AN ACT relating to public utilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;
(9) "Generation and transmission cooperative" or "G&T" means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;

(10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;

(11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;

(12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;

(13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility, but does not include Voice over Internet Protocol (VoIP) service;

(14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;

(15) "Commission" means the Public Service Commission of Kentucky;

(16) "Commissioner" means one (1) of the members of the commission;

(17) "Demand-side management" means any conservation, load management, or other
utility activity intended to influence the level or pattern of customer usage or demand, including home energy assistance programs;

(18) "Affiliate" means a person that controls or that is controlled by, or is under common control with, a utility;

(19) "Control" means the power to direct the management or policies of a person through ownership, by contract, or otherwise;

(20) "CAM" means a cost allocation manual which is an indexed compilation and documentation of a company's cost allocation policies and related procedures;

(21) "Nonregulated activity" means the provision of competitive retail gas or electric services or other products or services over which the commission exerts no regulatory authority;

(22) "Nonregulated" means that which is not subject to regulation by the commission;

(23) "Regulated activity" means a service provided by a utility or other person, the rates and charges of which are regulated by the commission;

(24) "USoA" means uniform system of accounts which is a system of accounts for public utilities established by the FERC and adopted by the commission;

(25) "Arm's length" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction;

(26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class of customer, activity, or business unit that is attributable to another;

(27) "Solicit" means to engage in or offer for sale a good or service, either directly or indirectly and irrespective of place or audience;

(28) "USDA" means the United States Department of Agriculture;

(29) "FERC" means the Federal Energy Regulatory Commission;

(30) "SEC" means the Securities and Exchange Commission;

(31) "Commercial mobile radio services" has the same meaning as in 47 C.F.R. sec. 20.3
and includes the term "wireless" and service provided by any wireless real time two
(2) way voice communication device, including radio-telephone communications
used in cellular telephone service, personal communications service, and the
functional or competitive equivalent of a radio-telephone communications line used
in cellular telephone service, a personal communications service, or a network radio
access line; \[and\]
(32) "Voice over Internet Protocol" or "VoIP" has the same meaning as in federal law
(33) "Customer charge" means the basic fee for utility service that:

(a) Does not fluctuate with usage; and
(b) Is intended to recover the direct, fixed customer-related costs.

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

(1) Every utility may demand, collect and receive fair, just, reasonable, and affordable rates for the services rendered or to be rendered by it to any person. The commission may, on its own motion, examine the adequacy of a utility's rate if the utility has not requested a rate adjustment in three (3) years. If the commission finds that a rate is inadequate, the commission may order a full rate case to mitigate the impact of rate increases on the customer. In determining fair, just, reasonable, and affordable rates for services rendered under this subsection, the commission shall balance the interests of the customer, the utility, and in cases where the utility has investors, the interests of those investors.

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

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

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

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

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

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

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

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

(1) 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 upon the request of a party, and shall, regardless of whether or not a hearing is requested:

(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 in accordance with Section 3 of this Act.

(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.

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

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

(2) Pending the hearing and the decision thereon, and after notice to the utility, the
commission may, at any time before the schedule becomes effective, suspend the
operation of the schedule and defer the use of the rate, charge, classification, or
service, but not for a longer period than five (5) months beyond the time when it
would otherwise go into effect if an historical test period is used, or longer than six
(6) months if a forward-looking test period is used, pursuant to KRS 278.192; and
after such hearing, either completed before or after the rate, charge, classification, or
service goes into effect, the commission may make those orders with reference
thereto as it deems proper in the matter. If the proceeding has not been concluded
and an order made at the expiration of five (5) months, or six (6) months, as
appropriate, the utility may place the proposed change of rate, charge, classification,
or service in effect at the end of that period after notifying the commission, in
writing, of its intention so to do. Where increased rates or charges are thus made
effective, the commission may, by order, require the interested utility or utilities to
maintain their records in a manner as will enable them, or the commission, or any of
its customers, to determine the amounts to be refunded and to whom due in the
event a refund is ordered, and upon completion of the hearing and decision may, by
further order, require such utility or utilities to refund to the persons in whose behalf
the amounts were paid that portion of the increased rates or charges as by its
decision shall be found unreasonable. Provided, however, if the commission, at any
time, during the suspension period, finds that the company's credit or operations
will be materially impaired or damaged by the failure to permit the rates to become
effective during the period, the commission may, after any hearing or hearings,
permit all or a portion of the rates to become effective under terms and conditions
as the commission may, by order, prescribe.

