

CHAPTER 511 (HB 897)

AN ACT relating to utilities and affiliates of utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

- (1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies and instrumentalities thereof, associations, joint-stock companies, and business trusts;
- (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;
- (3) "Utility" means any person except a city, who owns, controls, or operates or manages any facility used or to be used for or in connection with:
 - (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
 - (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
 - (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
 - (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;
 - (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
 - (f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district;
- (4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;
- (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;
- (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;
- (7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;
- (8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;

- (9) "Generation and transmission cooperative", or "G&T", means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;
- (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;
- (11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;
- (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;
- (13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility;
- (14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;
- (15) "Commission" means the Public Service Commission of Kentucky;
- (16) "Commissioner" means one (1) of the members of the commission;~~[-and]~~
- (17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand;
- (18) ***"Affiliate" means a person that controls or that is controlled by, or is under common control with, a utility;***
- (19) ***"Control" means the power to direct the management or policies of a person through ownership, by contract, or otherwise;***
- (20) ***"CAM" means a cost allocation manual which is an indexed compilation and documentation of a company's cost allocation policies and related procedures;***
- (21) ***"Nonregulated activity" means the provision of competitive retail gas or electric services or other products or services over which the commission exerts no regulatory authority;***
- (22) ***"Nonregulated" means that which is not subject to regulation by the commission;***
- (23) ***"Regulated activity" means a service provided by a utility, the rates and charges of which are regulated by the commission;***
- (24) ***"USoA" means uniform system of accounts which is a system of accounts for public utilities established by the FERC and adopted by the commission;***
- (25) ***"Arm's length" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction;***
- (26) ***"Subsidize" means the recovery of costs or the transfer of value from one class of customer, activity, or business unit that is attributable to another;***

- (27) *"Solicit" means to engage in or offer for sale a good or service, either directly or indirectly and irrespective of place or audience;*
- (28) *"USDA" means the United States Department of Agriculture; (29) "FERC" means the Federal Energy Regulatory Commission; and*
- (30) *"SEC" means the Securities and Exchange Commission.*

SECTION 2. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

A utility shall not subsidize a nonregulated activity provided by an affiliate or by the utility itself. The commission shall require all utilities providing nonregulated activities, either directly or through an affiliate, to keep separate accounts and allocate costs in accordance with procedures established by the commission. The commission may promulgate administrative regulations that will assist the commission in enforcing this section.

SECTION 3. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) *A utility that engages in a nonregulated activity shall identify all costs of the nonregulated activity and report the costs in accordance with the guidelines in the USoA and the cost allocation methods described in subsection (2) of this section.*
- (2) *In allocating costs between regulated and nonregulated activities, a utility shall utilize one of the following cost allocation methods:*
- (a) *The fully distributed cost method; or*
- (b) *A cost allocation method recognized or mandated by the rules of the SEC promulgated pursuant to 15 U.S.C. sec. 79, et seq. or promulgated by the FERC or by the USDA.*
- (3) *A utility's compliance with federal cost allocation methods shall constitute compliance with the provisions of KRS 278.010 to 278.450.*
- (4) *Notwithstanding subsections (1) to (3) of this section, a utility may report an incidental nonregulated activity as a regulated activity if:*
- (a) *The revenue from the aggregate total of the utility's nonregulated incidental activities does not exceed the lesser of two percent (2%) of the utility's total revenue or one million dollars (\$1,000,000) annually; and*
- (b) *The nonregulated activity is reasonably related to the utility's regulated activity.*
- (5) *Nothing contained in this section shall be construed as requiring a utility to violate any cost allocation methods required to be employed under any service agreement validly existing as of the effective date of this Act for the term of the existing agreement, except where the commission makes the determination that a service agreement was executed for the purpose of avoiding provisions of KRS 278.010 to 278.450.*

SECTION 4. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) *Any utility that engages in a nonregulated activity whose revenue exceeds the amount provided for incidental nonregulated activities under subsection (4)(a) of Section 3 of this Act, shall develop and maintain a CAM as described in subsections (2) to (5) of this section.*

