

By: Representatives Deweese, Crawford

To: Public Utilities

HOUSE BILL NO. 943

1 AN ACT TO AMEND SECTION 77-3-21, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE FAIR RATES AS PART OF REASONABLE AND ADEQUATE SERVICE; TO
3 AUTHORIZE THE PUBLIC SERVICE COMMISSION TO INTERVENE, ARBITRATE
4 AND/OR MEDIATE RATE CONFLICTS BETWEEN WATER ASSOCIATIONS AND
5 RATEPAYERS; TO BRING FORWARD SECTIONS 49-17-751, 77-1-53, 77-1-55,
6 77-3-5, 77-3-6, 77-3-13, 77-3-17, 77-3-22, 77-3-22.1, 77-3-33,
7 77-3-35, 77-3-37, 77-3-41, 77-3-43, 77-3-203, 77-3-217, 77-3-301,
8 77-3-303 AND 77-3-307, MISSISSIPPI CODE OF 1972, WHICH RELATE TO
9 THE REGULATION OF PUBLIC UTILITIES, FOR PURPOSES OF POSSIBLE
10 AMENDMENT; TO AMEND SECTIONS 77-3-11, 77-3-39 AND 77-3-305,
11 MISSISSIPPI CODE OF 1972, TO MAKE MINOR, NONSUBSTANTIVE CHANGES;
12 AND FOR RELATED PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 **SECTION 1.** Section 77-3-21, Mississippi Code of 1972, is
15 amended as follows:

16 77-3-21. (1) The commission may, after a hearing had upon
17 due notice, make such findings as may be supported by proof as to
18 whether any utility holding a certificate under the provisions of
19 this article is rendering reasonably adequate service, including
20 the provision of fair and reasonable rates, in any area covered by
21 such utility's certificate. In the event the commission finds
22 that such utility is not rendering reasonably adequate service,
23 including fair rates, the commission may enter an order specifying



24 in what particulars such utility has failed to render reasonably
25 adequate service and order that such failure, including the
26 failure to maintain fair and reasonable rates, be corrected within
27 a reasonable time, such time to be fixed in such order. If the
28 utility so ordered to correct such a failure fails to comply with
29 such order of the commission and the commission finds that
30 cancellation of its certificate would be in the best interest of
31 the consuming public served by the holder of the certificate, its
32 certificate for the area affected may be revoked and cancelled by
33 the commission.

34 (2) The commission may intervene, arbitrate, and/or mediate
35 disputes regarding rates, terms, and conditions of service between
36 any certificated water utility, whether a private or public water
37 association, and the ratepayers in the affected service area. The
38 commission may initiate such intervention, arbitration and/or
39 mediation process upon request by either party or when the
40 commission deems it necessary to protect the public interest. Any
41 decision or order by the commission regarding the resolution of
42 rate conflicts shall be binding, unless the commission finds good
43 cause to amend or modify the decision.

44 (3) If a rate dispute exists within any certificated water
45 district between a private or public water association and its
46 ratepayers, the commission may intervene and mediate or arbitrate
47 in the dispute, upon receiving a request from either party or on
48 its own initiative. The commission shall resolve the dispute in a



49 fair and transparent manner, and may issue an order to ensure that
50 rates charged by the utility are just, reasonable, and in
51 accordance with the principles of fairness to both the utility and
52 its customers. The commission may also propose recommendations to
53 either party for the resolution of any outstanding issues.

54 (4) Prior to any municipality exercising the power of
55 eminent domain as provided in Section 77-3-17, the commission
56 shall determine that the certificate of public convenience and
57 necessity granted to the utility pursuant to Section 77-3-13 for
58 the service area wherein such facilities are located, shall be
59 cancelled as provided in this section. Nothing in this paragraph
60 shall be construed to include service for water and sewage.

61 (5) Notwithstanding Section 77-3-1(1), the commission shall
62 have jurisdiction to investigate whether any municipality that
63 holds a certificate to provide service greater than one (1) mile
64 outside its municipal boundaries is providing reasonably adequate
65 service. Following a hearing and upon making such a finding, the
66 commission shall have full authority to enter any order authorized
67 under this section, including canceling the certificate for the
68 area that extends beyond the municipalities' boundaries.

69 **SECTION 2.** Section 49-17-751, Mississippi Code of 1972, is
70 brought forward as follows:

71 49-17-751. (1) Notwithstanding the provisions of Sections
72 77-3-21 and 77-3-23, Mississippi Code of 1972, the certificate of
73 public convenience and necessity held by any municipality, public



74 agency, district, public utility or other person authorized by law
75 to provide water, sewer and wastewater services may be cancelled
76 and its powers, duties and responsibilities transferred to the
77 county authority in the manner provided by this section.

78 (2) Any entity described in subsection (1) of this section
79 desiring to have its certificate of public convenience and
80 necessity cancelled and its powers, duties and responsibilities
81 transferred to the county authority shall make a determination to
82 that effect on its official minutes if a public entity, or by
83 affidavit if not a public entity, and transmit such determination
84 to the county authority.

85 (3) Upon receipt of the document evidencing such
86 determination from an entity to transfer its powers, duties and
87 responsibilities to the county authority, the county authority
88 shall, by resolution, declare whether it is willing and able to
89 accept such transfer from the entity.

90 (4) Upon completion of the requirements of subsections (2)
91 and (3) herein and agreement by both parties to the transfer, the
92 holder of the certificate of public convenience and necessity and
93 the county authority shall jointly petition the Public Service
94 Commission to cancel the certificate of public convenience and
95 necessity. The petition must be accompanied by copies of the
96 official minutes, affidavit or resolution, as the case may be,
97 reflecting the actions of the petitioners. After review of the
98 petition and any other evidence as the Public Service Commission



99 deems necessary, the commission may issue an order cancelling the
100 certificate and transferring to the county authority the powers,
101 duties and responsibilities granted by the certificate, including
102 all assets and debts of the transferor petitioner related to such
103 certificated services, real or personal, or both, if it finds
104 that:

105 (a) Subsections (2) and (3) of this section have been
106 complied with; and

107 (b) Such action is in the public interest.

108 (5) The county authority and providers of water, sewer,
109 wastewater and storm water services that are not holders of a
110 certificate of a public convenience and necessity from the Public
111 Service Commission may enter into agreements for the provision of
112 such services, including, but not limited to, the transfer to the
113 county authority of such provider's powers, duties,
114 responsibilities, assets and debts.

115 **SECTION 3.** Section 77-1-53, Mississippi Code of 1972, is
116 brought forward as follows:

117 77-1-53. (1) Whenever the commission, an employee of the
118 commission or any employee of the public utilities staff has
119 reason to believe that a willful and knowing violation of any
120 statute administered by the commission or any regulation or any
121 order of the commission has occurred, the commission may cause a
122 written complaint to be served upon the alleged violator or
123 violators. The complaint shall specify the provisions of such



statute, regulation or order alleged to be violated and the facts alleged to constitute a violation thereof and shall require that the alleged violator appear before the commission at a time and place specified in the notice and answer the charges complained of. The time of appearance before the commission shall not be less than twenty (20) days from the date of the service of the complaint, unless the commission finds that the public convenience or necessity requires that such hearing be held at an earlier date.

(2) The commission shall afford an opportunity for a fair hearing to the alleged violator or violators at the time and place specified in the complaint. On the basis of the evidence produced at the hearing, the commission shall make findings of fact and conclusions of law and enter its order, which in its opinion will be in the best interests of the consuming public. Failure to appear at any such hearing, without prior authorization to do so from the commission, may result in the commission finding the alleged violator guilty of the charges complained of by default, and at such time an order may be entered, including the assessment of a penalty. The commission shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing or made written request for notice of the order. The commission may assess such penalties as provided in subsection (3) of this section.



(3) Any person found by the commission, pursuant to a hearing or by default as provided in this section, violating any statute administered by the commission, or any regulation or order of the commission in pursuance thereof, shall be subject to a civil penalty of not more than Five Thousand Dollars (\$5,000.00) for each violation, to be assessed and collected by the commission. Each day that a violation continues shall constitute a separate violation. In lieu of, or in addition to, the monetary penalty, the commission, for any violation by a certificate holder, may impose a penalty in accordance with Section 77-3-21, Mississippi Code of 1972, if it finds that the violator is not rendering reasonably adequate service. Appeals from the imposition of the civil penalty may be taken to the Circuit Court of the First Judicial District of Hinds County in the same manner as appeals from orders of the commission constituting judicial findings.

(4) All penalties collected by the commission under this section shall be deposited in the Public Service Commission Regulation Fund.

