

~~authority to direct correction thereof and the may direct the board to correct the rules.~~ The rules of the board shall are not be in compliance until the corrections are made.

Sec. 25. 1981 Iowa Acts, chapter 9, section 7, subsection 6, is amended to read as follows:

6. The following are range four positions: superintendent of banking, director of the Iowa beer and liquor control department, chairperson and members of the Iowa state commerce commission, director of the state conservation commission, director of the Iowa development commission, ~~executive director of the educational radio and television facility board Iowa~~ department of public broadcasting, director of the Iowa department of job service, director of the department of general services, commissioner of health, director of the office for planning and programming, and commissioner of public safety.

Sec. 26. Members of the state educational radio and television facility board on the effective date of this Act shall continue to serve the unexpired portion of their term as members of the state educational radio and television facility board as members of the Iowa public broadcasting board. The state comptroller shall transfer funds and accounts of the state educational radio and television facility board to the Iowa department of public broadcasting on the effective date of this Act. Property and records of the state educational radio and television facility board become the property and records of the Iowa department of public broadcasting on the effective date of this Act and shall be transferred accordingly.

Sec. 27. Sections 18.134, 18.138 through 18.140 and 18.144 through 18.155, Code 1983, are repealed.

Approved May 16, 1983

CHAPTER 127
PUBLIC UTILITY REGULATION
H.F. 312

AN ACT relating to public utilities and providing civil penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 13.7, Code 1983, is amended to read as follows:

13.7 SPECIAL COUNSEL. ~~No compensation~~ Compensation shall not be allowed to any person for services as an attorney or counselor to ~~any an~~ an executive department of the state government, or the head thereof, or to ~~any a~~ a state board or commission, ~~but.~~ However, the executive council may employ legal assistance, at a reasonable compensation, in ~~any a~~ a pending action or proceeding to protect the interests of the state, but only upon a sufficient showing, in writing, made by the attorney general, that the department of justice cannot for reasons stated by the attorney general perform ~~said the~~ the service, which reasons and action of the council shall be entered upon its records. When the attorney general determines that the department of justice cannot perform legal service in an action or proceeding, the executive council shall request the department involved in the action or proceeding to recommend legal counsel to represent the department. If the attorney general concurs with the department that the

person recommended is qualified and suitable to represent the department, the person recommended shall be employed. If the attorney general does not concur in the recommendation, the department shall submit a new recommendation. This section ~~shall~~ does not affect the ~~office of the commerce general counsel for the Iowa state commerce commission, the transportation regulation authority counsel, or the legal counsel of the Iowa department of job service or the office of consumer advocate.~~

Sec. 2. Section 17A.2, subsection 1, Code 1983, is amended to read as follows:

1. "Agency" means each board, commission, department, officer or other administrative office or unit of the state. "Agency" does not mean the general assembly, the courts, ~~the office of consumer advocate, the governor or a political subdivision of the state or its offices and units.~~ Unless provided otherwise by statute, no less than two-thirds of the members eligible to vote of a multimember agency shall constitute a quorum authorized to act in the name of the agency.

Sec. 3. Section 18.98, subsection 7, Code 1983, is amended to read as follows:

7. To the office of governor, secretary of state, auditor of state, treasurer of state, commissioner of insurance, general counsel for the Iowa state commerce commission, and ~~commerce counsel~~ consumer advocate, each 1 copy

Sec. 4. Section 28F.1, unnumbered paragraph 1, Code 1983, is amended to read as follows:

This chapter is ~~intended to provide~~ provides a means for the joint financing by public agencies of works or facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, and industrial waste, also electric power facilities constructed within the state of Iowa ~~except that hydroelectric power facilities may also be located in the waters and on the dams of or on land adjacent to either side of the Mississippi or Missouri river bordering the state of Iowa,~~ water supply systems, swimming pools or golf courses. ~~The provisions of this~~ This chapter apply applies to the acquisition, construction, reconstruction, ownership, operation, repair, extension, or improvement of such works or facilities, by a separate administrative or legal entity created pursuant to chapter 28E. When the legal entity created under this chapter is comprised solely of cities, counties, and sanitary districts established under chapter 358, or any combination thereof or any combination of the foregoing with other public agencies, the entity shall be both a corporation and a political subdivision with the name under which it was organized. The legal entity may sue and be sued, contract, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the ~~same~~ seal at pleasure, and execute all the powers conferred in this chapter.

Sec. 5. Section 364.2, subsection 4, Code 1983, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. If a city franchise fee is assessed to customers of a franchise, the fee shall not be assessed to the city as a customer.

Sec. 6. Section 474.1, unnumbered paragraph 3, Code 1983, is amended to read as follows:

As used in this section and ~~sections 474.2 to 474.9~~ chapter and chapter 475A, the words "commission" and "commerce commission" mean the Iowa state commerce commission.

Sec. 7. NEW SECTION. 474.10 GENERAL COUNSEL. The commission shall employ competent attorneys as the general counsel and assistants to the general counsel as it finds necessary for the full and efficient discharge of its duties. The general counsel shall be the attorney for, and legal advisor of, the commission and shall be exempt from chapter 19A. Assistants to the general counsel shall be subject to chapter 19A. The general counsel or assistant to the general counsel shall provide the necessary legal advice to the commission in all matters and represent the commission in all actions instituted in a state or federal court challenging the validity of any rule, regulation, or order of the commission. The general

counsel shall also represent the grain warehouse division in all administrative proceedings before the commission brought under chapters 542, 542A, and 543. The existence of a fact which disqualifies a person from election or acting as state commerce commissioner disqualifies the person from employment as general counsel or assistant general counsel. The general counsel shall devote the counsel's entire time of employment to the duties of the office; and during employment the counsel shall not be a member of a political committee, contribute to a political campaign fund other than through the income tax checkoff for contributions to the Iowa election campaign fund and the presidential election campaign fund, participate in a political campaign, or be a candidate for a political office.

