

PUBLIC UTILITY CODE (66 PA.C.S.) - OMNIBUS AMENDMENTS**Act of Feb. 14, 2012, P.L. 72, No. 11****Cl. 66**

Session of 2012

No. 2012-11

HB 1294

AN ACT

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further providing for Law Bureau, other bureaus, offices and positions, for the burden of proof, for the recovery of the costs of distribution system improvement projects and for civil penalties for violations.

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

Section 1. Sections 308(b), 308.2(a)(11) and 315(e) of Title 66 of the Pennsylvania Consolidated Statutes are amended to read:
 § 308. Bureaus and offices.

* * *

(b) Law Bureau.--The Law Bureau shall be a multifunction legal staff, consisting of a prosecutory function, an advisory function, a representational function and an enforcement function. The Director of the Law Bureau shall be the chief counsel of the commission and shall serve at the pleasure of the commission. The commission may also, from time to time, appoint such assistant counsel to the commission as may be required for the proper conduct of the work of the Law Bureau. Assistant counsel may be removed by the commission only for good cause. The Law Bureau shall advise the commission on any and all matters. 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. Except for litigation referred to the Attorney General or other appropriate outside counsel, the Law Bureau solely shall be responsible to represent the commission upon appeals and other hearings in the courts of common pleas and in the Commonwealth Court, Supreme Court or other courts of this Commonwealth or in any Federal court or agency and in actions instituted to recover penalties and to enforce regulations and orders of the commission. If necessary to protect the public interest, the Law Bureau, pursuant to its prosecutorial function, may initiate and participate in proceedings before the commission [unless directed by the commission to do so in a proceeding involving transportation, safety, eminent domain, siting, service issues having no impact on rates or ability to pay or assist the Office of Trial Staff in carrying out the duties of the Office of Trial Staff, nor shall any member of the Law Bureau receive assistance from the Office of Trial Staff in the performance of his duties. Except as provided in this section, the Law Bureau may receive assistance from any other bureau or office of the commission as determined to be necessary].

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§ 308.2. Other bureaus, offices and positions.

(a) Establishment of other bureaus, offices and positions.--In addition to the specific bureaus established in this part, the commission may establish other bureaus, offices and positions to perform the following functions:

* * *

(11) Take appropriate enforcement actions, including rate proceedings, service proceedings and [allocation] **application**

proceedings, necessary to insure compliance with this title, commission regulations and orders.

* * *

§ 315. Burden of proof.

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(e) Use of future test year.--In discharging its burden of proof the utility may utilize a **future test year or a fully projected future test year, which shall be the 12-month period beginning with the first month that the new rates will be placed in effect after application of the full suspension period permitted under section 1308(d) (relating to voluntary changes in rates)**. The commission shall promptly adopt rules and regulations regarding the information and data to be submitted when and if a future test period **or a fully projected future test year** is to be utilized. Whenever a utility utilizes a future test year **or a fully projected future test year** in any rate proceeding and such future test year **or a fully projected test year** forms a substantive basis for the final rate determination of the commission, the utility shall provide, as specified by the commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the future test year **or a fully projected future test year**, and the commission may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data. **Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities), the commission may permit facilities which are projected to be in service during the fully projected future test year to be included in the rate base.**

Section 2. The heading of Chapter 13 of Title 66 is amended and the chapter is amended by adding a subchapter heading to read:

CHAPTER 13

RATES AND [RATE MAKING] **DISTRIBUTION SYSTEMS**

SUBCHAPTER A

RATES

Section 3. Section 1307(g) of Title 66 is repealed:
§ 1307. Sliding scale of rates; adjustments.

* * *

[(g) Recovery of costs related to distribution system improvement projects designed to enhance water quality, fire protection reliability and long-term system viability.--Water utilities may file tariffs establishing a sliding scale of rates or other method for the automatic adjustment of the rates of the water utility as shall provide for recovery of the fixed costs (depreciation and pretax return) of certain distribution system improvement projects, as approved by the commission, that are completed and placed in service between base rate proceedings. The commission, by regulation or order, shall prescribe the specific procedures to be followed in establishing the sliding scale or other automatic adjustment method.]