(5) No portion of any penalty or costs associated with an administrative or court proceeding which results in the assessment of a penalty against a public utility for violation of any statute administered by the commission, or any regulation or order of the commission shall be considered by the commission in fixing any rates or charges of such public utility.



(6) This section shall be in addition to any other law which provides for the imposition of penalties for the violation of any statute administered by the commission or any regulation or order of the commission.

(7) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(8) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SECTION 4. Section 77-1-55, Mississippi Code of 1972, is brought forward as follows:

77-1-55. (1) The Public Service Commission, with the aid and the assistance of the Public Utilities Staff, shall have the power to monitor, investigate, and seek relief in any appropriate federal forum from all existing or proposed interstate rates, charges, allocations and classifications, and all rules and practices in relation thereto promulgated and prescribed by or for any public utility as defined in Section 77-3-3(d)(i).

(2) The Public Service Commission, with the aid and the assistance of the Public Utilities Staff, may seek relief from any proposed or final decision, order, regulation, rule or law that



has an impact on any existing or proposed interstate rate, charge, allocation or classification.

(3) For the purpose of this section, the Public Service Commission and the Executive Director of the Public Utilities Staff may each enter into professional services contracts with one or more attorneys or consultants from a competent, qualified and independent firm as may be required by the commission or the executive director. Costs associated with the professional service contracts shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) for each agency with respect to each rate regulated affected utility in any twelve-month period. The consultants or counsel shall submit periodically, but no less frequently than once each calendar quarter, to the executive director or the commission, as applicable, for approval of payment, itemized bills detailing the work performed. The executive director or the chairman of the commission, as applicable, shall requisition the applicable public utility to make the requisite payments to such consultants. The commission shall allow the utility to recover both the total costs the utility incurred under this section and the carrying charges for those costs through a rate rider established to recover the costs incurred and carrying charges incurred. Such rider shall include a true-up provision to ensure actual recovery of costs paid or otherwise incurred by the utility.



221 **SECTION 5.** Section 77-3-5, Mississippi Code of 1972, is
222 brought forward as follows:

223 77-3-5. Notwithstanding any other provision of law, and
224 subject only to the limitations imposed in this chapter and in
225 accordance with the provisions of this chapter, the Public Service
226 Commission shall have exclusive original jurisdiction over the
227 intrastate business and property of public utilities and, for
228 purposes of clarification of the existing scope of said exclusive
229 original jurisdiction, such exclusive original jurisdiction
230 extends, but is not limited to: the establishment of retail
231 rates; challenges, including customer complaints, to the amount of
232 a retail rate or customer bill or whether such rate is just and
233 reasonable; and challenges to the validity or accuracy of rates
234 charged by a public utility, or to the accuracy or reliability of
235 information submitted to the Public Service Commission by a public
236 utility or other person in support of or in opposition to a
237 proposed or approved rate, regardless of the legal theory upon
238 which any such challenge is made. However, the commission shall
239 not have jurisdiction over the production and gathering of natural
240 gas or the sale of natural gas in or within the vicinity of the
241 field where produced, or over the facilities and equipment
242 utilized in any such operations, including, but not limited to,
243 such facilities as separators, scrubbers and gasoline plants of
244 all types. Further, the commission shall not have jurisdiction
245 over the governance, management or other internal affairs of



entities as described by paragraphs (b) and (c) below. Moreover, the commission shall not have jurisdiction to regulate the rates for the sales and/or distribution:

(a) Of gas, water, electricity or sewage disposal services by municipalities to such persons as said municipalities are authorized by law to serve;

(b) Of gas or electricity by cooperative gas or electric power associations to the members thereof as consumers, except as provided by Section 77-3-17, where service is rendered in a municipality;

(c) Of water or sewage disposal service by nonprofit corporations or associations where the governing body of such corporation or association is elected by the consumers thereof or appointed by the county board of supervisors; or

(d) Of water by districts organized under the provisions of Chapter 45, Laws of 1966-1967, Extraordinary Session.

SECTION 6. Section 77-3-6, Mississippi Code of 1972, is brought forward as follows:

77-3-6. (1) Any dispute between a municipally owned or operated public utility and a customer of such public utility with regard to billing and/or services in excess of Two Thousand Five Hundred Dollars (\$2,500.00) shall be subject to investigation, review and arbitration by the commission upon petition filed therefor with the commission by such public utility or customer.



271 However, the commission shall not commence any investigation or
272 proceedings pursuant to such petition if at the time of filing the
273 petition suit has been filed in any court of this state or of the
274 United States with regard to the subject matter of the dispute and
275 in which such public utility and customer are parties. Any such
276 petition shall be immediately dismissed if any such suit is filed
277 after filing of the petition with the commission.

278 (2) In any arbitration proceedings commenced under the
279 provisions of this section, the commission may, by order entered
280 on its minutes and delivery of a certified copy thereof to the
281 public utility, direct any municipally owned or operated public
282 utility to provide the commission with copies of all statements,
283 accounts and reports concerning operation of the public utility
284 which the utility is required to provide the governing authorities
285 of the municipality under Section 21-27-17. The commission is
286 further authorized to conduct and shall conduct investigation of
287 and informal hearings in the dispute and may negotiate with the
288 public utility and the customer for the resolution thereof. In
289 every arbitration proceeding under this section the commission
290 shall perform such duties as it deems reasonable and likely to
291 result in settlement of the dispute without commencement of
292 litigation between the public utility and the customer.

293 (3) Participation in any investigation, proceeding,
294 negotiation, or settlement under the provisions of this section
295 shall be voluntary by the public utility and the customer;



however, no suit may be commenced in any court of this state by either the public utility or customer based upon the facts giving rise to the dispute for a period of sixty (60) days after a petition is filed with the commission under this section.

(4) The provisions prescribed herein for the Public Service Commission to investigate, review and arbitrate disputes between a municipally owned or operated public utility and a customer of such public utility shall not extend to tort actions.

SECTION 7. Section 77-3-11, Mississippi Code of 1972, is amended as follows:

77-3-11. (1) No person shall construct, acquire, extend or operate equipment for manufacture, mixing, generating, transmitting or distributing natural or manufactured gas, or mixed gas, or water, for any intrastate sale to or for the public for compensation, or for the operation of a public utility operating a business and equipment or facilities as contemplated by * * * Section 77-3-3(d)(iii), without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require the operation of such equipment or facility.

(2) No person shall construct, acquire, extend or operate equipment for manufacture, generating, transmitting or distributing electricity for any intrastate or interstate sale to or for the public for compensation without first having obtained from the commission a certificate that the present and future



public convenience and necessity require or will require the operation of such equipment or facility. Provided, however, nothing herein contained shall be construed to require a joint municipal electric power agency organized in accordance with the provisions of Section 77-5-201 et seq., Mississippi Code of 1972, to obtain any permit, license, certificate or approval from the Mississippi Public Service Commission.

(3) No person shall construct, acquire, extend or operate equipment or facilities for collecting, transmitting, treating or disposing of sewage, or otherwise operating an intrastate sewage disposal service, to or for the public for compensation, without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require the operation of such equipment or facilities.

(4) However, nothing herein shall be construed to require any certificate of convenience and necessity from the commission for the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, the distribution or sale of liquefied petroleum gas, the sale of natural gas to the ultimate consumer for use as a motor vehicle fuel, or for the facilities and equipment utilized in any such operations.

(5) Upon complaints filed by not less than ten percent (10%) of the total subscribers or three thousand five hundred (3,500) subscribers of a public utility, whichever is less, then the



commission shall hold a hearing on the adequacy of service as contemplated in Section 77-3-21.

(6) With respect to any facility or contract for a facility serving a customer under Section 77-3-271, nothing in this section shall supersede the provisions of Section 77-3-271.

SECTION 8. Section 77-3-13, Mississippi Code of 1972, is brought forward as follows:

77-3-13. (1) The commission shall issue a certificate of convenience and necessity to any person engaged in the construction or operation of such equipment or facility as is mentioned in subsection (1) of Section 77-3-11 on March 29, 1956, for the construction or operation then being conducted, without requiring proof that public convenience and necessity will be served by such construction or operation, and without further proceedings, if application for such certificate is made to the commission within six (6) months after March 29, 1956. Any utility covered by this chapter which has heretofore been under the jurisdiction of the commission shall, upon application within six (6) months of March 29, 1956, be issued a certificate authorizing it to conduct operations and make extensions within any area covered by its service area map or maps on file with the commission on March 29, 1956.

(2) The commission shall issue a certificate of convenience and necessity to any person engaged in the construction or operation of a sewage disposal service as mentioned in subsection



371 (2) of Section 77-3-11 on August 9, 1968, for the construction or
372 operation then being conducted, without requiring proof that
373 public convenience and necessity will be served by such
374 construction or operation, and without further proceedings, if
375 application for such certificate is made to the commission within
376 six (6) months after August 9, 1968. Pending the filing of such
377 application and the issuance of a certificate, the continuance of
378 such construction or operation shall be lawful.

