

LAWS OF DELAWARE
VOLUME 85
CHAPTER 78
153rd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 59

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITIES AND UTILITY RATES.

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

Section 1. Amend Subchapter III, Chapter 1, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 302. Determination of rate base.

The Commission may, from time to time, ascertain and determine the rate base of any public utility whenever, in the judgment of the Commission, it is necessary so to do for the purpose of carrying out this chapter, and in making such determination the Commission may have access to and use any books, documents, or records in the possession of any department, board, commission or agency of this State or any political subdivision thereof. In ascertaining and determining the rate base, the Commission may determine every fact, matter, or thing which, in its judgment, does or may have any bearing thereon.

If a water utility is not, pursuant to § 122(3)c. of Title 16, under review concerning its water system's ability to provide adequate service to its customers under its present certificates of public convenience and necessity or subject to a review by the Commission of the appropriate rates to be charged by the water utility in light of the quality of service being provided to its customers, the Commission will include in the utility's rate base, treat as used and useful utility plant, and, accordingly, allow to be fully recovered in the utility's rates without imputation of revenues, all just and reasonable, and prudent costs which are incurred by the water utility, ~~in the exercise of its good faith business judgment,~~ in constructing facilities (including without limitation supply, treatment and transmission facilities) to serve the needs of existing customers or of persons who are reasonably anticipated by the water utility to be its customers within 3 years from the date used by the Commission to recognize rate base in the rate proceeding. The number of customers reasonably anticipated to be added within that 3-year period will consist of customer projections which are relied on by the utility and are generated by professional engineers or planners, governmental or regulatory agencies, officials or authorities, or the water utility itself, and which are not arbitrary and capricious. If the water utility does not, by the end of the 3-year period after the date used by the Commission to recognize rate base in the rate proceeding, reach at least 75% of the total number of customers originally anticipated to be served by the facilities, the Commission may only then require the water utility to impute revenues and then only to the extent of the number of customers it originally anticipated to be served by the facilities but who have not, as of the end of the 3-year period, been added.

§ 307. Burden of proof; speedy determination.

(a) In any proceeding upon the motion of the Commission, or upon complaint, or upon application of a public utility, involving any proposed or existing rate of any public utility, or any proposed change in rates, the burden of proof to show that the rate involved is just and reasonable, and prudent, which requires a showing that the rate involved allows for recovery of only those costs or expenses prudently incurred, is upon the public utility. In making the determination of whether a cost or expense was prudently incurred, the Commission must consider the objective reasonableness of the cost or expense incurred, based on what the public utility knew or reasonably should have known at the time the cost or expense was incurred. The Commission may determine that the cost or expense incurred is only partially prudent, and may adjust the elements of rate base, operating expenses, or fuel costs accordingly to reflect that determination.

(b) The public utility shall have the burden of proof in justifying every accounting entry of record questioned by the Commission which may suspend any charge or credit pending submission of satisfactory and sufficient proof in support thereof by the public utility.

(c) The Commission shall give preference to the hearing and decision of any rate proceeding over all other proceedings and decide the same as speedily as possible.

§ 309. Rate change by Commission initiative.

(a) The Commission may, after hearing, upon notice, by order in writing, fix just and reasonable individual rates, joint rates, charges or schedules thereof, as well as commutation, mileage and other special rates, which shall be imposed, observed and followed thereafter by any public utility whenever the Commission determines any existing individual rate, joint rate, toll,

charge or schedule thereof, or commutation, mileage, or other special rate to be unjust, unreasonable, imprudent, insufficient, or unjustly discriminatory or preferential.

(b) No order of the Commission requiring a change in rates shall become operative until at least 30 days after service thereof except upon the written consent of the public utility affected.

§ 311. Determination of rate by Commission. If, after hearing, the Commission finds any existing or proposed rate unjust, unreasonable, imprudent, or unjustly discriminatory, or in any wise in violation of law, the Commission shall determine the just and reasonable rate to be charged or applied by the utility for the service in question, and shall fix the same by order to be served upon the utility; and such rate shall thereafter be observed until changed, as provided in this chapter. In determining the just and reasonable rate to be charged, the Commission shall consider the revenue needs of the utility, its past and projected rates of return on its rate base, or, when appropriate, its operating ratio.

Section 2. Amend § 201(e), Subchapter II, Chapter 1, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 201. General jurisdiction and powers.

(e) (1) In the exercise of supervision and regulation over public utilities, the Commission may, upon application or on its own motion, after notice and hearing, alter, in whole or in part, its supervision and regulation over some or all public utility products or services and over some or all public utilities to the extent necessary to promote and sustain adequate service at just and reasonable, and prudent rates, where the Commission determines that alternatives to supervision and regulation including the competitive provision of such products and services are in the public interest. Alternatives include, but are not limited to, incentive regulation, earnings sharing, categorization of services for the purposes of pricing, price caps, price indexing, ranges of authorized returns and different returns for different services. The Commission is specifically authorized to depart from rate base, rate of return regulation when it is in the public interest and when such departure is found to promote just and reasonable, and prudent rates.

Section 3. This Act takes effect on January 1, 2026 following its enactment into law.

Approved July 16, 2025