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Section 4. Section 1311(c) of Title 66 is amended and the section is amended by adding a subsection to read:

§ 1311. Valuation of and return on the property of a public utility.

* * *

(c) Segregation of property.--When any public utility furnishes more than one of the different types of utility service, the commission shall segregate the property used and useful in furnishing each type of such service, and shall not consider the property of such public utility as a unit in determining the value of the rate base of such public utility for the purpose of fixing **base rates. A utility that provides water and wastewater service shall be exempt from this subsection upon petition of a utility to combine water and wastewater revenue requirements. The commission, when setting base rates, after notice and an opportunity to be**

heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest.

* * *

(e) Definition.--As used in this section, the term "utility that provides both water and wastewater service" shall include separate companies that individually provide water or wastewater service so long as the companies are wholly owned by a common parent company.

Section 5. Section 1327(b) introductory paragraph of Title 66 is amended to read:

§ 1327. Acquisition of water and sewer utilities.

* * *

(b) Procedure.--The commission, upon application by a public utility, person or corporation which has agreed to acquire property from another public utility, municipal corporation or person, may approve an inclusion in rate base in accordance with subsection (a) prior to the acquisition and prior to a proceeding under this [chapter] **subchapter** to determine just and reasonable rates if:

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Section 6. Chapter 13 of Title 66 is amended by adding a subchapter to read:

SUBCHAPTER B DISTRIBUTION SYSTEMS

Sec.

- 1350. Scope of subchapter.
- 1351. Definitions.
- 1352. Long-term infrastructure improvement plan.
- 1353. Distribution system improvement charge.
- 1354. Customer notice.
- 1355. Review.
- 1356. Asset optimization plans.
- 1357. Computation of charge.
- 1358. Customer protections.
- 1359. Projects.
- 1360. Applicability.

§ 1350. Scope of subchapter.

This subchapter shall provide an additional mechanism for a distribution system to recover costs related to the repair, improvement and replacement of eligible property.

§ 1351. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Capitalized cost." Costs permitted to be capitalized pursuant to the Uniform System of Accounts and Generally Accepted Accounting Principles.

"Distribution system." A system owned or operated by a utility. The term includes a natural gas distribution company, a city natural gas distribution operation, an electric distribution company, a water utility and a collection system for a wastewater utility.

"Distribution system improvement charge." A charge imposed by a utility to recover the reasonable and prudent costs incurred to repair, improve or replace eligible property that is part of the utility's distribution system.

"Eligible property." Property that is part of a distribution system and eligible for repair, improvement and replacement of infrastructure under this subchapter. Included property shall be as follows:

(1) For electric distribution companies, eligible property shall include:

- (i) Poles and towers.
- (ii) Overhead and underground conductors.

(iii) Transformers and substation equipment.

(iv) Any fixture or device related to eligible property under subparagraphs (i), (ii) and (iii), including insulators, circuit breakers, fuses, reclosers, grounding wires, crossarms and brackets, relays, capacitors, converters and condensers.

(v) Unreimbursed costs related to highway relocation projects where an electric distribution company must relocate its facilities.

(vi) Other related capitalized costs.

(2) For natural gas distribution companies and city natural gas distribution operations, eligible property shall include:

(i) Piping.

(ii) Couplings.

(iii) Gas services lines and insulated and noninsulated fittings.

(iv) Valves.

(v) Excess flow valves.

(vi) Risers.

(vii) Meter bars.

(viii) Meters.

(ix) Unreimbursed costs related to highway relocation projects where a natural gas distribution company or city natural gas distribution operation must relocate its facilities.

(x) Other related capitalized costs.

(3) For water utilities, eligible property shall include:

(i) Utility service lines, meters and hydrants installed as in-kind replacements for customers.

(ii) Mains and valves installed as replacements for existing facilities that have worn out, are in deteriorated condition or are required to be upgraded to meet under 52 Pa. Code Ch. 65 (relating to water service).

(iii) Main extensions installed to eliminate dead ends and to implement solutions to regional water supply problems that present a significant health and safety concern for customers currently receiving service from the water utility.