379 Except as otherwise specifically provided by subsection (2)
380 of Section 77-3-11 or by this subsection, that portion of the
381 business of a public utility dealing with the operation of a
382 sewage disposal service as provided by subsection (2) of Section
383 77-3-11 shall be subject to provisions of this chapter, in like
384 manner and with like effect as if such business had been included
385 within the definition of a "public utility" in the original
386 enactment of this chapter.

387 (3) In all other cases, except as provided in subsection (9)
388 of this section, the commission shall set the matter for hearing,
389 and shall give reasonable notice of the hearing thereon to all
390 interested persons, as in its judgment may be necessary under its
391 rules and regulations, involving the financial ability and good
392 faith of the applicant, the necessity for additional services and
393 such other matters as the commission deems relevant. The
394 commission may issue a certificate of public convenience and
395 necessity, or refuse to issue the same or issue it for the



establishment or construction of a portion only of the contemplated plant, route, line or system, or extension thereof, or for the partial exercise only of such right or privilege, and may attach to the exercise of the rights granted by the certificate such reasonable terms and conditions as to time or otherwise as, in its judgment, the public convenience, necessity and protection may require, and may forfeit such certificate after issuance for noncompliance with its terms, or provide therein for an ipso facto forfeiture of the same for failure to exercise the rights granted within the time fixed by the certificate. However, nothing in this section shall be construed as requiring such certificate for a municipally owned plant, project or development, route, line or system or extension thereof in areas within one (1) mile of the corporate boundaries which are not certificated to another utility, and nothing in this chapter or other provision of law shall be construed as allowing a municipally owned plant, project or development, route, line or system or extension thereof in areas certificated to another utility. No certificate shall be required for extensions or additions within the corporate limits of a municipality being served by the holder of a certificate of convenience and necessity.

(4) The commission shall, prior to issuing a certificate of public convenience and necessity to a public utility for any new construction, extension or addition to its property, ascertain that all labor, materials, property or services to be rendered for



any proposed project will be supplied at reasonable prices. The commission shall, after issuance of a certificate for facilities estimated to cost Five Million Dollars (\$5,000,000.00) or more or estimated to cost an amount equal to one percent (1%) of the rate base allowed by the commission in the utility's last rate case, whichever is greater, assign the public utilities staff to monitor such projects, to inspect periodically construction in progress, and to report to the commission any variances or deviations as found, if any, and to file progress reports thereon with the commission. Such public utility shall file a similar report with the commission at such times and in such form as the commission shall require, including any substantial changes in plans and specifications, cost allocations, construction schedule and funds available to complete the project.

(5) The commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of Sections 77-3-11 through 77-3-21: (a) temporary acts or operations for which the issuance of a certificate will not be required in the public interest; and (b) extensions or additions of service facilities outside of municipalities under such general rules as will promote the prompt availability of such service to prospective users, and



at the same time prevent unnecessary and uneconomic duplication of such facilities as between two (2) or more persons.

(6) Prior to the acquisition pursuant to Section 77-3-17, or other provisions of law, by any public agency, authority, district, state or other agency, institution or political subdivision thereof, of any certificate of public convenience and necessity or portion thereof, service areas or portion thereof, or operating rights or portion thereof, issued or granted by the commission pursuant to the provisions of this section and/or the facilities or other properties and equipment of the utility providing service therein of any regulated utility, as defined in Section 77-3-3(d)(i), (ii) and (iii), the commission shall first determine if such service area, certificate of public convenience and necessity, or operating right, or portions thereof, should be cancelled as provided in Section 77-3-21.

(7) Before the acquisition pursuant to any negotiated purchase agreement entered into before 1987, by any public agency, authority, district, state or other agency, institution or political subdivision thereof, of any certificate of public convenience and necessity or portion thereof, service areas or portion thereof, or operating rights or portion thereof, issued or granted by the commission pursuant to this section and/or the facilities or other properties and equipment of the utility providing service therein of any regulated utility defined in Section 77-3-3(d)(i), the commission first shall determine that



such service area, certificate of public convenience and necessity, or operating right, or portions thereof, shall be cancelled as provided in Section 77-3-21.

(8) Notwithstanding any provision of this section to the contrary, the certificate as applied for may be granted without a hearing in uncontested cases; however, the commission may hear any uncontested case if it determines that the public interest will be served thereby.

(9) With respect to any facility or contract for a facility serving a customer under Section 77-3-271, nothing in this section shall supersede the provisions of Section 77-3-271.

SECTION 9. Section 77-3-17, Mississippi Code of 1972, is brought forward as follows:

77-3-17. In addition to such other rights as it may have to use the streets, alleys and public places of a municipality, a public utility which holds a certificate of public convenience and necessity granted under the provisions of this article covering the geographical area of such municipality, and which (1) is operating under a municipal franchise on March 29, 1956, or (2) shall have previously operated under such a municipal franchise which has expired within five (5) years prior to said date, or (3) which shall hereafter operate under a municipal franchise hereafter granted, may, after the expiration of any such franchise continue to use the streets, alleys and public places therein situated upon condition that (1) such utility shall pay the said



495 municipality compensation therefor at the rate of two percent (2%)
496 of said utility's gross revenue from sales to residential and
497 commercial customers within said municipality, in the case of a
498 utility defined in subparagraphs (i) and (ii) of paragraph (d) of
499 Section 77-3-3 and in the case of a utility defined in
500 subparagraph (iii) of paragraph (d) of said section, the said
501 utility shall pay two percent (2%) of the monthly service charges
502 in said municipality whether said utility has a franchise to
503 operate therein or not, such payments to be made quarterly of each
504 year, and (2) after the expiration of such franchise the
505 municipality, or any customer of such utility in such
506 municipality, upon appropriate petition, shall be entitled to a
507 hearing as to whether or not the certificate of convenience and
508 necessity may then and thereafter be granted on a permanent basis.
509 Any co-operative which shall operate within any area of a
510 municipality shall likewise pay such municipality two percent (2%)
511 of the co-operative's gross revenue from sales to residential and
512 commercial customers within said municipality.

513 Any municipality shall have the right to acquire by purchase,
514 negotiation or condemnation the facilities of any utility that is
515 now or may hereafter be located within the corporate limits of
516 such municipality; provided, however, prior to any municipality
517 exercising the right of eminent domain as provided herein, the
518 commission shall determine that the certificate of public
519 convenience and necessity granted to the utility pursuant to



Section 77-3-13 for the service area wherein such facilities are located, shall be cancelled as provided in Section 77-3-21.

SECTION 10. Section 77-3-22, Mississippi Code of 1972, is brought forward as follows:

77-3-22. Notwithstanding Section 77-3-1(1), if the commission determines that any privately owned water and/or sewer system, or any municipally owned or operated electric utility providing service greater than one (1) mile outside its municipal boundaries and within its jurisdiction is unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its owner, or that its management is grossly inefficient, irresponsible or unresponsive to the needs of its customers, the commission or its designated representative may petition the Chancery Court of the First Judicial District of Hinds County or the chancery court of any county wherein the public utility does business for an order attaching the assets of the privately owned water and/or sewer system or municipally owned or operated electric utility and placing such system under the sole control and responsibility of a receiver. If the court determines that the petition is proper in all respects and finds, after a hearing thereon, the allegations contained in the petition are true, it shall order that the system be placed in receivership. The court, in its discretion and in consideration of the recommendation of the commission or its designated representative, may appoint a receiver who shall be a responsible



545 individual, partnership, corporation or political subdivision
546 knowledgeable in water, sewer or electric service affairs and who
547 shall maintain control and responsibility for the operation and
548 management of the affairs of such system. The receiver shall
549 operate the system so as to preserve the assets of the system and
550 to serve the best interests of its customers. The receiver shall
551 be compensated from the assets of the system in an amount to be
552 determined by the court.

553 Control of and responsibility for the system shall remain in
554 the receiver until the court determines that it is in the best
555 interests of the customers that the system be returned to the
556 owner, transferred to another owner or assumed by another
557 operator, system or public service corporation. If the court,
558 after hearing, determines that control of and responsibility for
559 the affairs of the system should not be returned to the legal
560 owner thereof, the receiver may proceed to liquidate the assets of
561 such system in the manner provided by law.

562 In any court-initiated receivership for a municipally owned
563 or operated electric utility providing service greater than one
564 (1) mile outside its municipal boundaries, the receiver shall
565 assume the responsibilities and obligations of the municipality
566 with regard to any existing wholesale power contract.