Sec. 8. NEW SECTION. 475A.1 CONSUMER ADVOCATE.

1. **APPOINTMENT.** After the general assembly convenes in 1983, and every four years thereafter, the governor shall appoint a competent attorney to the office of consumer advocate, subject to confirmation by the senate, in accordance with section 2.32. The advocate's term of office is for four years. The term begins and ends as provided in section 69.19.

2. **VACANCY.** If a vacancy occurs in the office of consumer advocate, the vacancy shall be filled for the unexpired term in the same manner as an original appointment under the procedures of section 2.32.

3. **DISQUALIFICATION.** The existence of a fact which disqualifies a person from election or acting as state commerce commissioner under section 474.2 disqualifies the person from appointment or acting as consumer advocate.

4. **POLITICAL ACTIVITY PROHIBITED.** The consumer advocate shall devote the advocate's entire time to the duties of the office; and during the advocate's term of office the advocate shall not be a member of a political committee or contribute to a political campaign fund other than through the income tax checkoff for contributions to the Iowa election campaign fund and the presidential election campaign fund or take part in political campaigns or be a candidate for a political office.

5. **REMOVAL.** The governor may remove the consumer advocate for malfeasance or nonfeasance in office, or for any cause which renders the advocate ineligible for appointment, or incapable or unfit to discharge the duties of the advocate's office; and the advocate's removal, when so made, is final.

Sec. 9. NEW SECTION. 475A.2 DUTIES. The consumer advocate shall:

1. Investigate the legality of all rates, charges, rules, regulations, and practices of all persons under the jurisdiction of the Iowa state commerce commission, and institute civil proceedings before the commission or any court to correct any illegality on the part of any such person. In any such investigation, the person acting for the office of the consumer advocate shall have the power to ask the commission to issue subpoenas, compel the attendance and testimony of witnesses, and the production of papers, books, and documents, at the discretion of the commission.

2. Act as attorney for and represent all consumers generally and the public generally in all proceedings before the Iowa state commerce commission.

3. Institute as a party judicial review of any decision of the Iowa state commerce commission, if the consumer advocate deems judicial review to be in the public interest.

4. Appear for all consumers generally and the public generally in all actions instituted in any state or federal court which involve the validity of a rule, regulation, or order of the Iowa state commerce commission.

5. Act as attorney for and represent all consumers generally and the public generally in proceedings before federal and state agencies and related judicial review proceedings and appeals, at the discretion of the consumer advocate.

6. Appear and participate as a party in the name of the office of consumer advocate in the performance of the duties of the office.

Sec. 10. NEW SECTION. 475A.3 OFFICE—EMPLOYEES—EXPENSES.

1. **OFFICE.** The office of consumer advocate is at the seat of the government at the same location as the Iowa state commerce commission.

2. **EMPLOYEES.** The consumer advocate may employ attorneys, legal assistants, secretaries, clerks, and other employees the consumer advocate finds necessary for the full and efficient discharge of the duties and responsibilities of the office. The consumer advocate may employ consultants as expert witnesses or technical advisors pursuant to contract in any proceeding in which the consumer advocate is a party.

3. **SALARIES, EXPENSES, AND APPROPRIATION.** The salary of the consumer advocate shall be fixed by the general assembly. The salaries of employees of the consumer advocate and the reimbursement of expenses for the employees and the consumer advocate are as provided by law. The appropriation for the office of consumer advocate shall be a separate line item contained in the appropriation for the Iowa state commerce commission.

In establishing salaries and benefits for employees the consumer advocate shall provide for an affirmative action plan which shall be based upon guidelines provided by the Iowa state civil rights commission. In addition, when establishing salaries and benefits the consumer advocate shall not discriminate in the employment or pay between employees on the basis of gender by paying wages to employees at a rate less than the rate at which wages are paid to employees of the opposite gender for work of comparable worth. As used in this section "comparable worth" means the value of work as measured by the composite of the skill, effort, responsibility, and working conditions normally required in the performance of work.

The consumer advocate shall make a report to the legislative council which shall contain a copy of the affirmative action plan adopted and details regarding the manner in which compliance is made for establishing salaries and benefits based on comparable worth. The report shall be made to the legislative council as soon as possible after the effective date of this Act but not later than August 1, 1983, unless the legislative council shall extend the date for making the report.

Sec. 11. NEW SECTION. 475A.4 COMMERCE COMMISSION RECORDS AND EMPLOYEES.

1. The consumer advocate has free access to all the files, records, and documents in the office of the Iowa state commerce commission except:

- a. Personal information in confidential personnel records of the commerce commission.
- b. Records which represent and constitute the work product of the general counsel of the commerce commission, and records of confidential communications between commerce commissioners and their general counsel, where the records relate to a proceeding before the commerce commission in which the consumer advocate is a party or a proceeding in any state or federal court in which both the commerce commission and the consumer advocate are parties.
- c. Customer information of a confidential nature which could jeopardize the customer's competitive status and is provided by the utility to the commission. Such information shall be provided to the consumer advocate by the commission, if the commission determines it to be in the public interest.

d. Financial statements which are confidential under section 542.16 or 543.24.

2. The consumer advocate may utilize employees of the commerce commission as expert witnesses or technical advisors in any proceeding in which the consumer advocate is a party. The consumer advocate may utilize employees of the commerce commission to assist in investigations and studies related to rates and services of utilities, as deemed appropriate by the commission. However, any commerce commission employee utilized by the consumer advocate shall not participate on behalf of the commission in its decision.

Sec. 12. NEW SECTION. 475A.5 SERVICE. The consumer advocate is entitled to service of all documents required by statute or rule to be served on parties in proceedings before the Iowa state commerce commission and all notices, petitions, applications, complaints, answers, motions, and other pleadings filed pursuant to statute or rule with the commerce commission.

