

1 AN ACT relating to public utilities.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED
4 TO READ AS FOLLOWS:

5 ***In setting residential rates for electric, natural gas, and water service, the commission***
6 ***shall adjust and set each utility's residential fixed customer charge to recover no more***
7 ***than fixed direct capital costs including depreciation, fair rate of return, and income***
8 ***taxes, and operations and maintenance expenses that are directly related to metering,***
9 ***billing, service connections, and the provision of customer service.***

10 ➔Section 2. KRS 278.010 is amended to read as follows:

11 As used in KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and
12 278.990, unless the context otherwise requires:

13 (1) "Corporation" includes private, quasipublic, and public corporations, and all boards,
14 agencies, and instrumentalities thereof, associations, joint-stock companies, and
15 business trusts;

16 (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more
17 persons having a joint or common interest;

18 (3) "Utility" means any person except a regional wastewater commission established
19 pursuant to KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), and (f) of
20 this subsection, a city, who owns, controls, operates, or manages any facility used or
21 to be used for or in connection with:

22 (a) The generation, production, transmission, or distribution of electricity to or for
23 the public, for compensation, for lights, heat, power, or other uses;

24 (b) The production, manufacture, storage, distribution, sale, or furnishing of
25 natural or manufactured gas, or a mixture of same, to or for the public, for
26 compensation, for light, heat, power, or other uses;

27 (c) The transporting or conveying of gas, crude oil, or other fluid substance by

- 1 pipeline to or for the public, for compensation;
- 2 (d) The diverting, developing, pumping, impounding, distributing, or furnishing
3 of water to or for the public, for compensation;
- 4 (e) The transmission or conveyance over wire, in air, or otherwise, of any
5 message by telephone or telegraph for the public, for compensation; or
- 6 (f) The collection, transmission, or treatment of sewage for the public, for
7 compensation, if the facility is a subdivision collection, transmission, or
8 treatment facility plant that is affixed to real property and is located in a
9 county containing a city of the first class or is a sewage collection,
10 transmission, or treatment facility that is affixed to real property, that is
11 located in any other county, and that is not subject to regulation by a
12 metropolitan sewer district or any sanitation district created pursuant to KRS
13 Chapter 220;
- 14 (4) "Retail electric supplier" means any person, firm, corporation, association, or
15 cooperative corporation, excluding municipal corporations, engaged in the
16 furnishing of retail electric service;
- 17 (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS
18 278.017;
- 19 (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is
20 being or has been substantially used to supply retail electric service and includes all
21 lines from the distribution substation to the electric consuming facility but does not
22 include any transmission facilities used primarily to transfer energy in bulk;
- 23 (7) "Retail electric service" means electric service furnished to a consumer for ultimate
24 consumption, but does not include wholesale electric energy furnished by an electric
25 supplier to another electric supplier for resale;
- 26 (8) "Electric-consuming facilities" means everything that utilizes electric energy from a
27 central station source;

- 1 (9) "Generation and transmission cooperative" or "G&T" means a utility formed under
2 KRS Chapter 279 that provides electric generation and transmission services;
- 3 (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that
4 provides retail electric service;
- 5 (11) "Facility" includes all property, means, and instrumentalities owned, operated,
6 leased, licensed, used, furnished, or supplied for, by, or in connection with the
7 business of any utility;
- 8 (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation
9 for service rendered or to be rendered by any utility, and any rule, regulation,
10 practice, act, requirement, or privilege in any way relating to such fare, toll, charge,
11 rental, or other compensation, and any schedule or tariff or part of a schedule or
12 tariff thereof;
- 13 (13) "Service" includes any practice or requirement in any way relating to the service of
14 any utility, including the voltage of electricity, the heat units and pressure of gas, the
15 purity, pressure, and quantity of water, and in general the quality, quantity, and
16 pressure of any commodity or product used or to be used for or in connection with
17 the business of any utility, but does not include Voice over Internet Protocol (VoIP)
18 service;
- 19 (14) "Adequate service" means having sufficient capacity to meet the maximum
20 estimated requirements of the customer to be served during the year following the
21 commencement of permanent service and to meet the maximum estimated
22 requirements of other actual customers to be supplied from the same lines or
23 facilities during such year and to assure such customers of reasonable continuity of
24 service;
- 25 (15) "Commission" means the Public Service Commission of Kentucky;
- 26 (16) "Commissioner" means one (1) of the members of the commission;
- 27 (17) "Demand-side management" means any conservation, load management, or other