567 Mississippi laws and Mississippi Rules of Civil Procedure
568 generally applicable to receivership shall govern receiverships
569 created under this section.



570 This section is in addition to the provisions of Section
571 77-3-21.

572 **SECTION 11.** Section 77-3-22.1, Mississippi Code of 1972, is
573 brought forward as follows:

574 77-3-22.1. In any county having a population of more than
575 thirty-five thousand (35,000) but less than forty thousand
576 (40,000), according to the most recent federal decennial census,
577 any water or sewer system for which a finding is made under
578 Section 49-17-44.1 or Section 77-3-22 by a court of competent
579 jurisdiction that it is appropriate for a receiver to be
580 appointed, the receiver shall give preference to a municipality
581 within the county or to the governing authorities of the county in
582 making any transfer of ownership of the water or sewer system.
583 The term "preference," as used in this section, means that no sale
584 or transfer of the water or sewer system shall be approved by a
585 court of competent jurisdiction or otherwise until two (2) years
586 after the date of appointment of the receiver have elapsed. This
587 right of preference may be waived by the local governmental entity
588 given the preference under this section.

589 **SECTION 12.** Section 77-3-33, Mississippi Code of 1972, is
590 brought forward as follows:

591 77-3-33. (1) No rate made, deposit or service charge
592 demanded or received by any public utility shall exceed that which
593 is just and reasonable. Such public utility, the rates of which
594 are subject to regulation under the provisions of this article,



595 may demand, collect and receive fair, just and reasonable rates
596 for the services rendered or to be rendered by it to any person.
597 Rates prescribed by the commission shall be such as to yield a
598 fair rate of return to the utility furnishing service, upon the
599 reasonable value of the property of the utility used or useful in
600 furnishing service.

601 (2) Such utility shall furnish adequate, efficient and
602 reasonable service, and may establish reasonable rules governing
603 the conduct of its business and the conditions under which it
604 shall be required to render service. The commission may, after
605 hearing upon reasonable notice had, upon its own motion or upon
606 complaint, ascertain and fix just and reasonable standards,
607 regulations and practices of service which are to be furnished,
608 imposed, observed and followed by all public utilities. The
609 commission may require the service, rules and regulations of each
610 public utility to be filed with the commission and subjected to
611 its approval or to such changes therein as the commission
612 reasonably may require. Practices required or sanctioned pursuant
613 to the provisions hereof shall supersede other requirements of
614 law.

615 (3) Such utility may employ in the conduct of its business
616 suitable and reasonable classifications of its service, patrons,
617 rates, deposits and service charges. The classification may, in
618 any proper case, take into account the nature of the use, the



619 quantity and quality used, the time when used, the purpose for
620 which used, and any other reasonable consideration.

621 **SECTION 13.** Section 77-3-35, Mississippi Code of 1972, is
622 brought forward as follows:

623 77-3-35. (1) Subject to the provisions of subsections (2)
624 and (4) of this section, under such reasonable rules and
625 regulations as the commission may prescribe, every public utility,
626 as to the rates which are subject to regulation under the
627 provisions of this article, shall file with the commission, within
628 such time and in such form as the commission may designate,
629 schedules showing such rates and charges established by it and
630 collected and enforced, or to be collected or enforced within the
631 jurisdiction of the commission. The utility shall keep copies of
632 such schedules open to public inspection under such reasonable
633 rules and regulations as the commission may prescribe.

634 No such public utility shall directly or indirectly, by any
635 device whatsoever, or in anywise, charge, demand, collect or
636 receive from any person or corporation for any service rendered or
637 to be rendered by such public utility a greater or less
638 compensation than that prescribed in the schedules of such public
639 utility applicable thereto then filed in the manner provided in
640 this section, and no person or corporation shall receive or accept
641 any service from any such public utility for a compensation
642 greater or less than prescribed in such schedules.



643 Utilities selling commodities or rendering any service to
644 cooperatives, municipalities or other nonprofit organizations,
645 shall, at the order of the commission, file schedules of such
646 rates and charges for information purposes only.

647 The commission may provide, by rules and regulations to be
648 adopted by it, the following:

649 (a) That utilities may contract with a manufacturer
650 that is not a utility for furnishing the services or commodities
651 described in Section 77-3-3(d)(i), (ii) and (iii) for use in
652 manufacturing;

653 (b) That utilities described in Section 77-3-3(d)(i)
654 also may contract with a customer that has a minimum yearly
655 electric consumption of two thousand five hundred (2,500) megawatt
656 hours per year or greater for furnishing the services or
657 commodities described in Section 77-3-3(d)(i); and

658 (c) That utilities described in Section 77-3-3(d)(ii)
659 also may contract with a customer that has a minimum yearly
660 consumption of eight million five hundred thousand (8,500,000)
661 cubic feet of gas per year or greater for furnishing the services
662 or commodities described in Section 77-3-3(d)(ii).

663 These contracts may be entered into without reference to the
664 rates or other conditions which may be established or fixed
665 pursuant to other provisions of this article. Such regulations
666 shall provide that before becoming effective any such contract
667 shall be approved by the commission.



668 (2) (a) The Legislature recognizes that the maintenance of
669 universal telephone service in Mississippi is a continuing goal of
670 the commission and that the public interest requires that the
671 commission be authorized and encouraged to formulate and adopt
672 rules and policies that will permit the commission, in the
673 exercise of its expertise, to regulate and control the provision
674 of telecommunications services to the public in a changing
675 environment where competition and innovation are becoming more
676 commonplace, giving due regard to the interests of consumers, the
677 public, the providers of telecommunications services and the
678 continued availability of good telecommunications service. The
679 commission is authorized to issue more than one (1) competing
680 certificate of public convenience and necessity to provide local
681 exchange telephone service in the same geographical area;
682 provided, that the issuing of any such additional certificates
683 shall not otherwise affect any certificate of public convenience
684 and necessity heretofore issued to any provider of such services.

685 The commission shall adopt all rules and regulations
686 necessary for implementing this subsection (2)(a).

687 The commission may apply standards adopted by the Federal
688 Communications Commission that are generally applicable to
689 companies that are designated and operate as eligible
690 telecommunications carriers, pursuant to 47 USCS Section 214(e).
691 The commission may exercise its authority to ensure that these
692 carriers, including commercial mobile radio service providers that



693 receive federal eligible telecommunications status, comply with
694 those standards, only to the extent permitted by and consistent
695 with applicable federal laws and regulations.

696 The commission retains the authority to issue orders to
697 implement its rules, regulations and the provisions of this
698 chapter, including the authority to grant and modify, impose
699 conditions upon, or revoke a certificate.

700 (b) The commission may, on its own motion or at the
701 request of any interested party, enter an order, after notice and
702 opportunity for hearing, determining and directing that, in the
703 provision of a service or facility by a utility of the type
704 defined in Section 77-3-3(d)(iii), competition or other market
705 forces adequately protect the public interest, or that a service
706 or facility offered by the utility is discretionary, and that the
707 public interest requires that the utility's rates and charges for
708 such service or facility shall not thereafter be subject to
709 regulation by the commission.

710 (c) In making its determination whether the rates and
711 charges for a service or facility shall not be subject to
712 regulation by the commission, the commission may consider
713 individually or collectively:

714 (i) Whether the exercise of commission
715 jurisdiction produces tangible benefits to the utility's customers
716 that exceed those available by reliance on market forces or other
717 factors;



(ii) Whether technological changes, competitive forces, discretionary nature of the service or facility, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the Mississippi commission unnecessary or wasteful;

(iii) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or equipment;

(iv) Whether the existence of competition tends to prevent abuses, unjust discrimination and extortion in the charges of telecommunications utilities for the service or facility in question;

(v) The availability of the service or facility from other persons and corporations; or

(vi) Any other factors that the commission considers relevant to the public interest.

In making the determination as above set forth, the commission may specify the period of time during which the utility's rates and charges for the service or facility shall not thereafter be subject to regulation. Likewise, after notice and opportunity for hearing, the commission may revoke a determination and direction made under this section, when the commission finds that commission regulation of the utility's rates and charges for



the service or facility in question is necessary to protect the public interest.

(3) (a) The commission is authorized to consider and adopt alternative methods of regulation proposed by a utility of the type defined in Section 77-3-3(d)(i), (ii) or (iii) to establish rates for the services furnished by such utility that are fair, just and reasonable to the public and that provide fair, just and reasonable compensation to the utility for such services.

(b) For purposes of this subsection, the phrase "alternative methods of regulation" means the regulation of utility rates and charges by methods other than the rate base or rate of return method of regulation set forth in other provisions of this article.

