

# KRS Chapter 278

## Public Utilities

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**278.010 Definitions for KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and 278.990.**

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, 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.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 239, sec. 5, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 109, sec. 2, effective June 20, 2005. -- Amended 2002 Ky. Acts ch. 365, sec. 15, effective April 24 2002. -- Amended 2001 Ky. Acts ch. 11, sec. 1, effective June 21, 2001. -- Amended 2000 Ky. Acts ch. 101, sec. 5, effective July 14, 2000; ch. 118, sec. 1, effective July 14, 2000; and ch. 511, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 188, sec. 1, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 238, sec. 1, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 1, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 118, sec. 1. -- Amended 1972 Ky. Acts ch. 83, sec. 1. -- Amended 1964 Ky. Acts ch. 195, sec. 1. -- Amended 1960 Ky. Acts ch. 209, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-1.

### **278.012 Water association subject to Public Service Commission -- Exceptions.**

Notwithstanding any other provisions of the Kentucky Revised Statutes, any water association formed for the purpose of furnishing water or sewer services to the general public pursuant to KRS Chapter 273 is deemed to be and shall be a public utility and shall be subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility as defined in KRS 278.010, except:

- (1) As provided in KRS 278.023; or
- (2) When a wholesale supplier selling water or providing sewage treatment to a water association increases its rates, the water association shall have the authority to increase its rates commensurate with the wholesale supplier without prior approval by the commission.

Within twenty (20) days after any such increase in rates, the association shall file its revised tariffs with the commission, together with a copy of the notice from its wholesale supplier showing the increase in the rate charged to the utility, and a statement of the volume of purchased water used or sewage treated to calculate the increase in rates. The commission shall approve the filing or establish revised rates by order no later than thirty (30) days after the above documents are filed with it. Prior to or at the time of the first billing of the new rates, the district shall give notice to its customers of the increase.

**Effective:** July 14, 1992

**History:** Amended 1992 Ky. Acts ch. 276, sec. 2, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 12, sec. 2, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 495, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 2, effective April 1, 1979. -- Created 1972 Ky. Acts ch. 310, sec. 1.

**278.015 Water district; combined water, gas, or sewer district; or water commission a public utility subject to Public Service Commission -- Exceptions.**

Notwithstanding any of the provisions of KRS Chapter 74, any water district; combined water, gas, or sewer district; or water commission, except a joint commission created under the provisions of KRS 74.420 to 74.520, shall be a public utility and shall be subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility as defined in KRS 278.010, except:

- (1) As provided in KRS 278.023; or
- (2) When a wholesale supplier selling water or providing sewage treatment to a water district; combined water, gas, or sewer district; or water commission increases its rates, the water district or combined water, gas, or sewer district shall have the authority to increase its rates commensurate with the wholesale supplier without prior approval by the commission.

Within twenty (20) days after any such increase in rates, the district shall file its revised tariffs with the commission, together with a copy of the notice from its wholesale supplier showing the increase in the rate charged to the utility, and a statement of the volume of purchased water used or sewage treated to calculate the increase in rates. The commission shall approve the filing or establish revised rates by order no later than thirty (30) days after the above documents are filed with it. Prior to or at the time of the first billing of the new rates, the district shall give notice to its customers of the increase.

**Effective:** July 15, 1996

**History:** Amended 1996 Ky. Acts ch. 122, sec. 10, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 276, sec. 1, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 12, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 495, sec. 2, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 3, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 3, effective April 1, 1979. -- Created 1964 Ky. Acts ch. 195, sec. 2.

**278.0152 Water utility permitted to charge a tapping fee for installing service to customer.**

- (1) Any utility subject to this chapter which is engaged in the distributing or furnishing of water to or for the public, for compensation, may, subject to the approval of the commission, make a charge or "tapping fee" for installing service to its customers.
- (2) The "tapping fee" shall include charges for a service tap, meter, meter vault, and installation thereof.

