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BRANDI NIELAND
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ASSISTANCE UNIT

BILL NO.:	Senate Bill 131 Public Service Commission – Rate Suspension Proceedings
COMMITTEE:	Finance
HEARING DATE:	February 1, 2022
SPONSOR:	Senator Kelley
POSITION:	Support

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The Office of People's Counsel strongly supports SB 131. The bill will provide additional time for analysis and input in proceedings before the Public Service Commission involving alternative forms of ratemaking. The bill's extension of the schedule by 90 days for these proceedings will benefit utility customers.

In a typical rate case proceeding, a utility's expenses and capital projects over a recent "historic" 12-month period are reviewed to determine if the expenditures were prudent and whether the projects serve the interests of customers. The analysis entails the examination of the utility's expenses and investments over that 12-month period to determine the utility's required annual revenues. The utility must give 30 days' notice of a change in rates, and the Commission has authority to suspend the rate change for an initial period of 150 days and then an additional 30 days beyond that. Thus, the longest time allowed for a rate case under current law—from the utility's filing until the Commission's order—is 210 days (roughly 7 months). This timeframe is one of the shortest in the country and creates challenges for parties to traditional rate cases.

A utility's proposal for an alternative form of ratemaking is vastly more complex than a traditional rate case, but current law still allows only 210 days from start to finish. In 2020 and 2021, two utilities filed cases for multi-year rates, a form of alternative ratemaking. As these cases showed, parties to an alternate form of ratemaking case—such as OPC—must perform detailed analyses of not only past spending, but also proposed spending. OPC's analysis is necessary to carry out its statutory obligation of evaluation and participation for the protection of residential customer interests. This requires OPC to retain experts, present testimony, and make arguments before the Commission—all of which is more challenging and time consuming than for a traditional rate case.

In particular, alternative ratemaking cases require examining past utility expenses and capital projects, as well as the expenses and investments occurring simultaneously with the litigation of the case, to establish a baseline for judging the reasonableness of the projections of three separate future annual rates. Beyond that, they require examining new issues, including the utility's future-year plans for projects and expenditures. Often they also require a detailed assessment of the utility's financial incentives under various rate design proposals to determine how they align with the public interest. These analyses require additional evidence, such as the testimony of experts, which is not submitted in a traditional rate case.

Additionally, as occurred with the multi-year proposals filed by Baltimore Gas and Electric and Potomac Electric Power Company, a utility filing a multi-year rate plan will often propose rate increases for each year of the plan. Such proposals raise the rate case's total cost impact for customers, making it critical for OPC to have adequate time to conduct the required discovery and present the necessary testimony to give the Commission the fullest record to review so that it can make the most informed decision in setting utility rates and performance expectations.

Furthermore, future multi-year cases will be even more complicated because the utility's actual expenditures and performance since the prior case must be compared to what the utility had projected and the Commission approved. This review could result in changes to the utility's rates to correct for performance failures over the course of the multi-year rate period. Thus, it becomes even more important over time that OPC and other parties have additional time to sufficiently analyze and present evidence in alternative-form rate cases.

SB 131 would amend the Public Utilities Article to allow the Commission to extend the schedule an additional 90 days if the case involves an alternate form of ratemaking. This schedule extension is critical for a more thorough evaluation of the utility's rate case, which will ultimately benefits utility customers.

Recommendation: OPC requests a favorable report on Senate Bill 131.

SB 131-- AOBA--FAV.pdf
Uploaded by: Frann Francis
Position: FAV

Bill No: **SB 131—Public Service Commission – Rate Suspension Proceedings**

Committee: **Finance**

Date: **February 1, 2022**

Position: **Support**

The Apartment and Office Building Association of Metropolitan Washington ("AOBA") submits this testimony in **support of SB 131.** AOBA's members own or manage approximately 60 million square feet of commercial office space and over 296,000 apartment units in the State of Maryland and receive service from the Potomac Electric Power Company ("Pepco") and the Washington Gas Light Company ("WGL").