(4) (a) Notwithstanding any other provisions of this article or any other statute to the contrary, and consistent with the provisions herein, for those public utilities of the type defined in Section 77-3-3(d)(iii) that are subject to the competitive requirements set forth in 47 USCS Section 251 or those public utilities that have waived a suspension granted by the commission of the requirements of 47 USCS Section 251(b) and (c) as authorized by 47 USCS Section 251(f)(2), the Legislature has determined that, in the provision of all services, other than switched access service, competition or other market forces adequately protect the public interest. Therefore, subject to paragraph (d) of this subsection, the commission no longer has



767 jurisdiction over the services, other than the provision of
768 intrastate switched access service, provided by such public
769 utilities.

770 (b) For those public utilities of the type defined in
771 Section 77-3-3(d)(iii) that have been granted a suspension by the
772 commission of the requirements of 47 USCS Section 251(b) and (c)
773 as authorized by 47 USCS Section 251(f)(2), the commission, at the
774 request of such public utility, shall enter an order, after notice
775 and opportunity for hearing, determining that such public
776 utility's provision of service will be subject to the same level
777 of regulation as provided in paragraph (a) of this subsection, but
778 only after the commission determines that such public utility has
779 satisfied one (1) of the following conditions:

780 (i) Has executed interconnection agreements which
781 have been approved by the commission to the extent required under
782 law with two (2) or more local exchange carriers unaffiliated with
783 such public utility;

784 (ii) Offers for resale at wholesale rates,
785 pursuant to 47 USCS Section 251(c)(4)(A) and (B), such public
786 utility's retail telecommunications services provided to
787 subscribers who are not telecommunications carriers;

788 (iii) At least two (2) competitive
789 telecommunications providers unaffiliated with such requesting
790 public utility are offering service to such public utility's
791 subscribers; or



(iv) Has experienced a material reduction in access lines or minutes of use in two (2) consecutive years.

A waiver of suspension under paragraph (a) of this subsection shall be effective upon written notification to the commission. The initial rate utilized by such public utility shall be the rate for such service in effect at the time of such waiver under this section. The commission, upon request of the public utility, may return such public utility to a form of regulation permitted under this section.

(c) Subject to paragraph (d) of this subsection, a public utility of the type defined in Section 77-3-3(d)(iii) which is regulated under the provisions of paragraph (a) of this subsection shall not be subject to any rule, regulation or order promulgated by the commission with regard to retail services. The provisions of Section 77-3-23 shall not apply to such public utility regulated under the provisions of paragraph (a) of this subsection.

(d) Nothing in this chapter shall be construed to affect the duties of an incumbent local exchange carrier arising under 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections, or the commission's authority to approve, arbitrate and enforce interconnection agreements and to resolve disputes pursuant to 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections or any other



817 applicable federal law or regulation. The commission shall
818 exercise its jurisdiction in its role as a dispute resolution
819 forum to hear complaints between certificated carriers, including
820 complaints to prohibit anti-competitive practices and with respect
821 to enforcement or modification of any wholesale self-effectuating
822 enforcement mechanism plan in place as of July 1, 2011, and to
823 issue orders to resolve such complaints, provided that such
824 actions are consistent with federal telecommunications law. The
825 commission shall interpret and apply federal, not state,
826 substantive law. The commission shall adjudicate and enforce such
827 claims in accordance with state procedural law and rules. No
828 claim shall be brought to the commission as to which the FCC has
829 exclusive jurisdiction. All complaints brought between carriers
830 pursuant to this section shall be resolved by final order of the
831 commission within one hundred eighty (180) days of the filing of
832 the complaint.

833 (e) The commission shall retain exclusive original
834 jurisdiction over customer complaints for those services that
835 continue to be regulated. For services no longer regulated, the
836 commission shall have exclusive original jurisdiction to interpret
837 and enforce the terms and conditions of customer service
838 agreements for telecommunications services, but it shall not
839 alter, set aside or refuse to enforce the rates, terms and
840 conditions thereof, either directly or indirectly. No other party
841 shall be allowed to participate in any such complaint proceeding,



except for the customer, legal counsel or other representative of the customer, or the public utility involved.

(f) A public utility of the type defined in Section 77-3-3(d)(iii) which is regulated under the provisions of paragraph (a) of this subsection shall not be required to file financial, service quality or other information with the commission. The calculation of the public utility regulatory tax established in Section 77-3-87 shall be based upon ninety thousandths of one percent (90/1000 of 1%) per year of the gross revenues from the intrastate operations of such public utility which is subject to regulation under the provision of paragraph (a) of this subsection. In addition, such public utility shall only be required to adhere to billing for retail telecommunications services in compliance with the federal truth in billing regulations prescribed by the Federal Communications Commission.

(g) (i) In order to transition to the changes effectuated by paragraph (a) of this subsection, the rates, terms and conditions for products and services no longer subject to regulation by the commission which were in effect with a specific term immediately prior to July 1, 2006, shall remain in effect for the duration of the specific term as to customers who subscribed to such products or services prior to July 1, 2006. If no term applied to such products or services at the time such customer subscribed to such products or services, then the rates, terms and



867 conditions governing such products or services shall remain in
868 effect until a written customer service agreement becomes
869 effective as described in subparagraph (ii) of this paragraph (g).

870 (ii) Except as provided in subparagraph (i) of
871 this paragraph (g), the service provider shall offer existing and
872 new customers a written customer service agreement, which in the
873 case of new customers shall be delivered no later than thirty (30)
874 days after the initiation of service. The customer service
875 agreement shall include a provision advising the customer that he
876 has thirty (30) days from receipt in which to elect:

877 1. To terminate service with the service
878 provider by contacting such service provider within the thirty-day
879 time period, in which case the customer shall have the right to
880 pay off the account in the same manner and under the same rates,
881 terms and conditions as set forth in the written customer service
882 agreement provided to the customer, which written customer service
883 agreement shall relate back in its entirety to the date of a new
884 customer's request for service or the date the agreement was sent
885 to an existing customer, as applicable, and shall be in effect
886 until termination through pay off; or

887 2. To use the services of the service
888 provider or to otherwise continue the account with the service
889 provider after the thirty-day time period has elapsed, either of
890 which shall constitute the customer's assent to all the rates,
891 terms and conditions of the written customer service agreement.



892 The customer service agreement shall be deemed received three (3)
893 business days after deposit in the United States mail, first-class
894 delivery.

895 (iii) If any service provider desires to modify in
896 any respect any rates, terms or conditions of a customer service
897 agreement, it shall provide at least thirty (30) days' prior
898 written notice of the modification and the proposed effective date
899 to the customer. The customer service agreement shall include a
900 provision advising the customer that he has the option:

901 1. To terminate service with the service
902 provider by contacting such service provider prior to the
903 effective date, in which case the customer shall have the right to
904 pay off the account in the same manner and under the same rates,
905 terms and conditions as then in effect; or

906 2. To use the services of the service
907 provider or to otherwise continue the account with the service
908 provider on or after the effective date, either of which shall
909 constitute the customer's assent to the modified written customer
910 service agreement. The customer service agreement shall be deemed
911 received three (3) business days after deposit in the United
912 States mail, first-class delivery.

913 (h) Nothing herein shall change the obligation of those
914 public utilities described in Section 77-3-3(d)(iii) to obtain a
915 certificate of public convenience and necessity pursuant to this
916 chapter.



(5) With respect to any facility or contract for a facility serving a customer under Section 77-3-271, nothing in this section shall supersede the provisions of Section 77-3-271.

SECTION 14. Section 77-3-37, Mississippi Code of 1972, is brought forward as follows:

77-3-37. (1) No public utility shall make any change in any rate which has been duly established under this chapter, except as provided in this chapter. A public utility seeking a change in any rate or rates shall file with the secretary of the commission and the executive director of the public utilities staff a notice of intent to change rates. The commission may promulgate rules and regulations providing for notice to customers of the filing by any public utility for a rate increase. Routine changes in rates and schedules that do not involve any substantial revenue adjustment may go into effect after thirty (30) days' notice to the commission or after such shorter period of notice as the commission, for good cause shown, may allow. In all other cases, the notice of intent shall contain a statement of the changes proposed to be made in the rates then in force, the new level of revenues sought, the reasons for the proposed changes and the date proposed for such changes to become effective, which date shall not be less than thirty (30) days after the date of filing. The proposed changes may be shown by filing new schedules, by plainly indicating the changes upon schedules filed and in force at the time and kept open to public inspection or by such other manner as



942 will clearly indicate the rates to be changed and the rates
943 proposed. All direct testimony, exhibits and other information
944 which any utility will rely upon in support of the proposed
945 changes shall be filed concurrently with the filing of the notice
946 of intent. Such other data or documentation as the commission
947 shall request shall be supplied by such utility.

