Primer and Update on Public Utility Law and Practicing Before the Public Service Commission

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Kentucky Public Service Commission

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Any views expressed in this presentation are those of the presenter and do not reflect official positions of the PSC.

Public Service Commission

- Independent Regulatory Agency
- Three-member Commission
- Quasi-judicial function
- Regulates rates and service provided by jurisdictional utilities:
  - 1,100 jurisdictional utilities
  - Water and sewer utilities **(small systems comprise the bulk of regulated utilities)**
  - Natural gas distribution systems and intrastate pipelines
  - Electric utilities (investor-owned and jurisdictional cooperatives)
  - Telecommunications (small number)
  - Does not regulate municipal utilities except for gas pipeline safety.
  - Does not regulate cooperatives served by TVA.

Service and Rates

- Since 1934, the primary statutory directive of utility regulation in Kentucky revolves around:
  - Rates
    - Fair, just and reasonable
  - Service
    - Adequate, efficient and reasonable

Public Service Commission- Jurisdiction

- Regulates rates and service provided by jurisdictional utilities:
  - Water and sewer utilities
    - Investor-owned, water districts and water associations
  - Natural gas distribution systems and intrastate pipelines
    - Rates for gas utilities and farm taps, safety for gas utilities and cities
  - Electric utilities
    - Investor-owned, cooperatives
      - Big Rivers, EKPC, and those that buy their power from Big Rivers and EKPC
  - Telecommunications
    - Very little oversight

Public Service Commission- Jurisdiction

- The PSC does not regulate:
  - Municipal utilities, except
    - Gas safety
    - The wholesale water rate they charge to utilities we do regulate
  - The Tennessee Valley Authority, or anyone that buys their power from TVA
  - Sanitation Districts
  - Environmental matters
    - Water Quality
- Must be an attorney to represent anyone other than yourself before the PSC (Admin. Order No. 249)

Legal Basis of Regulation

- PSC has exclusive jurisdiction over utilities' rates and service (KRS 278.040)
- A utility is a person who owns, operates, control or manages facilities used in the conveyance to or for the public for compensation (KRS 278.010 (3))
- Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person; Every utility shall furnish adequate, efficient and reasonable service, and may establish rules governing the conduct of its business and the conditions under which it shall be required to render service (KRS 278.030 (1) &(2))

Where do rates and rules go?

- Tariffs! (KRS 278.160)
- Utility shall file, as required by PSC, schedules showing all rates and conditions for service
- These “tariffs” must be available to public
- Utility may not charge rates or provide a service except as prescribed in those tariffs

Kentucky Utilities Company

P.S.C. No. 20, Third Revision of Original Sheet No. 5
Canceling P.S.C. No. 20, Second Revision of Original Sheet No. 5

Standard Rate **RS**
Residential Service

APPLICABLE
In all territory served.

AVAILABILITY
Available for single-phase secondary delivery to single family residential service subject to the terms and conditions on Sheet No. 100 of this Tariff. Three-phase service under this rate schedule is restricted to those Customers being billed on this rate schedule as of July 1, 2004.

RATE

Basic Service Charge per day:	$0.53		
Plus an Energy Charge per kWh:	Infrastructure	Variable	Total
	$0.06556	$0.03143	$0.09699

"Variable" shall be the rate comprised of costs, such as fuel, that fluctuate with the production of energy used by customers.

"Infrastructure" shall be the rate comprised of costs associated with meeting system demand that do not fluctuate directly with energy usage as well as the portion of fixed customer-related expenses not recovered in the Basic Service Charge.

ADJUSTMENT CLAUSES
The bill amount computed at the charges specified above shall be increased or decreased in accordance with the following:

Demand-Side Management Cost Recovery Mechanism	Sheet No. 86	
Fuel Adjustment Clause	Sheet No. 85	
Off-System Sales Adjustment Clause	Sheet No. 88	
Environmental Cost Recovery Surcharge	Sheet No. 87	D
Home Energy Assistance Program	Sheet No. 92	
Franchise Fee	Sheet No. 90	
School Tax	Sheet No. 91	

MINIMUM CHARGE
The Basic Service Charge shall be the minimum charge.