(iv) Main cleaning and relining projects.

(v) Unreimbursed costs related to highway relocation projects where a water utility must relocate its facilities.

(vi) Other related capitalized costs.

(4) For wastewater utilities, eligible property shall include:

(i) Collection sewers, collecting mains and service laterals, including sewer taps, curbstops and lateral cleanouts installed as in-kind replacements for customers.

(ii) Collection mains and valves for gravity and pressure systems and related facilities such as manholes, grinder pumps, air and vacuum release chambers, cleanouts, main line flow meters, valve vaults and lift stations installed as replacements or upgrades for existing facilities that have worn out, are in deteriorated condition or are required to be upgraded by law, regulation or order.

(iii) Collection main extensions installed to implement solutions to wastewater problems that present a significant health and safety concern for customers currently receiving service from the wastewater utility.

(iv) Collection main rehabilitation including inflow and infiltration projects.

(v) Unreimbursed costs related to highway relocation projects where a wastewater utility must relocate its

facilities.

(vi) Other related capitalized costs.

"Utility." A natural gas distribution company, electric distribution company, water or wastewater utility or city natural gas distribution operation.

§ 1352. Long-term infrastructure improvement plan.

(a) Submission.--In order to be eligible to recover costs under section 1353 (relating to distribution system improvement charge), a utility must submit a long-term infrastructure improvement plan. The plan shall include the following:

(1) Identification of the types and age of eligible property owned or operated by the utility for which the utility would seek recovery under this subchapter.

(2) An initial schedule for the planned repair and replacement of eligible property.

(3) A general description of the location of the eligible property.

(4) A reasonable estimate of the quantity of eligible property to be improved.

(5) Projected annual expenditures to implement the plan and measures taken to ensure that the plan is cost effective.

(6) The manner in which the replacement of aging infrastructure will be accelerated and how the repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service.

(7) If the plan is not adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service, the commission shall order a new or revised plan.

(b) Periodic review.--

(1) The commission shall promulgate regulations for the periodic review at least once every five years of long-term infrastructure plans. The regulations may authorize a utility to revise, update or resubmit a plan as appropriate.

(2) The regulations shall ensure that a distribution system improvement charge shall terminate if the commission determines that the utility is not in compliance with the approved plan.

§ 1353. Distribution system improvement charge.

(a) Authority.--Except as provided under this subchapter, after January 1, 2013, a utility may petition the commission, or the commission, after notice and hearing, may approve the establishment of a distribution system improvement charge to provide for the timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

(b) Petition.--A petition for commission approval of a distribution system improvement charge shall include the following:

(1) An initial tariff that complies with a model tariff adopted by the commission. The proposed tariff shall include the following:

(i) A description of the eligible property.

(ii) The effective date of the distribution system improvement charge.

(iii) Computation of the distribution system improvement charge.

(iv) The method by which the utility will provide quarterly updates of the distribution improvement charge.

(v) A description of consumer protections.

(2) Testimony, affidavits, exhibits or other evidence that demonstrates that a distribution improvement system charge is in the public interest and will facilitate utility compliance with the following:

(i) The provision and maintenance of adequate, efficient, safe, reliable and reasonable service consistent with section 1501 (relating to character of service and facilities).

(ii) Commission regulations and orders relating to the provision and maintenance of adequate, efficient, safe, reliable and reasonable service.

(iii) Any other requirement under Federal or State law relating to the provision and maintenance of adequate, efficient, safe, reliable and reasonable service.

(3) A long-term infrastructure improvement plan under section 1352 (relating to long-term infrastructure improvement plan).

(4) Certification that a base rate case has been filed within five years prior to the date of the filing of the petition under section 1308(d) (relating to voluntary changes in rates).

(5) If a base rate case has not been filed within five years prior to the date of the filing of the petition, the utility must file a base rate case in order to be eligible for a distribution system improvement charge.

(6) Any other information required by the commission.

§ 1354. Customer notice.

Utilities shall provide notice to customers in bill inserts or through other means as prescribed by the commission of the following:

(1) Submission of the proposed distribution system improvement charge and initial tariff.

