

1. Amend Sec. 1 (Sec. 1), page 2, lines 26-27, by inserting after "THIRTY-FIVE THOUSAND DOLLARS (\$35,000)"

as of January 1, 1977, and forty thousand dollars (\$40,000) as of January 1, 1978

And page 3, line 3, by deleting "THIRTY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$36,500)" and inserting in lieu thereof

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

2. Amend Sec. 3 (Sec. 3), page 4, line 16, by adding before "Commissioners"

Commencing July 1, 1977,

3. Amend Sec. 7, page 8, lines 15-30; page 9, lines 1-11, by deleting all of said lines, and page 9, line 30, by deleting ":" and inserting in lieu thereof

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.

And page 10, line 4, by deleting "FURTHER", and lines 11-19, by deleting all of said lines.

4. Amend Sec. 7, page 11, line 16, by deleting "Thirty Thousand Dollars, (\$30,000)" and inserting in lieu thereof

Thirty-five thousand dollars (\$35,000)

Amend Sec. 7, page 13, line 13, by deleting "planning" and inserting in lieu thereof

forecasting

And line 17, by inserting after "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.

And line 21, by inserting after "conservation."

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.

Delete
reference to
6.1 (A)(3)
page 12

5. Amend Sec. 9, page 16, line 19, by inserting after "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.

- P. 17, lines 20-21 - delete same language*
6. Amend Sec. 9, page 23, line 15, by inserting after "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.

7. Amend Sec. 10, page 24, line 30, by striking out "examiners" and inserting in lieu thereof

administrative law judges

June 14, 1976

Amendments to Senate Bill 1217 (PN 1752)

Amend Section 1, page 2, by deleting all of lines 25 through 30 and inserting
to be determined by the Executive Board

Amend Section 3, page 4, by deleting all of line 8 after "utility" and all of
line 9 and "thereof" on line 10

Amend Section 4, page 7, line 13, by deleting "listed as"

Amend Section 3, page 5, line 6, by deleting "their" and inserting
his or her

Amend Section 7, page 8, lines 15 and 16 by deleting "NOMINATE AND, BY AND
WITH THE CONSENT OF TWO-THIRDS OF ALL THE MEMBERS OF THE SENATE,".

Amend Section 7, page 9 by deleting on line 6 "not to exceed thirty thousand
dollars (\$30,000)", all of line 7 after "commission", all of line 8, and
"No. 286), known as the "Public Utility Law," on line 9.

Amend Section 7, page 9, by deleting all of line 15 after "commission", all of lines 16 and 17 and inserting

shall

Amend Section 7, page 9, by deleting all of line 22 after "commission", all of line 23, and on line 24, "centum of the commission's budget"

Amend Section 7, page 10, by deleting all of lines 1 through 4 and inserting

"commission: Further, provided that the employees 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 employees, in accordance with the employment standards established pursuant to Section 6.1 (a) (3) of this act."

Amend Section 7, page 10 by deleting all of line 18 after "penalties" and inserting

, except with regard to proposed opinions, regulations, orders and decisions, in which cases only that action which would produce a final disposition of such proposed matter need be taken in accordance with the requirements of that act.

Amend Section 7, page 11 by deleting all of line 6 and "THIRTY THOUSAND DOLLARS

(\$30,000)" on line 7 and inserting

of thirty thousand dollars (\$30,000) to thirty-six thousand dollars (\$36,000)

Amend Section 7, page 11 by deleting on line 13 "SUCH PERSONS SHALL NOT SERVE AS", and all of lines 14 and 15

Amend Section 7, page 12, by deleting "THE POSITION" on line 2, all of lines 3 through 6 and 'AS THE CIVIL SERVICE ACT.'" on line 7

Amend Section 7, page 14, by deleting all of lines 11 through 15

Amend Section 9, page 15, line 27, by deleting the period and inserting
, except as may be allowed by the commission.

Amend Section 9, page 17, line 9 by deleting the period and inserting
, nor shall anything herein affect in any way the burden
of proof described in Section 921 of this act.