DUE DATE OF BILL
Customer's payment will be due within sixteen (16) business days (no less than twenty-two (22) calendar days) from the date of the bill.

DATE OF ISSUE: October 17, 2022

DATE EFFECTIVE: With Service Rendered
On and After October 1, 2022

ISSUED BY: /s/ Robert M. Conroy, Vice President
State Regulation and Rates
Lexington, Kentucky

KENTUCKY
PUBLIC SERVICE COMMISSION
Linda C. Bridwell
Executive Director
Linda C. Bridwell
EFFECTIVE
10/1/2022
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

Changing Rates - KRS 278.180 & 278.190

- A utility may not increase “rates” except upon 30 days notice
  - Can be shortened to 20 days for good cause shown
  - Notice can be “less time” if a reduction
- PSC may suspend the implementation of the rate change for up to 5 or 6 months in order to investigate the proposal
- After suspension period, utility may implement proposal, subject to refund
- PSC has 10 months from the filing to make a decision
  - Once 10 months has run, rate is effective as filed

What does a rate change look like?

- Small changes to rates, such the cost for new customers to tap onto a water system, may be filed through tariff filing system (807 KAR 5:011)
- Rate cases, for instance, are filed in the form of an application, supported by evidence, testimony, affidavits, etc., all in accordance with statutes and regulations (KRS 278.190 & 192, 807 KAR 5:001 Section 16 & 5:011)
- Acceptance of application for filing, if compliant, starts 30-day and 10-month clocks. PSC may enter order w/in 30 days suspending effective date to investigate (PSC may set rules on application standards- *Bullitt Utilities)*
- Same order that suspends effective date sets a procedural schedule (See Order from 2024-00092). Schedule includes:
  - Intervention date for interested parties
  - Discovery deadlines
  - Hearing date or briefing dates

Ratemaking- What is the PSC looking for?

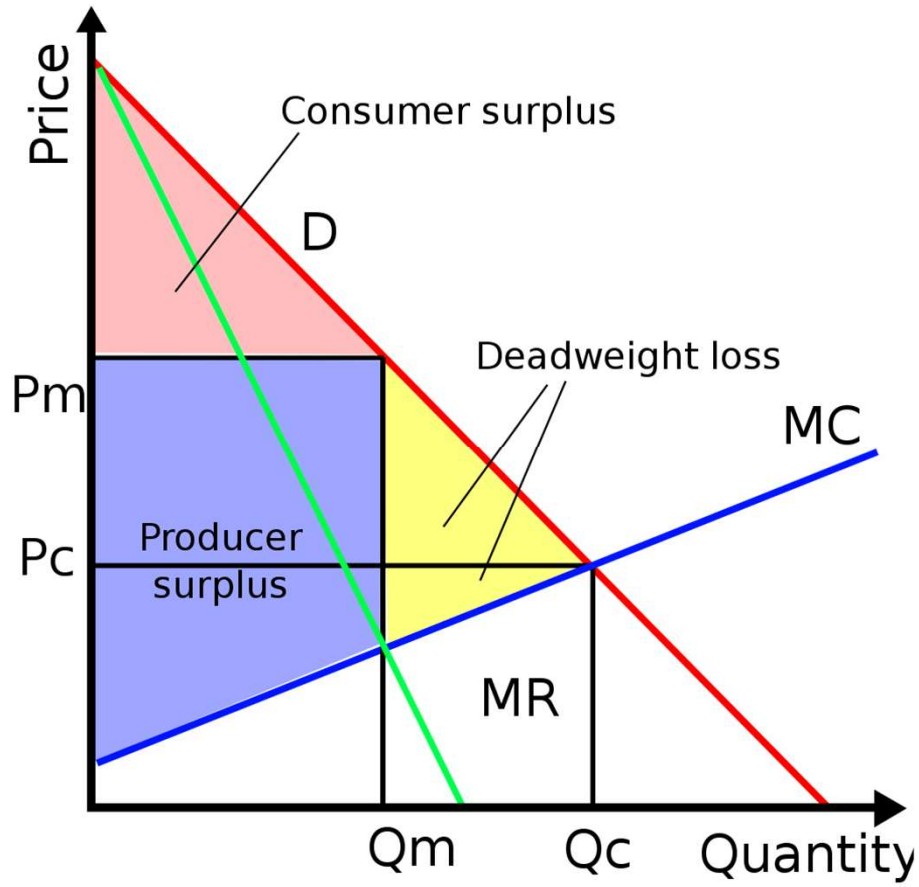
- Utilities in Kentucky are not competitive businesses, but instead have their rates and service regulated by the PSC
- Historically, there was a concern around the duplication of the same service, leading to the inefficient investment of capital
- Electric utilities, for instance, were provided defined service territories: They have an obligation to serve everyone who demands service in that territory (KRS 278.016 - 278.018)
- A state granted monopoly creates two primary problems: risk of poor service, and monopoly profits in excess of costs
- Solution: regulate the utility's rates and service