(2) Notice of the commission's disposition of the submission under paragraph (1).

(3) Any changes that occur as a result of quarterly adjustments.

(4) Any other information required by the commission.

§ 1355. Review.

Following the filing of a petition in compliance with section 1353 (relating to distribution system improvement charge), the commission shall, after notice and opportunity to be heard, approve, modify or reject the distribution system improvement charge and initial tariff. The commission shall hold evidentiary and public input hearings as necessary to review the petition.

§ 1356. Asset optimization plans.

A utility with an approved distribution system charge and long-term infrastructure plan shall file annual asset optimization plans. The plan shall include the following:

(1) A description that specifies all eligible property repaired, improved and replaced in the immediately preceding 12-month period pursuant to the utility's long-term infrastructure improvement plan and prior year's asset optimization plan.

(2) A detailed description of all the facilities to be improved in the upcoming 12-month period.

§ 1357. Computation of charge.

(a) Recovery.--The following shall apply:

(1) The initial distribution system improvement charge shall be calculated to recover the fixed cost of eligible property that has:

(i) Not previously been reflected in the utility's rates or rate base.

(ii) Been placed in service during the three-month period ending one month prior to the effective date of the distribution improvement system charge.

(2) After calculation of the initial charge under paragraph (1), the distribution system improvement charge must be updated on a quarterly basis to reflect eligible property placed in service during the three-month period ending one

month prior to the effective date of each distribution system improvement charge update.

(3) The fixed cost of eligible property shall consist of depreciation and pretax return, except as provided for in subsection (c) for city natural gas distribution operation.

(b) Depreciation calculation.--Depreciation shall be calculated by applying the original cost of the eligible property to the annual accrual rates employed in the utility's most recent base rate case for the plant accounts in which each retirement unit of distribution system improvement charge eligible property is recorded. The following shall apply:

(1) The pretax return shall be calculated using the Federal and State income tax rates, the utility's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day of the three-month period ending one month prior to the effective date of the distribution system improvement charge and subsequent updates.

(2) The cost of equity shall be the equity return rate approved in the utility's most recent fully litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the distribution system improvement charge.

(3) If more than two years have elapsed between the entry of a final order and the effective date of the distribution system improvement charge, the equity return rate used in the calculation shall be the equity return rate calculated by the commission in the most recent Quarterly Report on the Earnings of Jurisdictional Utilities released by the commission.

(c) Recovery of costs.--Utilities may file tariffs establishing a sliding scale of rates or other method for the automatic adjustment of the rates of the utility to provide for recovery of the depreciation and pretax return fixed costs of eligible property, as approved by the commission, that are completed and placed in service between base rate proceedings. For city natural gas distribution operations, recoverable costs shall be amounts reasonably expended or incurred to purchase and install eligible property and associated financing costs, if any, including debt service, debt service coverage and issuance costs.

(d) Calculation.--

(1) The distribution system improvement charge shall be expressed as a percentage carried to two decimal places and shall be applied in a manner consistent with section 1358 (relating to customer protections) to each customer under the utility's applicable rates and charges. The charge shall not be applied to amounts billed for public fire protection service by water utilities and the State tax adjustment surcharge.

(2) The distribution system improvement charge shall be calculated by dividing one-fourth of the annual fixed costs associated with all eligible property under the distribution system improvement charge by the projected revenue for the quarterly period during which the distribution system will be collected. The projected revenues shall not include revenues from public fire protection service earned by water utilities and the State tax adjustment surcharge.

(3) Supporting data for each quarterly update shall be filed with the commission and served upon the commission, the Office of Consumer Advocate and the Office of Small Business Advocate at least ten days prior to the effective date of the update.

§ 1358. Customer protections.

(a) Limitation.--As follows:

(1) Except as provided under paragraph (2), the distribution system improvement charge may not exceed 5% of the amount billed to customers under the applicable rates of the wastewater utility or distribution rates of the electric

distribution company, natural gas distribution company or city natural gas distribution operation. The commission may upon petition grant a waiver of the 5% limit under this paragraph for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

(2) A distribution system improvement charge granted to a water utility under former section 1307(g) (relating to sliding scale of rates; adjustments) or this subchapter may not exceed 7.5% of the amount billed to customers. All proceedings, orders and other actions of the commission related to a distribution system improvement charge granted to a water utility and all practices and procedures of a water utility operating under a distribution system improvement charge prior to the effective date of this paragraph shall remain in effect unless specifically amended or revoked by the commission.