Amend Section 12, page 25 by deleting all of line 7 after "shown", all of lines 8 through 10 and "'Public Utility Law.'" on line 11.

Analysis of Amendments to Senate Bill 1217 (PN 2082) - June 29, 1976

Amendments 1 through 4 remove^a a provision that salaries of commissioners will be set by the Executive Board, and sets salaries of commissioners at \$35,000 annually and that of the commission chairman at \$36,500.

Amendments 5 through 7 reinsert language prohibiting commissioners and employees from holding "any other appointive or elective office of the Commonwealth, or any political subdivision thereof."

Amendments 8 and 9 remove language which qualifies the provision that total compensation paid to consultants in any fiscal year shall not exceed 4% of the commissions budget. The deleted language created an exception in the event of an emergency declared by the commission.

Amendments 10 through 12 conform employment security provisions relating to administrative law judges to those concerning other commission employees, all of whom would be covered in that area by civil service.

Amendment 13 would remove determination of the salaries of administrative law judges from the Executive Board and reinstate prior language specifying an annual salary of \$25,000 to \$30,000.

Amendment 14 would reinstate prior language which provides additional employment security for the chief administrative law judge.

Amendment 15 is a technical amendment required to compensate for an earlier change in language which resulted in ungrammatical construction.

Amendment 16 reinstates prior deleted language which would provide job security for attorneys employed by the commission as assistants to the chief counsel and specify that compensation of all counsel is to be set by the commission.

AMENDMENTS TO SENATE BILL NO. 1217

Mr.

Printer's No. 2082

1. Amend Sec. 1 (Sec. 1), page 2, line 26, by striking out the bracket before "of"
2. Amend Sec. 1 (Sec. 1), page 2, line 26, by inserting brackets before and after "twenty-four thousand dollars (\$24,000)" and inserting
thirty-five thousand dollars (\$35,000)
3. Amend Sec. 1 (Sec. 1), page 2, line 28, by inserting a bracket before "twenty-five"
4. Amend Sec. 1 (Sec. 1), page 2, lines 29 and 20; page 3, lines 1 and 2, by striking out "TO BE" in line 29, all of line 30, page 2; both of lines 1 and 2, page 3 and inserting
thirty-six thousand five hundred dollars (\$36,500).
5. Amend Sec. 3 (Sec. 3), page 4, line 7, by removing the period after "utility"
6. Amend Sec. 3 (Sec. 3), page 4, line 7, by striking out the bracket before "or"
7. Amend Sec. 3 (Sec. 3), page 4, line 9, by inserting a bracket before "No"
8. Amend Sec. 7 (Sec. 6.1), page 9, line 20, by removing the comma after "budget" and inserting a period
9. Amend Sec. 7 (Sec. 6.1), page 9, lines 20 through 23, by striking out "EXCEPT IN AN EMERGENCY AS DECLARED" in line 20, all of lines 21 and 22 and "THE GOVERNOR." in line 23
10. Amend Sec. 7 (Sec. 6.2), page 11, line 6, by striking out "employed and covered fully" and inserting
afforded employment security as provided
11. Amend Sec. 7 (Sec. 6.2), page 11, line 7, by removing the comma after "Act" and inserting a period
12. Amend Sec. 7 (Sec. 6.2), page 11, lines 7 and 8, by striking out "except to the extent provided in this act."
13. Amend Sec. 7 (Sec. 6.2), page 11, lines 11 through 13, by striking out "TO BE DETERMINED BY THE EXECUTIVE BOARD IN" in line 11, all of lines 12 and 13 and inserting
of twenty-five thousand dollars (\$25,000) to thirty thousand dollars (\$30,000).
14. Amend Sec. 7 (Sec. 6.2), page 12, line 13, by inserting after "Act."
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.

15. Amend Sec. 12 (Sec. 9.1), page 25, line 6, by inserting after "counsel"

is

16. Amend Sec. 12 (Sec. 9.1), page 25, line 16, by inserting after "Law."

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.