Ratemaking, continued.

- The rate regulation of monopoly, investor-owned utilities is a function of costs
  - Of course, in the idealized version of competition, and in particular a "perfect market," in the short run prices will reflect the marginal cost of a particular product.
  - The introduction of monopolies leads to an expectation that the firm will charge prices well in excess of costs, leading to the sale of less goods, and resulting in deadweight loss
    - Under this scenario, the producer has more surplus, consumers have less surplus and there is also a complete loss of potential gains that neither accrue to the producer or consumer; that is deadweight loss.

Ratemaking, continued.

- Deadweight loss



Ratemaking, continued.

- Again the rate regulation of monopoly, investor-owned utilities is a function of costs
  - Since we have concerns about the prices a monopoly would charge, particularly charging rates in excess of costs, rates are created based on the costs incurred or expected to be incurred by a utility
- The first step in ratemaking is to determine all of the costs a utility incurred or expects to incur in a year that are deemed to be recoverable from customers
  - This includes operations and maintenance expenses, the investments made by the utility, and a return on the capital reflected by the investments.

Ratemaking, continued.

- This determination of the utility's annual expenses that are recoverable from customers is called the "revenue requirement," and is calculated below

Revenue Requirement= O & M expenses + (original investments- amount of investments already recovered)* Rate of return

  - O&M expenses includes repairs, taxes, depreciation expense, labor, fuel, insurance, etc.
  - Original Investments is the gross value of the utility's property (costs that are depreciated)
  - Amount of investments already recovered is referred to as accumulated depreciation
  - Rate of Return is the cost of the debt and equity capital underpinning the investments

Ratemaking, continued.

- The rate of return is reflective of the cost and relative type of capital used to fund investments.
  - Debt capital is less expensive than equity capital because of the rights and risk of each type of capital
  - If 50% of investments were funded by debt, provided at a cost of 4%, and the other 50% was funded by equity investments at a cost of 10%, the cost of capital is: (.5*.04)+(.5*.1)=.07 or 7%
  - If you originally invested 100 dollars, and recovered 50 of it over the last 10 years, in this year your return on investment would be: (100-50)*.7= $3.50
  - However, $3.50 isn't profit, because lenders will demand their payment on the debt. $1, or ($50/2)*4% of the $3.50 will pay the cost of the debt
  - The "profit" of the utility in this year would be $2.50

Ratemaking, continued.