- 1 utility activity intended to influence the level or pattern of customer usage or
2 demand, including home energy assistance programs;
- 3 (18) "Affiliate" means a person that controls or that is controlled by, or is under common
4 control with, a utility;
- 5 (19) "Control" means the power to direct the management or policies of a person through
6 ownership, by contract, or otherwise;
- 7 (20) "CAM" means a cost allocation manual which is an indexed compilation and
8 documentation of a company's cost allocation policies and related procedures;
- 9 (21) "Nonregulated activity" means the provision of competitive retail gas or electric
10 services or other products or services over which the commission exerts no
11 regulatory authority;
- 12 (22) "Nonregulated" means that which is not subject to regulation by the commission;
- 13 (23) "Regulated activity" means a service provided by a utility or other person, the rates
14 and charges of which are regulated by the commission;
- 15 (24) "USoA" means uniform system of accounts which is a system of accounts for public
16 utilities established by the FERC and adopted by the commission;
- 17 (25) "Arm's length" means the standard of conduct under which unrelated parties, each
18 party acting in its own best interest, would negotiate and carry out a particular
19 transaction;
- 20 (26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class
21 of customer, activity, or business unit that is attributable to another;
- 22 (27) "Solicit" means to engage in or offer for sale a good or service, either directly or
23 indirectly and irrespective of place or audience;
- 24 (28) "USDA" means the United States Department of Agriculture;
- 25 (29) "FERC" means the Federal Energy Regulatory Commission;
- 26 (30) "SEC" means the Securities and Exchange Commission;
- 27 (31) "Commercial mobile radio services" has the same meaning as in 47 C.F.R. sec. 20.3

1 and includes the term "wireless" and service provided by any wireless real time two
 2 (2) way voice communication device, including radio-telephone communications
 3 used in cellular telephone service, personal communications service, and the
 4 functional or competitive equivalent of a radio-telephone communications line used
 5 in cellular telephone service, a personal communications service, or a network radio
 6 access line; ~~and~~

7 (32) "Voice over Internet Protocol" or "VoIP" has the same meaning as in federal law

8 **(33) "Customer charge" means the basic fee for utility service that:**

9 **(a) Does not fluctuate with usage; and**

10 **(b) Is intended to recover the direct, fixed customer-related costs.**

11 ➔Section 3. KRS 278.030 is amended to read as follows:

12 (1) Every utility may demand, collect and receive fair, just, ~~and~~ reasonable, **and**
 13 **affordable** rates for the services rendered or to be rendered by it to any person.

14 (2) Every utility shall furnish adequate, efficient, and reasonable service, and may
 15 establish reasonable rules governing the conduct of its business and the conditions
 16 under which it shall be required to render service.

17 (3) **In determining the rates for services rendered under subsection (1) of this**
 18 **section, the commission may consider whether the utility has furnished adequate,**
 19 **efficient, and reasonable service under subsection (2) of this section.**

20 (4) **In determining the rates for services rendered under subsection (1) of this**
 21 **section, except for charges approved for a federally funded construction project**
 22 **under KRS 278.023, it shall be the policy of the Commonwealth that all costs**
 23 **determined by the commission to be reasonable and within the direct control of**
 24 **the utility shall be recovered through base rates rather than through surcharges.**

25 (5) **When exercising its ratemaking function, the commission shall balance the**
 26 **interests of the utility, the utility investor where required, and the consumer in**
 27 **establishing fair, just, reasonable, and affordable rates.**

1 **(6)** Every utility may employ in the conduct of its business suitable and reasonable
2 classifications of its service, patrons and rates. The classifications may, in any
3 proper case, take into account the nature of the use, the quality used, the quantity
4 used, the time when used, the purpose for which used, and any other reasonable
5 consideration.