- (2) *A CAM shall contain the following information for a utility's jurisdictional operations in the Commonwealth:*
- (a) *A list of regulated and nonregulated divisions within the utility;*
 - (b) *A list of all regulated and nonregulated affiliates of the utility to which the utility provides services or products and where the affiliates provide non-regulated activities as defined in subsection (21) of Section 1 of this Act;*
 - (c) *A list of services and products provided by the utility, an identification of each as regulated or nonregulated, and the cost allocation method generally applicable to each category;*
 - (d) *A list of incidental, nonregulated activities that are subject to the provisions of subsection (4) of Section 3 of this Act;*
 - (e) *A description of the nature of transactions between the utility and the affiliate; and*
 - (f) *For each USoA account and subaccount, a report that identifies whether the account contains costs attributable to regulated operations and nonregulated operations. The report shall also identify whether the costs are joint costs that cannot be directly identified. A description of the methodology used to apportion each of these cost shall be included and the allocation methodology shall be consistent with the provisions of Section 3 of this Act.*
- (3) *Within two hundred seventy (270) days of the effective date of this Act, the utility shall file:*
- (a) *A statement with the commission that certifies the CAM has been developed and will be adopted by the management, effective with the beginning of the next calendar year. The statement shall be signed by an officer of the utility; and*
 - (b) *One copy of the CAM.*
- (4) *Within sixty (60) days of any material change in matters required to be listed in the CAM, the utility shall amend the CAM to reflect the change.*
- (5) *The CAM shall be available for public inspection at the utility and at the Commission.*
- (6) *The CAM shall be filed as part of the initial filing requirement in a proceeding involving an application for an adjustment in rates pursuant to KRS 278.190.*

SECTION 5. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) *The terms for transactions between a utility and its affiliates shall be in accordance with the following:*
- (a) *Services and products provided to an affiliate by the utility pursuant to a tariff shall be at the tariffed rate, with nontariffed items priced at the utility's fully distributed cost but in no event less than market, or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology.*
 - (b) *Services and products provided to the utility by an affiliate shall be priced at the affiliate's fully distributed cost but in no event greater than market or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology.*

- (2) *A utility may file an application with the commission requesting a deviation from the requirements of this section for a particular transaction or class of transactions. The utility shall have the burden of demonstrating that the requested pricing is reasonable. The commission may grant the deviation if it determines the deviation is in the public interest.*
- (3) *Nothing in this section shall be construed to interfere with the commission's requirement to ensure fair, just, and reasonable rates for utility services.*

SECTION 6. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

In any formal commission proceeding in which cost allocation is at issue, a utility shall provide sufficient information to document that its cost allocation procedures and affiliate transaction pricing are consistent with the provisions of this chapter.

SECTION 7. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) *If the commission finds that a utility has not complied with any provision of this chapter for any transaction between a utility and its affiliate, or if a utility has failed to provide sufficient evidence of its compliance, then the commission may:*
 - (a) *Access the books and records of a utility's nonregulated affiliate; and*
 - (b) *Order that the costs attached to any transactions be disallowed from rates.*
- (2) *If, after inspecting an affiliate's books and records, the commission finds that a utility has not complied with any provision of KRS 278.010 to 278.450, the commission may perform a financial audit of the utility's affiliate to the extent necessary to ensure compliance with KRS 278.010 to 278.450.*

SECTION 8. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

The provisions of this section shall govern a public utility company's activities related to the sharing of information, databases, and resources between its employees or an affiliate involved in the marketing or the provision of nonregulated activities and its employees or an affiliate involved in the provision of regulated activities.

- (1) *A utility and its affiliate shall be separate corporate entities and maintain separate books and records. If a utility and nonregulated affiliate have common officers, directors, or employees, the fees, compensation, and expenses of the individuals involved shall be subject to the cost allocation requirements set forth in Section 3 and Section 5 of this Act. Any utility that provides nonregulated activities shall separately account for all investments, revenues, and expenses in accordance with its filed cost allocation manual.*
- (2) *A utility shall not provide advertising space in its billing envelope to its affiliates or for its nonregulated activities unless it offers the same to competing service providers on the same terms it provides to its affiliates. This subsection applies to nonregulated activities only.*
- (3) *A utility shall not attempt to persuade customers to do business with its affiliates by offering rebates or discounts on tariffed services.*