- Utilities make more profit the more they invest
  - This is assuming the cost of equity capital is constant
  - The PSC determines the cost of equity capital in rate cases, to ensure that the utility shareholders' rate of return on their equity investments are commiserate with the risk experienced by the utility
  - This should create a natural equilibrium over time
    - If the cost of equity capital is set too low, you may have underinvestment in the utility (not necessarily by the utility)
    - If the cost of equity capital is set too high, you may see investors flock to invest in the utility

Other PSC Jurisdictional Items

- Other than rate cases, the PSC:
  - Reviews applications to expand or construct systems (think power plants);
  - Reviews applications to enter into financing for more than 2 years;
  - Reviews, every three years, electric utility plans on how they plan to meet customers' demand;
  - Reviews utility mergers, sales and acquisitions;
  - Conducts training for water district commissioners
    - New commissioners must get 12 hours of training within first 12 months
    - Other commissioners may get training in order to receive additional salary (6 hours)
    - PSC performs 6 training sessions a year across the state to help meet 12 and 6 hour thresholds
    - Other entities may ask to also host training, but only to satisfy 6 mo. requirements

Other PSC Jurisdictional Items, continued

- Other than rate cases, the PSC also:
  - Regulates compliance with 811 for gas facilities;
  - Regulates pole attachments, especially for broadband attachers;
  - Ensures electric utilities stay in their boundaries;
  - Reviews applications for cell towers in counties without P&Z;
  - Regulates wholesale water rates of cities to jurisdictional utilities;
  - Reviews gas/electric utility fuel purchases;
  - Houses and staffs the merchant generation and transmission siting board
    - J/Es in non-P&Z counties serve on the board
    - J/Es choose amongst themselves for projects in more than 1 county
    - P&Z chair in those counties with P&Z

Merchant Solar Facilities—The Siting Board

- Kentucky State Board on Electric Generation and Transmission Siting
- Created in 2002 with few changes since
- Reviews applications and grants certificates, if approved, for the construction of electric generating facilities (i.e., merchant generators) greater than 10 MW and transmission lines from entities not regulated by the PSC.
- Review focuses on such factors as noise and visual impacts; economic impacts; and potential impact on transmission lines within the state.
- Operations are funded through fees paid by applicants
- Siting Board is created new for each project
- Public guide on PSC website

Siting Board Members

- Three members of the PSC
- Secretary of the Energy and Environment Cabinet or a designee/proxy
- Secretary of the Cabinet for Econ. Development or a designee/proxy
- Two local members, with one appointed by the Governor to serve for a specific case
  - Ordinarily Judge/Executive or chair of P & Z is one member (statutory member)

PSC/Siting Board Practice Tips

- Get a PSC.KY.GOV account to file electronically
  - Except for pro se complaints filed against utilities, everyone else is required by rule to file document electronically. Public comments may be mailed or emailed
- Review "Rules of Procedure" (807 KAR 5:001) or "Board Proceedings"(807 KAR 5:110) regulations, paying attention to:
  - Electronic filing procedures, including file size and type restrictions;
  - Intervention standard;
  - Rules for requests for information;
  - Rules for hearing and rehearing;
  - Rules for specific types of PSC applications;
  - Treatment of confidential information; and
  - Notice requirements (to board/commission and public)

2023 Legislative Session

- Senate Bill 4
  - Related to the retirement of fossil fuel-fired generators
  - Already in effect
  - PSC processed first case, permitting two power plants to retire, denying a request to retire two others, approved building of new power plant and denied permission to build a second
- Senate Bill 192
  - Related to Securitization
  - First case in process
  - Permits refinancing at a lower rate

Senate Bill 4 (2023) (KRS 278.262 & .264)

- Provides PSC authority to approve or disapprove fossil-fuel fired generation retirements
  - Previously, all retirement decisions for any asset was at utility's discretion, PSC only had authority over resulting financial implications
- Sets forth a standard and process for retiring a fossil-fuel fired generator
  - Statute provides a rebuttable presumption against retirement
  - To retire, a utility must show:
    - Retirement is more economic than keeping unit online;
    - Retiring generator will be replaced with adequate generation; and
    - Retirement isn't a result of federal incentives
- First case under new law was processed in 2023- Case No. 2022-00402