6 ~~(7)~~~~(4)~~ Notwithstanding the provisions of subsection (2) of this section, no utility
7 shall energize power to an electrical service in a manufactured home or mobile
8 home where the certified installer's seal is not present pursuant to KRS 227.570.

9 ~~(8)~~~~(5)~~ Notwithstanding the provisions of subsection (2) of this section, no utility
10 shall energize power to an electrical service in a previously owned manufactured
11 home or previously owned mobile home where the Class B1 seal is not present
12 pursuant to KRS 227.600.

13 ➔Section 4. KRS 278.183 is amended to read as follows:

14 (1) Notwithstanding any other provision of this chapter, effective January 1, 1993, a
15 utility shall be entitled to the current recovery of its costs of complying with the
16 Federal Clean Air Act as amended and those federal, state, or local environmental
17 requirements which apply to coal combustion wastes and by-products from facilities
18 utilized for production of energy from coal in accordance with the utility's
19 compliance plan as designated in subsection (2) of this section. These costs shall
20 include a reasonable return on construction and other capital expenditures and
21 reasonable operating expenses for any plant, equipment, property, facility, or other
22 action to be used to comply with applicable environmental requirements set forth in
23 this section. Operating expenses include all costs of operating and maintaining
24 environmental facilities, income taxes, property taxes, other applicable taxes, and
25 depreciation expenses as these expenses relate to compliance with the
26 environmental requirements set forth in this section.

27 (2) Recovery of costs pursuant to subsection (1) of this section that are not already

1 included in existing rates shall be by environmental surcharge to existing rates
2 imposed as a positive or negative adjustment to customer bills in the second month
3 following the month in which costs are incurred. Each utility, before initially
4 imposing an environmental surcharge pursuant to this subsection, shall thirty (30)
5 days in advance file a notice of intent to file said plan and subsequently submit to
6 the commission a plan, including any application required by KRS 278.020(1), for
7 complying with the applicable environmental requirements set forth in subsection
8 (1) of this section. The plan shall include the utility's testimony concerning a
9 reasonable return on compliance-related capital expenditures and a tariff addition
10 containing the terms and conditions of a proposed surcharge as applied to individual
11 rate classes. Within six (6) months of submittal, the commission shall conduct a
12 hearing to:

13 (a) Consider and approve the plan and rate surcharge if the commission finds the
14 plan and rate surcharge reasonable and cost-effective for compliance with the
15 applicable environmental requirements set forth in subsection (1) of this
16 section;

17 (b) Establish a reasonable return on compliance-related capital expenditures; and

18 (c) Approve the application of the surcharge.

19 (3) The amount of the monthly environmental surcharge shall be filed with the
20 commission ten (10) days before it is scheduled to go into effect, along with
21 supporting data to justify the amount of the surcharge which shall include data and
22 information as may be required by the commission. At six (6) month intervals, the
23 commission shall review past operations of the environmental surcharge of each
24 utility, and after hearing, as ordered, shall, by temporary adjustment in the
25 surcharge, disallow any surcharge amounts found not just and reasonable and
26 reconcile past surcharges with actual costs recoverable pursuant to subsection (1) of
27 this section. Every two (2) years the commission shall review and evaluate past

1 operation of the surcharge, and after hearing, as ordered, shall disallow improper
2 expenses, and to the extent appropriate, incorporate surcharge amounts found just
3 and reasonable into the existing base rates of each utility *in accordance with*
4 *Section 3 of this Act.*

5 (4) The commission may employ competent, qualified independent consultants to assist
6 the commission in its review of the utility's plan of compliance as specified in
7 subsection (2) of this section. The cost of any consultant shall be included in the
8 surcharge approved by the commission.