SB 131 would amend the current law, Public Utilities Article ("PUA") §4-204, to allow the Public Service Commission the ability to extend a proceeding if it is for an alternative form of ratemaking for an electric company, a gas company, an electric and gas company, or a telephone company for up to an additional 90 days.

For more than forty-five years, AOBA has actively participated as a party in proceedings before the Public Service Commission ("Commission" or "PSC") involving electric and natural gas energy distribution services representing commercial and multi-family apartment customers of Pepco and Washington Gas. My testimony today in support of **SB 131** is based on AOBA's long standing participation in rate cases and our recent intervention in Pepco proceedings in Maryland and the District of Columbia considering an alternative form of regulation, a Multi-Year Rate Plan (("MYP"), Case No. 9655 in Maryland and Formal Case No. 1156 in the District of Columbia.

The passage of **SB 131** would extend by an additional 90 days the time the Public Service Commission can investigate and decide applications made by electric, natural gas and telephone utility companies, for approval of alternative forms of ratemaking to recover their costs for providing regulated services to their customers.

The importance of this amendment to Public Utilities Article ("PUA") §4-204 is best viewed in the context of the Public Service Commission's duties and responsibilities to regulate public utility companies, and establish utility rates that are just and reasonable and in the public interest. The Public Service Commission has the authority to regulate the activities of all public utility service companies operating in Maryland, including the authority to establish and set the distribution rates that utility companies are permitted to charge their customers.

The Commission must balance the interests of utility customers and utility shareholders in setting rates for utility services. As required by PUA §4-201, rates are required to be "just and reasonable." In accordance with PUA §4-101, the statute defines a "just and reasonable" rate as one that "fully considers and is consistent with the public good," and "will result in an operating income to the public service company that yields, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair value of the public service company's property used and useful in providing service to the public." These are core principles of Commission rate regulation that underscore the exercise of its regulatory authority regardless of the form of rate regulation.

In considering applications for approval of alternative forms of rate regulation, PUA §7-505(c)(2) provides that the Public Service Commission "may adopt an alternative form of regulation ... if the Commission finds, after notice and hearing, that the alternative form of regulation: (i) protects consumers; (ii) ensures quality, availability, and reliability of regulated services; and (iii) is in the interest of the public, including shareholders of the electric company."

The proposed SB 131 amendment to PUA §4-204 would provide the Public Service Commission with additional flexibility in investigating the complex proposals submitted by utility companies for approval of alternative forms of regulation.

Historically, Pepco's distribution rates are determined on an annual basis after the filing of a rate increase application. The Commission considers the company's application for a rate increase pursuant to an examination of a prior "test year" consisting of the Company's costs, expenses and required rate of return on the company's rate base. Based on this investigation of the utility's costs for a single year period, i.e., "the test year," the PSC determines on a going forward basis whether an increase in the utilities rates is warranted. If so, the Commission sets the company's new rates for the "rate effective period." Those rates remain in effect until such time as the company files a request for another rate increase.

Pepco's recent application for a Multi-Year Rate Plan ("MYP") in Maryland covered a three-year period where Pepco requested to set rates that would automatically adjust during the approved three-year MYP.

Specifically, Pepco requested an increase in its rates beginning April 1, 2021 through March 31, 2024. The costs for a MYP are to reflect costs since Pepco's last base rate case but forecasted into the future, i.e., through March 31, 2024. In other words, the Commission must determine rates for three years into the future based on one year of historic costs and projections of future costs three years into the future. It is important that implementation of alternative forms of regulations be implemented correctly and afford all parties appropriate due process protections.

SB 131 will facilitate the best of outcomes from the Commission in complex investigations involving multi-year rate plans based on forecasts. Most importantly, the Public Service Commission will have the necessary time required to balance the competing interests of ratepayers, utility companies and their shareholders, in order to ensure that complex alternative forms of rate regulation serve the public interest, and that rates for distribution energy services are just and reasonable.