Securitization

- Is the process of financing cash flows from a specific asset or pool of assets, and issuing claims on these assets, through the issuance of asset-backed securities.
  - More simply, securitization is a process set out by a state statute that can permit customers of a utility to effectively buy an asset from a utility using money provided by bonds financed by lenders.
  - Effectively, since the utility earns an equity and debt return on their own investments, replacing that investment with only debt capital reduces the financing costs of that asset.
  - The bonds used to "buy out" the utility are sometimes referred to as ratepayer-backed bonds because they are financed on the premise that a utility's customers, pursuant to a statute, have guaranteed the repayment of the bond according to predetermined schedules.

Securitization- Why?

- Some costs are nonrecurring, one-time, extreme, or are otherwise not ordinary property that makes utility financing of those costs expensive for customers and unnecessarily burdensome for a utility
  - Debt costs less than equity capital
    - Although the principal amount is the same, the reduction in the interest rate, coupled with the time value of money, can lead to significant customer "savings" compared to the status quo
- Utilities make investments in assets for the public benefit; they are not financing entities. Having them hold investments and receive a return on paper assets may not be the best use of their limited capital
  - Securitization allows the utility to get out of investing in a paper asset, and put that capital to use, likely to invest in the assets to replace whatever the regulatory asset is related to (like the replacement generator in the scenario)
- Reduce the costs to customers of decisions or outcomes beyond most any stakeholder's control

Securitization Facts

- About half of states have legislation on the books allowing securitization
  - Some are more prescriptive than others
  - Some permit different types of bond marketing (utility v. state bonding authority)
  - Different states allow securitization to apply to certain types of assets or costs, while some have complicated criteria that have to be met in an application:
    - Retired generation
    - Extreme fuel costs (winter storm Uri)
    - Wildfire costs
    - Extreme storm damage, such as hurricanes
  - Debt is not backed by full faith and credit of the state- They are the obligation of the captive ratepayers
- As of May 2022, $62 billion of utility securitization bonds nationwide have been issued by electric utilities, ranging from $22M to $4B issuances

Securitization – Need for statute

- Securitization "works" only because of the low-cost debt financing that replaces the combo debt and equity financing providing by the utility
  - The reason that bondholders are willing to finance these ratepayer-back bonds that are not part of utility debt, is because of the strict language of statutes, PSC orders, security interest in the property, nonbypassable charges and other characteristics that ensure timely repayment of the debt.
  - "The ability to segregate the collateral in a bankruptcy-remote [special purpose entity] and the ability to make periodic adjustments to the Securitization Charges are critical to the rating agencies' analysis to reach the highest possible rating category (AAA)."

Senate Bill 192 (2023) KRS 278.670 - .696

- Statutes set forth a scheme for a utility to seek, and PSC approve, securitization of outstanding costs
- First request was filed in 2023 and was approved in early 2024
- Utility and PSC are in the process of seeing through the transaction with the goal of the utility marketing the bonds and finalizing the sale(s) in 2024 – Case No. 2023-00159
- Based on conditions existing at the time of the approval order, savings are expected to be nearly $75M on a present value basis

2024 Legislative Session

- Senate Bill 349
  - Related to the retirement of fossil fuel-fired generators
  - Follow-on from Senate Bill 4
  - Adds pre-filing process and study before filing a case with PSC under SB 4 (2023)
    - Creates the Energy Planning and Inventory Commission (EPIC) 18 members, July 1, 2024
    - Before filing application to retire generation with PSC, retirement must first be submitted and studied by EPIC
    - Separate from retirement studies, may also study other related Ky energy issues
  - Sets new deadlines for PSC action of 8 months for:
    - Certificates of Public Convenience and Necessity
    - Financing approval
    - Territory transfers
    - Transfer of control/sale