9 (5) The commission shall retain all jurisdiction granted by this section and KRS
10 278.020 to review the environmental surcharge authorized by this section and any
11 complaints as to the amount of any environmental surcharge or the incorporation of
12 any environmental surcharge into the existing base rate of any utility.

13 ➔Section 5. KRS 278.190 is amended to read as follows:

14 (1) Whenever any utility files with the commission any schedule stating new rates, the
15 commission may, upon its own motion, or upon complaint as provided in KRS
16 278.260, and upon reasonable notice, hold a hearing concerning the reasonableness
17 of the new rates *and may also examine the costs as required under Section 1 of*
18 *this Act and subsections (1), (2), (3), (4), and (5) of Section 3 of this Act.*

19 (2) Pending the hearing and the decision thereon, and after notice to the utility, the
20 commission may, at any time before the schedule becomes effective, suspend the
21 operation of the schedule and defer the use of the rate, charge, classification, or
22 service, but not for a longer period than five (5) months beyond the time when it
23 would otherwise go into effect if an historical test period is used, or longer than six
24 (6) months if a forward-looking test period is used, pursuant to KRS 278.192; and
25 after such hearing, either completed before or after the rate, charge, classification, or
26 service goes into effect, the commission may make those orders with reference
27 thereto as it deems proper in the matter. If the proceeding has not been concluded

1 and an order made at the expiration of five (5) months, or six (6) months, as
2 appropriate, the utility may place the proposed change of rate, charge, classification,
3 or service in effect at the end of that period after notifying the commission, in
4 writing, of its intention so to do. Where increased rates or charges are thus made
5 effective, the commission may, by order, require the interested utility or utilities to
6 maintain their records in a manner as will enable them, or the commission, or any of
7 its customers, to determine the amounts to be refunded and to whom due in the
8 event a refund is ordered, and upon completion of the hearing and decision may, by
9 further order, require such utility or utilities to refund to the persons in whose behalf
10 the amounts were paid that portion of the increased rates or charges as by its
11 decision shall be found unreasonable. Provided, however, if the commission, at any
12 time, during the suspension period, finds that the company's credit or operations
13 will be materially impaired or damaged by the failure to permit the rates to become
14 effective during the period, the commission may, after any hearing or hearings,
15 permit all or a portion of the rates to become effective under terms and conditions
16 as the commission may, by order, prescribe.

17 (3) At any hearing involving the rate or charge sought to be increased, the burden of
18 proof to show that the increased rate or charge is just and reasonable, **and that costs**
19 **are determined in accordance with Section 1 of this Act and subsections (1), (2),**
20 **(3), (4) and (5) of Section 3 of this Act. The burden of proof** shall be upon the
21 utility, and the commission shall give to the hearing and decision of such questions
22 preference over other questions pending before it and decide the same as speedily as
23 possible, and in any event not later than ten (10) months after the filing of such
24 schedules.

25 (4) If the commission, by order, directs any utility to make a refund, as hereinabove
26 provided, of all or any portion of the increased rates or charges, the utility shall
27 make the refund within sixty (60) days after a final determination of the proceeding

1 by an order of the court or commission with or without interest in the discretion of
 2 the commission. If the utility fails to make the refund within sixty (60) days after
 3 the final determination, any party entitled to a refund may, after ten (10) days'
 4 written demand, bring an action in any court of competent jurisdiction of this state,
 5 and may recover, in addition to the amount of the refund due, legal interest, court
 6 costs, and reasonable attorney's fees. No such action may be maintained unless
 7 instituted within one (1) year after the final determination. Any number of persons
 8 entitled to refunds may join in as plaintiffs in a single action and the court shall
 9 render a judgment severally for each plaintiff as his interest may appear.

