

1 AN ACT relating to the Public Service Commission.

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

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

4 (1) (a) No person, partnership, public or private corporation, or combination thereof
5 shall commence providing utility service to or for the public or begin the
6 construction of any plant, equipment, property, or facility for furnishing to the
7 public any of the services enumerated in KRS 278.010, except:

8 1. Retail electric suppliers for service connections to electric-consuming
9 facilities located within its certified territory;~~and~~

10 2. Ordinary extensions of existing systems in the usual course of business;
11 or

12 3.~~2.~~A water district created under KRS Chapter 74 or a water association
13 formed under KRS Chapter 273 that undertakes a waterline extension or
14 improvement project if the water district or water association is a Class
15 A or B utility as defined in the uniform system of accounts established
16 by the commission according to KRS 278.220 and:

17 a. The water line extension or improvement project will not cost
18 more than five hundred thousand dollars (\$500,000); or

19 b. The water district or water association will not, as a result of the
20 water line extension or improvement project, incur obligations
21 requiring commission approval as required by KRS 278.300.

22 In either case, the water district or water association shall not, as a result
23 of the water line extension or improvement project, increase rates to its
24 customers;

25 until that person has obtained from the Public Service Commission a
26 certificate that public convenience and necessity require the service or
27 construction.

- 1 (b) Upon the filing of an application for a certificate, and after any public hearing
2 which the commission may in its discretion conduct for all interested parties,
3 the commission may issue or refuse to issue the certificate, or issue it in part
4 and refuse it in part, except that the commission shall not refuse or modify an
5 application submitted under KRS 278.023 without consent by the parties to
6 the agreement.
- 7 (c) The commission, when considering an application for a certificate to construct
8 a base load electric generating facility, may consider the policy of the General
9 Assembly to foster and encourage use of Kentucky coal by electric utilities
10 serving the Commonwealth.
- 11 (d) The commission, when considering an application for a certificate to construct
12 an electric transmission line, may consider the interstate benefits expected to
13 be achieved by the proposed construction or modification of electric
14 transmission facilities in the Commonwealth.
- 15 (e) Unless exercised within one (1) year from the grant thereof, exclusive of any
16 delay due to the order of any court or failure to obtain any necessary grant or
17 consent, the authority conferred by the issuance of the certificate of
18 convenience and necessity shall be void, but the beginning of any new
19 construction or facility in good faith within the time prescribed by the
20 commission and the prosecution thereof with reasonable diligence shall
21 constitute an exercise of authority under the certificate.
- 22 (2) For the purposes of this section, construction of any electric transmission line of one
23 hundred thirty-eight (138) kilovolts or more and of more than five thousand two
24 hundred eighty (5,280) feet in length shall not be considered an ordinary extension
25 of an existing system in the usual course of business and shall require a certificate
26 of public convenience and necessity. However, ordinary extensions of existing
27 systems in the usual course of business not requiring such a certificate shall include:

- 1 (a) The replacement or upgrading of any existing electric transmission line; or
- 2 (b) The relocation of any existing electric transmission line to accommodate
- 3 construction or expansion of a roadway or other transportation infrastructure;
- 4 or
- 5 (c) An electric transmission line that is constructed solely to serve a single
- 6 customer and that will pass over no property other than that owned by the
- 7 customer to be served.
- 8 (3) Prior to granting a certificate of public convenience and necessity to construct
- 9 facilities to provide the services set forth in KRS 278.010(3)(f), the commission
- 10 shall require the applicant to provide a surety bond, or a reasonable guaranty that the
- 11 applicant shall operate the facilities in a reasonable and reliable manner for a period
- 12 of at least five (5) years. The surety bond or guaranty shall be in an amount
- 13 sufficient to ensure the full and faithful performance by the applicant or its
- 14 successors of the obligations and requirements of this chapter and of all applicable
- 15 federal and state environmental requirements. However, no surety bond or guaranty
- 16 shall be required for an applicant that is a water district or water association or for
- 17 an applicant that the commission finds has sufficient assets to ensure the continuity
- 18 of sewage service.
- 19 (4) No utility shall exercise any right or privilege under any franchise or permit, after
- 20 the exercise of that right or privilege has been voluntarily suspended or
- 21 discontinued for more than one (1) year, without first obtaining from the
- 22 commission, in the manner provided in subsection (1) of this section, a certificate of
- 23 convenience and necessity authorizing the exercise of that right or privilege.
- 24 (5) No utility shall apply for or obtain any franchise, license, or permit from any city or
- 25 other governmental agency until it has obtained from the commission, in the manner
- 26 provided in subsection (1) of this section, a certificate of convenience and necessity
- 27 showing that there is a demand and need for the service sought to be rendered.

1 (6) No person shall acquire or transfer ownership of, or control, or the right to control,
2 any utility under the jurisdiction of the commission by sale of assets, transfer of
3 stock, or otherwise, or abandon the same, without prior approval by the
4 commission. The commission shall grant its approval if the person acquiring the
5 utility has the financial, technical, and managerial abilities to provide reasonable
6 service.

