


MEMORANDUM

March 14, 1975

TO: Honorable C. L. Schmitt, Chairman
Consumer Protection Committee

FROM: Louis B. Kozloff, Executive Director
Consumer Protection Committee 

SUBJECT: Analysis House Bill No. 175, Consumer Advocate Act

House Bill No. 175 will be known as the Consumer Advocate Act. The purpose of the Act is to create a Department of Consumer Advocate, establishing its powers and duties and providing its methods of financing. According to this Act "Commission" will refer to the Pennsylvania Public Utility Commission, "Consumer" by definition will mean any person who is the ultimate recipient of a product or service supplied by any person subject to a regulatory agency. Consumer will also mean any individual affected by action with the authority of the regulatory agency. These regulatory agencies are the Milk Marketing Board, the Pennsylvania Public Utility Commission and the Insurance Department.

The purpose of the Department of Consumer Advocate is to "represent the interest of consumers before State Regulatory Agencies of the Commonwealth." The Department head will be a qualified apointee of the Governor known as the Consumer Advocate. His concern by the very nature of his training and experience will be in the interests of the consumer. The Consumer Advocate will have the right to appoint upon gubernatorial approval, Assistant Consumer Advocates and other such staff person necessary to the proper functioning of his department.

The Consumer Advocate shall be an affected party before each regulatory agency and an aggrieved party on appeal from any action or decision by a regulatory agency.

The Consumer Advocate may exercise discretation in determining the interest of consumers. Upon petition of 20% or 2,500 of the consumers, whichever is less, the Consumer Advocate will either participate in any particular preceeding involving the aggrieved consumer or will provide a written statement for refraining. Any legal action against a regulatory agency will be brought in the name of the Consumer Advocate.

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It is also the duty of the Consumer Advocate to provide to the Governor and the General Assembly, an annual report on the conduct of his department. He can further make a recommendation concerning the protection of the consumer's interest.

Included in the powers of the Consumer Advocate is the right to subpoena any individual with information pertinent to a pending proposal or proceeding before a regulatory agency. Any subpoena issued by the Consumer Advocate shall be subject to invalidation by the appropriate regulatory agency upon good and proper cause shown, provided that the regulatory agency is petitioned to invalidate the subpoena within ten days of its service. However, the Consumer Advocate has the right to immediate appeal to the Commonwealth Court.

The last section of this Act deals with the assessment upon the public utilities and the disposition, appropriation and disbursement of these assessments. Concerning assessment, each year prior to July 1, the Consumer Advocate must make an estimate of the total expenditures of the administration of this Act as it relates to the Public Utilities Commission. This estimate must not exceed two-hundredths of one percent of the total gross intrastate operating revenues of the public utilities which is equal to 10% of the Public Utilities Commission maximum budget allowed by law. This assessment will then be submitted to the Governor and to the Appropriations Committees of the House and Senate through their chairmen. At this point, the estimate will either be approved or a lesser amount determined. If the Governor or the Appropriations Committees fail to notify the Consumer Advocate of its action within thirty days, the Consumer Advocate's estimate will be considered approved by the approving authority which failed to notify him. The Final Estimate will be the least of the three amounts approved by the three approving authorities, and the approval of this least amount will constitute compliance with the Administrative Code of 1929. The total assessment will be achieved when the Department of the Consumer Advocate subtracts from their final estimate, the estimated balance of the appropriation carried over into the fiscal year from the preceding one. This total assessment will then be allocated to, and paid by the public utilities.

Concerning allocation, the Department of Consumer Advocate will determine for each preceding calendar year the amount of expenditure which can be attributed to its activities in connection with each group of utilities furnishing the same kind of service and then debit the amount applicable to each group. Further it must be noted that for

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each prior fiscal year before the first full calendar year the allocation will be based upon its expenditure experience if any, and its expenditure estimate for the balance of the first 12 months of its operation.

The Consumer Advocate will then allocate that proportion of the administrative costs of the Department of Consumer Advocate attributable to each group of utilities which furnish the same service.

The Public Utilities Commission will complete the assessment procedure by collecting the assessments in the following manner: each individual utility within a group will pay to the Public Utilities Commission a proportion of operating expenses of the Consumer Advocate. The utilities are divided into categories, and the proportion of expenses attributed to a given company is the same proportion that the gross interstate revenues of the company bear to the total revenues of that category. For example, electric companies gross \$1.9 billion, and the total Consumer Advocate expenses attributable to them are estimated at \$500,000, then a company whose proportion of \$1.9 billion is 180 million or 9.4% percent, would be assessed 9.4 percent of \$500,000 or \$47,000.

To determine the added cost to the individual rate payer, you would divide the \$500,000 estimated allocable expense attributable to the electric utility group by the total intrastate operating revenues of the electric utilities, which is \$1.9 billion, (\$500,000 divided by \$1.9 billion) which equals the percent of increase to the rate payer on their utility bill.

Example:

Total amount of expense of Consumer Advocate allocable to all electric companies is estimated at \$500,000.

Total intrastate operating revenues of all of the electric utilities is \$1.9 billion.

$\$500,000 \text{ divided } \$1,900,000,000 = .00026$

.00026 represents the increase to electric rate payer for estimated expense of Consumer Advocate before the Public Utility Commission.

