

CHAPTER 75**(SB 246)**

AN ACT relating to construction of certain electric transmission lines.

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

Section 1. KRS 278.020 is amended to read as follows:

- (1) No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction. Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement. The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth. Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.
- (2) ***For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity. However, ordinary extensions of existing systems in the usual course of business not requiring such a certificate shall include:***
 - (a) ***The replacement or upgrading of any existing electric transmission line; or***
 - (b) ***The relocation of any existing electric transmission line to accommodate construction or expansion of a roadway or other transportation infrastructure; or***
 - (c) ***An electric transmission line that is constructed solely to serve a single customer and that will pass over no property other than that owned by the customer to be served.***
- (3) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.

- ~~(4)~~~~(3)~~ No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.
- ~~(5)~~~~(4)~~ No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.
- ~~(6)~~~~(5)~~ No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.
- ~~(7)~~~~(6)~~ Subsection ~~(6)~~~~(5)~~ of this section shall not apply to any acquisition of control of any:
- (a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection ~~(6)~~~~(5)~~ of this section;
 - (b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or
 - (c) Utility pursuant to the terms of any indebtedness of the utility, provided the issuance of indebtedness was approved by the commission.

(8) *In a proceeding on an application filed pursuant to this section, any interested person, including a person over whose property the proposed transmission line will cross, may request intervention, and the commission shall, if requested, conduct a public hearing in the county in which the transmission line is proposed to be constructed, or, if the transmission line is proposed to be constructed in more than one county, in one of those counties. The commission shall issue its decision no later than ninety (90) days after the application is filed, unless the commission extends this period, for good cause, to one hundred twenty (120) days. The commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its discretion, it deems it necessary to hire a competent, qualified and independent firm to assist it in reaching its decision. The issuance by the commission of a certificate that public convenience and necessity require the construction of an electric transmission line shall be deemed to be a determination by the commission that, as of the date of issuance, the construction of the line is a prudent investment.*

(9)~~(7)~~ If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

Section 2. KRS 278.516 is amended to read as follows:

- (1) The legislature finds and determines that:
 - (a) Small telephone utilities lack the resources to fully participate in the existing regulatory processes, particularly under traditional rate of return and certificate of public convenience and necessity regulation;
 - (b) Regulation, if not tailored specifically to the needs of small telephone utilities, can retard the growth and development of small telephone utilities by requiring the expenditure of excessive time and money responding to and addressing regulatory processes instead of devoting those resources to customer service and more productive business concerns and issues; and
 - (c) It is in the public interest to provide regulatory flexibility to small telephone utilities to better enable them to adjust to the competition and innovation that has come and is coming to the telecommunications industry as found and determined by the legislature at KRS 278.512(1).
- (2) In addition to the definitions set forth at KRS 278.010, the following definitions shall apply to this section:
 - (a) "Telephone utility" means a telephone utility as defined at KRS 278.010(3)(e) except that it includes local exchange carriers only;
 - (b) "Local exchange carrier" means a traditional wireline telephone utility which provides its subscribers with access to the national public switched telephone network;
 - (c) "Traditional wireline telephone utility" means one whose delivery of its telephone utility services is characterized by the predominant use of wire or wireline connections carrying communications transmissions between the subscriber of the utility and the national public switched telephone network;
 - (d) "Small telephone utility" means a local exchange carrier providing telephone utility service and having not more than fifty thousand (50,000) access lines in Kentucky;

- (e) "Largest telephone utility" means the local exchange carrier providing telephone utility service in Kentucky and having the greatest number of access lines in Kentucky;
- (f) "Access lines" mean the telephone lines provided by a local exchange carrier. In calculating the number of access lines provided by a local exchange carrier, the number of access lines provided by all telephone utilities under common ownership or control, as defined in KRS 278.020(6)~~[(5)]~~, with that telephone utility shall be counted;
- (g) "GDP" means the real Gross Domestic Product Price Index, as it may be amended from time to time, as it is published by the Bureau of Economic Analysis of the United States Department of Commerce;
- (h) "Annual percent change in the GDP" means, for any given calendar year, the annual percentage change in the GDP as it is calculated by the Bureau of Economic Analysis of the United States Department of Commerce;
- (i) "Basic business rate" and "basic residential rate" mean the total rates or charges which must be paid by a business or residential subscriber, respectively, to a local exchange carrier in order to receive, outside of a standard metropolitan statistical area, telephone utility service within a specified geographic area for local calling and for which tariffed rates or charges are assessed, regardless of the amount of use of local calling;
- (j) "Standard metropolitan statistical area" means any area in Kentucky designated as such, or as a part thereof, pursuant to 44 U.S.C. sec. 3504(d)(3) and 31 U.S.C. sec. 1104(d), as they may be amended, by the Office of Management and Budget of the Executive Office of the President of the United States; provided, however, that for purposes of this section, "standard metropolitan statistical area" shall include only the two (2) largest, as measured by population, standard metropolitan statistical areas, regardless of whether that area is located wholly or partially in Kentucky;
- (k) "Basic business service" or "basic residential service" means the service for which basic business rates or basic residential rates are charged;
- (l) "Average basic business or residential rate, including zone charges," means the total revenues which should be produced by the imposition of those rates or charges divided by the number of access lines to which those rates or charges are applicable;
- (m) "Zone charges" mean mileage or zone charges and are the charges assessed by a telephone utility on the basis of a subscriber's distance from a central office in order that the subscriber may receive basic business or residential services;
- (n) "Subscriber" means the person or entity legally and financially responsible for the bill rendered by a telephone utility for its services;
- (o) "Intrastate access charges" mean the charges assessed for use of the telecommunications facilities of one telephone utility by another person or entity in order to deliver to the public for compensation telephone messages originating and terminating within Kentucky;
- (p) "Interstate access charges" mean the charges assessed for use of the telecommunications facilities of one (1) telephone utility by another person or entity in order to deliver to the public for compensation telephone messages originating or terminating, but not both, in Kentucky; and