948 (2) The commission shall establish by rule and regulation a
949 standard requirement list of documentation to be filed with or to
950 be included in every notice of intent. With respect to any notice
951 of intent involving a major change in rates as defined in
952 subsection (8) of this section, the standard requirement list in
953 each case shall include:

954 (a) A copy of its charter or articles of incorporation,
955 if not already on file with the commission;

956 (b) A schedule of the present rates, fares, tolls,
957 charges or rentals in effect, and the changes it is desired to
958 make;

959 (c) A balance sheet of the utility prepared as of the
960 last day of the latest month in which data shall be readily
961 available;

962 (d) An actual operating statement setting forth revenue
963 and expenses by account numbers for the twelve (12) months ending
964 as the date of the balance sheet applicable to the utility filing
965 the notice of intent;



966 (e) A pro forma operating statement in the same form as
967 the actual operating statement showing estimate of revenue and
968 expenses for the twelve-month period beginning with the effective
969 date of the changed rates (i) without giving effect to the changed
970 rates and (ii) giving effect to the changed rates;

971 (f) A pro forma operating statement in the same form as
972 the actual operating statement for the same period giving effect
973 to the proposed changes in rates and adjusted for known changes in
974 the cost of operations;

975 (g) A statement showing the number of stations or
976 customers by classes affected by the proposed changes in rates,
977 the actual revenue under the old rates arising from each class and
978 the annual amount of the proposed increase or decrease applicable
979 to each class;

980 (h) A description of the utility's property, including
981 a statement of the original cost of the property and the cost to
982 the utility;

983 (i) A statement in full of the reasons why the change
984 in rates is desired so that the commission may clearly see the
985 justification therefor;

986 (j) The amount and kinds of stock authorized;

987 (k) The amount and kinds of stock issued and
988 outstanding;

989 (l) The number and amount of bonds authorized and the
990 number and amount issued;



991 (m) The rate and amount of dividends paid during the
992 five (5) previous fiscal years, and the amount of capital stock on
993 which dividends were paid each year;

994 (n) An analysis of surplus covering the period from the
995 close of the last calendar year for which an annual report has
996 been filed with the commission to the date of the balance sheet
997 attached to the notice.

998 (3) The commission may, by rule and regulation, require the
999 utility filing a notice of intent to change rates to supplement
1000 the above data with such other information as the commission or
1001 the public utilities staff may reasonably request.

1002 (4) Unless the commission, upon application by a utility and
1003 for good cause shown, shall enter an order waiving one or more of
1004 the following requirements, then whenever a public utility files a
1005 notice of intent wherein an increase in the level of annual
1006 revenues in the amount of at least Fifteen Million Dollars
1007 (\$15,000,000.00) is sought, the standard requirement list of
1008 documentation shall include:

1009 (a) Guidelines or directives as to the public utility's
1010 presentation provided by a controlling affiliate, parent or
1011 holding company;

1012 (b) Marginal cost data;

1013 (c) Alternate rate design;

1014 (d) Conservation effectiveness;



1015 (e) A properly prepared, complete, detailed lead-lag
1016 study for the test year for the total company, Mississippi retail,
1017 other retail jurisdictions and Federal Energy Regulatory
1018 Commission wholesale rates in support of the public utility's
1019 total working capital requirement contained therein, including all
1020 working papers in support thereof;

1021 (f) Direct testimony proposed to be offered at a
1022 hearing.

1023 (5) The notice of intent for major changes in rates as
1024 defined in subsection (8) of this section shall state the test
1025 period adopted by the public utility in support of its proposed
1026 rate changes, which may be a twelve-month period beginning with
1027 the proposed effective date of the rates proposed in the notice.
1028 For the purpose of expediting the regulatory process, all public
1029 utilities shall keep the commission advised of their plans or
1030 needs for future requests for major rate changes.

1031 (6) Within five (5) days after the notice of intent has been
1032 filed, the utility shall serve a copy of the notice of intent
1033 without documentation on all parties of record in its last
1034 proceeding in which a major change in rates was sought, and shall
1035 file a certificate of service with the commission. Thereafter, a
1036 copy of all material filed by the utility shall be furnished by
1037 the utility to those persons as may be provided for by the
1038 commission's rules and regulations.



1039 (7) (a) When the rates in a notice of intent are suspended
1040 by commission order, the commission may issue a scheduling order
1041 which establishes deadlines for submitting data requests,
1042 responding to data requests, conducting prehearing conferences and
1043 hearings and disposing of other matters necessary for the orderly
1044 disposition of the case.

1045 (b) The public utilities staff and all intervenors or
1046 protestants shall file all direct testimony, exhibits and other
1047 information which is to be relied upon regarding the proposed
1048 changes within eighty (80) days from the filing of such notice of
1049 intent. At the time of filing direct testimony, exhibits and
1050 other information, each party filing such documents shall serve
1051 copies of the documentation on all other parties of record and
1052 shall file a certificate of service with the commission.

1053 (8) The commission, for good cause shown, may, except in the
1054 case of major changes, allow changes in rates to take effect at
1055 the end of thirty (30) days from the date of the filing and the
1056 notice of intent, or on the effective date set out in the notice,
1057 without requiring any further proceedings, under such conditions
1058 as it may prescribe. All such changes shall be immediately
1059 indicated by such public utility upon its schedules. "Major
1060 changes" means (a) an increase in rates which would increase the
1061 annual revenues of such public utility more than the greater of
1062 One Hundred Thousand Dollars (\$100,000.00) or two percent (2%),
1063 but shall not include changes in rates allowed to go into effect



1064 by the commission or made by the public utility pursuant to an
1065 order of the commission after hearings held upon notice to the
1066 public, or (b) a change in the rate design which has a significant
1067 impact on a class or classes of ratepayers.

1068 (9) For all major changes in rates and schedules as defined
1069 in subsection (8) of this section, a public utility as defined in
1070 Section 77-3-3(d)(iv) shall provide, not later than twenty (20)
1071 days after filing the notice of intent to change rates, notice of
1072 such proposed change within each affected customer's bill or
1073 invoice and in a newspaper having general circulation in the area
1074 where service is being provided by the public utility. The notice
1075 shall state the date on which the notice of intent was filed with
1076 the commission and shall include a financial impact statement
1077 showing the average amount of increase to customers by class and
1078 usage. The filing public utility shall file a copy of the notice,
1079 along with a certificate with the executive secretary of the
1080 commission, verifying that notice to each of the utility's
1081 affected customers was provided in a timely manner.

1082 (10) With respect to any facility or contract for a facility
1083 serving a customer under Section 77-3-271, nothing in this section
1084 shall supersede the provisions of Section 77-3-271.

1085 **SECTION 15.** Section 77-3-39, Mississippi Code of 1972, is
1086 amended as follows:

1087 77-3-39. (1) Whenever there is filed with the commission by
1088 any public utility any notice of intent to change rates pursuant



1089 to the provisions of Section 77-3-37, the commission, if it so
1090 orders within thirty (30) days after the date such notice of
1091 intent is filed, shall hold a hearing to determine the
1092 reasonableness and lawfulness of such rate change. The commission
1093 shall hold such hearing in every case in which the change in rates
1094 constitutes a major change in rates, as defined in Section
1095 77-3-37(8). An abbreviated proceeding may satisfy this
1096 requirement if the commission's order is supported by the data,
1097 documentation and exhibits on file in the proceeding.

1098 (2) Pending such hearing and the decision thereon, the
1099 commission may, at any time before they become effective, suspend
1100 the operation of such rate or rates, but not for a period longer
1101 than one hundred twenty (120) days beyond the date of the filing
1102 of the notice of intent, except as provided in subsections (15)
1103 and (16) of this section.

1104 (3) Prior to the hearing specifically provided for herein,
1105 the commission shall direct all parties of record to appear before
1106 a hearing examiner or member of the commission staff designated by
1107 it, for a prehearing conference.

1108 (4) Such prehearing conference shall be held at least twenty
1109 (20) days before the date such rate case is set for hearing. The
1110 commission shall establish a procedure for conducting such
1111 prehearing conference, which procedure shall include: (a) setting
1112 forth issues upon which no evidence shall be taken, except upon
1113 offer of proof; (b) designation of specific issues upon which



1114 evidence will be taken; and (c) specific areas of agreement to be
1115 placed on the record, together with the original position of the
1116 utility, the public utilities staff and the interested parties of
1117 record.

1118 (5) At such prehearing conference the commission, or its
1119 designee, and the parties shall consider: (a) the simplification
1120 of the issues; (b) the necessity or desirability of providing
1121 additional information to the commission; (c) the possibility of
1122 obtaining admissions or stipulations that will avoid unnecessary
1123 proof; and (d) such other matters as may aid in the disposition of
1124 the case.