June 25, 1976

Amendment to SB 1217 (PN 2082)

Amend Section 12 (9.1), page 25, line 10 by inserting after the period

The compensation of all counsel to the commission shall
be set by the commission.

June 25, 1976

Amendments to SB 1217 (PN 2082)

Amend Section 9 (7.1), page 17, by deleting the period in line 16 and inserting after "SECTION 921"

of the Act of May 28, 1937 (P.L. 1053, No. 286), known
as the "Public Utility Law."

Amend Section 12 (9.1), page 25, line 6, by inserting after "counsel"

is

AMENDMENTS TO SENATE BILL NO. 1217

Mr.

Printer's No. 2082

Amend Sec. 12 (Sec. 9.1), page 25, line 6, by inserting after "counsel"

is

AMENDMENTS TO SENATE BILL NO. 1217

Mr.

Printer's No. 2082

Amend Sec. 12 (Sec. 9.1), page 25, line 16, by inserting after "Law."

The compensation of all counsel to the commission
shall be set by the commission.

SENATE BILL 1217, Printer's No. 2082 - Analysis and Comment

This bill proposes to amend the Public Utility Commission Act, Act of March 31, 1937, P.L. 160, as amended, 66 P.S. 452 et. seq., to provide as follows:

Section 1 (Section 1) - Salaries for commissioners are to be determined by the Executive Board, under the Administrative Code of 1929.

The quorum requirement is amended to a majority of those serving instead of three members.

The nomination and confirmation process is amended to conform to the recent constitutional amendment.

Sections 2 and 3 (Sections 2 and 3) - Commissioners are required to be fulltime, and are prohibited from any outside employment or from holding any incompatible offices outside the Commission. Each commissioner must disclose and divest or place in blind trust any security holdings in any public utility or its affiliates held by the commissioner, the spouse, and any minor, unemancipated children. Each commissioner, bureau director and administrative law judge is prohibited from accepting any employment with a public utility for a period of one year after terminating employment with the Commission.

Sections 4 and 5 (Sections 3.1 and 4) - A code of ethics similar to that established for judges in this Commonwealth is established for commissioners and administrative law judges. The penalty for violation is removal from office.

Commissioners and administrative law judges are required to see that personnel subject to their direction similarly conform to the code of ethics.

Sections 6 and 7 (Sections 6 and 6.1) - A strong administrator to be known as the executive director is established for the Commission in lieu of the present provision for a Secretary of the Commission. The Commission is given authority to establish, after consultation with the Civil Service Commission, standardized qualifications for employment and advancement. The Commission is given the authority to fix compensation for its employees subject to budget approval by the legislature. Total compensation paid during one year to consultants may not exceed 4% of the Commission's budget, except in an emergency situation and by approval of the same officials who originally approved the budget. Civil Service coverage is retained for employees presently covered by that Act. Provision is made for assigned monitoring of cases by each Commissioner.

Section 7 (Section 6.2) - The office of administrative law judge is established to replace the present hearing examiner system. Administrative law judges must devote full-time to their official duties. Temporary administrative law judges are allowed to provide for emergencies and for the start up period immediately after passage of the bill. Minimum qualifications are established.

Section 7 (Section 6.3) - The following bureaus are established within the Commission: Law Bureau, Bureau of Consumer Services and Bureau of Conservation, Economics and Energy Planning. The Commission may establish other bureaus as it sees fit, but must make some provision for its rate setting and transportation regulation functions. The provisions are meant to insure that specific legislative directions to the PUC are carried out while retaining certain flexibility within the Commission.

All electric and gas utilities are required to file an annual conservation report along guidelines set by the Commission.

Provision is made for staff testimony and staff cross-examination as is the practice in several other states.

Sections 8 and 9 (Sections 7.1 - 7.5) - Minimum hearing procedures are established. These procedures require, inter alia, that in a rate proceeding, for example, hearings will be conducted before a single administrative law judge who will render a recommended decision, which upon forwarding to the Commission will become public and subject to exceptions by the parties prior to the Commission's adoption thereof or refusal to adopt in whole or in part.

