

1 AN ACT relating to municipal interlocal gas utilities.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) As used in this section, "municipal interlocal gas utility" means an interlocal*  
6 *agency as defined in KRS 65.230 whose membership includes only city*  
7 *governments for the sole purpose of operating a system for the construction,*  
8 *acquisition, distribution, transmission, furnishing, or selling of natural gas.*

9 *(2) Notwithstanding any provision of law to the contrary, a municipal interlocal gas*  
10 *utility shall not be subject to the provisions or requirements of KRS Chapter 278,*  
11 *the administrative regulations promulgated thereunder, or the regulatory*  
12 *jurisdiction of the Public Service Commission for any purpose, except as provided*  
13 *in KRS 278.495.*

14 *(3) A municipal interlocal gas utility may exercise the powers and authority provided*  
15 *in this chapter and Section 2 of this Act, in addition to all other applicable*  
16 *provisions of law. Notwithstanding any provision of law to the contrary, a*  
17 *municipal interlocal gas utility shall also possess the following powers:*

18 *(a) The authority to define, enlarge, or reduce its service territory through the*  
19 *official acts of its governing authority;*

20 *(b) Except as related to a city utility or another municipal interlocal gas utility,*  
21 *the primary right to provide services, at retail or wholesale, to any*  
22 *customers within its defined service territory, including the ability to be the*  
23 *first provider for any new customers within its defined service territory; and*

24 *(c) The authority to acquire by eminent domain all or part of the plant of an*  
25 *existing natural gas distribution system located wholly or partially within its*  
26 *defined service territory pursuant to KRS Chapter 416. The valuation of the*  
27 *plant or system acquired by eminent domain under this paragraph shall be*

1                   *its depreciated replacement cost plus the value of the underlying land if the*  
 2                   *land was vacant.*

3                   *(4) Except as related to a city utility or another municipal interlocal gas utility, a*  
 4                   *municipal interlocal gas utility shall be exempt from:*

5                   *(a) Subsections (2), (4), and (5) of Section 3 of this Act;*

6                   *(b) Section 5 of this Act; and*

7                   *(c) Section 6 of this Act.*

8                   ➔Section 2. KRS 65.240 is amended to read as follows:

9                   (1) Any powers, privileges, or authorities exercised or capable of exercise by a public  
 10                   agency of this state may be exercised and enjoyed jointly with any other public  
 11                   agency of this state, and jointly with any public agency of any other state or of the  
 12                   United States to the extent that the laws of the United States permit such joint  
 13                   exercise or enjoyment. Any agency of the state government when acting jointly  
 14                   with any public agency may exercise and enjoy all of the powers, privileges and  
 15                   authority conferred by KRS 65.210 to 65.300 upon a public agency.

16                   (2) Any two (2) or more public agencies may enter into agreements with one another  
 17                   for joint or cooperative action pursuant to~~[the provisions of]~~ KRS 65.210 to  
 18                   65.300, including but not limited to for the sharing of revenues and physical assets.  
 19                   Appropriate action by ordinance, resolution or otherwise pursuant to law, of the  
 20                   governing bodies of the participating public agencies shall be necessary before any  
 21                   such agreement may enter into force.

22                   (3) Any public agency may enter into agreements with another public agency or  
 23                   agencies pursuant to KRS 65.210 to 65.300 to acquire by purchase or lease, any real  
 24                   or personal property, or any interest, right, easement, or privilege therein, outside of  
 25                   its municipal or jurisdictional boundaries, in connection with the acquisition,  
 26                   construction, operation, repair, or maintenance of any water, sewage, wastewater,  
 27                   *natural gas,* or storm water facilities, notwithstanding any other provision of the

1 Kentucky Revised Statutes restricting, qualifying, or limiting their authority to do  
2 so, except as set forth in KRS Chapter 278.