The importance of the availability of additional time for the Public Service Commission to investigate utility company applications for approval of alternative forms of rate regulation can best be viewed in the specific context of the Commission's recent consideration of Pepco's Application for approval of the Company's multi-year rate plan ("MYP").

In the Commission's June 28, 2021 Order No. 89868, in Case No. 9655, the Commission noted that an extension of time in the procedural schedule was required for the Commission, and parties, to thoroughly investigate Pepco's application for approval of the Company's proposed multi-year rate plan:

> "The Commission shares the concerns raised by Staff … and AOBA … regarding the accuracy and granularity of the Company's forecasts. Reliable and reasonable forecasts are essential to the development of a MRP and resulting rates…. **If not for the five-week extension in this case**, Staff would not have had enough time to complete its analysis of Pepco's forecasts, and the Commission would have had no alternative but to reject this rate application." *Potomac Electric Power Company s Application for an Electric Multi-Year Rate Plan*, Case No. 9655, Order No. 89868 at 188, ¶442 (June 28, 2021), (Emphasis supplied). https://www.psc.state.md.us/wp-content/uploads/Order-No.-89868-Case-No.-9655-Pepco-MYP-Order.pdf.

In the District of Columbia, the Pepco MYP proceeding was filed on May 30, 2019. As in Maryland, the Pepco MYP proceeding in the District of Columbia necessitated Pepco's filing of several "corrections" to its testimony and several "updated versions" of its testimony, all of which required responsive testimony, and an opportunity for additional discovery in order to protect the parties due process rights.

After evidentiary hearings were held in October 2020, and post-hearing briefs and reply briefs were filed December 9, and December 23, 2020 respectively, the DC Commission issued its Order and Opinion No. 20755 on June 8, 2021, more than two years after Pepco's original MYP application was filed.

AOBA believes that the utility applicants and parties to Commission investigations of any application for approval of alternative forms of rate regulation will also benefit from **at least the 90 day extension of time** that **SB 131** would provide for the Public Service Commission to meet its statutory obligations. In providing the Commission the regulatory flexibility to extend by 90 days the procedural schedule required to thoroughly investigate applications for alternative forms of regulation, the Public Service Commission would benefit from the varied perspectives of participating parties who would have the opportunity to perform their investigations in a timely manner and provide invaluable perspectives and findings in testimonies, hearings, and briefs for Commission consideration. It would also give the Commission the necessary flexibility to incorporate unforeseen events into the evidentiary process time frame.

For these reasons AOBA urges a favorable report on SB 131.

For further information, contact Frann Francis, AOBA Senior Vice President and General Counsel, at ffrancis@aoba-metro.org or call 202-296-3390 ext. 766.

SB 131 - Rate Case Timeframes.pdf
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Position: FAV

STATE OF MARYLAND

PUBLIC SERVICE COMMISSION

Statutory Deadlines for Processing Utility Rate Cases in the U.S.

- When a utility files an application for new rates, the rate change goes into effect **automatically** unless the Maryland Public Service Commission suspends those rates for a statutorily limited period. The suspension period allows the Commission to oversee a rate case in which multiple parties investigate, conduct discovery, introduce evidence, challenge other parties, and ultimately the Commission determines how much of the requested change is justified.

- In 2020-21, the Commission processed the State's first two electric and gas utility multi-year rate cases. Both cases were extremely challenging to process in the existing timeframe because of the multi-year nature of the requests and many novel issues for parties to analyze. In the future, these cases will be even more complex as the Commission will need to consider both the prudency of the utility's actions in the prior multi-year period and the proposed spending for the next three years. Additional time to verify and review information will improve multi-year rate case quality and content.

- Maryland's current timeframe for a utility rate case is **six** months.
    - 78% of states have a **longer** timeline for multi-year rate plans (Colorado is the *only* state utilizing a multi-year plan with a shorter suspension period).
    - Eleven states utilizing multi-year rate plans have **longer** suspension periods for rate cases.