Section 10 (Section 8) - Provision is made for the Commission to authorize the chairman through the executive director to be responsible for the daily administrative operations of the Commission.

Sections 11 and 12 (Sections 9 and 9.1) - The Act is amended to provide that counsel to the Commission shall be appointed by the Commission rather than the Attorney General.

COMMENT

As originally proposed, the salary for commissioners was raised to \$40,000 per year and the chairman's salary to \$42,500 per year. As commissioner's will now be prohibited from any other employment this salary increase was considered necessary to insure qualified persons will accept this position. Presently bureau directors within the Commission receive \$30,000 to \$33,000 per year.

Perhaps most significantly, the salaries of the commissioners impact downward on the entire staff. Staff salaries have not been adequate or competitive in the past, and the lower salary range for commissioners will perpetuate the problem.

Commissioners have as much, if not more, impact than judges of courts of record who receive \$40,000 annually. Therefore, comparable salaries are justified. As stated in the May 20, 1976 Patriot Editorial:

"Legislators swallow hard at these wage figures, but there is really no alternative to them. Important as a PUC Code of Ethics, budget changes, the right to hire consultants and all the rest may be, if there is not true independence at the top, secured by salaries commensurate with the responsibilities, the PUC will not be improved at all."

It is unrealistic to oppose the salary raise in terms of a percentage increase above the present level. Not only have rigid restrictions been placed on the commissioners for the first time, but significant new responsibilities have been added as well. The commissioners and staff are expected to accelerate their work pace and to live up to some very high expectations. The new salary range should coincide with the implementation of the needed legislation. It is expected that the Executive Board will set salaries which will meet these criteria.

The recent history of PUC vacancies, which created a situation where all three sitting commissioners had to unanimously agree upon any action, precipitated the change in the quorum requirement to a simple majority of those serving. Thus, if two vacancies exist among the commissioners, action could be accomplished by a majority of two commissioners. What constitutes a majority is determined from the number of commissioners serving and not by the number of commissioners present at a given session.

As a means of preventing lengthy vacancies existing in the PUC and as an expression of the intent of the public, the nomination and confirmation process was amended to conform to the recent constitutional amendment.

The cases (Commonwealth v. Benn 284 Pa. 421 (1925)); Commonwealth v. Stewart, 286 Pa. 511 (1926); and Commonwealth v. King, 312 Pa. 412 (1933)) establish that the PUC statute controls appointment and removal of PUC commissioners. As was succinctly stated by the Supreme Court in Commonwealth v. Stewart, supra, at 520:

"Appointments to the Public Service Commission are not made under the provisions of the Constitution but under the act." (Emphasis supplied)

Therefore, in amending the Public Utility Commission Act, Act of March 31, 1937, P.L. 160, 66 P.S. 452 et seq., it was deemed necessary to specifically provide for the method of selection, nomination and confirmation to coincide with the recent amendment to Article IV, Section 8 of the Constitution.

Commissioners are to serve full-time. The only permitted vocational activities, other than official duties, are speaking, writing, lecturing (First Amendment rights) and holding or managing investments which are not incompatible with the office.

Financial disclosure is required of the commissioner and his or her immediate family of securities in public utilities or their affiliates and of monies received for a commissioner's extracurricular activities, as defined in the statute. It was felt that only those financial matters which could conceivably affect a commissioner's impartiality need be disclosed.

The Commission is given the authority to establish qualifications and compensation for its employees. While the Commission is required to consult the Civil Service Commission regarding standards for employment, it is the Commission's responsibility to establish and apply such standards.

The Commission's establishment of salaries shall not be subject to Office of Administration approval. However, the General Assembly has supervisory power over the salary level in its approval of the PUC's annual budget. Thus, if the PUC decided to pay each employee \$24,000 per year the legislature could prohibit such payment by disapproving those amounts in the budget.

Civil Service tenure is retained for all commission employees presently covered thereby. Bureau directors and counsel serve at the pleasure of the Commission because of their positions to exercise control over the theory and practice of regulation.

