

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 278.010 is amended to read as follows:

4 As used in KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and
5 278.990, unless the context otherwise requires:

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

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

11 (3) "Utility" means any person who transmits or conveys over wire or air or by any
12 other means, any message by telephone or telegraph for the public for
13 compensation, or~~except a regional wastewater commission established pursuant to~~
14 ~~KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), and (f) of this~~
15 ~~subsection, a city,~~ who owns, controls, operates, or manages any facility used or to
16 be used for or in connection with:

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

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

22 (c) The transporting or conveying of gas, crude oil, or other fluid substance by
23 pipeline to or for the public, for compensation;

24 (d) The diverting, developing, pumping, impounding, distributing, or furnishing
25 of water to or for the public, for compensation;

26 (e)~~The transmission or conveyance over wire, in air, or otherwise, of any~~
27 ~~message by telephone or telegraph for the public, for compensation; or~~

1 ~~(f)~~ The collection, transmission, or treatment of sewage for the public, for
2 compensation, if the facility is a subdivision collection, transmission, or
3 treatment facility plant that is affixed to real property and is located in a
4 county containing a city of the first class or is a sewage collection,
5 transmission, or treatment facility that is affixed to real property, that is
6 located in any other county, and that is not subject to regulation by a
7 metropolitan sewer district or any sanitation district created pursuant to KRS
8 Chapter 220.

9 "Utility" does not include a regional wastewater commission established
10 pursuant to KRS 65.8905 or a city that owns, controls, operates, or manages any
11 facility used or to be used for, or in connection with, the purposes set forth in
12 paragraphs (a), (b), (c), (d), and (e) of this subsection;

13 (4) "Retail electric supplier" means any person, firm, corporation, association, or
14 cooperative corporation, excluding municipal corporations, engaged in the
15 furnishing of retail electric service;

16 (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS
17 278.017;

18 (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is
19 being or has been substantially used to supply retail electric service and includes all
20 lines from the distribution substation to the electric consuming facility but does not
21 include any transmission facilities used primarily to transfer energy in bulk;

22 (7) "Retail electric service" means electric service furnished to a consumer for ultimate
23 consumption, but does not include wholesale electric energy furnished by an electric
24 supplier to another electric supplier for resale;

25 (8) "Electric-consuming facilities" means everything that utilizes electric energy from a
26 central station source;

27 (9) "Generation and transmission cooperative" or "G&T" means a utility formed under

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

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

1 (2) way voice communication device, including radio-telephone communications
 2 used in cellular telephone service, personal communications service, and the
 3 functional or competitive equivalent of a radio-telephone communications line used
 4 in cellular telephone service, a personal communications service, or a network radio
 5 access line; and

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

7 ➔Section 2. KRS 278.020 is amended to read as follows:

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

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

14 2. Ordinary extensions of existing systems in the usual course of business;
 15 or

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

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

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

26 In either case, the water district or water association shall not, as a result
 27 of the water line extension or improvement project, increase rates to its

1 customers;

2 until that person has obtained from the Public Service Commission a
3 certificate that public convenience and necessity require the service or
4 construction.

5 (b) Upon the filing of an application for a certificate, and after any public hearing
6 which the commission may in its discretion conduct for all interested parties,
7 the commission may issue or refuse to issue the certificate, or issue it in part
8 and refuse it in part, except that the commission shall not refuse or modify an
9 application submitted under KRS 278.023 without consent by the parties to
10 the agreement.

11 (c) The commission, when considering an application for a certificate to construct
12 a base load electric generating facility, may consider the policy of the General
13 Assembly to foster and encourage use of Kentucky coal by electric utilities
14 serving the Commonwealth.

15 (d) The commission, when considering an application for a certificate to construct
16 an electric transmission line, may consider the interstate benefits expected to
17 be achieved by the proposed construction or modification of electric
18 transmission facilities in the Commonwealth.