- If SB 131 becomes law, the deadline for the Commission to process an application for a *multi-year* rate plan will be extended by three months (for a total of **nine** months).
    - 42% of states would *still* have a **longer** timeline than Maryland for *all* types of rate cases.
    - Only **two** states would have a shorter timeline than Maryland for multi-year rate plans.
    - Maryland's timeline for historic test year cases will remain *unchanged*.

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- The table below identifies states that are currently implementing multi-year rate plans.
    - A majority of states that use multi-year rate plans have longer suspension periods than the proposed nine months in SB 131.

States Using Multi-Year Rate Plans		
3-6 Months	**7-10 Months**	**11-14+ Months**
Colorado (3)	Florida (8-12)	New York (11)
Maryland (*Current*: 6)	Maryland (*Proposed*: 9)	New Hampshire (12)
Connecticut (6)	Massachusetts (9)	District of Columbia (No Deadline)
	Ohio (9)	
	Pennsylvania (9)	
	Hawaii (9-12)	
	Washington (10)	
	Iowa (10-12)	
	California (10-15)	

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Position: FAV

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STATE OF MARYLAND

PUBLIC SERVICE COMMISSION

February 1, 2022

Chairperson Delores G. Kelley
Finance Committee
Miller Senate Office Building, 3 East
Annapolis, MD 21401

RE: Senate Bill 131 – FAVORABLE – Public Service Commission – Rate Suspension Proceedings

Dear Chair Kelley and Committee Members:

The Commission writes in strong support of Senate Bill 131, which will allow the Maryland Public Service Commission, the Technical Staff of the Public Service Commission, and other parties an enhanced opportunity to review and analyze the vast amount of forecasted data required in alternative forms of ratemaking. To date, the Commission has encountered two applications from utilities requesting alternative forms of rate making. Each of these proceedings presented three years of forecasted information in the development of rates, which presented significant challenges in analyzing the many components necessary to determine appropriate rates for the citizens of Maryland. These challenges can be tamed by extending the schedule of multi-year rate proceedings. SB 131 would provide the Commission an additional period of 90 days to evaluate the merits of a utility's multi-year rate plan.

Currently, Maryland law authorizes a six-month suspension period, in addition to a one-month notice period, to review a utility rate proceeding before a utility's proposed rates automatically take effect.[1] The suspension period provides crucial time for parties to analyze the merits of the proposed rates. Traditional rate proceedings are based on one historical test year, and the parties rely largely on data from a single-year test period. Multi-year rate

[1] The Public Utilities Article provides three time periods: (1) 30-day notice period; (2) 150-day suspension period; and (3) an optional additional 30 days of suspension. For alternative forms of ratemaking, such as multi-year rate cases, SB 131 would provide an additional 90 days to the existing timeframe.

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plans, however, require the Commission to analyze five different test years: the historical test year, a bridge year, and the three forecasted rate effective years. In addition to a longer period of data to review, by their nature multi-year rates rely heavily on forecasts and projections to develop the revenue requirement and rates for future periods. The forecasted data include projections of sales, customer counts, capital budgets and operating costs a utility expects to need in support of its future operations.

Reviewing forecasts requires additional time. Staff needs to understand the theoretical basis of the forecasts, the variables included in the forecasts, and how forecasts are adjusted for energy efficiency, electric vehicles or any other program. Also, Staff needs to be informed of all input data into the forecasts including the source of the data. The relationship between the forecasts and individual rate classes needs to be understood as well, with a comparison of tariff level forecasts with historical data provided as support for the validity of the forecast. This list is not exhaustive and provides an example of some of the information that must be vetted and verified by Commission Staff and other parties to provide a sound recommendation.

Multi-year rate plans will also become more complex over time when subsequent multi-year rate plans include prudency reviews of prior periods. In reviewing prudency, Staff will assess the utility's actual performance compared to the forecasted capital spend, operations and maintenance budgets, and benefits forecasted in the prior application. Thus, in addition to the five years associated with the new proposed rates, the Commission will be reviewing the actual spending of the prior three-year period. This prudency review may require a "true-up" or change to the utility's revenue requirement and/or rates.