7 (7) No individual, group, syndicate, general or limited partnership, association,
8 corporation, joint stock company, trust, or other entity (an "acquirer"), whether or
9 not organized under the laws of this state, shall acquire control, either directly or
10 indirectly, of any utility furnishing utility service in this state, without having first
11 obtained the approval of the commission. Any acquisition of control without prior
12 authorization shall be void and of no effect. As used in this subsection, the term
13 "control" means the possession, directly or indirectly, of the power to direct or cause
14 the direction of the management and policies of a utility, whether through the
15 ownership of voting securities, by effecting a change in the composition of the
16 board of directors, by contract or otherwise. Control shall be presumed to exist if
17 any individual or entity, directly or indirectly, owns ten percent (10%) or more of
18 the voting securities of the utility. This presumption may be rebutted by a showing
19 that ownership does not in fact confer control. Application for any approval or
20 authorization shall be made to the commission in writing, verified by oath or
21 affirmation, and be in a form and contain the information as the commission
22 requires. The commission shall approve any proposed acquisition when it finds that
23 the same is to be made in accordance with law, for a proper purpose and is
24 consistent with the public interest. The commission may make investigation and
25 hold hearings in the matter as it deems necessary, and thereafter may grant any
26 application under this subsection in whole or in part and with modification and
27 upon terms and conditions as it deems necessary or appropriate. The commission

1 shall grant, modify, refuse, or prescribe appropriate terms and conditions with
2 respect to every such application within sixty (60) days after the filing of the
3 application therefor, unless it is necessary, for good cause shown, to continue the
4 application for up to sixty (60) additional days. The order continuing the application
5 shall state fully the facts that make continuance necessary. In the absence of that
6 action within that period of time, any proposed acquisition shall be deemed to be
7 approved.

8 (8) Subsection (7) of this section shall not apply to any acquisition of control of any:

9 (a) Utility which derives a greater percentage of its gross revenue from business
10 in another jurisdiction than from business in this state if the commission
11 determines that the other jurisdiction has statutes or rules which are applicable
12 and are being applied and which afford protection to ratepayers in this state
13 substantially equal to that afforded such ratepayers by subsection (7) of this
14 section;

15 (b) Utility by an acquirer who directly, or indirectly through one (1) or more
16 intermediaries, controls, or is controlled by, or is under common control with,
17 the utility, including any entity created at the direction of such utility for
18 purposes of corporate reorganization; or

19 (c) Utility pursuant to the terms of any indebtedness of the utility, provided the
20 issuance of indebtedness was approved by the commission.

21 (9) In a proceeding on an application filed pursuant to this section, any interested
22 person, including a person over whose property the proposed transmission line will
23 cross, may request intervention, and the commission shall, if requested, conduct a
24 public hearing in the county in which the transmission line is proposed to be
25 constructed, or, if the transmission line is proposed to be constructed in more than
26 one county, in one of those counties. The commission shall issue its decision no
27 later than ninety (90) days after the application is filed, unless the commission

1 extends this period, for good cause, to one hundred twenty (120) days. The
2 commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its
3 discretion, it deems it necessary to hire a competent, qualified and independent firm
4 to assist it in reaching its decision. The issuance by the commission of a certificate
5 that public convenience and necessity require the construction of an electric
6 transmission line shall be deemed to be a determination by the commission that, as
7 of the date of issuance, the construction of the line is a prudent investment.

8 (10) The commission shall not approve any application under subsection (6) or (7) of
9 this section for the transfer of control of a utility described in KRS 278.010(3)(f)
10 unless the commission finds, in addition to findings required by those subsections,
11 that the person acquiring the utility has provided evidence of financial integrity to
12 ensure the continuity of sewage service in the event that the acquirer cannot
13 continue to provide service.

14 (11) The commission shall not accept for filing an application requesting authority to
15 abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease
16 providing services unless the applicant has provided written notice of the filing to
17 the following:

- 18 (a) Kentucky Division of Water;
- 19 (b) Office of the Attorney General; and
- 20 (c) The county judge/executive, mayor, health department, planning and zoning
21 commission, and public sewage service provider of each county and each city
22 in which the utility provides utility service.

23 (12) The commission may grant any application requesting authority to abandon
24 facilities that provide services as set forth in KRS 278.010(3)(f) or to cease
25 providing services upon terms and conditions as the commission deems necessary
26 or appropriate, but not before holding a hearing on the application and no earlier
27 than ninety (90) days from the date of the commission's acceptance of the

1 application for filing, unless the commission finds it necessary for good cause to act
2 upon the application earlier.

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

7 ➔Section 2. KRS 278.183 is amended to read as follows:

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

21 (2) Recovery of costs pursuant to subsection (1) of this section that are not already
22 included in existing rates shall be by environmental surcharge to existing rates
23 imposed as a positive or negative adjustment to customer bills in the second month
24 following the month in which costs are incurred. Each utility, before initially
25 imposing an environmental surcharge pursuant to this subsection, shall thirty (30)
26 days in advance file a notice of intent to file said plan and subsequently submit to
27 the commission a plan, including any application required by KRS 278.020(1), for

1 complying with the applicable environmental requirements set forth in subsection
2 (1) of this section. The plan shall include the utility's testimony concerning a
3 reasonable return on compliance-related capital expenditures and a tariff addition
4 containing the terms and conditions of a proposed surcharge as applied to individual
5 rate classes. Within six (6) months of submittal, the commission shall conduct a
6 hearing upon the request of a party, and shall, regardless of whether or not a
7 hearing is requested~~[to]~~:

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

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

13 (c) Approve the application of the surcharge.

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

26 (4) The commission may employ competent, qualified independent consultants to assist
27 the commission in its review of the utility's plan of compliance as specified in

1 subsection (2) of this section. The cost of any consultant shall be included in the
2 surcharge approved by the commission.

3 (5) The commission shall retain all jurisdiction granted by this section and KRS
4 278.020 to review the environmental surcharge authorized by this section and any
5 complaints as to the amount of any environmental surcharge or the incorporation of
6 any environmental surcharge into the existing base rate of any utility.

7 ➔Section 3. The following KRS sections are repealed:

8 278.510 Consolidation of telephone lines.

9 278.545 Countywide service by major telephone company required, when.