19 (e) Unless exercised within one (1) year from the grant thereof, exclusive of any
20 delay due to the order of any court or failure to obtain any necessary grant or
21 consent, the authority conferred by the issuance of the certificate of
22 convenience and necessity shall be void, but the beginning of any new
23 construction or facility in good faith within the time prescribed by the
24 commission and the prosecution thereof with reasonable diligence shall
25 constitute an exercise of authority under the certificate.

26 (2) For the purposes of this section, construction of any electric transmission line of one
27 hundred thirty-eight (138) kilovolts or more and of more than five thousand two

- 1 hundred eighty (5,280) feet in length shall not be considered an ordinary extension
2 of an existing system in the usual course of business and shall require a certificate
3 of public convenience and necessity. However, ordinary extensions of existing
4 systems in the usual course of business not requiring such a certificate shall include:
- 5 (a) The replacement or upgrading of any existing electric transmission line; or
 - 6 (b) The relocation of any existing electric transmission line to accommodate
7 construction or expansion of a roadway or other transportation infrastructure;
8 or
 - 9 (c) An electric transmission line that is constructed solely to serve a single
10 customer and that will pass over no property other than that owned by the
11 customer to be served.
- 12 (3) Prior to granting a certificate of public convenience and necessity to construct
13 facilities to provide the services set forth in subsection (3)(e) of Section 1 of this
14 Act [~~KRS 278.010(3)(f)~~], the commission shall require the applicant to provide a
15 surety bond, or a reasonable guaranty that the applicant shall operate the facilities in
16 a reasonable and reliable manner for a period of at least five (5) years. The surety
17 bond or guaranty shall be in an amount sufficient to ensure the full and faithful
18 performance by the applicant or its successors of the obligations and requirements
19 of this chapter and of all applicable federal and state environmental requirements.
20 However, no surety bond or guaranty shall be required for an applicant that is a
21 water district or water association or for an applicant that the commission finds has
22 sufficient assets to ensure the continuity of sewage service.
- 23 (4) No utility shall exercise any right or privilege under any franchise or permit, after
24 the exercise of that right or privilege has been voluntarily suspended or
25 discontinued for more than one (1) year, without first obtaining from the
26 commission, in the manner provided in subsection (1) of this section, a certificate of
27 convenience and necessity authorizing the exercise of that right or privilege.

- 1 (5) No utility shall apply for or obtain any franchise, license, or permit from any city or
2 other governmental agency until it has obtained from the commission, in the manner
3 provided in subsection (1) of this section, a certificate of convenience and necessity
4 showing that there is a demand and need for the service sought to be rendered.
- 5 (6) No person shall acquire or transfer ownership of, or control, or the right to control,
6 any utility under the jurisdiction of the commission by sale of assets, transfer of
7 stock, or otherwise, or abandon the same, without prior approval by the
8 commission. The commission shall grant its approval if the person acquiring the
9 utility has the financial, technical, and managerial abilities to provide reasonable
10 service.
- 11 (7) No individual, group, syndicate, general or limited partnership, association,
12 corporation, joint stock company, trust, or other entity (an "acquirer"), whether or
13 not organized under the laws of this state, shall acquire control, either directly or
14 indirectly, of any utility furnishing utility service in this state, without having first
15 obtained the approval of the commission. Any acquisition of control without prior
16 authorization shall be void and of no effect. As used in this subsection, the term
17 "control" means the possession, directly or indirectly, of the power to direct or cause
18 the direction of the management and policies of a utility, whether through the
19 ownership of voting securities, by effecting a change in the composition of the
20 board of directors, by contract or otherwise. Control shall be presumed to exist if
21 any individual or entity, directly or indirectly, owns ten percent (10%) or more of
22 the voting securities of the utility. This presumption may be rebutted by a showing
23 that ownership does not in fact confer control. Application for any approval or
24 authorization shall be made to the commission in writing, verified by oath or
25 affirmation, and be in a form and contain the information as the commission
26 requires. The commission shall approve any proposed acquisition when it finds that
27 the same is to be made in accordance with law, for a proper purpose and is