- (q) "Pic charges" are charges assessed by a local exchange carrier in order to implement a change in a subscriber's long distance carrier.
- (3) (a) If a small telephone utility elects to be regulated as provided in subsection (7) of this section, a small telephone utility once during any twenty-four (24) month period may adjust or implement each of the following rates or charges: basic business rate; basic residential rate; zone charges; or installation charges for basic business or basic residential services by an amount not to exceed the sum of the annual percentage changes in the GDP for the immediately preceding two (2) calendar years multiplied by the existing rate or charge to be adjusted. However, in no event shall a small telephone utility so adjust:
1. Its basic business rate, including zone charges, if the resulting average basic business rate, including zone charges, would thereby exceed the average basic business rate, including zone charges, of the largest telephone utility;
 2. Its basic residential rate, including zone charges, if the resulting average basic residential rate would thereby exceed the average basic residential rate including zone charges, of the largest telephone utility; or
 3. If its average basic business rate, including zone charges, its average basic residential rate, including zone charges, or its installation charges for basic business or basic residential services would be increased by more than twenty percent (20%).
- (b) At least sixty (60) calendar days before the effective date of such an adjustment of its rates or charges, a small telephone utility shall file a copy of its revised rates and tariffs with the commission and shall mail notice of the proposed rate adjustment to each affected subscriber and the commission. The notice shall state:
1. The GDP for the preceding two (2) calendar years;
 2. The amount by which any of the small telephone utility's rates or charges identified in subsection (3)(a) of this section will be adjusted; and
 3. The right of subscribers to object to the adjustment and request commission review by filing a letter or petition with the commission.
- (c) If by the forty-fifth calendar day following the date of the notice to subscribers of such a proposed adjustment to its rates or charges, the commission has received letters or petitions requesting commission review of the adjustment signed by at least five hundred (500) subscribers or five percent (5%) of subscribers, whichever is greater, the commission shall immediately notify the small telephone utility of this fact, and the proposed rate adjustment shall not become effective as scheduled. The small telephone utility may withdraw the proposed rate or charge adjustment, or if it decides to proceed, the commission shall review the proposed rate adjustment as though no election had been made pursuant to subsection (7) of this section.
- (4) Any other provision of this chapter notwithstanding, a small telephone utility which has elected to be regulated pursuant to this section may adjust any of its rates, charges, or tariffs, except for:
- (a) Its basic business rate;
 - (b) Its basic residential rate;

- (c) Its zone charges;
- (d) Its installation charges for basic business or basic residential services;
- (e) Its access charges; or
- (f) Its pic charges,

without regard to the effect on its revenues, by filing its proposed rates, charges, or tariffs with the commission and by notifying its subscribers, both at least thirty (30) calendar days prior to the effective date of its proposed rates, charges, or tariffs.

- (5) A small telephone utility which has elected to be regulated pursuant to this section shall not:
 - (a) Adjust its intrastate access charges if the adjustment requires the small telephone utility's access charge customers, including interexchange carriers, to pay intrastate access charges at levels exceeding the small telephone utility's interstate access charge levels; or
 - (b) Adjust its intrastate pic charges if the adjustment requires the small telephone utility's customers to pay intrastate pic charges at levels exceeding the small telephone utility's interstate pic charge levels.

The small telephone utility may decrease its intrastate access charges or intrastate pic charges to any level without restriction. Adjustments to intrastate access charge rates or intrastate pic charges shall be effective thirty (30) calendar days following the filing of access charge tariffs or pic charge tariffs with the commission.

- (6) The rates, charges, earnings, or revenues of a small telephone utility which has elected to be regulated pursuant to this section and is in compliance with the provisions of this section shall be deemed by the commission to be in compliance with KRS 278.030(1).
- (7) A small telephone utility may elect, at any time, to be regulated by the provisions, in their entirety only, of this section by filing a verified resolution of the utility's board of directors, or other governing body, so electing with the commission. An election shall be effective immediately upon filing with the commission and shall remain effective until withdrawn by the filing with the commission of a verified resolution of the small telephone utility's board of directors or other governing body; provided, however, that all resolutions of election or withdrawal shall remain in effect for at least one (1) year from the date of their filing with the commission. A resolution electing to be regulated by the provisions of this section shall mean that the small telephone utility so electing shall be regulated by this section and shall not be regulated by KRS 278.020(1) and 278.300. Nothing in this section, however, shall be construed to alter the applicability of KRS 278.020(4)~~[(3)]~~ or 278.030(2) to small telephone utilities electing to be regulated by the provisions of this section.
- (8) A small telephone utility which has elected to be regulated pursuant to this section may file an application with the commission pursuant to KRS 278.020(1), and, if a utility does so, that application shall be deemed to have been granted unless within thirty (30) calendar days following the filing of the application, the commission denies the application. If the application is denied or none is filed, the small telephone utility electing to be regulated pursuant to this section may engage in the construction of the plant or facilities, or the purchase of equipment or properties, to provide the services described in KRS 278.010(3)(e). However, if the small telephone utility subsequently files a resolution of withdrawal under subsection (7) of this section, the increased value of property that resulted from any construction project denied approval by the commission or not submitted to the

commission for approval may be excluded from the small utility's rate base for rate making purposes if the cost of construction exceeded one million dollars (\$1,000,000) or five percent (5%) of the value of the small telephone utility's property as reflected in the utility's most recent annual report filed with the commission.

Approved April 7, 2004