A ceiling is placed upon the amount the Commission may yearly expend for consultants to insure that consultants are not used to bypass or replace regular employees in contravention of good economic and administrative practices, with allowance made for emergency situations.

An administrative law judge system is to replace the current part-time hearing examiner system. Provision is made for temporary administrative law judges because upon passage of the act the PUC cannot be expected to have a full complement of qualified full-time administrative law judges. Again, temporary administrative law judges are to be temporary and are not to replace full-time personnel.

The Chief Administrative Law Judge does not serve at the pleasure of the Commission lest he be subject to undue influence in deciding a case or in his choice of assignments of personnel to hear specific cases. He could be demoted to an administrative law judge, but only for merit reasons.

It is intended that the administrative law judges and the Commissioners have a cadre of technical staff to assist them in performance of their duties. The administrative law judges are not to be subject to the control of other Commission personnel engaged in prosecutory or investigatory functions. They are to maintain impartiality in the performance of their duties.

Bureaus and functions are established for the Commission in a manner providing for certain flexibility while mandating some specific duties of particular public interest.

Provision is made for staff testimony. It is difficult for the parties to meet Commission arguments when the staff which formulates the policies is not required in any manner to publicly set forth its views and to have them tested.

Minimum rules of procedure are established as a basic modernization of the Commission's rules of practice and procedure. The Commission may establish additional non-conflicting rules. These rules, adopted from the Federal Administrative Procedure Act, are designed to expedite proceedings in accordance with due process.

The Commission is expected to avoid all actual conflicts of interest and the appearance thereof.

It is intended that at the conclusion of hearings in any proceeding the administrative law judge shall issue an initial recommendation, which shall then be subject to exceptions by the parties. The Commission may then hear oral argument on the exceptions and shall then issue a final decision accepting in whole or in part the recommended decision, giving its reasons therefor as a part of its decision.

To avoid further conflicts between personnel and conflicting requests of commissioners the Commission may establish a daily administrative chain of authority through the Chairman and the Executive Director.

It is intended that the prosecutory duties of the Commission become more adversary in nature. It is intended that the Commission perform more research and enter into more rule-making proceedings to develop regulations of general applicability for classes of utilities on significant future issues. It is further intended that the Commission develop prospective regulations and not just reactive regulations. It is to these goals that these reforms and the increased budget allowance are directed.

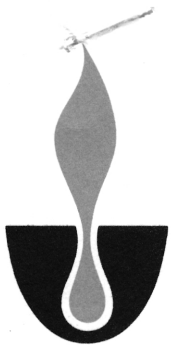
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RECOMMENDATIONS FROM COMMISSIONER MICHAEL JOHNSON

Amend Senate Bill 1217, Printer's No. 1647 as follows:

Amend Section 6, by modifying 6.1(e) to read

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"; except with regard to proposed opinions, regulations, orders and decisions, in which cases only that action which would produce a final disposition of such proposed matter need be taken in accordance with the requirements of that act.



THE
PEOPLES
NATURAL GAS
COMPANY

TWO GATEWAY CENTER
PITTSBURGH, PA. 15222 (412) 471-5100

S. E. McMURRAY, President

March 29, 1976

The Honorable C. L. Schmitt, Chairman
Consumer Protection Committee
House Post Office
Main Capitol
Harrisburg, PA 17120

Dear Mr. Schmitt:

I am asking you as chairman of the Consumer Protection Committee to be instrumental in restoring by appropriate amendment to Senate Bill 1217, Printer's Number 1752, realistic salary scales for full-time Public Utility Commissioners as originally proposed by Senator Franklin L. Kury: \$42,500 for the chairman and \$40,000 for each of the other commissioners. We cannot expect competent persons to serve full time on the Commission--prohibited from engaging in any outside work-- for the ill-conceived pay schedule endorsed by the Senate in final passage of SB 1217: \$32,500 for the chairman and \$30,000 for each of the other commissioners.