1 consistent with the public interest. The commission may make investigation and
2 hold hearings in the matter as it deems necessary, and thereafter may grant any
3 application under this subsection in whole or in part and with modification and
4 upon terms and conditions as it deems necessary or appropriate. The commission
5 shall grant, modify, refuse, or prescribe appropriate terms and conditions with
6 respect to every such application within sixty (60) days after the filing of the
7 application therefor, unless it is necessary, for good cause shown, to continue the
8 application for up to sixty (60) additional days. The order continuing the application
9 shall state fully the facts that make continuance necessary. In the absence of that
10 action within that period of time, any proposed acquisition shall be deemed to be
11 approved.

- 12 (8) Subsection (7) of this section shall not apply to any acquisition of control of any:
- 13 (a) Utility which derives a greater percentage of its gross revenue from business
14 in another jurisdiction than from business in this state if the commission
15 determines that the other jurisdiction has statutes or rules which are applicable
16 and are being applied and which afford protection to ratepayers in this state
17 substantially equal to that afforded such ratepayers by subsection (7) of this
18 section;
- 19 (b) Utility by an acquirer who directly, or indirectly through one (1) or more
20 intermediaries, controls, or is controlled by, or is under common control with,
21 the utility, including any entity created at the direction of such utility for
22 purposes of corporate reorganization; or
- 23 (c) Utility pursuant to the terms of any indebtedness of the utility, provided the
24 issuance of indebtedness was approved by the commission.
- 25 (9) In a proceeding on an application filed pursuant to this section, any interested
26 person, including a person over whose property the proposed transmission line will
27 cross, may request intervention, and the commission shall, if requested, conduct a

1 public hearing in the county in which the transmission line is proposed to be
2 constructed, or, if the transmission line is proposed to be constructed in more than
3 one county, in one of those counties. The commission shall issue its decision no
4 later than ninety (90) days after the application is filed, unless the commission
5 extends this period, for good cause, to one hundred twenty (120) days. The
6 commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its
7 discretion, it deems it necessary to hire a competent, qualified and independent firm
8 to assist it in reaching its decision. The issuance by the commission of a certificate
9 that public convenience and necessity require the construction of an electric
10 transmission line shall be deemed to be a determination by the commission that, as
11 of the date of issuance, the construction of the line is a prudent investment.

12 (10) The commission shall not approve any application under subsection (6) or (7) of
13 this section for the transfer of control of a utility described in subsection (3)(e) of
14 Section 1 of this Act~~[KRS 278.010(3)(f)]~~ unless the commission finds, in addition
15 to findings required by those subsections, that the person acquiring the utility has
16 provided evidence of financial integrity to ensure the continuity of sewage service
17 in the event that the acquirer cannot continue to provide service.

18 (11) The commission shall not accept for filing an application requesting authority to
19 abandon facilities that provide services as set forth in subsection (3)(e) of Section 1
20 of this Act~~[KRS 278.010(3)(f)]~~ or to cease providing services unless the applicant
21 has provided written notice of the filing to the following:

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

27 (12) The commission may grant any application requesting authority to abandon

1 facilities that provide services as set forth in subsection (3)(e) of Section 1 of this
2 Act~~[KRS 278.010(3)(f)]~~ or to cease providing services upon terms and conditions as
3 the commission deems necessary or appropriate, but not before holding a hearing on
4 the application and no earlier than ninety (90) days from the date of the
5 commission's acceptance of the application for filing, unless the commission finds it
6 necessary for good cause to act upon the application earlier.