**Effective:** July 15, 1988

**History:** Created 1988 Ky. Acts ch. 8, sec. 1, effective July 15, 1988.

**278.016 Commonwealth to be divided into geographical service areas.**

It is hereby declared to be in the public interest that, in order to encourage the orderly development of retail electric service, to avoid wasteful duplication of distribution facilities, to avoid unnecessary encumbering of the landscape of the Commonwealth of Kentucky, to prevent the waste of materials and natural resources, for the public convenience and necessity and to minimize disputes between retail electric suppliers which may result in inconvenience, diminished efficiency and higher costs in serving the consumer, the state be divided into geographical areas, establishing the areas within which each retail electric supplier is to provide the retail electric service as provided in KRS 278.016 to 278.020 and, except as otherwise provided, no retail electric supplier shall furnish retail electric service in the certified territory of another retail electric supplier.

**History:** Created 1972 Ky. Acts ch. 83, sec. 2.

### **278.017 Establishing boundaries of certified areas.**

- (1) Except as otherwise provided in this section, the boundaries of the certified territory of each retail electric supplier are hereby set as a line or lines substantially equidistant between its existing distribution lines and the nearest existing distribution lines of any other retail electric supplier in every direction, with the result that there is hereby certified to each retail electric supplier such area which in its entirety is located substantially in closer proximity to one of its existing distribution lines than to the nearest existing distribution line of any other retail electric supplier.
- (2) On or before one hundred twenty (120) days after June 16, 1972, or, when requested in writing by a retail electric supplier and for good cause shown, such further time as the commission may fix by order, each retail electric supplier shall file with the commission a map or maps showing all of its existing distribution lines. The commission shall prepare or cause to be prepared within one hundred twenty (120) days thereafter a map or maps of uniform scale to show, accurately and clearly, the boundaries of the certified territory of each retail electric supplier as established under subsection (1) of this section, and shall issue such map or maps of certified territory to each retail electric supplier. Any retail electric supplier who feels itself aggrieved by reason of a certification of territory pursuant to this section may protest the certification of territory within a one hundred twenty day period after issuance of the map of certified territory by the commission; and the commission shall have the power, after hearing, to revise or vacate such certified territories or portions thereof.
- (3) In such hearing, the commission shall be guided by the following conditions as they existed on June 16, 1972:
  - (a) The proximity of existing distribution lines to such certified territory.
  - (b) Which supplier was first furnishing retail electric service, and the age of existing facilities in the area.
  - (c) The adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service at reasonable costs.
  - (d) The elimination and prevention of duplication of electric lines and facilities supplying such territory. In its determination of such protest, the commission hearing shall be de novo; and neither supplier shall bear the burden of proof.
- (4) In each area, where the commission shall determine that the existing distribution lines of two or more retail electric suppliers are so intertwined or located that subsection (1) of this section cannot reasonably be applied, the commission shall, after hearing, certify the service territory or territories for the retail electric suppliers under the provisions of subsection (3) of this section.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 4, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 4, effective April 1, 1979. -- Created 1972 Ky. Acts ch. 83, sec. 3.

**278.018 Right to serve certified territory.**

- (1) Except as otherwise provided herein, each retail electric supplier shall have the exclusive right to furnish retail electric service to all electric-consuming facilities located within its certified territory, and shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric-consuming facilities located within the certified territory of another retail electric supplier; provided that any retail electric supplier may extend its facilities through the certified territory of another retail electric supplier, if such extension is necessary for such supplier to connect any of its facilities or to serve its consumers within its own certified territory. In the event that a new electric-consuming facility should locate in two (2) or more adjacent certified territories, the commission shall determine which retail electric supplier shall serve said facility based on criteria in KRS 278.017(3).
- (2) Except as provided in subsections (3) and (5) of this section, any new electric-consuming facility located in an area which has not as yet been included in a map issued by the commission, pursuant to KRS 278.017(2), or certified, pursuant to KRS 278.017(4), shall be furnished retail electric service by the retail electric supplier which has an existing distribution line in closer proximity to such electric-consuming facility than is the nearest existing distribution line of any other retail electric supplier. Any disputes under this subsection shall be resolved by the commission.
- (3) The commission may, after a hearing had upon due notice, make such findings as may be supported by proof as to whether any retail electric supplier operating in a certified territory is rendering or proposes to render adequate service to an electric-consuming facility and in the event the commission finds that such retail electric supplier is not rendering or does not propose to render adequate service, the commission may enter an order specifying in what particulars such retail electric supplier has failed to render or propose to render adequate service and order that such failure be corrected within a reasonable time, such time to be fixed in such order. If the retail electric supplier so ordered to correct such failure fails to comply with such order, the commission may authorize another retail electric supplier to furnish retail electric service to such facility.
- (4) Except as provided in subsection (3) of this section, no retail electric supplier shall furnish, make available, render or extend retail electric service to any electric-consuming facility to which such service is being lawfully furnished by another retail electric supplier on June 16, 1972, or to which retail electric service is lawfully commenced thereafter in accordance with this section by another retail electric supplier.
- (5) The provisions of KRS 278.016 to 278.020 shall not preclude any retail electric supplier from extending its service after June 16, 1972, to property and facilities owned and operated by said retail electric supplier.
- (6) Notwithstanding the effectuation of certified territories established by or pursuant to KRS 278.016 to 278.020, and the exclusive right to service within such territory, a retail electric supplier may contract with another retail electric supplier for the