Prior to submitting to the Senate the 11 PUC reform bills last November, Senator Kury conducted a series of investigative public hearings so that members of the Consumer Affairs Committee would become somewhat knowledgeable about the administration, operations and regulatory matters of Commonwealth utilities. In regard to full-time commissioners, Senator Kury noted in his very detailed 73-page report: "...If the commissioners are to provide the leadership required, it will require their constant personal and physical presence and direction at the offices of the Commission. If the public utility commissioners are to be

March 29, 1976
The Honorable C. L. Schmitt, Chairman
Page Two

expected to devote their full talents and energies solely to their office, this committee believes they must be compensated and staffed at a level commensurate with their heavy and serious responsibility...We believe the responsibility of a Public Utility Commissioner is at least commensurate with that of a Common Pleas judge. We believe the commissioner should be compensated accordingly."

I emphatically endorse Senator Kury's statement and urge your amendment to revert to the compensation stated for full-time commissioners in Printer's Number 1454 of SB 1217.

We in the investor-owned utility business are optimistic that with the advent of full-time commissioners, decisions on pending rate cases will be more prompt. I would like to mention that sheer economics forced Peoples Gas to file for a general rate increase earlier this year--despite the fact the the Commission was still (and to this day) investigating a rate increase request filed on December 31, 1974. Such regulatory "lag" should be eliminated when full-time commissioners couple their efforts with qualified staff persons.

Again, Mr. Schmitt, I urge you to give this matter your utmost attention.

Sincerely,

S. E. McMurray

CONTENTS

S.B. 1217, Conference Report

PUC commissioners' salaries increased: as of 1/77, \$35,000 (\$37,500 for Chairman); as of 1/78, \$40,000/\$42,500.

Salaries
Majority

For voting purposes, a majority of those serving constitute quorum, and majority vote governs, not 3 in any event.

Nomination and confirmation of PUC commissioners repeats newest amendment to Pennsylvania Constitution to ensure it applies to PUC.

Full Time

Commissioners to be full time commencing July 1, 1977; no other incompatible employment permitted by commissioners or by employees.

Disclosure

Financial disclosure by commissioners and divestiture or blind trust for public utility holdings.

One year Proscription

One year employment proscription after termination of commission service applicable to commissioners, administrative law judges and bureau directors.

Hiring

Code of Ethics for commissioners and Administrative Law Judges

PUC to have authority to hire support staff, including consultants who may not be paid more than 4% of the PUC budget (so temporary help will not replace PUC staff). PUC employees to remain covered by Civil Service to the extent of employment security (or unless collective bargaining agreement applies).

"Sunshine Law" to apply to commission proceedings.

Commissioners to monitor cases before PUC to ensure expeditious handling.

Law Judge
Bureaus

Office of Administrative Law Judge created to replace inefficient hearing examiner system. Salary range: \$25-35,000.

Three specific Bureaus mandated: Law; Conservation, Economics and Energy Planning; and Consumer Services.

Law Bureau divided into prosecutory and advisory functions to avoid conflict of interest.

Planning
Conservation
Consumer

Bureau of Conservation, Economics and Energy Planning for long range planning and research not presently done (one duty: to review plant expansion proposals for effect on rates).

Annual conservation of energy report required.

Bureau of Consumer Services to create a central consumer complaint and service center which also is to advise PUC on needed formal commission action as a result of complaints. Also to advise on safety compliance.

Witnesses

PUC given authority to establish other bureaus to deal with rates and transportation matters.

Rules

Members of PUC staff may be called as witnesses by parties to any PUC proceeding.

Rules of civil procedure adapted from federal Administrative Procedure Act; PUC may adopt such other rules as it deems necessary; fully delineates functions of Administrative Law Judges (formerly hearing examiners).

Commission may authorize Chairman, through the secretary, to daily administer the PUC.

Office of Chief Counsel created within commission; appointed by PUC to serve at its pleasure. Assistant counsel may only be removed for cause. PUC to set Counsel's salary. Duties to represent PUC set.