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

11 ➔Section 3. KRS 278.183 is amended to read as follows:

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

25 (2) Recovery of costs pursuant to subsection (1) of this section that are not already
26 included in existing rates shall be by environmental surcharge to existing rates
27 imposed as a positive or negative adjustment to customer bills in the second month

1 following the month in which costs are incurred. Each utility, before initially
2 imposing an environmental surcharge pursuant to this subsection, shall thirty (30)
3 days in advance file a notice of intent to file said plan and subsequently submit to
4 the commission a plan, including any application required by KRS 278.020(1), for
5 complying with the applicable environmental requirements set forth in subsection
6 (1) of this section. The plan shall include the utility's testimony concerning a
7 reasonable return on compliance-related capital expenditures and a tariff addition
8 containing the terms and conditions of a proposed surcharge as applied to individual
9 rate classes. Within six (6) months of submittal, the commission shall conduct a
10 hearing upon the request of a party, and shall, regardless of whether or not a
11 hearing is requested~~[to]~~:

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

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

17 (c) Approve the application of the surcharge.

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

1 expenses, and to the extent appropriate, incorporate surcharge amounts found just
2 and reasonable into the existing base rates of each utility.

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

7 (5) The commission shall retain all jurisdiction granted by this section and KRS
8 278.020 to review the environmental surcharge authorized by this section and any
9 complaints as to the amount of any environmental surcharge or the incorporation of
10 any environmental surcharge into the existing base rate of any utility.

11 ➔Section 4. KRS 278.990 is amended to read as follows:

12 (1) Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any
13 other person who willfully violates any of the provisions of this chapter or any
14 regulation promulgated pursuant to this chapter, or fails to obey any order of the
15 commission from which all rights of appeal have been exhausted, or who procures,
16 aids, or abets a violation by any utility, shall be subject to either a civil penalty to be
17 assessed by the commission not to exceed two thousand five hundred dollars
18 (\$2,500) for each offense or a criminal penalty of imprisonment for not more than
19 six (6) months, or both. If any utility willfully violates any of the provisions of this
20 chapter or any regulation promulgated pursuant to this chapter, or does any act
21 therein prohibited, or fails to perform any duty imposed upon it under those sections
22 for which no penalty has been provided by law, or fails to obey any order of the
23 commission from which all rights of appeal have been exhausted, the utility shall be
24 subject to a civil penalty to be assessed by the commission for each offense not less
25 than twenty-five dollars (\$25) nor more than two thousand five hundred dollars
26 (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting
27 for or employed by a utility and acting within the scope of his employment shall be

1 deemed to be the act, omission, or failure of the utility.

2 (2) **The commission shall have the authority, by and through counsel, to commence**
3 **and prosecute actions to collect any penalties, fines, fees, and other amounts**
4 **assessed or due under this chapter. Except as otherwise provided in subsection (7)**
5 **of this section, actions by the commission shall be brought in Franklin Circuit**
6 **Court**~~[Actions to recover the principal amount due and penalties under this chapter~~
7 ~~shall be brought in the name of the Commonwealth in the Franklin Circuit Court.~~
8 ~~Whenever any utility is subject to a penalty under this chapter, the commission shall~~
9 ~~certify the facts to its counsel, who shall bring an action for recovery of the~~
10 ~~principal amount due and the penalty. The commission may compromise and~~
11 ~~dismiss the action on terms approved by the court. The principal amount due shall~~
12 ~~be paid into the State Treasury and credited to the account of the commission, and~~
13 ~~all penalties recovered in such actions shall be paid into the State Treasury and~~
14 ~~credited to the general fund].~~

15 (3) Any utility that fails to pay an assessment as provided for by KRS 278.130 to
16 278.150 shall forfeit and pay to the state one thousand dollars (\$1,000), and twenty-
17 five dollars (\$25) for each day it fails to pay the assessment, and shall not be
18 released thereby from its liability for the assessment.

19 (4) Any utility that issues any securities or evidences of indebtedness, or assumes any
20 obligation or liability in respect to the securities or evidences of indebtedness of any
21 other person, or makes any sale or other disposition of securities or evidences of
22 indebtedness, or the proceeds thereof, for purposes other than the purposes specified
23 in the order of the commission made with respect thereto under KRS 278.300, shall
24 be fined not more than ten thousand dollars (\$10,000).