purpose of allocating territories and consumers between such retail electric suppliers and designating which territories and consumers are to be served by which of said retail electric suppliers. Notwithstanding any other provisions of law, a contract between retail electric suppliers as herein provided when approved by the commission shall be valid and enforceable. The commission shall approve such a contract if it finds that the contract will promote the purposes of KRS 278.016 and will provide adequate and reasonable service to all areas and consumers affected thereby.

**Effective:** April 1, 1979

**History:** Amended 1978 Ky. Acts ch. 379, sec. 5, effective April 1, 1979. -- Created 1972 Ky. Acts ch. 83, sec. 4.

**278.020 Certificate of convenience and necessity required for construction provision of utility service or of utility -- Exceptions -- Approval required for acquisition or transfer of ownership -- Public hearing on proposed transmission line -- Severability of provisions.**

- (1) No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction. Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement. The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth. The commission, when considering an application for a certificate to construct an electric transmission line, may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric transmission facilities in the Commonwealth. Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.
- (2) For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity. However, ordinary extensions of existing systems in the usual course of business not requiring such a certificate shall include:
  - (a) The replacement or upgrading of any existing electric transmission line; or
  - (b) The relocation of any existing electric transmission line to accommodate construction or expansion of a roadway or other transportation infrastructure; or
  - (c) An electric transmission line that is constructed solely to serve a single customer and that will pass over no property other than that owned by the customer to be served.

- (3) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.
- (4) No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.
- (5) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.
- (6) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.
- (7) Subsection (6) of this section shall not apply to any acquisition of control of any:

- (a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection (6) of this section;
  - (b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or
  - (c) Utility pursuant to the terms of any indebtedness of the utility, provided the issuance of indebtedness was approved by the commission.
- (8) In a proceeding on an application filed pursuant to this section, any interested person, including a person over whose property the proposed transmission line will cross, may request intervention, and the commission shall, if requested, conduct a public hearing in the county in which the transmission line is proposed to be constructed, or, if the transmission line is proposed to be constructed in more than one county, in one of those counties. The commission shall issue its decision no later than ninety (90) days after the application is filed, unless the commission extends this period, for good cause, to one hundred twenty (120) days. The commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its discretion, it deems it necessary to hire a competent, qualified and independent firm to assist it in reaching its decision. The issuance by the commission of a certificate that public convenience and necessity require the construction of an electric transmission line shall be deemed to be a determination by the commission that, as of the date of issuance, the construction of the line is a prudent investment.
- (9) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 137, sec. 1, effective July 12, 2006. -- Amended 2004 Ky. Acts ch. 75, sec. 1, effective July 13, 2004. -- Amended 2001 Ky. Acts ch. 35, sec. 1, effective June 21, 2001. -- Amended 1998 Ky. Acts ch. 388, sec. 1, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 144, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 102, sec. 2, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 12, sec. 3, effective July 15, 1988; ch. 22, sec. 5, effective July 15, 1988; ch. 335, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 368, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 5, effective July 15, 1982; ch. 130, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 6, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 388, sec. 3. -- Amended 1972 Ky. Acts ch. 83, sec. 5. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-25.

**278.021 Receivership for abandoned utility.**

- (1) If the commission determines, after notice and hearing, that any utility is abandoned, the commission may petition the Franklin Circuit Court for an order attaching the assets of the utility and placing it under the sole control and responsibility of a receiver.
- (2) Any receiver appointed by the court shall file a bond unless the court finds it unnecessary. The receiver shall operate the utility to preserve its assets and to serve the best interests of its customers.