Sec. 13. NEW SECTION. 475A.6 CERTIFICATION OF EXPENSES TO COMMERCE COMMISSION. The consumer advocate shall determine the advocate's expenses, including a reasonable allocation of general office expenses, directly attributable to participation in proceedings involving specific utilities, and shall certify the expenses to the Iowa state commerce commission not less than quarterly. The expenses shall then be includable in the expenses of the commerce commission subject to direct assessment under section 476.10.

The consumer advocate shall annually, within ninety days after the close of each fiscal year, determine the advocate's expenses, including a reasonable allocation of general office expenses, attributable to participation in proceedings involving public utilities generally, and shall certify the expenses to the commerce commission. The expenses shall then be includable in the expenses of the commission subject to remainder assessment under section 476.10.

The consumer advocate is entitled to notice and opportunity to be heard in any commerce commission proceeding on objection to an assessment for expenses certified by the consumer advocate. Expenses assessed under this section shall not exceed the amount appropriated for the office of consumer advocate.

Sec. 14. NEW SECTION. 475A.7 CONSUMER ADVISORY PANEL. The governor shall appoint nine members to a consumer advisory panel to meet at the request of the consumer advocate for consultation regarding public utility regulation. A member shall be appointed from each congressional district with the appointee residing within the congressional district at the time of appointment. The remaining appointees shall be members at large. No more than five members shall belong to the same political party as provided in section 69.16. The members shall serve four-year terms at the pleasure of the governor and their appointments are not subject to confirmation. The governor shall fill a vacancy in the same manner as the original appointment for the unexpired portion of the member's term. Members of the consumer advisory panel shall serve without compensation, but shall be reimbursed for actual expenses from funds appropriated to the office of consumer advocate.

Sec. 15. Section 476.1, Code 1983, is amended by adding the following new-unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The jurisdiction of the commission as to the regulation of communications services is not applicable to a service or facility provided by a telephone utility that is or becomes subject to competition, as determined by the commission. In determining whether a service or facility is or becomes subject to competition, the commission shall consider whether a comparable service or facility is available from a supplier other than the telephone utility. When a service or facility provided by a telephone utility becomes subject to competition, the commission shall, within a reasonable period of time, deregulate that service or facility. Upon deregulation, all investment, revenues, and expenses associated with the service or facility shall be removed from the telephone utility's regulated operations and shall not be considered by the commission in setting rates for the telephone utility unless they continue to affect the company's regulated operations. In the event that the commission considers investment, revenues, and expenses associated with unregulated services or facilities in setting rates for the telephone utility, the commission shall not use any profits or costs from such unregulated services or facilities to determine the rates for regulated services or facilities. Nothing in this section shall preclude the commission from

considering the investment, revenues and expenses associated with the sale of classified directory advertising by a telephone utility in determining rates for the telephone utility.

Sec. 16. Section 476.1, Code 1983, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. As used in this chapter, "commission" or "commerce commission" means the Iowa state commerce commission.

Sec. 17. Section 476.3, subsection 1, Code 1983, is amended to read as follows:

1. ~~Every~~ A public utility shall furnish reasonably adequate service at rates and charges in accordance with tariffs filed with the commission. When there is filed with the commission by any person or body politic, or filed by the commission upon its own motion, a written complaint requesting the commission to determine the reasonableness of the rates, charges, schedules, service, regulations, or anything done or omitted to be done by ~~any~~ a public utility subject to this chapter in contravention of ~~the provisions of~~ this chapter, the written complaint shall be forwarded by the commission to the public utility, which shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time to be specified by the commission. Copies of the written complaint forwarded by the commission to the public utility and copies of all correspondence from the public utility in response to the complaint shall be provided by the commission in an expeditious manner to the consumer advocate. If the public utility does not satisfy the commission with respect to the complaint within the time specified determines the public utility's response is inadequate and there appears to be any reasonable ground for investigating the complaint, the commission shall promptly initiate a formal proceeding. If the consumer advocate determines the public utility's response to the complaint is inadequate, the consumer advocate may file a petition with the commission which shall promptly initiate a formal proceeding if the commission determines that there is any reasonable ground for investigating the complaint. The formal proceeding may be initiated at any time by the commission on its own motion. If a proceeding is initiated upon ~~application or petition~~ filed by the consumer advocate or upon the commission's own motion, the commission shall set the case for hearing and give notice as it deems appropriate. When the commission, after a hearing held after reasonable notice, finds ~~any~~ a public utility's rates, charges, schedules, service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law, the commission shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.

Sec. 18. Section 476.3, subsection 2, Code 1983, is amended to read as follows:

2. If, as a result of ~~either~~ a review procedure conducted under section 476.31, ~~or~~ a review conducted under section 476.32, a special audit, an investigation by commission staff, or an investigation by the consumer advocate, a complaint is filed by commission staff, or a petition is filed with the commission by the consumer advocate, alleging that a utility's rates are excessive, the disputed amount shall be specified in the complaint or petition. The public utility shall, within the time prescribed by the commission, file a bond or undertaking approved by the commission conditioned upon the refund in a manner prescribed by the commission of amounts collected after the date of filing of the complaint or petition in excess of rates or charges finally determined by the commission to be lawful. If upon hearing the commission finds that the utility's rates are unlawful, the commission shall order a refund, with interest, of amounts collected after the date of filing of the complaint or petition that are determined to be in excess of the amounts which would have been collected under the rates finally approved, provided that. However, the commission shall not order a refund that is greater than the amount specified in the complaint or petition, plus interest, and provided that if the commission fails to render a decision within ~~one hundred eighty days~~ ten months following the date of filing of the complaint or petition, the commission shall not order a refund of any excess

amounts that are collected after the expiration of that ~~one hundred eighty-day~~ ten-month period and prior to the date the decision is rendered.