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

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

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

(1) Beginning on the effective date of this Act, and except for a distribution cooperative, the commission shall require a management and operations audit to investigate management effectiveness and operating efficiency of each utility with annual intra-Kentucky assessable revenue as of December 31, 2019 of not less than one hundred million dollars ($100,000,000) to investigate management effectiveness and operating efficiency. The commission shall complete or provide for an initial full and comprehensive audit of each such utility under this subsection that meets the intra-Kentucky assessable revenue requirement at any time after the effective date of this Act, except that all initial audits under this
subsection shall be completed prior to January 1, 2023. After the initial audit of any utility, the commission may order a subsequent audit of that utility focusing on issues disclosed by the initial audit. After the initial audit of any utility, the commission shall provide for a management and operations audit to be filed with the commission every five (5) years following the first completed audit. A full and comprehensive audit of any utility initiated prior to July 13, 1984, may be deemed to satisfy the requirements of this subsection if the audit was required and directed by the commission and completed after July 1, 1983.

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

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

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

(a) Filed with the commission.
Open to public inspection; and
Available on the commission's and the utilities' Web sites.

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

(1) The commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion. Upon initiation of an investigation pursuant to this subsection, the commission shall provide notice by mail or electronically to the Attorney General's Office of Rate Intervention. No order affecting the rates or service complained of shall be entered by the commission without a formal public hearing.

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

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

Section 8. KRS 96.120 is amended to read as follows:

(1) Any city that owns and operates its own water or light plant may acquire a franchise to furnish water and light to any other city, in the same manner that any private
corporation or individual may acquire such a franchise.

(2) Any city that owns and operates its own water or light plant may contract with any other city to furnish water and light to that other city. Those contracts may be entered into by the legislative bodies of the cities, and the legislative bodies are given full power to so contract in regard to the furnishing of water or light. Each contract shall be specific in its terms. Any city may pay to any other city a rental for water and light from year to year, or for a term of years.

(3) Any city may construct, lay, or maintain mains, pipes, lines, or other necessary apparatus to convey water or light from any city that owns and operates its own water or light plant, or may contract with the other city to do these things, and the other city shall have the same power. For this purpose, any city may acquire rights and rights-of-way in the same manner that private corporations or individuals may acquire rights and rights-of-way, and may do any other things in carrying into effect the provisions of this section that any individual or corporation may do.

(4) Any contract entered into pursuant to this section shall be submitted for review and approval by the Public Service Commission. The rates and service provided in the contract shall be subject to review and regulation by the Public Service Commission pursuant to KRS Chapter 278. The criteria for approval of the contract shall include a determination that the contract shall provide for adequate, efficient, and reasonable water or light service and that the rates of the service are fair, just, and reasonable.

Section 9. KRS 96.150 is amended to read as follows:

(1) Any city that owns or operates a water supply or sanitary sewer system may extend the system into, and furnish and sell water and provide sanitary sewers to any person within, any territory contiguous to the city, and may install within that territory necessary apparatus; provided, however, that the extension of a water supply or sanitary sewer system shall not enter into any territory served by an
existing water supply or sanitary sewer district unless such district requests the
extension of water or sewer services from a city. For these purposes the city or
sanitation authority established by an interlocal agreement may condemn or
otherwise acquire franchises, rights, and rights-of-way, as private corporations may
do.

(2) When extending the system to any person, water district, or water association, the
city may consider the installation of fire hydrants on the extended lines. The city
may extend water lines which are incapable of servicing fire hydrants only if the
city determines that servicing hydrants is not feasible. The determination shall
include consideration of the incremental costs of adequately sized pipe and
associated pumps and towers, and the benefits of real estate development, water
sales, the availability of fire protection insurance, and the reduction in fire insurance
premiums which may result from the installation of hydrants at specified intervals.
When extending lines to a water district or water association, the determination may
be made in consultation with the district or association, taking into consideration
their fiscal capacity.