**Effective:** July 15, 1994

**History:** Created 1994 Ky. Acts ch. 145, sec. 1, effective July 15, 1994.

**278.023 Approval of federally-funded construction projects -- Commission review of agreement and supporting documents -- Surcharge.**

- (1) The provisions of this section shall apply to any construction project undertaken by a water association, commission, district, or combined water, gas or sewer district formed under KRS Chapter 74 or 273, which is financed in whole or in part under the terms of an agreement between the water utility and the United States Department of Agriculture or the United States Department of Housing and Urban Development. Because federal financing of such projects entails prior review and oversight by the federal agency and obligates the utility to certain actions, and because conflicting requirements by the federal agency and the Public Service Commission may place the water utility in an untenable position and delay or jeopardize such projects, it is declared to be the policy of the Commonwealth that such agreements shall be accepted by the Public Service Commission, and that the commission shall not prohibit a water utility from fulfilling its obligations under such an agreement.
- (2) No agreement between a water utility and federal agency under this section shall take effect until thirty (30) days after such agreement, together with necessary applications and documentation, is filed with the commission, unless the commission acts within a lesser time. The commission in its administrative regulations shall list the specific documents required to be filed under this subsection.
- (3) The commission shall review the project and the agreement, may recommend changes to the utility and the federal agency, but shall not modify or reject any portion of the agreement on its own authority. The commission shall issue a certificate of necessity and convenience and such other orders as may be required to implement the terms of the agreement no later than thirty (30) days after filing.
- (4) The commission shall not prohibit the inclusion of any cost or the use of any accounting procedure in reviewing or setting the rates of the utility if such cost or procedure is required as a condition for federal financing of a construction project under an approved agreement between the water utility and federal agency.
- (5) If the federal agency approves a surcharge to the water bills of customers who receive service through an extension of water facilities under this section, which is in lieu of an assessment against the customer for the cost of the extension, then the Public Service Commission shall allow collection of the surcharge to continue for the period of years for which the surcharge was established.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 158, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 388, sec. 2, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 12, sec. 4, effective July 15, 1988.

**278.025** Repealed, 2002

**Catchline at repeal:** Certificate of environmental compatibility -- Requirements.

**History:** Repealed 2002 Ky. Acts ch. 365, sec. 16, effective April 24, 2002. -- Amended 1982 Ky. Acts ch. 82, sec. 6, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 265, sec. 1, effective June 17, 1978; and ch. 379, sec. 7, effective April 1, 1979. -- Created 1974 Ky. Acts ch. 388, sec. 1.

**278.027 Application for certificate -- Publishing notice of hearing.**

When application required by KRS 278.020 is made to the commission for a certificate that public convenience and necessity require the construction of a new electric transmission line of four hundred (400) kilovolts or more, during the thirty (30) days immediately preceding the public hearing on such application provided for in KRS 278.020(1), the commission shall, on at least four (4) days, publish notice of such hearing in a newspaper or newspapers of general circulation in the counties and municipalities within which such transmission facility is proposed to be located in whole or in part. The commission shall not issue such a certificate for a new electric transmission line of four hundred (400) kilovolts or more unless the commission shall first determine that the proposed route of the line will reasonably minimize adverse impact on the scenic and environmental assets of the general area concerned, consistent with engineering and other technical and economic factors appropriate for consideration in determining the route of the line. At the said public hearing provided for in KRS 278.020(1), all persons residing on or owning property affected by the proposed transmission facility may be heard.

**History:** Created 1974, Ky. Acts ch. 388, sec. 2.

**278.030 Rates, classifications and service of utilities to be just and reasonable -- Service to be adequate. (Effective until January 1, 2009)**

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

**Effective:** March 29, 1976

**History:** Amended 1976 Ky. Acts ch. 88, sec. 1, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-28, 3952-29.

**278.030 Rates, classifications and service of utilities to be just and reasonable -- Service to be adequate -- Utilities prohibited from energizing power to electrical service where seal is not present. (Effective January 1, 2009)**

- (1) Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.
- (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) 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.
- (4) 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.
- (5) 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.