25 (5) Any utility that violates any of the provisions of KRS 278.460 shall be fined not
26 less than one hundred dollars (\$100) for each offense.

27 (6) Any company that willfully fails to receive, transport, and deliver oil or gas as

1 required by KRS 278.490 shall, in addition to being liable in damages to the injured
2 person, be fined not less than one hundred dollars (\$100) nor more than five
3 hundred dollars (\$500), and each day of willful failure shall constitute a separate
4 offense.

5 (7) Any telephone company that refuses to make a connection with the exchange or
6 lines of another company for a period of thirty (30) days after being ordered to do so
7 by the commission under subsection (2) of KRS 278.530 shall be fined not less than
8 one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), to be
9 recovered by indictment in the Franklin Circuit Court or in the Circuit Court of the
10 county where the company requesting the connection resides or has its chief office
11 in this state. If the company desiring the connection proceeds to make the
12 connection, as permitted by subsection (2) of KRS 278.530, and the company so
13 connected with refuses to receive and transmit the toll messages offered to it by the
14 company making the connection, or refuses to deliver messages from its own lines
15 or exchanges to the lines or exchanges of the company making the connection, the
16 company so refusing shall be fined one hundred dollars (\$100) for each day it
17 refuses, to be recovered by indictment in the courts mentioned in the first sentence
18 of this subsection; if it continues so to refuse for a period of six (6) months it shall
19 forfeit its right to do business in this state, and any of its officers, agents, or
20 employees who does or attempts to do any business in this state for it after the
21 expiration of the six (6) months' period shall be fined fifty dollars (\$50) for each day
22 he does or attempts to do such business.

23 ➔Section 5. KRS 96.531 is amended to read as follows:

24 Any legislative body of any city may provide telecommunications service. Any city that
25 owns, operates, or controls, either directly or indirectly, a municipal utility that provides
26 telecommunications services as defined in KRS 278.010(3)~~(e)~~ shall, as to telephone
27 service solely, be subject to the provisions of KRS Chapter 278 in the same manner as

1 other nonmunicipal providers of telephone services.

2 ➔Section 6. KRS 224.73-150 is amended to read as follows:

- 3 (1) The cabinet may seek to have a receiver appointed to assume the management and
4 operation of a privately owned small wastewater treatment plant if the plant:
- 5 (a) Presents a threat or likely threat to the public health or the environment;
 - 6 (b) Is in substantial and recurring noncompliance with its discharge permit as
7 issued by the cabinet; or
 - 8 (c) The owner is unable or unwilling to operate or to provide for the proper
9 operation of the plant.
- 10 (2) If the cabinet, after following the procedures and conducting a hearing in
11 accordance with KRS 224.10-410 or 224.10-420 and the administrative regulations
12 promulgated thereunder, enters an order in which it finds that a plant meets any of
13 the conditions of subsection (1) of this section, and after notification to the Public
14 Service Commission if the plant is a utility as defined in subsection (3)(e) of
15 Section 1 of this Act~~[KRS 278.010(3)(f)]~~, the cabinet may bring an action in the
16 Franklin Circuit Court for an order attaching the assets of the plant and placing
17 those assets under the sole control and responsibility of a receiver.
- 18 (3) Within twenty (20) days after commencing an action in Franklin Circuit Court, the
19 cabinet shall file a certified copy of the record of the administrative proceeding in
20 which the secretary of the cabinet entered his or her findings.
- 21 (4) During the pendency of any receivership, the receiver may bring or defend any
22 cause of action on behalf of the owner of the plant as the court may authorize,
23 including an action to raise rates or institute surcharges as necessary to properly
24 operate, maintain, restore, and rehabilitate the plant and to pay the costs, fees, and
25 expenses of the receiver.
- 26 (5) The receiver shall control and manage the assets and operations of the plant until
27 the Franklin Circuit Court, after reasonable notice and hearing, orders the receiver

1 to return control of those assets to the plant's owner or to liquidate and transfer
2 those assets as provided by law.

