission, for purposes of the pending proceeding and to conserve hearing time, of any relevant, unprivileged, undisputed facts, the genuineness of any document described in the request, the admissibility of evidence, the order of proof, and other similar matters.

(f) A party to a proceeding may obtain in accordance with commission rules a subpoena duces tecum requiring the production of or the making available for inspection, copying, or photographing of relevant necessary designated documents at a prehearing conference or other specific time and place.

(g) The presiding officer shall have the authority to impose schedules on the parties to the proceeding specifying the periods of time during which the parties may pursue each means of discovery available to them under the rules of the commission. Such schedules and time periods shall be set with a view to accelerating disposition of the case to the fullest extent consistent with fairness.

(h) Except as provided in subsection (b)(6), an interlocutory appeal from a ruling of the presiding officer on discovery shall be allowed only upon certification by the presiding officer that the ruling involves an important question of law or policy which should be resolved at that time. Notwithstanding the presiding officer's certification, the commission shall have the authority to dismiss summarily the interlocutory appeal if it should appear that the certification was improvident. An interlocutory appeal shall not result in a stay of the proceedings except upon a finding by the presiding officer and the commission that extraordinary circumstances exist.

(i) The presiding officer shall have the authority, upon motion by a party or by the person from whom discovery is sought, and for good cause shown, to make any order, subject to the rules of the commission, which justice requires to protect the party or person.

(j) The presiding officer shall have the power in accordance with commission rules to issue subpoenas ad testificandum and duces tecum at any time during the course of the proceeding.

Section 7.5. (a) The same presiding officer shall to the fullest extent possible preside at all the reception of evidence in a particular case to which he has been assigned. The same presiding officer who presides at the reception of evidence shall make the recommended decision or initial decision except where such presiding officer becomes unavailable to the commission.

(b) Save to the extent required for the disposition of ex-parte matters not prohibited by this act, no presiding officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall any presiding officer be responsible to or subject to the supervision or direction of any officer, employe, or agent engaged in the performance of investigative or prosecuting functions for the commission. No employe, appointee, commissioner, or official engaged in the service of, or in any manner connected with the commission shall engage in ex-parte communications save to the extent permitted by this act. No officer, employe, or agent engaged in the performance of investigative or prosecuting functions for the commission in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision or commission review, except as witness or counsel in public proceedings.

(c) Ex-parte communications prohibited by this act shall mean any off-the-record communications to or by any member of the commission, administrative law judge, or employe of the commission, regarding the merits or any fact in issue of any matter pending before the commission in any contested on-the-record proceeding. Contested on-the-record proceeding shall mean a proceeding required by a statute, constitution, published commission rule or regulation or order in a particular case, to be decided on the basis of the record of a commission hearing, and in which a protest or a petition or notice to intervene in opposition to requested commission action has been filed. This subsection shall not be construed to prohibit off-the-record communications to or by any employe of the commission prior to the actual beginning of hearings in a contested on-the-record proceeding when such communications are solely for the purpose of seeking clarification of or corrections in evidentiary materials intended for use in the subsequent hearings.

Section 7.6. (a) When the commission does not preside at the reception of evidence, the presiding officer shall initially decide the case, unless the commission requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding officer

makes an initial decision, that decision then shall be approved by the commission and may become the opinion of the commission without further proceeding within the time provided by commission rule. On review of the initial decision, the commission has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the commission makes the decision in a rate determination proceeding without having presided at the reception of the evidence, the presiding officer shall make a recommended decision to the commission in accordance with the provisions of this act. Alternatively, in all other matters:

(1) the commission may issue a tentative decision or one of its responsible employes may recommend a decision; or

(2) this procedure may be omitted in a case in which the commission finds on the record that due and timely execution of the functions imperatively and unavoidably so requires.

(b) Before a recommended, initial, or tentative decision issued under this section, or a decision on commission review of the decision of subordinate employes, the parties are entitled to a reasonable opportunity to submit for the consideration of the commission:

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employes or to tentative commission decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of (i) findings and conclusions, and the reasons or basis therefore, on all material issues of fact, law, or discretion presented on the record; and (ii) the appropriate rule, order, sanction, relief, or denial thereof.

Section 10. Section 8 of the act is amended to read:

Section 8. The commission may authorize the chairman—(1) To designate the time and place for the conducting of investigations, inquiries and hearings; (2) to assign cases to a commissioner or commissioners for hearing, investigation, inquiry, study or other similar purposes; (3) to assign cases to special agents or [examiners] *administrative law judges* for the taking and receiving of evidence; and (4) to direct and designate officers and employes of the commission to make investigations, inspections, inquiries, studies and other like assignments for report to the commission. *Additionally, the commission may authorize the chairman to be responsible through the secretary for specifically enumerated daily administrative operations of the commission.*

Section 11. Section 9 of the act is repealed.

Section 12. The act is amended by adding a section to read:

Section 9.1. The office of chief counsel to the Pennsylvania Public Utility Commission is hereby created. Such chief counsel is to be appointed

by the commission and to hold office at its pleasure. The commission may also from time to time appoint such assistant counsel to the Pennsylvania Public Utility Commission as may be required for the proper conduct of its work. Assistant counsel may be removed by the commission only for good cause shown. The compensation of the counsel to the Pennsylvania Public Utility Commission shall be fixed by the commission. In accordance with the multi-function legal staff established herein, such counsel shall attend the hearings before the commission or a commissioner, or a special agent or administrative law judge, and conduct the examination of witnesses and shall represent the commission upon appeals and other hearings in the courts of common pleas and in the Commonwealth and Supreme Courts, or other courts of the Commonwealth of Pennsylvania, or in any Federal court or agency and in actions instituted to recover penalties and to enforce regulations and orders of the commission. Such counsel shall also assist the Attorney General in conducting all mandamus, injunction and quo warranto proceedings at law or in equity, instituted by him for the enforcement of the regulations and orders of the commission, and shall perform such other professional duties as may be required of them by the commission.

Section 13. Sections 303 and 709, act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," are repealed insofar as they are inconsistent with the provisions of this act.

APPROVED—The 7th day of October, A. D. 1976.

MILTON J. SHAPP