**Effective:** January 1, 2009

**History:** Amended 2008 Ky. Acts ch. 118, sec. 3, effective January 1, 2009. -- Amended 1976 Ky. Acts ch. 88, sec. 1, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-28, 3952-29.

**278.035 Prohibition against preferential retail rates for utility services for certain publicly-funded entities -- Exception.**

Any entity receiving public funds from the Commonwealth of Kentucky, or any political subdivision thereof, for the purpose of offsetting at least fifty percent (50%) of its operational expenses shall not be entitled to preferential retail rates for services provided by utilities subject to the provisions of KRS Chapter 278. This section shall not prohibit the provision of free or reduced rate service under KRS 278.170(3).

**Effective:** July 15, 1996

**History:** Amended 1996 Ky. Acts ch. 141, sec. 1, effective July 15, 1996. -- Created 1990 Ky. Acts ch. 357, sec. 3, effective July 13, 1990.

#### **278.040 Public Service Commission -- Jurisdiction -- Regulations.**

- (1) The Public Service Commission shall regulate utilities and enforce the provisions of this chapter. The commission shall be a body corporate, with power to sue and be sued in its corporate name. The commission may adopt a seal bearing the name "Public Service Commission of Kentucky," which seal shall be affixed to all writs and official documents, and to such other instruments as the commission directs, and all courts shall take judicial note of the seal.
- (2) The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.
- (3) The commission may adopt, in keeping with KRS Chapter 13A, reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commission not contrary to law.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 7, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 8, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 2, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-2, 3952-12, 3952-13, 3952-27.

**278.042 Service adequacy and safety standards for electric utilities--National Electrical Safety Code.**

- (1) For the purposes of this section, "NESC" means the National Electrical Safety Code as published by the Institute of Electrical and Electronics Engineers, Inc.
- (2) Except as otherwise provided by law, the commission shall, in enforcing service adequacy and safety standards for electric utilities, ensure that each electric utility constructs and maintains its plant and facilities in accordance with accepted engineering practices as set forth in the commission's administrative regulations and orders and in the most recent edition of the NESC.

**Effective:** June 24, 2003

**History:** Created 2003 Ky. Acts ch. 84, sec. 1, effective June 24, 2003.

**278.045** Repealed, 1980.

**Catchline at repeal:** Transfer of functions of electrical inspection.

**History:** Repealed 1980 Ky. Acts ch. 188, sec. 310, effective July 15, 1980. -- Created 1974 Ky. Acts ch. 74, Art. V, sec. 21.

**278.046** Repealed, effective July 15, 1986.

**Catchline at repeal:** Annual reports by municipally owned electric utilities.

**History:** Repealed 1986 Ky. Acts ch. 300, sec. 5, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 8, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 9, effective April 1, 1979. -- Created 1976 Ky. Acts ch. 88, sec. 14, effective March 29, 1976.

**278.047** Renumbered as KRS 96.534.

**278.050 Membership of Public Service Commission -- Appointment -- Terms -- Chairman -- Vacancies.**

- (1) The Public Service Commission shall consist of three (3) members appointed by the Governor with the advice and consent of the Senate. If the Senate is not in session when a term expires or a vacancy occurs, the Governor shall make the appointment to take effect at once, subject to the approval of the Senate when convened. Appointments to the Public Service Commission made more than ninety (90) days prior to a regular session of the General Assembly shall be subject to confirmation by the Joint Interim Committee on Energy. Each of the three (3) members of the commission shall be appointed on or before the first day of July, 1982, for staggered terms as follows: one (1) shall serve until the first day of July, 1983, one (1) until the first day of July, 1984, and one (1) until the first day of July, 1985, and thereafter for a term of four (4) years and until a successor is appointed and qualified. Each member of the commission shall be a full-time employee as defined in KRS 18A.005(17).
- (2) The Governor shall appoint one (1) of the commissioners on the commission to act as chairman thereof and the chairman shall be the chief executive officer of the commission. The Governor shall designate one (1) of the commissioners on the commission to serve as vice chairman thereof and act for the chairman in the latter's absence.
- (3) Vacancies for unexpired terms shall be filled in the same manner as original appointments, but the appointee shall hold office only to the end of the unexpired term.