In addition to the challenges of reviewing longer test periods and forecasting, a multi-year rate plan includes an annual reconciliation process that trues-up the ratemaking components for actual costs. This essential protection for ratepayers places additional analytical and procedural burdens on the Commission, Commission Staff, and all parties. From Staff's perspective, additional time to review rates is necessary to better probe and understand the decisions underlying utility budgets at the time rates are established. Ideally, better review in the rate case will reduce the variance between forecasts and actual results and reduce necessary true-ups. One of the key customer benefits of multi-year rates is rate stability and predictability; SB 131 will ultimately help the Commission deliver that benefit to customers.

The Commission's experiences with multi-year rate plans have shown that the additional three months that SB 131 provides is essential. Multi-year rate plans add complexities that require more analysis than is needed for a traditional rate case. These complexities necessitate that the Commission have additional time to review and analyze forecasts and projections. Future multi-year rate cases will be increasingly complex as prudency reviews are included in the analysis. Finally, insufficient rate case review will result in rate instability for customers and undermine one of the largest customer benefits of longer rate effective periods. For the above reasons, the Commission respectfully requests that the Committee grant a favorable report for SB 131.

Thank you for your consideration of this information. Please contact Lisa Smith, Director of Legislative Affairs, at (410) 336-6288 if you have any questions.

Sincerely,

Jason M. Stanek
Chairman

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Position: FAV

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TESTIMONY FOR SB0131

Public Service Commission-Rate Suspension-Rate Suspension Proceedings.

Bill Sponsor: Senator Kelly
Committee: Finance
Organization Submitting: AARP Maryland
Person Submitting: Mary Lee Olsen, Energy Advocacy
Position: FAVORABLE

I am submitting this testimony in favor of SB0131 on behalf of AARP Maryland.

January 25, 2022

Senator Kelly and members of the Finance Committee.

I am Mary Lee Olsen, an AARP Member and also a Howard County resident. AARP Maryland is one of the largest membership- based organizations in the state, encompassing over 850,000 members. AARP overwhelmingly supports HB0228 and SB0131, Public Service Commission-Rate Suspension-Rate Suspension Proceedings.

AARP is a nonpartisan, nonprofit, nationwide organization that helps people turn their goals and dreams into real possibilities, strengthens communities,and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities,and protection from financial abuse.

Bill number SB0131 authorizes the Public Service Commission to extend rate suspension proceedings for up to an additional 120 days. The filing is for an Alternative Form of Ratemaking (AFOR) which could benefit all parties with the rapid changes in the economy and the utility industry. AARP Maryalnd supports this additional extension to permit the Commission additional time to set just and reasonable rates for residential customers.

We respectfully request you support bill SB013. For questions or additional information, please contact Tammy Bresnahan, Associate State Director of Advocacy at tbresnahan@aarp.org or by calling 410.302.8451.

Sincerely,
Mary Lee Olsen

SB 131_Kelley Testimony.pdf

Uploaded by: Delores Kelley

Position: FWA

SENATOR DELORES G. KELLEY
Legislative District 10
Baltimore County

Chair
Finance Committee

Executive Nominations Committee
Rules Committee
Legislative Policy Committee

THE SENATE OF MARYLAND
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TESTIMONY OF SENATOR DELORES G. KELLEY
REGARDING SENATE BILL 131-PUBLIC SERVICE COMMISSION-RATE SUSPENSION PROCEEDINGS
BEFORE THE SENATE FINANCE COMMITTEE
ON FEBRUARY 1, 2022

Colleagues:

Senate Bill 131 simply allows the Maryland Public Service Commission, its Technical Staff, and other parties a little more time (a maximum of 90 days, added on to six months) to review and analyze the vast amount of forecasted data from utilities in "alternative," or multi-year, rate cases. It is important that proposed utility rates are scrutinized, as this is a highly technical process.

In 2019 there was a legislative debate concerning alternative forms of ratemaking. I participated in the PSC's public conference that ultimately led to the Commission's decision to ultimately approve multi-year rate plans. The

Commission has processed two of these complex cases so far, from BGE and Pepco, and we will hear more about lessons learned today, from our panelists.