Sec. 19. Section 476.6, subsections 1 and 5, Code 1983, are amended to read as follows:

1. **FILING WITH COMMISSION.** A public utility subject to rate regulation shall not make effective ~~any a~~ a new or changed rate, charge, schedule or regulation ~~except by filing it with the commission at least thirty days prior to its effective date until the rate, charge, schedule, or regulation has been approved by the commission, except as provided in subsections 11 and 13. The commission, for good cause shown, may allow changes in rates, charges, schedules or regulations to become effective on less than thirty days' notice.~~

PARAGRAPH DIVIDED. Any A subscriber of a telephone exchange or service, who is declared to be legally blind under section 422.12, subsection 1, paragraph "e", is exempt from any charges for telephone directory assistance that may be approved by the commerce commission.

5. **WRITTEN NOTICE OF INCREASE.** All public utilities, ~~including~~ except those exempted from rate regulation by the provisions of section 476.1, shall give written notice of ~~any a~~ a proposed increase of any rate or charge to all affected customers served by the public utility ~~at least thirty days prior to the effective date thereof no more than sixty-two days prior to and prior to the time the application for the increase is filed with the commission. Public utilities exempted from rate regulation by section 476.1 shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase.~~ If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file a written objection to ~~such~~ the rate increase and that ~~he~~ the affected customers may request the commission to hold a public hearing to determine if ~~such~~ the rate increase should be allowed. The commission shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

Sec. 20. Section 476.6, subsections 6, 7, 8, 9, and 10, Code 1983, are amended by striking the subsections and inserting in lieu thereof the following:

6. **FACTS AND ARGUMENTS SUBMITTED.** At the time a public utility subject to rate regulation files with the commission an application for any new or changed rates, charges, schedules, or regulations, the public utility also shall submit factual evidence and written argument offered in support of the filing. If the filing is an application for a general rate increase, the utility shall also file affidavits containing testimonial evidence to be offered in support of the filing, although this requirement does not apply if the public utility is a rural electric cooperative.

7. **HEARING SET.** After the filing of an application for new or changed rates, charges, schedules, or regulations by a public utility subject to rate regulation, the commission, prior to the expiration of thirty days after the filing date, shall docket the case as a formal proceeding and set the case for hearing unless the new or changed rates, charges, schedules, or regulations are approved by the commission. In the case of a rural electric cooperative, the commission may docket the case as a formal proceeding and set the case for hearing prior to the proposed effective date of the tariff. The commission shall give notice of formal proceedings as it deems appropriate. The docketing of a case as a formal proceeding suspends the effective date of the new or changed rates, charges, schedules, or regulations until the rates, charges, schedules, or regulations are approved by the commission, except as provided in subsection 13.

8. **UTILITY HEARING EXPENSES REPORTED.** When a case has been docketed as a formal proceeding under subsection 7, the public utility, within a reasonable time thereafter, shall file with the commission a report outlining the utility's expected expenses for litigating the case through the time period allowed by the commission in rendering a decision. At the

conclusion of the utility's presentation of comments, testimony, exhibits, or briefs the utility shall submit to the commission a listing of the utility's actual litigation expenses in the proceeding. As part of the findings of the commission under subsection 9, the commission shall allow recovery of costs of the litigation expenses over a reasonable period of time to the extent the commission deems the expenses reasonable and just.

9. **FINDING BY COMMISSION.** If, after hearing and decision on all issues presented for determination in the rate proceeding, the commission finds the proposed rates, charges, schedules, or regulations of the utility to be unlawful, the commission shall by order authorize and direct the utility to file new or changed rates, charges, schedules, or regulations which, when approved by the commission and placed in effect, will satisfy the requirements of this chapter. The rates, charges, schedules, or regulations so approved are lawful and effective upon their approval.

10. **LIMITATION ON FILINGS.** A public utility shall not make a subsequent filing of an application for a new or changed rate, charge, schedule, or regulation which relates to services for which a rate filing is pending within twelve months following the date the prior application was filed or until the commission has issued a final order on the prior application, whichever date is earlier, unless the public utility applies to the commission for authority and receives authority to make a subsequent filing at an earlier date.

Sec. 21. Section 476.6, Code 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 11. AUTOMATIC ADJUSTMENTS PERMITTED. This chapter does not prohibit a public utility from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing the automatic adjustment of rates and charges is first filed with the commission.

If an automatic adjustment is used, the adjustment must be reduced to zero at least once in every twelve-month period, and all appropriate charges collected by the automatic adjustment shall be incorporated in the utility's other rates at that time.

Sec. 22. Section 476.6, Code 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 12. RATE LEVELS FOR TELEPHONE UTILITIES. The commission may approve a schedule of rate levels for any regulated service provided by a utility providing communication services.

Sec. 23. Section 476.6, Code 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 13. TEMPORARY AUTHORITY. Upon the request of a public utility, the commission shall, when required by this subsection, grant the public utility temporary authority to place in effect any or all of the suspended rates, charges, schedules or regulations by filing with the commission a bond or other undertaking approved by the commission conditioned upon the refund in a manner to be prescribed by the commission of any amounts collected in excess of the amounts which would have been collected under rates, charges, schedules or regulations finally approved by the commission. In determining that portion of the new or changed rates, charges, schedules or regulations to be placed in effect prior to a final decision, the commission shall apply previously established regulatory principles and shall, at a minimum, permit rates and charges which will allow the utility the opportunity to earn a return on common stock equity equal to that which the commission held reasonable and just in the most recent rate case involving the same utility or the same type of utility service, provided that if the most recent final decision of the commission in an applicable rate case was rendered more than twelve months prior to the date of filing of the request for temporary rates, the commission shall in addition consider financial market data that is filed or that is otherwise available to the commission and shall adjust the rate of return on common stock equity that was approved in that decision upward or downward as necessary to reflect current conditions. The commission shall render a decision on a request for temporary authority

within ninety days after the date of filing of the request. The decision shall be effective immediately. If the commission has not rendered a final decision with respect to suspended rates, charges, schedules or regulations upon the expiration of ten months after the filing date, plus the length of any delay that necessarily results either from the failure of the public utility to exercise due diligence in connection with the proceedings or from intervening judicial proceedings, plus the length of any extension permitted by section 476.33, subsection 3, then those portions that were approved by the commission on a temporary basis shall be deemed finally approved by the commission and the utility may place them into effect on a permanent basis, and the utility also may place into effect subject to refund and until the final decision of the commission any portion of the suspended rates, charges, schedules or regulations not previously approved on a temporary basis by filing with the commission a bond or other undertaking approved by the commission.