3 (6) (a) Notwithstanding subsection (2) of this section, the cabinet, after notification
4 to the Public Service Commission if the plant is a utility as defined in
5 subsection (3)(e) of Section 1 of this Act~~[KRS 278.010(3)(f)]~~, may petition
6 the Franklin Circuit Court to appoint a temporary receiver to operate and
7 manage the assets of the plant meeting the conditions set out in subsection (1)
8 of this section.

9 (b) After notice to the owner of the plant, and after notification to the Public
10 Service Commission if the plant is a utility as defined in subsection (3)(e) of
11 Section 1 of this Act~~[KRS 278.010(3)(f)]~~, the court may grant a petition for
12 the appointment of a temporary receiver, on terms and conditions as it deems
13 appropriate, upon a showing by a preponderance of the evidence:

- 14 1. That the plant is an immediate threat to the public health, safety, or the
15 environment;
- 16 2. There is an immediate threat to the continued availability of service to
17 the customers served by the plant; and
- 18 3. That the delay required for the cabinet to follow the procedures and
19 conduct a hearing in accordance with subsection (2) of this section
20 would place the public health or safety, the environment, or continued
21 wastewater treatment service at unnecessary risk.

22 ➔Section 7. KRS 278.516 is amended to read as follows:

23 (1) The legislature finds and determines that:

- 24 (a) Small telephone utilities lack the resources to fully participate in the existing
25 regulatory processes, particularly under traditional rate of return and
26 certificate of public convenience and necessity regulation;
- 27 (b) Regulation, if not tailored specifically to the needs of small telephone utilities,

1 can retard the growth and development of small telephone utilities by
2 requiring the expenditure of excessive time and money responding to and
3 addressing regulatory processes instead of devoting those resources to
4 customer service and more productive business concerns and issues; and

5 (c) It is in the public interest to provide regulatory flexibility to small telephone
6 utilities to better enable them to adjust to the competition and innovation that
7 has come and is coming to the telecommunications industry as found and
8 determined by the legislature at KRS 278.512(1).

9 (2) In addition to the definitions set forth at KRS 278.010, the following definitions
10 shall apply to this section:

11 (a) "Telephone utility" means a telephone utility as defined at KRS
12 278.010(3)~~{(e)}~~ except that it includes local exchange carriers only;

13 (b) "Local exchange carrier" means a traditional wireline telephone utility which
14 provides its subscribers with access to the national public switched telephone
15 network;

16 (c) "Traditional wireline telephone utility" means one whose delivery of its
17 telephone utility services is characterized by the predominant use of wire or
18 wireline connections carrying communications transmissions between the
19 subscriber of the utility and the national public switched telephone network;

20 (d) "Small telephone utility" means a local exchange carrier providing telephone
21 utility service and having not more than fifty thousand (50,000) access lines in
22 Kentucky;

23 (e) "Largest telephone utility" means the local exchange carrier providing
24 telephone utility service in Kentucky and having the greatest number of access
25 lines in Kentucky;

26 (f) "Access lines" mean the telephone lines provided by a local exchange carrier.
27 In calculating the number of access lines provided by a local exchange carrier,