**Effective:** July 13, 2004

**History:** Amended 2004 Ky. Acts ch. 127, sec. 4, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 58, sec. 1, effective July 15, 2002. -- Amended 1982 Ky. Acts ch. 82, sec. 9, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 11, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 3, effective March 29, 1976. -- Amended 1972 Ky. Acts ch. 47, sec. 1. -- Amended 1956 Ky. Acts ch. 91, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-3, 3952-3a.

**278.060 Qualifications of commissioners -- Oath -- Restrictions on conduct.**

- (1) Each commissioner shall be a resident and qualified voter of this state, not less than twenty-five (25) years of age at the time of his appointment and qualification, and shall have resided in this state for at least three (3) years prior to his appointment and qualification. Each commissioner shall take and subscribe to the constitutional oath of office, which shall be recorded in the office of the Secretary of State.
- (2) No person shall be appointed to or hold the office of commissioner who holds any official relationship to any utility, or who owns any stocks or bonds thereof, or who has any pecuniary interest therein.
- (3) No commissioner shall receive any rebate, pass, percentage of contract or other thing of value from any utility.
- (4) In addition to the restrictions on members of the commission set forth in KRS 278.050(1), no commissioner shall engage in any occupation or business inconsistent with his duties as such commissioner.
- (5) If any commissioner becomes a member of any political party committee, his office as commissioner shall be thereby vacated.
- (6) In making appointments to the commission, the Governor shall consider the various kinds of expertise relevant to utility regulation and the varied interests to be protected by the commission, including those of consumers as well as utility investors, and no more than two (2) members shall be of the same occupation or profession.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 10, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 12, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 4, effective March 29, 1976. -- Amended 1960 Ky. Acts ch. 68, Art. XII, sec. 1, effective March 17, 1960. -- Amended 1956 Ky. Acts ch. 91, sec. 2. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-3, 3952-4.

**278.070 Removal of commissioners.**

The Governor may remove any commissioner for cause, after giving him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense upon not less than ten (10) days' notice. If a commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges against the commissioner and his findings thereon, and a complete record of the proceedings. Any commissioner so removed may bring action in the proper court to determine whether or not he was legally removed in accordance with this section.

**Effective:** October 1, 1942

**History:** Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-5.

**278.080 Quorum -- Performance of functions by less than a majority of commissioners or by hearing examiners.**

A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all of the powers of the commission. Any investigation, inquiry, or hearing that the commission has power to undertake or hold may be undertaken or held, and the evidence therein taken, by any one (1) or more commissioners or a hearing examiner designated for that purpose by the commission, and every finding, opinion or order made by the commissioner or commissioners or hearing examiner so designated shall, when approved or confirmed by the commission, become the finding, opinion or order thereof.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 11, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 13, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 5, effective March 29, 1976. -- Amended 1972 Ky. Acts ch. 47, sec. 2. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-6.

**278.090 Office and hours -- Meetings.**

- (1) The principal office of the commission shall be located at the state capital, and it shall be kept open during the usual business hours.
- (2) The commission shall hold meetings at its principal office and at such other convenient places in the state as are expedient or necessary for the proper performance of its duties.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 12, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 14, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-7.

### **278.100 Executive director.**

The commission shall appoint an executive director, who shall hold office during its pleasure and shall devote his entire time to the duties of his office. The executive director shall be selected on the basis of experience and training demonstrating capacity to deal with the problems of management and governmental regulation and knowledge relatable to utility regulation. The executive director shall be the chief administrative officer for the commission and shall be responsible for implementing the programs, directing the staff, and maintaining the official records of commission proceedings, including all approved orders.

**Effective:** July 15, 1986

**History:** Amended 1986 Ky. Acts ch. 221, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 13, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 15, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 6, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-8.

### **278.110 Additional employees.**

The commission acting through the executive director may employ such clerks, stenographers, rate experts, agents, special agents, engineers, accountants, auditors, inspectors, lawyers, hearing examiners, experts and other classified service employees and the commission may contract for services of persons in a professional or scientific capacity to make or conduct a hearing or a temporary or special inquiry, investigation or examination as it deems necessary to carry out the provisions of this chapter, or to perform the duties and exercise the powers conferred by law upon the commission.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 14, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 16, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 7, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-10.

**278.115 Commission to establish internal organization of its offices.**

The commission shall establish the internal organization of its offices and shall divide the commission into such offices or divisions as the commission may deem necessary to perform the functions, powers and duties of the commission, subject to the provisions of KRS Chapter 12.