If the commission finds that an extension of the ten-month period is necessary to permit the accumulation of necessary data with respect to the operation of a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity and that is proposed to be included in the rate base for the first time, the commission may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules or regulations shall, for purposes of computing the ninety-day and ten-month limitations stated above, be the date as determined by the commission that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

The commission shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is two percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the commission, compounded annually. The commission shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

Sec. 24. Section 476.6, Code 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 14. REFUNDS PASSED ON TO CUSTOMERS. If pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a refund or credit for past gas purchases, the savings shall be passed on to the customers in a manner approved by the commission. Similarly, if pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a rate for future gas purchases which is lower than the price included in the public utility's approved rate application, the savings shall be passed on to the customers in a manner approved by the commission.

Sec. 25. Section 476.6, Code 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 15. NATURAL GAS SUPPLY AND COST REVIEW. The commerce commission shall periodically, but not less than annually, conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

Under procedures established by the commerce commission, each rate-regulated public utility furnishing gas shall periodically file a complete natural gas procurement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the commission. The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified twelve-month period. The description of the major contracts and arrangements shall include the price of gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility, and such other information as the commission may require.

Contemporaneously with the natural gas procurement plan, the public utility shall file with the commission a five-year forecast of the gas requirement of its customers, its anticipated sources of supply, and projections of gas costs. The forecast shall include a description of all relevant major contracts and gas supply arrangements entered into or contemplated between the gas utility and its suppliers, a description of all major gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the utility's principal pipeline suppliers and their major sources of gas, and such other information as the commission may require.

During the natural gas supply and cost review, the commission shall evaluate the reasonableness and prudence of the gas procurement plan. In evaluating the gas procurement plan, the commission shall consider the volume, cost, and reliability of the major alternative gas supplies available to the utility; the cost of alternative fuels available to the utility's customers; the availability of gas in storage; the appropriate legal and regulatory actions which the utility could take to minimize the cost of purchased gas; the gas procurement practices of the utility; and other relevant factors. If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long-term supply of natural gas, the commission shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

The commission shall also evaluate the five-year forecast filed by the public utility. The commission may indicate any cost items in the five-year forecast that on the basis of present evidence in the record the commission would be unlikely to permit the utility to recover from its customers in rates, charges or purchased gas clauses established in the future. Nothing in this section prohibits the commission from disallowing the recovery of other related or unrelated costs on the basis of evidence received in a later contested case proceeding.

The commission shall adopt rules pursuant to chapter 17A to implement the provisions of this section prior to January 1, 1984.

Sec. 26. Section 476.6, Code 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 16. ANNUAL ELECTRIC ENERGY SUPPLY AND COST REVIEW. The commerce commission shall conduct an annual proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the commerce commission, the utility shall file information as the commission deems appropriate. If a utility is not taking all reasonable actions to minimize its fuel costs, the commission shall not allow the utility to recover from its customers fuel costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

Contemporaneously with the annual review proceeding, the commission shall analyze the electric generating capacity needs for the next decade by the public utility's customers, under procedures established by the commission. The utility shall file information regarding future capacity needs of its customers as deemed appropriate by the commission.

Sec. 27. Section 476.8, unnumbered paragraph 1, Code 1983, is amended to read as follows:

Every public utility is required to furnish reasonably adequate service and facilities. "Reasonably adequate service and facilities" for public utilities furnishing gas or electricity includes programs for customers to encourage the use of energy conservation and renewable energy sources. The charge made by any public utility for any heat, light, gas, energy conservation and renewable energy programs, water or power produced, transmitted, delivered or furnished, or communications services, or for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful. In determining reasonable and just rates, the commission shall consider all factors relating to value and shall not be bound by rate base decisions or rulings made prior to the adoption of this chapter.

Sec. 28. Section 476.10, unnumbered paragraphs 1 and 2, Code 1983, are amended to read as follows:

~~Whenever~~ When the commission ~~shall deem~~ deems it necessary in order to carry out the duties imposed upon it by this chapter for the purpose of determining rate matters to investigate the books, accounts, practices, and activities of, or make appraisals of the property of any public utility, or to render any engineering or accounting services to any public utility, ~~such~~ or to review the operations or annual reports of the public utility under section 476.31 or 476.32, the public utility shall pay the expense reasonably attributable to such the investigation, appraisal, or service, or review. The commission shall ascertain ~~such~~ the expenses including certified expenses incurred by the office of consumer advocate directly chargeable to the public utility under section 475A.6, and shall render a bill therefor, by certified mail, to the public utility, either at the conclusion of the investigation, appraisal, or services, or review, or from time to time during its progress, which bill shall constitute is notice of said the assessment and shall demand payment thereof. The total amount of such expense in any one calendar year, for which any public utility shall become liable, shall not exceed two-tenths of one percent of its gross operating revenues derived from intrastate public utility operations in the last preceding calendar year.