10 →Section 6. KRS 278.255 is amended to read as follows:

- 11 (1) **Beginning on the effective date of this Act, and except for a distribution**
 12 **cooperative,** the commission shall **require a** ~~[provide for periodic]~~ management and
 13 **operations audit to investigate management effectiveness and operating**
 14 **efficiency** ~~[operation audits]~~ of each utility with annual intra-Kentucky assessable
 15 revenue as of December 31, **2017** ~~[1983]~~, under KRS 278.150(1), **of** not less than
 16 one hundred million dollars (\$100,000,000) ~~[to investigate management~~
 17 ~~effectiveness and operating efficiency]~~. The commission shall complete or provide
 18 for **an initial** ~~[a]~~ full and comprehensive audit of each such utility **under this**
 19 **subsection that meets the intra-Kentucky assessable revenue requirement at any**
 20 **time after the effective date of this Act, except that all initial audits under this**
 21 **subsection shall be completed** prior to January 1, **2021** ~~[1990]~~. After the initial audit
 22 of any utility, the commission may order a subsequent audit of that utility focusing
 23 on issues disclosed by the initial audit. **After the initial audit of any utility, the**
 24 **commission shall provide for a management and operations audit to be filed with**
 25 **the commission every five (5) years following the first completed audit** ~~[A full and~~
 26 ~~comprehensive audit of any utility initiated prior to July 13, 1984, may be deemed~~
 27 ~~to satisfy the requirements of this subsection if the audit was required and directed~~

1 ~~by the commission and completed after July 1, 1983].~~

2 (2) **Notwithstanding subsection (1) of this section,** the commission may provide for
 3 management or operations audits, or both, of any utility under its jurisdiction on a
 4 regular or irregular schedule to investigate all or any portion of the management and
 5 operating procedures or any other internal workings of the utility, **either upon**
 6 **complaint or by the commission's own motion.**

7 (3) Audits provided under this section may, at the discretion of the commission, be
 8 performed by the commission staff or by a competent, qualified and independent
 9 firm. When the commission orders an audit to be performed by an independent
 10 firm, the commission shall select the audit firm, which shall work for and under the
 11 direction of the commission, with the cost to be borne by the utility. The
 12 commission shall include the cost of conducting any audits required in this section
 13 in the cost of service of the utility for ratemaking purposes.

14 (4) The commission shall adopt rules and regulations setting forth the scope and
 15 application of audits, and procedures for the conduct of management and operations
 16 audits. The audit procedures shall provide the utility being audited the opportunity
 17 to comment at various stages of the audit, including an opportunity to comment on
 18 the initial work plan and the opportunity to review and comment on preliminary
 19 audit drafts prior to issuance of a final document. The results of all audits shall be:

20 **(a)** Filed with the commission; ~~and shall be~~

21 **(b)** Open to public inspection; **and**

22 **(c)** **Available on the commission and the utilities' Web sites.**

23 ➔Section 7. KRS 278.260 is amended to read as follows:

24 (1) The commission shall have original jurisdiction over complaints as to rates or
 25 service of any utility, and upon a complaint in writing made against any utility by
 26 any person that any rate in which the complainant is directly interested is
 27 unreasonable or unjustly discriminatory, or that any regulation, measurement,

1 practice or act affecting or relating to the service of the utility or any service in
2 connection therewith is unreasonable, unsafe, insufficient or unjustly
3 discriminatory, or that any service is inadequate or cannot be obtained, the
4 commission shall proceed, with or without notice, to make such investigation as it
5 deems necessary or convenient. The commission may also make such an
6 investigation on its own motion. Upon initiation of an investigation pursuant to
7 this subsection, the commission shall provide notice by mail or electronically to
8 the Attorney General's Office of Rate Intervention. No order affecting the rates or
9 service complained of shall be entered by the commission without a formal public
10 hearing.

11 (2) The commission shall fix the time and place for each hearing held by it, and shall
12 serve notice thereof upon the utility and the complainant not less than twenty (20)
13 days before the time set for the hearing. The commission may dismiss any
14 complaint without a hearing if, in its opinion, a hearing is not necessary in the
15 public interest or for the protection of substantial rights.

16 (3) The complainant and the person complained of shall be entitled to be heard in
17 person or by an attorney and to introduce evidence.