You will hear the PSC Chairman describe the process of a multi-year rate case and its complicated elements. A representative from PSC's Technical Staff will tell us about their experience reviewing utility forecasts in multi-year cases and conducting the essential reconciliation processes. We will also hear supportive testimony from OPC and AOBA, who are parties to these rate cases. You will not hear any opposition from the utilities.

SB 131 is a small, but critical, change that will benefit the public – ensuring that utility rates are fair, stable, and predictable. The attached amendment, a recommendation from the PSC, reduces the wait time from 120 to 90 days.

In light of these considerations, I ask for a favorable report for SB 131.

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Position: FWA

UNOFFICIAL COPY OF SENATE BILL 131

SENATE BILL 131

C5 2lr0443

(PRE-FILED) CF 2lr1547

By: **Senator Kelley**
Requested: September 8, 2021
Introduced and read first time: January 12, 2022
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Public Service Commission - Rate Suspension Proceedings

FOR the purpose of authorizing the Public Service Commission to suspend a new rate or change in rate for a certain number of days after the proposed effective date; authorizing the Commission to extend the rate suspension ~~proceedings~~ for a certain number of days if the filing is for an alternative form of ratemaking for ~~an electric company, gas company, electric and gas company, or telephone company~~ a public service company; and generally relating to the rate suspension proceedings of the Public Service Commission.

BY repealing and reenacting, without amendments,
Article - Public Utilities
Section 4-204(a) and (b)(1)
Annotated Code of Maryland
(2020 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
Article - Public Utilities
Section 4-204(b)(2)
Annotated Code of Maryland
(2020 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Public Utilities

4-204.

(a) (1) The Commission may suspend, effective immediately and without formal proceedings, any new rate or change in rate proposed by a public service company.

(2) Unless suspended by the Commission, and subject to § 4-203 of this subtitle, a new rate or change in rate proposed by a public service company takes effect on the date specified in the rate application.

(3) The Commission shall furnish to the public service company proposing a rate a written statement of the reasons for the suspension.

(b) (1) The Commission promptly shall institute proceedings to consider whether the suspended rate is a just and reasonable rate.

(2) The Commission may:

(i) suspend the rate initially for not more than ~~150~~ **180** days after the proposed effective date; and

(ii) ~~**1.** extend the suspension for an additional 30 days if the Commission finds that the proceedings cannot be completed within the initial suspension period**; OR**~~

~~**2.**~~ **EXTEND THE ~~PROCEEDINGS~~ SUSPENSION FOR UP TO AN ADDITIONAL ~~120~~ 90 DAYS IF THE FILING IS FOR AN ALTERNATIVE FORM OF RATEMAKING FOR ~~AN ELECTRIC COMPANY, A GAS COMPANY, AN ELECTRIC AND GAS COMPANY, OR A TELEPHONE COMPANY~~ A PUBLIC SERVICE COMPANY**.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.

SB0131-933720-01.pdf
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Position: FWA

SB0131/933720/1 **NATM**

BY: Finance

AMENDMENTS TO SENATE BILL 131
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, after "Commission" insert "to suspend a new rate or change in rate for a certain number of days after the proposed effective date; authorizing the Commission"; in line 3, after "extend" insert "the"; in line 4, strike "proceedings"; strike beginning with "an electric company" in line 5 down through "company" in line 6 and substitute "a public service company".

AMENDMENT NO. 2

On page 2, in line 9, strike "150" and substitute "**180**"; strike beginning with "**1.**" in line 11 down through "**2.**" in line 14; in line 14, strike "**PROCEEDINGS**" and substitute "**SUSPENSION**"; in line 15, strike "**120**" and substitute "**90**"; strike beginning with "**AN ELECTRIC COMPANY**" in line 16 down through "**TELEPHONE COMPANY**" in line 17 and substitute "**A PUBLIC SERVICE COMPANY**".