The commission shall ascertain the total of its expenditures during each year which are reasonably attributable to the performance of its duties under this chapter ~~and~~. The commission shall add to this total the certified expenses of the consumer advocate as provided under section 475A.6 and shall deduct therefrom all amounts chargeable directly to any specific utility under any law. The remainder shall be assessed by the commission to the several public utilities in proportion to their respective gross operating revenues during the last calendar year derived from intrastate public utility operations and shall be assessed within ninety days of the close of the calendar year based upon an estimate of the commission expenditures for the first half of the commission's fiscal year and again within ninety days of the close of the fiscal year as necessary to conform the amount of the assessment to the requirements of this section. Public utilities exempt from rate regulation under this chapter shall not be assessed for remainder expenses incurred during review of rate-regulated public utilities under section 476.31 or 476.32, but such remainder expenses shall be assessed proportionally as provided in this section among only the rate-regulated public utilities. The total amount which may be assessed to the public utilities under authority of this paragraph shall not exceed ~~one-tenth~~ two-tenths of one percent of the total gross operating revenues of ~~such~~ the public utilities during such the calendar year derived from intrastate public utility operations. However, the

total amount which may be assessed in any one calendar year to a public utility under this section shall not exceed three-tenths of one percent of the utility's total gross operating revenues derived from intrastate public utility operation in the last preceding year. For public utilities exempted from rate regulation under this chapter, the assessments under this paragraph shall be computed at one-half the rate used in computing the assessment for other utilities.

Sec. 29. Section 476.13, Code 1983, is amended by striking the section and inserting in lieu thereof the following:

476.13 JUDICIAL REVIEW.

1. Notwithstanding the Iowa administrative procedure Act, the district court for Polk county or for the county in which a public utility maintains its principal place of business has exclusive venue for the judicial review under chapter 17A of actions of the commission pursuant to rate-regulatory powers over that public utility.

2. Upon the filing of a petition for judicial review in an action referred to in subsection 1, the clerk of the district court shall notify the chief justice of the supreme court for purposes of assignment of a district judge under section 602.23. The judicial review proceeding shall be heard by the district judge appointed by the supreme court under section 602.23, but in the county of venue under subsection 1.

3. Notwithstanding the Iowa administrative procedure Act, if a public utility seeks judicial review of an order approving rates for the public utility, the level of rates that may be collected, under bond and subject to refund, while the appeal is pending shall be limited to the level of the temporary rates set by the commission, or the level of the final rates set by the commission, whichever is greater. During the period the judicial review proceeding is pending, the commission shall retain jurisdiction to determine the rate of interest to be paid on any refunds eventually required on rates collected during judicial review.

Sec. 30. NEW SECTION. 476.18 IMPERMISSIBLE CHARGES.

1. Public utilities subject to rate regulation are prohibited from including either directly or indirectly in their charges or rates to customers the costs of lobbying.

2. Legal costs and attorney fees incurred by a public utility subject to rate regulation in an appeal in state or federal court involving the validity of any action of the commission shall not be included either directly or indirectly in the public utility's charges or rates to customers except to the extent that recovery of legal costs and attorney fees is allowed by the commission. The commission shall allow a public utility to recover reasonable legal costs and attorney fees incurred in the appeal. The commission may consider the degree of success of the legal arguments of the public utility in determining the reasonable legal costs and attorney fees to be allowed.

3. Public utilities subject to rate regulation are prohibited from including either directly or indirectly in their charges or rates to customers the costs of advertising other than advertising which is required by the commerce commission or by other state or federal regulation. However, this subsection does not apply to a utility's advertising which is deemed by the commission to be necessary for the utility's customers and which is approved by the commission.

4. This section does not apply to a rural electric cooperative.

Sec. 31. Section 476.20, Code 1983, is amended to read as follows:

476.20 CUSTOMER PAYMENTS, ABANDONMENT AND TERMINATION OF SERVICE—DEPOSITS.

1. ~~No~~ A utility shall not, except in cases of emergency, discontinue, reduce, or impair service to a community, or a part of a community, except for nonpayment of account or violation of rules and regulations, unless and until ~~there shall have been first permission to do so is obtained from the commission~~ permission to do so.

2. The commerce commission shall establish rules requiring a regulated public utility furnishing gas or electricity to include in the utility's notice of pending disconnection of service a written statement advising the customer that the customer may be eligible to participate in the low income home energy assistance program or weatherization assistance program administered by the energy policy council. The written statement shall also state that the customer is advised to contact the public utility to settle any of the customer's complaints with the public utility, but if a complaint is not settled to the customer's satisfaction, the customer may file the complaint with the commerce commission. The written statement shall include the address and phone number of the commerce commission. The commerce commission shall establish rules requiring that the written notice contain such additional information as it deems necessary and appropriate.

3. The commerce commission shall establish rules which shall be uniform with respect to all public utilities furnishing gas or electricity relating to disconnection of service.

4. A public utility which violates a provision of this section relating to the disconnection of service or which violates a rule of the commerce commission relating to disconnection of service is subject to civil penalties imposed by the commission under section 476.35.

5. The commerce commission shall establish rules which shall be uniform with respect to all public utilities furnishing gas or electricity relating to deposits which may be required by the public utility for the initiation or reinstatement of service. The deposit for a residence which has previously received service shall not be greater than the highest billing of service for one month to the residence in the previous twelve-month period. This subsection does not prohibit a public utility from requiring payment of a customer's past due account with the utility prior to reinstatement of service.

Sec. 32. Section 476.33, subsection 1, Code 1983, is amended to read as follows:

1. The commission shall adopt rules pursuant to chapter 17A to provide for the completion of proceedings under section 476.3 within ~~one hundred eighty days~~ ten months after the date of the filing of a complaint or petition under section 476.3, subsection 2, and to provide for the completion of proceedings under section 476.6 within ten months after the date of filing of the new or changed rates, charges, schedules or regulations under that section. These rules shall include reasonable time limitations for the submission or completion of comments and testimony, and exhibits, briefs and hearings, and may provide for the granting of additional time upon the request of a party to the proceeding or commission staff for good cause shown.