3 (4) A private institution of higher education and one (1) or more county school districts  
4 or independent school districts may enter into agreements under KRS 65.210 to  
5 65.300 for the purposes of establishing and operating a program or facility,  
6 including a center for child learning and study, designed to help one (1) or more  
7 schools meet the goals set out in KRS 158.6451, or for the investment of funds if  
8 the Attorney General determines that the proposal is compatible with the United  
9 States Constitution as part of the review of the agreement provided in KRS  
10 65.260(2), notwithstanding any other provision of the statutes restricting, qualifying  
11 or limiting their authority to do so.

12 ➔Section 3. KRS 96.5375 is amended to read as follows:

13 (1) Subject to the limitations of subsection (4) of this section and KRS 96.045 and  
14 96.538, any city that owns and operates a municipal system for the acquisition,  
15 distribution, or transmission of natural gas may extend the system **or construct a**  
16 **new system, as authorized in KRS 96.170 and 96.542, to**~~into and~~ furnish and sell  
17 natural gas to any person or entity within the boundaries of the city or within any  
18 territory outside of the city's boundaries. **Municipal interlocal gas utilities shall**  
19 **have the same authority to extend existing natural gas systems or construct new**  
20 **systems to furnish and sell natural gas in territory inside or outside of their**  
21 **constituent cities' boundaries.** In exercising the authority provided by this  
22 subsection, the city may install the necessary apparatus to provide natural gas  
23 distribution or transmission service and may also condemn or otherwise acquire  
24 rights-of-way as private utilities may do. The provisions of this subsection shall  
25 apply to all cities of this Commonwealth transporting or distributing natural gas as  
26 well as any board, commission, or agency thereof.

27 (2) **(a)** A city, other than a city of the first class or a consolidated local government,

1           may acquire all or part of the entire plant of an existing natural gas  
 2           distribution system only under the same process and subject to the same  
 3           limitations established by KRS 96.580, 96.590, and 96.600, and paragraph  
 4           (b) of this subsection.

5           **(b) Notwithstanding any provision of law to the contrary, when all or part of**  
 6           **the plant of an existing natural gas distribution system is acquired by**  
 7           **eminent domain pursuant to paragraph (a) of this subsection, the valuation**  
 8           **of the condemned plant or system shall be its depreciated replacement cost**  
 9           **plus the value of the underlying land if the land was vacant.**

10       (3) No property owned or operated by an existing natural gas distribution system  
 11       located within the Commonwealth may be condemned by a city from another state.

12       (4) A natural gas utility, which, for purposes of this subsection, means a public, private  
 13       or municipally owned gas utility distributing or transporting natural gas to  
 14       customers within this Commonwealth, shall not:

15       (a) Extend its system for the purposes of furnishing or selling natural gas to any  
 16       person or entity that is currently being served by another natural gas utility; or

17       (b) Extend its system to furnish or sell natural gas to any person or entity when  
 18       there is another natural gas utility in closer proximity to the person or entity to  
 19       be served, unless the natural gas utility in closer proximity has declined to  
 20       provide service.

21       (5) ~~The provisions of~~ Subsection (4) of this section shall only apply to extension of  
 22       service issues between a municipally owned natural gas utility servicing customers  
 23       located outside its municipal boundaries and a private or investor-owned natural gas  
 24       utility. As used in this section, ~~The term~~ "municipally owned" includes ~~shall~~  
 25       ~~include~~ systems distributing or transporting natural gas that are owned by a city  
 26       from another state.

27       **(6) As used in this section, "municipal interlocal gas utility" means an interlocal**

1 agency as defined in KRS 65.230 whose membership includes only city  
2 governments for the sole purpose of operating a system for the construction,  
3 acquisition, distribution, transmission, furnishing, or selling of natural gas.