(3) Any extension of a water or sewer system pursuant to this section shall be subject
to review and regulation by the Public Service Commission. The rates and service
provided by the project shall be approved and regulated by the Public Service
Commission pursuant to KRS Chapter 278. The criteria for approval of the
project shall include a determination that the project shall furnish adequate,
efficient, and reasonable water or sewer service and that the rates of the service
are fair, just, and reasonable.

Section 10. KRS 96.520 is amended to read as follows:

(1) Any city of the home rule class or urban-county government may purchase,
establish, erect, maintain, and operate electric light, heat, and power plants, with
extensions and necessary appurtenances, within or without the corporate limits of
the city or the urban-county government, for the purpose of supplying the city or
urban-county government and its inhabitants with electric light, heat, power, and
telecommunications. Any city-owned or urban-county government-owned utility
created under this section that provides telecommunications services shall be
regulated as to that service by KRS Chapter 278. Any city-owned or urban-county
government-owned utility created under this section that provides municipal
telephone service shall be regulated as to that service by KRS Chapter 278. For the
purpose of providing electric light, heat, power, and telephone services, a city of the
home rule class or urban-county government may enter into and fulfill the terms of
an interconnection agreement with any electric or combination electric or gas utility
whose rates and service are regulated by the Public Service Commission of
Kentucky (or, if not so regulated, operating and having customers only outside of
Kentucky), or an affiliate entirely owned by or under complete common ownership
with an electric or combination electric and gas utility whose rates and service are
regulated by the Public Service Commission of Kentucky. Any city of the home rule
class or urban-county government may establish, erect, maintain, and operate plants,
individually or jointly with any of these utilities or utility affiliate. In the case of any
joint action, a city or urban-county government and utility or utility affiliate may
provide by contract for their respective responsibilities, for operation and
maintenance and for the allocation of expenses, revenues, and power. If in the
accomplishment of this purpose a city or urban-county government at any time has
capacity or energy surplus to the immediate needs of the city or urban-county
government and its inhabitants, the surplus, if not disposed of for consumption
outside this state, may be disposed of to an electric or combination electric and gas
utility whose rates and service are regulated by the Public Service Commission of
Kentucky, to an affiliate entirely owned by or under complete common ownership
with such a utility, or to a city-owned or urban-county government-owned utility
established pursuant to KRS Chapter 96. *If a city or urban-county government sells capacity or energy surplus to any electric or combination electric or gas utility, or to any city-owned or urban-county government-owned utility pursuant to KRS Chapter 96, the city or urban-county government shall make formal application for approval of the sale to the Public Service Commission. The rates and service provided by the city or urban-county government shall be reviewed and regulated by the Public Service Commission pursuant to KRS Chapter 278.*

(2) The city or urban-county government shall proceed in the same manner and be governed by the same conditions as are set forth in KRS 96.360 to 96.510 for the acquisition and operation of a water system, with the following exceptions:

(a) A petition calling for an election on the proposition of purchasing an existing plant shall be signed by at least two hundred (200) qualified voters of the city or urban-county government, rather than by twenty-five percent (25%) of the qualified voters of the city or urban-county government who voted at the last preceding regular election.

(b) Notwithstanding any other laws, bonds may be issued bearing interest at a rate or rates and may be sold on a basis to yield interest at a rate or rates as may be determined upon the sale of the bonds.

(c) Bonds of an issue, or bonds of two (2) or more issues consolidated for the purposes of sale, which equal or exceed $10,000,000 in the aggregate principal amount may be sold at public or private sale without compliance with KRS 424.360.

(3) This section constitutes a method for the acquisition of an electric light, heat, and power plant by any city of the home rule class or urban-county government in addition or as an alternate to any other method authorized by statute, provided that the city or urban-county government was operating an electric plant on June 1, 1942, and has not elected to operate under KRS 96.550 to 96.900. No proceedings
shall be required for the acquisition of any electric light, heat, or power plant or the
issuance of bonds under this section except the proceedings required by KRS
96.360 to 96.510.