Sec. 33. Section 476.33, subsection 3, Code 1983, is amended to read as follows:

3. If in a proceeding under section 476.6 additional time is granted to a party or commission staff under subsection 1, the commission may extend the ten-month period during which a utility is prohibited from placing its entire rate increase request into effect under section 476.6, but an extension shall not exceed ~~one-half~~ of the aggregate amount of all additional time granted under subsection 1.

Sec. 34. NEW SECTION. 476.35 CIVIL PENALTY. A public utility which willfully violates a provision of this chapter, a rule adopted by the commission, or a provision of an order lawfully issued by the commission, is subject to a civil penalty, which may be levied by the commission, of not more than one hundred dollars per violation or one thousand dollars per day of a continuing violation, whichever is greater. Civil penalties collected pursuant to this section shall be forwarded by the executive secretary of the commission to the treasurer of state to be credited to the energy research and development fund and to be used only for the low income home energy assistance program and the weatherization assistance program administered by the energy policy council. Penalties paid by a rate-regulated public utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to customers.

Sec. 35. **NEW SECTION. 476.36 MANAGEMENT EFFICIENCY.** It is the policy of this state that a public utility shall operate in an efficient manner. If the commission determines in the course of a proceeding conducted under section 476.3 or 476.6 that a utility is operating in an inefficient manner, or is not exercising ordinary, prudent management, or in comparison with other utilities in the state the commission determines that the utility is performing in a less beneficial manner than other utilities, the commission may reduce the level of profit or adjust the revenue requirement for the utility to the extent the commission believes appropriate to provide incentives to the utility to correct its inefficient operation. If the commission determines in the course of a proceeding conducted under section 476.3 or 476.6 that a utility is operating in such an extraordinarily efficient manner that tangible financial benefits result to the ratepayer, the commission may increase the level of profit or adjust the revenue requirement for the utility. The commission shall adopt rules for determining the level of profit or the revenue requirement adjustment that would be appropriate.

The commission shall also adopt rules establishing a methodology for an analysis of a utility's management efficiency.

Sec. 36. **NEW SECTION. 476.37 EXCESS CAPACITY.** It is the intent of the general assembly of the state of Iowa to provide for the development of a fair resolution concerning the allocation of costs associated with excess electric generating capacity. It is the policy of this state that it is in the public interest that public utilities subject to rate regulation, at a minimum, be prohibited from including either directly or indirectly in their charges or rates to customers the return on common equity associated with excess electric generating capacity, however this shall not apply to rural electric cooperatives. The commerce commission shall not allow a return on common equity on that portion of a public utility's electric generating capacity which is determined to be excess electric generating capacity. Excess electric generating capacity is that portion of the public utility's electric generating capacity which exceeds the amount reasonably necessary to provide adequate and reliable service as determined by the commission.

Electric generating capacity sold pursuant to the terms of contracts entered into between June 28, 1978 and June 30, 1978 for power delivered on or before May 1, 1983 to May 1, 1993, shall not be included in the determination of excess electric generating capacity.

Electric generating capacity purchased from qualifying cogeneration and small power production facilities shall not be included in the determination of excess electric generating capacity.

Sec. 37. **NEW SECTION. 476.38 DELAYED PAYMENT CHARGES.** A public utility shall not apply delayed payment charges on a customer's account if the scheduled payment was made by the customer within twenty days from the date the billing was sent to the customer. Delayed payment charges on a customer's account shall not exceed one and one-half percent per month of the past-due amount.

Sec. 38. **NEW SECTION. 476.39 COMPLAINT OF ANTITRUST ACTIVITIES.** An application for new or changed rates, charges, schedules or regulations filed under this chapter, or an application for a certificate or an amendment to a certificate submitted under chapter 476A, by an electric transmission line utility or a gas pipeline utility or a subsidiary of either shall not be approved by the commerce commission if, upon complaint by an Iowa electric or gas utility, the commission finds activities which create or maintain a situation inconsistent with antitrust laws and the policies which underlie them. The commission may grant the rate or facility certification request once it determines that those activities which led to the antitrust complaint have been eliminated. However, this subsection does not apply to an application for new or changed rates, charges, schedules or regulations after the expiration of the ten-month limitation and applicable extensions.

Sec. 39. Section 476A.6, Code 1983, is amended to read as follows:

476A.6 DECISION – CRITERIA. The commission shall render a decision on the application in an expeditious manner. A certificate shall be issued to the applicant if the commission finds ~~that~~ all of the following:

1. The services and operations resulting from the construction of the facility are required by the present or future public convenience, use and necessity; ~~and,~~

2. The applicant is willing to perform such services and construct, maintain, and operate the facility pursuant to the provisions of the certificate and this chapter; ~~and,~~

3. The construction, maintenance, and operation of the facility will cause minimum adverse land use, environmental, and aesthetic impact and are consonant with reasonable utilization of air, land and water resources for beneficial purposes considering available technology and the economics of available alternatives.

4. The applicant has in effect a comprehensive energy management program designed to reduce peak loads and to increase efficiency of use of energy by all classes of customers of the utility, and the facility in the application is necessary notwithstanding the existence of the comprehensive energy management program. As used in this subsection, a "comprehensive energy management program" includes at a minimum the following:

a. Establishment of load management and interruptible service programs, where cost effective.

b. Development of wheeling agreements and other energy sharing agreements, where cost effective with utilities that have available capacity.

c. Establishment of cost-effective energy conservation and renewable energy services and programs.

d. Compliance with commission rules on energy management procedures.

5. The applicant has considered all feasible alternatives to the proposed facility including nongeneration alternatives; has ranked those alternatives by cost; has implemented the least-cost alternatives first; and the facility in the application is necessary notwithstanding the implementation of these alternatives.