4 ➔Section 4. KRS 278.010 is amended to read as follows:

5 As used in KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and  
6 278.990, unless the context otherwise requires:

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

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

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

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

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

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

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

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

27 (f) The collection, transmission, or treatment of sewage for the public, for

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

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

11 (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS  
12 278.017;

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

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

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

22 (9) "Generation and transmission cooperative" or "G&T" means a utility formed under  
23 KRS Chapter 279 that provides electric generation and transmission services;

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

26 (11) "Facility" includes all property, means, and instrumentalities owned, operated,  
27 leased, licensed, used, furnished, or supplied for, by, or in connection with the

- 1 business of any utility;
- 2 (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation  
3 for service rendered or to be rendered by any utility, and any rule, regulation,  
4 practice, act, requirement, or privilege in any way relating to such fare, toll, charge,  
5 rental, or other compensation, and any schedule or tariff or part of a schedule or  
6 tariff thereof;
- 7 (13) "Service" includes any practice or requirement in any way relating to the service of  
8 any utility, including the voltage of electricity, the heat units and pressure of gas,  
9 the purity, pressure, and quantity of water, and in general the quality, quantity, and  
10 pressure of any commodity or product used or to be used for or in connection with  
11 the business of any utility, but does not include Voice over Internet Protocol (VoIP)  
12 service;
- 13 (14) "Adequate service" means having sufficient capacity to meet the maximum  
14 estimated requirements of the customer to be served during the year following the  
15 commencement of permanent service and to meet the maximum estimated  
16 requirements of other actual customers to be supplied from the same lines or  
17 facilities during such year and to assure such customers of reasonable continuity of  
18 service;
- 19 (15) "Commission" means the Public Service Commission of Kentucky;
- 20 (16) "Commissioner" means one (1) of the members of the commission;
- 21 (17) "Demand-side management" means any conservation, load management, or other  
22 utility activity intended to influence the level or pattern of customer usage or  
23 demand, including home energy assistance programs;
- 24 (18) "Affiliate" means a person that controls or that is controlled by, or is under common  
25 control with, a utility;
- 26 (19) "Control" means the power to direct the management or policies of a person  
27 through ownership, by contract, or otherwise;

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

1 (32) "Voice over Internet Protocol" or "VoIP" has the same meaning as in federal law;  
 2 and

3 **(33) "Municipal interlocal gas utility" means an interlocal agency as defined in KRS**  
 4 **65.230 whose membership includes only city governments for the sole purpose of**  
 5 **operating a system for the construction, acquisition, distribution, transmission,**  
 6 **furnishing, or selling of natural gas.**

7 ➔Section 5. KRS 96.045 is amended to read as follows:

8 (1) **Except as provided in Section 1 of this Act,** no municipality, in which there is  
 9 located an existing electric, water or gas public utility plant or facility shall  
 10 construct or cause to be constructed any similar utility plant or any similar public  
 11 utility facility duplicating such existing plant or facility or to obtain or acquire any  
 12 similar public utility plant or facility other than by the purchase of the existing plant  
 13 or facility or by the acquisition of such existing plant or facility by the exercise of  
 14 the power of eminent domain.

15 (2) **As used in this section,** "municipality" means any county, city, and municipal  
 16 corporation in the Commonwealth of Kentucky, and any board, commission or  
 17 agency thereof.

18 (3) **Except for Section 1 of this Act,** all laws and parts of laws in conflict herewith to  
 19 the extent of such conflict are repealed.

20 ➔Section 6. KRS 96.538 is amended to read as follows:

21 (1) Any utility providing electric service in any area annexed, subsequent to June 16,  
 22 1960, by any municipality shall have the dominant right to continue to provide  
 23 electric service in said area to consumers then being served and to new consumers  
 24 located nearer to its facilities than to the facilities of any other utility as all those  
 25 facilities were located immediately prior to annexation.

26 (2) **Except as provided in Section 1 of this Act,** any utility providing water, sewer or  
 27 gas service in any area annexed, subsequent to July 15, 1980, by any municipality

1 shall have the dominant right to continue to provide water, sewer or gas service in  
2 said area to consumers then being served and to new consumers located nearer to its  
3 facilities than to the facilities of any other utility as all those facilities were located  
4 immediately prior to annexation.

5 ➔Section 7. The exemptions granted in Sections 1 and 4 of this Act and the  
6 authority granted in Sections 1, 2, and 3 of this Act shall apply retroactively to January 1,  
7 2020, including with regard to any activities undertaken prior to the effective date of this  
8 Act by an entity to which the exemption or authority is conferred under this Act.