- 1 the number of access lines provided by all telephone utilities under common
2 ownership or control, as defined in KRS 278.020(7), with that telephone
3 utility shall be counted;
- 4 (g) "GDP" means the real Gross Domestic Product Price Index, as it may be
5 amended from time to time, as it is published by the Bureau of Economic
6 Analysis of the United States Department of Commerce;
- 7 (h) "Annual percent change in the GDP" means, for any given calendar year, the
8 annual percentage change in the GDP as it is calculated by the Bureau of
9 Economic Analysis of the United States Department of Commerce;
- 10 (i) "Basic business rate" and "basic residential rate" mean the total rates or
11 charges which must be paid by a business or residential subscriber,
12 respectively, to a local exchange carrier in order to receive, outside of a
13 standard metropolitan statistical area, telephone utility service within a
14 specified geographic area for local calling and for which tariffed rates or
15 charges are assessed, regardless of the amount of use of local calling;
- 16 (j) "Standard metropolitan statistical area" means any area in Kentucky
17 designated as such, or as a part thereof, pursuant to 44 U.S.C. sec. 3504(d)(3)
18 and 31 U.S.C. sec. 1104(d), as they may be amended, by the Office of
19 Management and Budget of the Executive Office of the President of the
20 United States; provided, however, that for purposes of this section, "standard
21 metropolitan statistical area" shall include only the two (2) largest, as
22 measured by population, standard metropolitan statistical areas, regardless of
23 whether that area is located wholly or partially in Kentucky;
- 24 (k) "Basic business service" or "basic residential service" means the service for
25 which basic business rates or basic residential rates are charged;
- 26 (l) "Average basic business or residential rate, including zone charges," means
27 the total revenues which should be produced by the imposition of those rates

1 or charges divided by the number of access lines to which those rates or
2 charges are applicable;

3 (m) "Zone charges" mean mileage or zone charges and are the charges assessed by
4 a telephone utility on the basis of a subscriber's distance from a central office
5 in order that the subscriber may receive basic business or residential services;

6 (n) "Subscriber" means the person or entity legally and financially responsible for
7 the bill rendered by a telephone utility for its services;

8 (o) "Intrastate access charges" mean the charges assessed for use of the
9 telecommunications facilities of one telephone utility by another person or
10 entity in order to deliver to the public for compensation telephone messages
11 originating and terminating within Kentucky;

12 (p) "Interstate access charges" mean the charges assessed for use of the
13 telecommunications facilities of one (1) telephone utility by another person or
14 entity in order to deliver to the public for compensation telephone messages
15 originating or terminating, but not both, in Kentucky; and

16 (q) "Pic charges" are charges assessed by a local exchange carrier in order to
17 implement a change in a subscriber's long distance carrier.

18 (3) (a) If a small telephone utility elects to be regulated as provided in subsection (7)
19 of this section, a small telephone utility once during any twenty-four (24)
20 month period may adjust or implement each of the following rates or charges:
21 basic business rate; basic residential rate; zone charges; or installation charges
22 for basic business or basic residential services by an amount not to exceed the
23 sum of the annual percentage changes in the GDP for the immediately
24 preceding two (2) calendar years multiplied by the existing rate or charge to be
25 adjusted. However, in no event shall a small telephone utility so adjust:

26 1. Its basic business rate, including zone charges, if the resulting average
27 basic business rate, including zone charges, would thereby exceed the

- 1 average basic business rate, including zone charges, of the largest
2 telephone utility;
- 3 2. Its basic residential rate, including zone charges, if the resulting average
4 basic residential rate would thereby exceed the average basic residential
5 rate including zone charges, of the largest telephone utility; or
- 6 3. If its average basic business rate, including zone charges, its average
7 basic residential rate, including zone charges, or its installation charges
8 for basic business or basic residential services would be increased by
9 more than twenty percent (20%).
- 10 (b) At least sixty (60) calendar days before the effective date of such an
11 adjustment of its rates or charges, a small telephone utility shall file a copy of
12 its revised rates and tariffs with the commission and shall mail notice of the
13 proposed rate adjustment to each affected subscriber and the commission. The
14 notice shall state:
- 15 1. The GDP for the preceding two (2) calendar years;
- 16 2. The amount by which any of the small telephone utility's rates or charges
17 identified in subsection (3)(a) of this section will be adjusted; and
- 18 3. The right of subscribers to object to the adjustment and request
19 commission review by filing a letter or petition with the commission.
- 20 (c) If by the forty-fifth calendar day following the date of the notice to subscribers
21 of such a proposed adjustment to its rates or charges, the commission has
22 received letters or petitions requesting commission review of the adjustment
23 signed by at least five hundred (500) subscribers or five percent (5%) of
24 subscribers, whichever is greater, the commission shall immediately notify the
25 small telephone utility of this fact, and the proposed rate adjustment shall not
26 become effective as scheduled. The small telephone utility may withdraw the
27 proposed rate or charge adjustment, or if it decides to proceed, the