- (4) *All utility company employees engaged in the merchant function shall abide by all standards promulgated by applicable FERC orders and regulations.*
- (5) *No utility employee shall share any confidential customer information with the utility's affiliates unless the customer has consented in writing, or the information is publicly available or is simultaneously made publicly available.*
- (6) *All dealings between a utility and a nonregulated affiliate shall be at arm's length.*
- (7) *Employees transferring from the utility to an affiliate shall not disclose to the affiliate confidential information or take with them any competitively sensitive materials.*
- (8) *Neither a utility, nor its employees or agents shall solicit business on behalf of an affiliate or for its nonutility services.*
- (9) *A utility that carries out any research and development or joint marketing and promotion with its affiliate for its nonregulated activities shall be subject to the cost allocation requirements set forth in Section 3 of this Act.*
- (10) *Except as provided in subsection (5) of this section, if a utility is engaged in a nonregulated activity, marketing employees for the nonregulated activity shall not have access to the customer information provided to the utility when the customer places an order for regulated service.*
- (11) *A utility shall not provide any type of undue preferential treatment to a nonregulated affiliate to the detriment of a competitor.*
- (12) *A utility shall notify the customer that competing suppliers of a nonregulated service exist if:*
 - (a) *The utility receives a request for a recommendation from a customer seeking a specific service which is offered by the utility's affiliate or by the utility itself; and*
 - (b) *The utility mentions itself or its affiliate when making the recommendation to the customer.*
- (13) *The utility's name, trademark, brand, or logo shall not be used by a nonregulated affiliate in any type of visual or audio media without a disclaimer. The commission shall develop specifications for the disclaimer. The disclaimer shall be approved by the commission prior to use in any advertisement by the utility's affiliate.*
- (14) *A utility shall not enter into any arrangements for financing nonregulated activities through an affiliate that would permit a creditor upon default to have recourse to the assets of the utility.*
- (15) *A utility shall inform the commission of all new nonregulated activities begun by itself or by the utility's affiliate within a time to be set by the commission.*
- (16) *Start-up costs associated with the formation of a nonregulated affiliate shall not be included in the utility's rate base.*
- (17) *The commission may require the utility to file annual reports of information related to affiliate transactions when necessary to monitor compliance with these guidelines.*

SECTION 9. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

The provisions of Sections 2 to 10 of this Act shall not apply to telecommunications utilities, telecommunications services, nonprofit water or sewer utilities, or water districts. Utilities organized under KRS Chapter 279 shall be exempt from Section 8 of this Act.

SECTION 10. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) Notwithstanding any provisions in Section 2 of this Act to the contrary, a utility may apply to the commission for a waiver or deviation from any or all provisions of Sections 2 to 8 of this Act.***
- (2) The utility's application to the commission shall:***
 - (a) Demonstrate the basis of the utility's need to be granted a waiver or deviation; and***
 - (b) Contain, if appropriate, documentation regarding the costs and benefits of compliance with the provisions of Sections 2 to 8 of this Act.***
- (3) The commission shall grant a waiver or deviation if the commission finds that compliance with the provisions of Sections 2 to 8 of this Act is impracticable or unreasonable. The findings of the commission shall be a final appealable order.***

Section 11. The General Assembly finds that regulated telecommunication providers have expanded into unregulated lines of business, such as the provision of internet and cable television service, which may give them an unfair advantage over existing and new entrants. The General Assembly further finds that it is the intent of KRS 278.514 to grant the Public Service Commission the statutory authority to prohibit subsidization of nonregulated telecommunication services by regulated telecommunications providers. Currently, telecommunications providers are subject to cost allocation and affiliate transaction rules promulgated by the Federal Communications Commission (FCC) that govern accounting standards and pricing relationships between the regulated utility and unregulated programs or affiliates. However, passage of the 1996 Telecommunications Act is making the telecommunications industry more competitive, and formerly regulated telecommunications providers may be subject to new federal rules regarding cost allocation and affiliate transactions.

Section 12. The Special Subcommittee on Energy is directed to study whether an additional statutory remedy is necessary to prevent cross-subsidization of nonregulated telecommunication services, with a particular emphasis on internet service, provided by regulated telecommunications utilities or their affiliates. The Special Subcommittee on Energy shall also determine if regulated telecommunications providers have an undue advantage in the provision of nonregulated services such as internet. The Special Subcommittee shall identify existing federal and state laws, rules and regulations that govern cost allocation, affiliate transaction rules, and a code of conduct between regulated utilities and their nonregulated programs or affiliates. The Special Subcommittee shall also take into account the cost of enforcing and the additional statutory authority that may be required to allow the Public Service Commission to prevent crosssubsidization while maintaining a level playing field between all providers of unregulated telecommunications services.

Section 13. The Special Subcommittee shall submit a final report that shall include findings and recommendations to the Legislative Research Commission no later than November 15, 2001.

Section 14. Provisions of this bill to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified in Section 11 to 13

of this Act to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved April 21, 2000