Sec. 40. NEW SECTION. 476A.15 ENERGY SHARING AGREEMENTS. Before a certificate is issued under section 476A.6, the public utility shall demonstrate to the commission that the utility has considered sources for long term electric supply from either purchase of electricity or investment in facilities owned by other utilities.

Sec. 41. Section 478.7, Code 1983, is amended to read as follows:

478.7 FORM OF FRANCHISE. ~~The commerce general counsel for the Iowa state commerce commission shall prepare a blank form of franchise for such purposes, which shall provide space for a general description of the improvement authorized thereby, the name and address of the person or corporation to whom granted, the general terms and conditions upon which it the franchise is granted, and such other things as may be necessary. This blank form shall be filled out and signed by the chairman chairperson of the commission which grants the franchise, and the official seal shall be attached. Such The franchise shall be is subject to such regulations and restrictions as the general assembly from time to time may prescribe prescribes, and to such rules, not inconsistent with statutes, as the Iowa state commerce commission may establish from time to time.~~

Sec. 42. Section 478.29, Code 1983, is amended to read as follows:

478.29 PENALTY – ENFORCEMENT. ~~Any A person or corporation who shall string strings or maintain any maintains wire across any a railroad track in this state at a different height or in a different manner from that prescribed by the Iowa state commerce commission shall forfeit and pay to the state the sum of one hundred dollars for each separate period of ten days during which such the wire is so maintained. Such The forfeiture shall be recovered in a~~

civil action in the name of the state by the ~~commerce~~ general counsel for the Iowa state commerce commission, or by the county attorney of the county in which ~~such~~ the wire is situated, at the request of the state commerce commission.

Sec. 43. Chapter 602, Code 1983, is amended by adding the following new section as section 602.23:

NEW SECTION. 602.23 PUBLIC UTILITY RATE CASES.

1. The supreme court shall designate at least one district judge in each judicial district in the state who shall be subject to assignment by the chief justice to preside as necessary in this state in judicial review proceedings referred to in section 476.13, subsection 1. Designations shall be made on the basis of qualifications and experience, and shall be for the purpose of developing a pool of district judges who will have the knowledge and experience needed to expedite judicial review proceedings in those cases.

2. Upon receipt of notice from a district court clerk under section 476.13, subsection 2, the chief justice of the supreme court shall assign one of the district judges selected under subsection 1 to preside at the judicial review proceeding under section 476.13.

Sec. 44. 1981 Iowa Acts, chapter 9, section 7, subsections 6 and 7, are amended to read as follows:

6. The following are range four positions: superintendent of banking, director of the Iowa beer and liquor control department, ~~chairperson and members of the Iowa state commerce commission~~, director of the state conservation commission, director of the Iowa development commission, director of the educational radio and television facility board, director of the Iowa department of job service, director of the department of general services, commissioner of health, director of the office for planning and programming, and commissioner of public safety.

7. The following are range five positions: state comptroller, superintendent of public instruction, executive secretary of the state board of regents, ~~chairperson and members of the Iowa state commerce commission~~, consumer advocate, director of the department of revenue, commissioner of social services, and director of the department of transportation.

Sec. 45. The legislative council shall authorize an interim study by a joint subcommittee composed of members of the senate committee on commerce and the house committee on small business and commerce to study the areas of utility rate regulation affected by the passage of House File 312. The study committee shall report its findings and recommendations with legislative bill drafts required to implement its recommendations, to the respective standing committees, the legislative council, and the general assembly.

Sec. 46. In order to implement sections of this Act creating the office of consumer advocate and the general counsel for the Iowa state commerce commission, the commerce counsel appointed by the Iowa state commerce commission in 1983 and approved by the senate is the consumer advocate commencing July 1, 1983 and the consumer advocate's term shall expire on April 30, 1985. If a vacancy occurs in the office of the consumer advocate after July 1, 1983, the governor shall appoint the consumer advocate to serve the remaining unexpired term subject to sections 475.1 and 475.2. The commerce counsel's assistants employed by the counsel on June 30, 1983, are the assistants to the consumer advocate commencing July 1, 1983. The office space, supplies, equipment and support staff provided to the office of commerce counsel on June 30, 1983, are the same space, supplies, equipment and support staff provided to the office of consumer advocate on July 1, 1983.

Sec. 47. In order to implement section 475A.7 created under this Act, the governor shall appoint four members to the consumer advisory panel whose terms shall commence upon appointment and shall expire April 30, 1985. The governor shall also appoint five members to the consumer advisory panel whose terms shall commence upon appointment and shall expire April 30, 1987.

Sec. 48. On July 1, 1983, the participation of the office of commerce counsel in proceedings pending before the commission shall end and the office of consumer advocate shall continue to participate in place of the office of commerce counsel. All rights of participation of the office of commerce counsel shall be transferred to the office of consumer advocate.

Sec. 49. On July 1, 1983, for all pending proceedings before the commission, the general counsel of the commission shall assume the duties of rendering legal advice to the commission. The general counsel shall represent the commission in all court appeals pending July 1, 1983, with assistance from the consumer advocate if requested.

Sec. 50. On or after the effective date of this Act, the Iowa state commerce commission shall not approve an application for a new or changed rate, charge, schedule, or regulation filed with the commerce commission by a public utility furnishing electricity which includes as part of the rate base the costs of an electrical generating facility which does not go on line until after the effective date of this Act, unless the new or changed rate, charge, schedule, or regulation complies with section 476.37 created under this Act.

Sec. 51. Except as provided under section 50 of this Act, this Act applies to complaints or petitions filed with the Iowa state commerce commission under section 476.3, and to applications for new or changed rates, charges, schedules, or regulations filed with the Iowa state commerce commission under section 476.6, which are filed on or after the effective date of this Act.

Sec. 52. Chapter 475, Code 1983, is repealed.

Approved May 17, 1983