1 commission shall review the proposed rate adjustment as though no election
2 had been made pursuant to subsection (7) of this section.

3 (4) Any other provision of this chapter notwithstanding, a small telephone utility which
4 has elected to be regulated pursuant to this section may adjust any of its rates,
5 charges, or tariffs, except for:

- 6 (a) Its basic business rate;
- 7 (b) Its basic residential rate;
- 8 (c) Its zone charges;
- 9 (d) Its installation charges for basic business or basic residential services;
- 10 (e) Its access charges; or
- 11 (f) Its pic charges,

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

15 (5) A small telephone utility which has elected to be regulated pursuant to this section
16 shall not:

- 17 (a) Adjust its intrastate access charges if the adjustment requires the small
18 telephone utility's access charge customers, including interexchange carriers,
19 to pay intrastate access charges at levels exceeding the small telephone
20 utility's interstate access charge levels; or
- 21 (b) Adjust its intrastate pic charges if the adjustment requires the small telephone
22 utility's customers to pay intrastate pic charges at levels exceeding the small
23 telephone utility's interstate pic charge levels.

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

- 1 (6) The rates, charges, earnings, or revenues of a small telephone utility which has
2 elected to be regulated pursuant to this section and is in compliance with the
3 provisions of this section shall be deemed by the commission to be in compliance
4 with KRS 278.030(1).
- 5 (7) A small telephone utility may elect, at any time, to be regulated by the provisions, in
6 their entirety only, of this section by filing a verified resolution of the utility's board
7 of directors, or other governing body, so electing with the commission. An election
8 shall be effective immediately upon filing with the commission and shall remain
9 effective until withdrawn by the filing with the commission of a verified resolution
10 of the small telephone utility's board of directors or other governing body; provided,
11 however, that all resolutions of election or withdrawal shall remain in effect for at
12 least one (1) year from the date of their filing with the commission. A resolution
13 electing to be regulated by the provisions of this section shall mean that the small
14 telephone utility so electing shall be regulated by this section and shall not be
15 regulated by KRS 278.020(1) and 278.300. Nothing in this section, however, shall
16 be construed to alter the applicability of KRS 278.020(5) or 278.030(2) to small
17 telephone utilities electing to be regulated by the provisions of this section.
- 18 (8) A small telephone utility which has elected to be regulated pursuant to this section
19 may file an application with the commission pursuant to KRS 278.020(1), and, if a
20 utility does so, that application shall be deemed to have been granted unless within
21 thirty (30) calendar days following the filing of the application, the commission
22 denies the application. If the application is denied or none is filed, the small
23 telephone utility electing to be regulated pursuant to this section may engage in the
24 construction of the plant or facilities, or the purchase of equipment or properties, to
25 provide the services described in KRS 278.010(3){(e)}. However, if the small
26 telephone utility subsequently files a resolution of withdrawal under subsection (7)
27 of this section, the increased value of property that resulted from any construction

1 project denied approval by the commission or not submitted to the commission for
2 approval may be excluded from the small utility's rate base for rate making purposes
3 if the cost of construction exceeded one million dollars (\$1,000,000) or five percent
4 (5%) of the value of the small telephone utility's property as reflected in the utility's
5 most recent annual report filed with the commission.

6 ➔Section 8. The following KRS sections are repealed:

7 278.510 Consolidation of telephone lines.

8 278.545 Countywide service by major telephone company required, when.