

CHAPTER 151
FORMERLY
SENATE BILL NO. 45
AS AMENDED BY
SENATE AMENDMENT NO. 3

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO
THE PUBLIC SERVICE COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF
DELAWARE:

Section 1. Amend Chapter 1, Title 26 of the Delaware Code by deleting the phrase “Delaware Public Service Commission Regulatory Revolving Fund” wherever it appears within the Chapter and substituting in lieu thereof the phrase “Delaware Public Utility Regulatory Revolving Fund”.

Section 2. Amend §114(b)(1), Title 26 of the Delaware Code by deleting said subsection and inserting a new §114(b)(1) to read as follows:

“§114(b)(1) Whenever the Commission, in a proceeding upon its own initiative or upon complaint or upon written application to it, shall deem it necessary in order to carry out its statutory duties, to investigate the operations, services, practices, accounting records and/or procedures, rates, charges, rules and regulations, of any public utility, and/or to make valuations or revaluations of the property of any public utility, and/or to enter into and hold a hearing or hearings in connection therewith, such public utility shall be charged with and pay such portion of the expenses of the Commission, and the compensation and expenses of its agents, representatives, consultants and employees, including, but not limited to those temporarily employed or retained, as is reasonably attributable to such investigation, valuation and revaluation, hearing or hearings. In addition, if the Division of the Public Advocate elects to intervene or participate in a natural gas, electric, water or wastewater rate proceeding under Subchapter III of this Title including fuel adjustments pursuant to §303(b) of this Title and water utility distribution system improvement charges pursuant to §314 of this Title. The public utility involved shall also be charged with and pay such portion of the expenses of the Division of the Public Advocate, and the compensation and expenses of its agents, representatives, consultants and employees, including but not limited to those temporarily employed or retained, as is reasonably attributable to such proceeding. At the time the Commission or the Division of the Public Advocate determines that such charges will be required, the Commission or Division shall provide notice to the public utility, or its counsel of record at such time, of its intent to impose and collect any charges. No charges shall be made for the compensation of Commissioners or the Public Advocate. If the Commission or an appellate court determines by order that the Commission or the Public Advocate brought or defended all or a portion of a proceeding (a) for an improper purpose; (b) without any basis in existing law; (c) without a justifiable basis for seeking the extension, modification or reversal of existing law; or (d) without evidentiary support after reasonable opportunity for investigation and discovery, then to such extent the public utility shall not be charged with or required to pay such expenses. If the Commission or an appellate court determines by order that a utility brought or defended all or a portion of a proceeding (a) for an improper purpose; (b) without any basis in existing law; (c) without a justifiable basis for seeking the extension, modification or reversal of existing law; or (d) without evidentiary support after reasonable opportunity for investigation and discovery, then

to such extent the utility shall not be permitted to include the costs associated with that proceeding in its rates".

Section 3. Amend §114(b)(2), Title 26 of the Delaware Code by deleting said subsection and inserting a new §114(b)(2) to read as follows:

“§114(b)(2) From time to time as the investigation, valuation, revaluation, hearing or hearings progress, or upon completion thereof, the Commission and the Division of the Public Advocate shall ascertain each agency’s costs incurred in connection therewith, including, but not limited to the expenses of the Commission and the Division of the Public Advocate and the compensation and expenses of each agency’s respective agents, representatives, consultants and employees, including those temporarily employed or retained, and shall determine the amount thereof to be paid by the public utility and shall render separate bills therefore to the public utility. The Commission and the Division of the Public Advocate shall furnish the public utility such itemization of each said bill as may be requested by said public utility. The public utility shall have the right to audit said bill within a reasonable period after its rendition by the Commission or the Division of Public Advocate and shall have the opportunity to be heard before the Commission as to any or all of the items included in the bill. The amount of such bill as finally determined by the Commission following such hearing and any appeal therefrom shall be paid into the Delaware Public Utility Regulatory Revolving Fund within thirty (30) days from the date of its determination. If any amount so assessed against a public utility is not paid within thirty (30) days after the date of rendition of the bill with respect thereto, the utility shall pay a penalty of one percent (1%) of the amount due for each month or fraction thereof that such amount is unpaid. The charges imposed for the costs of the Division of the Public Advocate shall be paid to the Commission and shall be deposited to the credit of the Delaware Public Utility Regulatory Revolving Fund.”.

