

AN ACT relating to energy and declaring an emergency.

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

➔Section 1. KRS 278.183 is amended to read as follows:

- (1) **Except as provided in subsection (6) of this section and notwithstanding**~~[Notwithstanding]~~ any other provision of this chapter, ~~[effective January 1, 1993, ]~~a utility shall be entitled to the current recovery of its costs of complying with the Federal Clean Air Act as amended and those federal, state, or local environmental requirements which apply to coal combustion wastes and by-products from facilities utilized for production of energy from coal in accordance with the utility's compliance plan as designated in subsection (2) of this section. These costs shall include a reasonable return on construction and other capital expenditures and reasonable operating expenses for any plant, equipment, property, facility, or other action to be used to comply with applicable environmental requirements set forth in this section. Operating expenses include all costs of operating and maintaining environmental facilities, income taxes, property taxes, other applicable taxes, and depreciation expenses as these expenses relate to compliance with the environmental requirements set forth in this section.
- (2) Recovery of costs pursuant to subsection (1) of this section that are not already included in existing rates shall be by environmental surcharge to existing rates imposed as a positive or negative adjustment to customer bills in the second month following the month in which costs are incurred. Each utility, before initially imposing an environmental surcharge pursuant to this subsection, shall thirty (30) days in advance file a notice of intent to file said plan and subsequently submit to the commission a plan, including any application required by KRS 278.020(1), for complying with the applicable environmental requirements set forth in subsection (1) of this section. The plan shall include the utility's testimony concerning a reasonable return on compliance-related capital expenditures and a tariff addition

containing the terms and conditions of a proposed surcharge as applied to individual rate classes. Within six (6) months of submittal, the commission shall conduct a hearing to:

- (a) Consider and approve the plan and rate surcharge if the commission finds the plan and rate surcharge reasonable and cost-effective for compliance with the applicable environmental requirements set forth in subsection (1) of this section;
  - (b) Establish a reasonable return on compliance-related capital expenditures; and
  - (c) Approve the application of the surcharge.
- (3) The amount of the monthly environmental surcharge shall be filed with the commission ten (10) days before it is scheduled to go into effect, along with supporting data to justify the amount of the surcharge which shall include data and information as may be required by the commission. At six (6) month intervals, the commission shall review past operations of the environmental surcharge of each utility, and after hearing, as ordered, shall, by temporary adjustment in the surcharge, disallow any surcharge amounts found not just and reasonable and reconcile past surcharges with actual costs recoverable pursuant to subsection (1) of this section. Every two (2) years the commission shall review and evaluate past operation of the surcharge, and after hearing, as ordered, shall disallow improper expenses, and to the extent appropriate, incorporate surcharge amounts found just and reasonable into the existing base rates of each utility.
- (4) The commission may employ competent, qualified independent consultants to assist the commission in its review of the utility's plan of compliance as specified in subsection (2) of this section. The cost of any consultant shall be included in the surcharge approved by the commission.
- (5) The commission shall retain all jurisdiction granted by this section and KRS 278.020 to review the environmental surcharge authorized by this section and any

complaints as to the amount of any environmental surcharge or the incorporation of any environmental surcharge into the existing base rate of any utility.

**(6) A utility shall not be entitled to recovery of compliance costs pursuant to subsection (1) of this section until the applicable environmental requirements have the full force and effect of law and compliance is required.**

→Section 2. Subsection (6) of Section 1 of this Act shall be applied retroactively to the effective date of this Act for any state, local, or federal environmental law and regulation which involves litigation to which the Commonwealth is a party.

→Section 3. Whereas the ratepayers of the Commonwealth should not be required to bear the burden of increased utility rates that are based on speculative costs, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.