1125 (6) The commission may accept and adopt as its own, the
1126 agreements between any or all interested parties of record, or any
1127 portion thereof, resulting from the prehearing conference and
1128 allow such changes in rates, without requiring any further
1129 proceedings, to become effective immediately.

1130 (7) The commission may enter its order reciting the action
1131 taken at the prehearing conference, the agreements made by the
1132 parties as to any matters considered and the limitation of the
1133 issues for hearing to those not disposed of by admissions or
1134 stipulations of counsel. If practicable, such order shall specify
1135 the facts that appear without substantial controversy, including
1136 the extent to which the rate change is not in controversy, and
1137 shall also direct such further proceedings in the case as are
1138 just.



1139 (8) After the prehearing conference and no later than ten
1140 (10) days prior to the date set by the commission for a hearing:

1141 (a) The public utilities staff shall submit to the
1142 commission all final exhibits, prepared testimony and evidence,
1143 and shall serve copies on all interested parties of record, which
1144 documents shall reflect the agreements made at the prehearing
1145 conference;

1146 (b) The utility shall provide an exhibit indicating
1147 which portion, if any, of the public utilities staff's
1148 presentation and that of other parties it is prepared to accept
1149 and be free of future litigation, showing thereon the effect of
1150 such acceptance on the applicant's request for such changes, and
1151 shall serve copies on all parties of record;

1152 (c) Parties other than the public utilities staff and
1153 the utility shall submit their amended exhibits, prepared direct
1154 testimony and evidence, reflecting the agreements made at the
1155 prehearing conference, and shall serve copies on all parties of
1156 record.

1157 (9) If, after such hearing or abbreviated proceeding, the
1158 commission shall find any such rate or rates to be unjust,
1159 unreasonable or unreasonably discriminatory, or in anywise in
1160 violation of the law, the same shall be set aside, and the
1161 commission shall determine and fix by order such rate or rates as
1162 will yield a fair rate of return to the public utility for
1163 furnishing service to the public and shall make and file its



1164 conclusions and findings of facts supporting such order. A copy
1165 of such order shall be served upon the utility in the manner
1166 provided in this chapter, and the rates fixed by the commission
1167 shall be the legal rates until changed as prescribed by this
1168 chapter.

1169 (10) Notwithstanding anything to the contrary contained in
1170 this chapter, the commission shall hold the hearing, render its
1171 decision and enter its order not more than one hundred twenty
1172 (120) days after the date of the filing of the said notice of
1173 intent. If the commission does not make a final determination
1174 concerning any schedule of rates within a period of one hundred
1175 twenty 120) days after the date of the filing of the notice of
1176 intent, and notwithstanding any order of suspension, except as
1177 provided in subsections (15) and (16) of this section, the public
1178 utility may put such suspended rate or rates into effect as
1179 temporary rates by filing with the commission a bond in a
1180 reasonable amount approved by the commission, with sureties
1181 approved by the commission, conditioned upon the refund, in a
1182 manner and to the parties to be prescribed by order of the
1183 commission, of the amount of the excess, with lawful interest
1184 thereon, if the rate or rates so put into effect are finally
1185 determined to be excessive. There may be substituted for such
1186 bond other arrangements satisfactory to the commission for the
1187 protection of the parties interested. During any such period when
1188 suspended rates are in effect under bond or other arrangement the



1189 commission may, in its discretion, require that the public utility
1190 involved shall keep an accurate account of payments made under the
1191 rate or rates which the public utility has put into operation in
1192 excess of the rate or rates in effect immediately prior thereto.

1193 (11) In addition to the other remedies provided by law,
1194 should there be an appeal of the commission's final order, the
1195 commission shall allow the utility to place such portion of the
1196 schedule of rates that is approved by the commission in such final
1197 order into effect under refunding bond or other arrangements
1198 satisfactory to the commission for the protection of parties
1199 interested.

1200 (12) Should the final judicial determination of an appeal of
1201 a commission's final order rendered pursuant to subsection (9)
1202 hereof result in a schedule of rates less than what the commission
1203 allowed, the commission shall by order require the refund to
1204 customers of any amounts collected by a utility under bond, or
1205 other arrangements, during the appellate process which the courts
1206 found to be in excess of the amounts that should have been allowed
1207 by the commission in its final order. Such refunds shall be made
1208 in full, including interest at the lawful rate and shall be made
1209 within ninety (90) days after such final judicial determination.
1210 In lieu of payment, the utility may credit the service account
1211 with the amount due under this subsection if the consumer entitled
1212 to the refund is, at that time, a consumer of the utility.



1213 (13) Any bond, or other arrangements, approved by the
1214 commission pursuant to subsection (11) of this section shall be in
1215 such amount and with sufficient sureties to insure the prompt
1216 payment of any refunds if the rates so put into effect are finally
1217 determined by the commission or the courts to be excessive.

1218 (14) For purposes of subsections (9), (11) and (12) of this
1219 section, the term "final order" means an order of the commission
1220 promulgated pursuant to subsection (9) of this section or, in the
1221 event of a rehearing conducted pursuant to Section 77-3-65, means
1222 an order of the commission promulgated subsequent to such
1223 rehearing.

1224 (15) No public utility may have more than one (1) major
1225 change in rates in effect under refunding bond at the same time.
1226 When a case is pending before the commission or before any court
1227 which involves a major change in rates which are in effect under
1228 refunding bond, and when the commission shall find that the
1229 pending case involves an issue or issues necessary to be resolved
1230 before the commission can effectively proceed with the hearing,
1231 decision or order, the 120-day period provided for in subsections
1232 (2) and (10) of this section may be enlarged by the commission, in
1233 order to postpone the hearing on the notice of intent, decision or
1234 final order in any subsequent rate case filed by the same utility,
1235 until a final order has been rendered with respect to the prior
1236 pending change in rates.



1237 (16) When a notice of intent to change rates is filed with
1238 the commission, said notice shall be assigned a docket number and
1239 the commission shall examine the filing to determine if it
1240 contains the standard requirement list of documentation set out in
1241 Section 77-3-37(2) and (4), if applicable, and in any rules and
1242 regulations adopted by the commission under Section 77-3-37(2).
1243 Within five (5) days from the date said notice is filed, the
1244 commission shall notify the filing utility in writing of its
1245 failure to include with its notice any items included in such
1246 standard requirement list of documentation. Such notification
1247 shall specify the item or items not filed with said notice. The
1248 filing utility shall have ten (10) days from the date it receives
1249 said notification to file the omitted item or items with the
1250 commission. Provided, however, upon request by the filing utility
1251 made within said ten-day period, the commission shall grant, by
1252 order, such additional time as the filing utility may request, not
1253 to exceed thirty (30) additional days, within which to file the
1254 omitted item or items. If the filing utility fails to file the
1255 omitted item or items within said ten (10) days or within such
1256 extended period of time as the commission by order shall allow,
1257 the commission may refuse to consider any evidence in support of
1258 said item or items in making the commission's final determination
1259 concerning the schedule of rates filed with the notice.
1260 Notwithstanding the 120-day time period imposed on the commission
1261 to render its decision and enter its order under subsections (2)



1262 and (10) of this section and the 80-day time period imposed on the
1263 public utilities staff, intervenors or * * * protestors for the
1264 filing of all direct testimony, exhibits and other information
1265 under Section 77-3-37(7)(b), if the filing utility is granted
1266 additional time within which to file the omitted item or items,
1267 said 120-day and the 80-day time periods shall be extended by the
1268 number of days between the date of the commission's order granting
1269 the extension and the date such omitted items are filed with the
1270 commission, but such extension of said 120-day and 80-day time
1271 periods shall not exceed thirty (30) days.

1272 (17) With respect to any facility or contract for a facility
1273 serving a customer under Section 77-3-271, nothing in this section
1274 shall supersede the provisions of Section 77-3-271.

1275 **SECTION 16.** Section 77-3-41, Mississippi Code of 1972, is
1276 brought forward as follows:

1277 77-3-41. (1) Whenever the commission, after hearing had on
1278 reasonable notice, finds that the existing rates in effect and
1279 collected by any public utility are unjust, unreasonable,
1280 materially excessive or insufficient or unreasonably
1281 discriminatory, or in anywise in violation of any provision of
1282 law, the commission shall determine, and fix by order, the just
1283 and reasonable rates which will yield a fair rate of return to the
1284 utility for furnishing service, which rates will thereafter be
1285 observed and in force. Said rates shall thereupon become the
1286 legal rates to be charged and paid until changed.



1287 (2) The commission shall have power, when deemed by it
1288 necessary to prevent injury to the business or interest of the
1289 people or any public utility of this state in case of any
1290 emergency, to permit any public utility to alter, amend or suspend
1291 temporarily any existing rates, schedules and orders relating to
1292 or affecting any public utility or part of any public utility in
1293 this state except as provided in Section 77-3-42.