Section 4. Amend §114(b)(3), Title 26 of the Delaware Code by deleting the phrase “and the compensation and expenses of its” and substituting in lieu thereof the phrase “and the Division of the Public Advocate and the compensation and expenses of each agency’s respective”.

Section 5. Amend §114(b)(5), Title 26 of the Delaware Code by deleting the phrase “the Commission” and substituting in lieu thereof the phrase “both the Commission and the Division of the Public Advocate”.

Section 6. Amend §114(c), Title 26 of the Delaware Code by adding the phrase “and the Division of the Public Advocate” between the word “Commission” and the word “shall”.

Section 7. Further Amend §114(c), Title 26 of the Delaware Code by deleting the phrase “its employees” and substituting in lieu thereof the phrase “the Division of the Public Advocate”.

Section 8. Amend §115(a), Title 26 of the Delaware Code by adding the phrase “and the Division of the Public Advocate” between the word “Commission” and the word “pursuant”.

Section 9. Amend §115(e), Title 26 of the Delaware Code by adding the sentence “A copy of such return shall also be delivered to the Division of the Public Advocate.” at the end of the first sentence.

Section 10. Amend §116(a), Title 26 of the Delaware Code by deleting the phrase “operation of the Commission” and substituting in lieu thereof the following phrase “operations of the Commission and the Division of the Public Advocate”.

Section 11. Further Amend §116(a), Title 26 of the Delaware Code by deleting the phrase “of it” found between the words “required” and the word “by”.

Section 12. Amend §116(b)(1), Title 26 of the Delaware Code by deleting the second sentence of said subsection and substituting in lieu thereof the following:

“However, if the General Assembly is not in session, any funds requested by the Department for the performance of the various functions and duties of the Commission and the Division of the Public Advocate, and which exceed the Commission’s annual operating budget, shall be officially submitted for approval or disapproval to the Controller General of the State and the Director of the Office of Management and Budget of the State.”.

Section 13. Amend § 116(c), Title 26 of the Delaware Code by deleting said subsection and inserting a new §116(c) to read as follows:

“§116(c) All payments to the Commission under §§114 and 115 of this Title shall be deposited in the State Treasury to the credit of the Delaware Public Utility Regulatory Revolving Fund to be used in the operations of the Commission and the Division of the Public Advocate, as authorized by the General Assembly. However, if the General Assembly is not in session, any funds requested by the Department for the performance of the various functions and duties, of the Commission and the Division of the Public Advocate, and which exceed the Commission’s or Division’s annual operating budget, shall be officially submitted for approval or disapproval to the Controller General of the State and the Director of the Office of Management and Budget of the State.”.

Section 14. Amend §116(d), Title 26 of the Delaware Code by deleting said subsection and inserting a new §116(d) to read as follows:

“§116(d) Money reposing in the Delaware Public Utility Regulatory Revolving Fund shall be used by the Commission and the Division of the Public Advocate in the performance of each agency’s various functions and duties as provided by law; subject always to annual appropriations by the General Assembly for salaries and other routine operating expenses of the Commission and the Division of the Public Advocate. If the General Assembly is not in session, any funds requested by the Department for the performance of the various functions and duties of the Commission and the Division of the Public Advocate, and which exceed the Commission’s or Division’s annual operating budget, shall be officially submitted for approval or disapproval to the Controller General of the State and the Director of the Office of Management and Budget of the State.”.

Section 15. Amend §116(e), Title 26 of the Delaware Code by deleting said subsection and inserting a new §116(e) to read as follows:

“Annual appropriations from the General Fund of the State for the operation of the Commission and the Division of the Public Advocate shall be credited to the Delaware Public Utility Regulatory Revolving Fund in appropriated monthly amounts and all expenditures authorized by the General Assembly for the operation of the Commission and the Division of the Public Advocate shall be made from said revolving fund. If the General Assembly is not in session, any funds requested by the Department for the performance of the various functions and duties required of the Commission and the Division of the Public Advocate by law and which exceed their respective operating budgets shall be officially submitted for approval or disapproval to the Controller General of the State and the Direction of the Office of Management and Budget of the State.”

Section 16. Amend §116(f), Title 26 of the Delaware Code by deleting the number “500,000” and substituting in lieu thereof the number “750,000”.

Approved July 10, 2009