The average annual residential electric bill of Metropolitan Edison is \$220.00.

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Therefore: The additional added cost to the average residential consumer of the Metropolitan Edison Company is:

$$\$220 \times .0026 = \$0.057 \text{ or } 5.7 \text{ cents.}$$

The PUC will give notice by certified or registered mail of the amount lawfully charged against each public utility under this Act. Each public utility must within thirty days of the receipt of notice pay the assessed amount; unless the PUC specifies on the notice to all public utilities an installment plan of payment. In this case, each installment will be paid on or before the date set by the Commission. It is right of the public utility, however, to file objections to its assessment within fifteen days of receipt of notice. The public utility must specify in detail the groups upon which they regard the assessment to be excessive, erroneous, unlawful or invalid. After giving notice to the public utility the Commission will hold a hearing and transmit its findings to the affected party. The public utility must pay within ten days any charges levied by the PUC in accordance with its findings with respect to the objections. Failure to pay will result in appropriate legal action by the PUC. This legal action may include suspension or revocation of certificates of public convenience, certification of automobile registration to the Secretary of Transportation for suspension or revocation, or a court suit by the Justice Department to recover the amount lawfully assessed together with the cost of its legal action. Further, no suit may be brought to delay the collection of the assessment.

A public utility which filed objections to the Commission and has paid its assessment may within two years of the date of payment bring an action against the Commonwealth to recover all or part of the amount paid on the grounds that the amount was excessive, unlawful, erroneous, or invalid in whole or part. In any legal action to recover payments every relevant legal issue may be raised but the fact findings of the Commonwealth will be prima facie evidence. All documents pertinent to the Commission's expenses are admissible in court and will be prima facie evidence of the truth of their contents. If the Court overturns the decision of the Consumer Advocate, the Consumer Advocate will make a refund out of the appropriation directed by the Court. The procedure given above is the exclusive remedy when challenging assessments by the Consumer Advocate.

Each public utility is required to pay a fair share of the administrative cost of the Act. Both records of the Act's administrative costs and the methods of computing assessments will be kept by the Consumer Advocate and the PUC and will be open to inspection.

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A public utility which challenges an assessment has the burden of proof before the Court, while the determination of the Consumer Advocate and the PUC are to be considered prima facie correct.

Assessments will be paid by the PUC to the General Fund of the State Treasury through the Revenue Department and is designated for the purpose of administering this Act. All requisitions for appropriations will be made by the Consumer Advocate or persons authorized by him in writing to the State Treasurer.

In addition to the assessment funding the sum of \$200,000 is appropriated to the Department of Consumer Advocate.

Sample Assessment % Bases on
1973 (Lates Available) Gross Revenues

Utility Group	Consumer Advocate Budget	Gross Intrastate Operating Revenues of each group for calendar year 1973	Percent of Increase to Rate Payer
Electric	\$500,000	\$1,921,505,375	= .026%
Water	25,000	93,160,772	= .027%
Gas	150,000	706,012,624	= .021%
Telephone and Telegraph	150,000	919,720,721	= .016%
Common Carrier	<u>25,000</u>	433,628,758	= .0058%
Total Assessment	\$850,000		

(Maximum assessment allowed by House Bill 175 is equal to two-hundredths of 1% (.02%) of the gross intrastate operating revenues of all utilities operating under the jurisdiction of the PUC or \$860,000.)

The Consumer Advocate is created in the Department of Justice to represent the interests of consumers before the P.U.C. or federal agency. The Office of Consumer Advocate (hereinafter referred to as OCA) is headed by the Consumer Advocate who is appointed by the Governor with the approval of a majority of members elected to the Senate; compensation is to be set by the Exec. Brd.

The Consumer Advocate may not while serving in this position engage in any business, vocation, other employment or have other interests inconsistent with his official responsibilities nor shall he seek or accept employment or render services for compensation with any public utilities subject to the authority of the P.U.C. while he is in office and for a period of two years after the appointment is served or terminated. Any Consumer Advocate shall not seek election nor accept employment to any political office during his term as Consumer Advocate and for a period of two years after the appointment is served or terminated.

The Consumer Advocate with the approval of the Attorney General shall appoint attorneys as assistant Consumer Advocates and such additional clerical, technical and professional staff as may be appropriate, and make contract for such additional services as shall be necessary for the performance of his functions; such compensation shall be set by the Executive Board; no assistant Consumer Advocate or other staff employee shall while serving in such a position engage in any inconsistent business, vocation or other employment or other interests.

The OCA may exercise discretion in determining the interests of consumers which will be advocated in any particular proceeding and in determining whether or not to participate in or initiate any particular proceeding and in so determining shall consider the public interest, the resources available and the substantiality of the effect of the proceeding on the interests of consumers; the OCA may appear before the P.U.C. or federal regulatory agencies.

The OCA must annually submit to the Governor, the Attorney General and the General Assembly an annual report on the conduct of the OCA, and shall make available to the public this report; the OCA shall make recommendations as on occasion may be necessary or desirable to protect the interests of consumers.

The initial appropriation was \$250,000 for fiscal 76-77. The act itself was enacted on July 9, 1976; the OCA shall expire June 30, 1979 unless the General Assembly extends its existence prior to April 1, 1979.