1294 (3) With respect to any facility or contract for a facility
1295 serving a customer under Section 77-3-271, nothing in this section
1296 shall supersede the provisions of Section 77-3-271.

1297 **SECTION 17.** Section 77-3-43, Mississippi Code of 1972, is
1298 brought forward as follows:

1299 77-3-43. (1) In regulating the rates of any public utility
1300 subject to the provisions of this chapter, the commission shall,
1301 on hearing after reasonable notice, ascertain and fix the rate
1302 base of the property of the public utility in such manner as to be
1303 fair both to the public utility and to the consumer when the same
1304 is relevant or material to the exercise of the jurisdiction of the
1305 commission. The commission shall make readjustments from time to
1306 time, and ascertain the cost of all new construction, extensions
1307 and additions to the property of every public utility. In
1308 arriving at such rate base, the commission shall give due
1309 consideration to: (a) the reasonable original costs of the
1310 property used and useful, or to be used and useful within a
1311 reasonable time after the test period; (b) the portion of the cost



1312 which has been consumed by previous use recovered by depreciation
1313 expense; (c) the allowance for funds used during construction, not
1314 to exceed on borrowed funds the true net interest cost of such
1315 funds, computed according to the actuarial method, and, on the
1316 equity component thereof, a rate of return granted on common
1317 equity in the last rate proceedings before the commission, or if
1318 such rate has not been established within the preceding three (3)
1319 years, then the average rate of return actually earned on equity
1320 during the preceding three (3) years; (d) any other elements
1321 deemed by the commission to be material in determining the rate
1322 base for rate-making purposes.

1323 (2) Valuations of property of such a public utility for
1324 rate-making purposes shall not include property purchased, labor
1325 supplied or services rendered by any firm or corporation owned or
1326 controlled in whole or in part, directly or indirectly, by such
1327 public utility, or which owns or controls in whole or in part,
1328 directly or indirectly, such public utility, unless such firm or
1329 corporation permits the commission to have access to such of the
1330 books and records of such firm or corporation as may be necessary
1331 in the opinion of the commission to enable the commission to
1332 determine whether such labor, materials, property or services
1333 rendered were supplied at reasonable prices. The rate base shall
1334 not include property donated to such utility without any
1335 consideration nor shall operating expenses include depreciation of
1336 such donated property.



1337 (3) Whenever the commission is required in administering
1338 this chapter to find the value of gas in the field where produced,
1339 such value shall be determined as the amount paid therefor by the
1340 public utility in the field pursuant to arm's length contract; and
1341 in the absence of such arm's length contract, the fair market
1342 value of such gas as a commodity in the field.

1343 (4) The commission, in its discretion, when requested by
1344 petition of a rate-jurisdictional public utility providing water
1345 service as defined in Section 77-3-3(d)(iv), may allow to be
1346 recovered in rates the reasonable costs of used and useful
1347 facilities deemed necessary for fire protection. Such facilities
1348 include fire hydrants, transmission and distribution mains,
1349 storage facilities, pumping equipment or other facilities
1350 associated with the provision of adequate water production,
1351 storage and distribution for fire protection.

1352 **SECTION 18.** Section 77-3-203, Mississippi Code of 1972, is
1353 brought forward as follows:

1354 77-3-203. If any public utility, other than a municipality,
1355 shall fail or refuse to construct within its certificated area any
1356 facilities necessary to provide public utility service, or shall
1357 fail or refuse to make written commitment to do so, within a
1358 reasonable time after written request for such service by any
1359 owner of property, which request shall specify with reasonable
1360 particularity the type of service desired, such owner may, in
1361 addition to any other legal or administrative remedy provided by



1362 law and either separately or jointly with any other owner or
1363 owners in the area affected, pursue either of the following
1364 alternatives or a combination thereof:

1365 (a) In the name of such owner or jointly with any other
1366 person, firm or corporation, pursuant to the provisions of Section
1367 77-3-13, apply to the Mississippi Public Service Commission for a
1368 certificate of public convenience and necessity to construct the
1369 appropriate facilities for furnishing such service or services and
1370 to furnish the same within the area affected, and, provided the
1371 commission finds that the cancellation of the outstanding
1372 certificate would be in the best interest of the consuming public
1373 as provided by Section 77-3-21, the fact that a certificate for
1374 the same type service or services may have been previously issued
1375 to the public utility failing or refusing to furnish such service
1376 shall not be prejudicial to such application; or

1377 (b) File with the Mississippi Public Service Commission
1378 a set of proposed plans for construction of such facilities and
1379 connection of the same with the system or systems of the utility
1380 or utilities affected, such plans to conform in all respects to
1381 all reasonable requirements of said commission and any other
1382 public body having lawful authority to establish standards of
1383 construction. The owner shall give twenty (20) days' notice of
1384 such filing to said commission and any other public bodies
1385 aforesaid and to the public utility or utilities holding a
1386 certificate for the area affected. If, after such notice and



1387 opportunity for protest and hearing thereon, the commission shall
1388 approve such plans or any modification thereof as being supported
1389 by present or future public convenience and necessity, the owner
1390 may give notice as hereinafter provided and then proceed to let
1391 contracts for the construction of the same or to construct the
1392 same and, upon proper completion thereof and conveyance or
1393 assignment of such facilities and easements to the utility, the
1394 holder of the certificate for the area and service affected shall
1395 be obliged promptly to connect the same to its systems and provide
1396 such service.

1397 **SECTION 19.** Section 77-3-217, Mississippi Code of 1972, is
1398 brought forward as follows:

1399 77-3-217. The provisions of this article shall be cumulative
1400 to, and not in derogation of, Sections 77-3-21 and 77-3-29.

1401 Any proceedings under the provisions of this article before
1402 the Public Service Commission shall be held and conducted as
1403 provided by Article 1 of this chapter. Appeals shall be available
1404 as a matter of right as provided by Sections 77-3-67 to 77-3-73.

1405 **SECTION 20.** Section 77-3-301, Mississippi Code of 1972, is
1406 brought forward as follows:

1407 77-3-301. Any person, firm, copartnership or corporation
1408 doing business in the State of Mississippi and engaged in the sale
1409 or distribution of electricity, gas or water, whose rates or
1410 tariffs for such service contain any form of so-called "service
1411 charge," shall be required to have fair and reasonable optional



1412 rate schedules and minimum charges that do not contain any form of
1413 such so-called "service charge," so that the consumer may exercise
1414 his option as to the form of rate schedule under which said
1415 consumer will be billed for service used. Such optional rate
1416 schedules shall not require the payment for each unit of
1417 electricity, gas, or water consumed, at a rate in excess of the
1418 rates per unit prescribed for use which were in effect prior to
1419 the establishment of a "service charge" by such person, firm or
1420 corporation affected hereby.

1421 **SECTION 21.** Section 77-3-303, Mississippi Code of 1972, is
1422 brought forward as follows:

1423 77-3-303. All bills rendered to consumers by any public
1424 service utility affected by this article shall be itemized so as
1425 to show in detail the amount of electricity, gas or water consumed
1426 and the rate per unit charged.

1427 **SECTION 22.** Section 77-3-305, Mississippi Code of 1972, is
1428 amended as follows:

1429 77-3-305. Any amount of money collected by any public
1430 utility in * * * willful violation of Section 77-3-303 may be
1431 recovered by an action at law by the consumer from whom it was
1432 collected. In addition thereto, any person, firm, copartnership
1433 or corporation violating the provisions of this article, shall be
1434 guilty of a misdemeanor and upon conviction shall be fined not
1435 more than Fifty Dollars (\$50.00) for each offense.



1436 **SECTION 23.** Section 77-3-307, Mississippi Code of 1972, is
1437 brought forward as follows:

1438 77-3-307. The provisions of this article shall not apply:

1439 (a) To municipally or privately owned plants where a
1440 flat charge only is made, and no meters are in operation;

1441 (b) To any municipally owned and/or operated public
1442 service utility, the net income of which said utility is used
1443 solely for governmental purposes and/or for the discharge of
1444 governmental obligations and not for private gain;

1445 (c) To the Tennessee Valley Authority or any
1446 municipality that purchases gas, water or electric lights and
1447 power from the Tennessee Valley Authority; or

1448 (d) To any state corporation chartered by the State of
1449 Mississippi, or any corporation doing business in the State of
1450 Mississippi, which buys electric current and/or power from the
1451 Tennessee Valley Authority for distribution for domestic and/or
1452 commercial purposes.

1453 **SECTION 24.** This act shall take effect and be in force from
1454 and after its passage.