(b) Charge reset.--

(1) The distribution system improvement charge shall be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs previously recovered under the distribution system improvement charge.

(2) After the reset date under paragraph (1), only the fixed costs of new eligible property that have not previously been reflected in the utility's rate base shall be reflected in the quarterly updates of the distribution system improvement charge.

(3) The distribution system improvement charge shall be reset at zero if, in any quarter, data filed with the commission in the utility's most recent annual or quarterly earnings report show that the utility will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the distribution system improvement charge.

(c) Construction.--Except as otherwise expressly provided under this subchapter, nothing under this subchapter shall be construed as limiting the existing ratemaking authority of the commission, including the authority to permit recovery of operating expenses through an automatic adjustment clause, or as indicating that the existing authority of the commission over rate structure or design is limited.

(d) Commission.--The commission, by regulation or order, shall prescribe the specific procedures to be followed to approve a distribution system improvement charge. A distribution system improvement charge approved by the commission shall provide:

(1) That the distribution system improvement charge shall be applied equally to all customer classes as a percentage of each customer's billed revenue, consistently with subsection (a).

(2) A process to adjust the charge and to provide:

(i) Credit to customer accounts for over collections and collections for ineligible projects.

(ii) Charges to customer accounts for under collections.

(3) A cap on the amount that may be collected from customers under this subchapter.

(e) Audit and reconciliation.--The following shall apply:

(1) The distribution system improvement charge shall be subject to the following:

(i) Audit at intervals determined by the commission.

(ii) Annual reconciliation based on a reconciliation period consisting of the 12 months ending December 31 of each year. The commission may also permit quarterly reconciliation.

(2) The revenue received under the distribution system improvement charge for the reconciliation period shall be compared to the utility's eligible costs for that period. The

difference between revenue and costs shall be recouped or refunded, as appropriate, in accordance with section 1307(e), over a one-year period or quarterly period commencing April 1 of each year.

(3) If revenues received from the distribution system improvement charge exceed eligible costs, the over collections shall be refunded with interest. Interest on the over collections shall be calculated at the residential mortgage lending rate specified by the Secretary of Banking in accordance with the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law, and shall be refunded in the same manner as an over collection.

(f) Complaint.--The distribution system improvement charge shall be subject to complaint under section 701 (relating to complaints).

§ 1359. Projects.

(a) Standards.--The commission shall establish standards to ensure that work on utility systems to repair, improve or replace eligible property is performed by qualified employees of either the utility or an independent contractor in a manner that protects system reliability and the safety of the public.

(b) Inspection.--Projects for which work to repair, improve or replace eligible property is performed by independent contractors shall be subject to reliability and safety standards and to inspection by utility employees.

(c) Cost.--Work on projects to repair, improve or replace eligible property that is not performed by qualified employees or contractors or inspected by the utility's qualified personnel shall not be eligible for recovery of a distribution system improvement charge.

§ 1360. Applicability.

(a) Acceptance.--The commission may accept a long-term infrastructure plan filed by a water utility prior to the effective date of this subsection in order to comply with section 1352 (relating to long-term infrastructure improvement plan).

(b) Submission.--The commission may require the submission of a new long-term infrastructure plan by a water utility.

Section 7. Section 3301(c) of Title 66 is amended to read:
§ 3301. Civil penalties for violations.

* * *

(c) Gas pipeline safety violations.--Any person or corporation, defined as a public utility in this part, who violates any provisions of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed [\$10,000] **\$200,000** for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed [\$500,000] **\$2,000,000** for any related series of violations, or subject to a penalty provided under Federal pipeline safety laws, whichever is greater.

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Section 8. This act shall take effect in 60 days.

APPROVED--The 14th day of February, A.D. 2012.

TOM CORBETT