**Effective:** July 15, 1986

**History:** Amended 1986 Ky. Acts ch. 245, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 52, sec. 3, effective July 15, 1982; ch. 82, sec. 15, effective July 15, 1982; and ch. 448, sec. 71, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 17, effective April 1, 1979. -- Created 1976 Ky. Acts ch. 88, sec. 9, effective March 29, 1976.

**278.120 Compensation and expenses of commissioners, executive director, and employees.**

- (1) The chairman and the other two (2) members of the commission shall be paid a salary fixed under KRS 64.640 to be paid monthly.
- (2) The executive director of the commission shall be paid a salary to be fixed by the commission, with the approval of the Governor.
- (3) The commissioners, the executive director, and employees of the commission are entitled to all expenses, including hotel bills, incurred in traveling on business of the commission.
- (4) The salaries and expenses provided for by this section, and all other expenses of the commission incurred in the administration of this chapter, shall be paid out of appropriations as provided by law out of the general expenditure fund.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 166, sec. 1, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 16, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 18, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 8, effective March 29, 1976. -- Amended 1972 Ky. Acts ch. 47, sec. 3. -- Amended 1968 Ky. Acts ch. 152, sec. 134. -- Amended 1956 Ky. Acts ch. 91, sec. 3. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-3, 3952-8, 3952-11, 3952-58.

**278.130 Assessments against utilities -- Applications for adjustment.**

- (1) For the purpose of maintaining the commission, including the payment of salaries and all other expenses, and the cost of regulation of the utilities subject to its jurisdiction, the Department of Revenue shall each year assess the utilities in proportion to their earnings or receipts derived from intrastate business in Kentucky for the preceding calendar year as modified by KRS 278.150, and shall notify each utility on or before July 1 of the amount assessed against it. The total amount so assessed shall not in any year exceed two (2) mills on intrastate receipts as so modified, which shall be deposited into the State Treasury to the credit of the general fund. The sum by each utility shall not be less than fifty dollars (\$50) in any one (1) year.
- (2) The assessments provided for in this section shall be in lieu of all other fees or assessments levied by any city or other political subdivision for the control or regulation of utilities.
- (3) The commission, upon application by a utility, shall authorize the utility to adjust its rates to recover, within not more than one (1) year, any change in the annual assessment and any costs imposed by commission order for the fees and expenses of consultants. The application, and any hearing or other proceedings thereon, shall be limited to the amount of such adjustment.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 671, effective June 20, 2005. -- Amended 1988 Ky. Acts ch. 229, sec. 1, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 82, sec. 17, effective July 15, 1982; and ch. 197, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 19, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 10, effective March 29, 1976. -- Amended 1972 Ky. Acts ch. 47, sec. 4. -- Amended 1964 Ky. Acts ch. 195, sec. 3. -- Amended 1960 Ky. Acts ch. 206, sec. 1. -- Amended 1952 Ky. Acts ch. 46, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-53, 3952-54, 3952-55, 3952-60.

**278.140 Report of gross earnings from intrastate business.**

To ascertain the amount of the assessment provided for in KRS 278.130, each utility shall, on or before March 31 of each year, file with the commission a report of its gross earnings or receipts derived from intrastate business for the preceding calendar year.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 18, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 20, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-55.

**278.150 Payment of assessments -- Certification of deduction by commission -- Administration of funds collected.**

- (1) The commission shall, on or before June 1, certify to the Department of Revenue and the Finance and Administration Cabinet the amount of intrastate business of each utility in the state subject to its jurisdiction during the previous calendar year. The commission shall, when certifying the intrastate sales of retail electric suppliers, deduct from such sales one-half (1/2) of the applicable wholesale power costs, provided the utility from which such wholesale power purchases were made pays assessment on the full wholesale value of its gross intrastate sales in Kentucky. When certifying the intrastate sales of retail electric suppliers not subject to the jurisdiction of the commission for rates, the commission shall deduct one-half (1/2) of their actual intrastate sales. All utilities classified as retail electric suppliers shall pay assessments based on the amount of intrastate sales less deductions as certified by the commission.
- (2) The Finance and Administration Cabinet shall, on or before June 10, establish the assessment rate and give written notification thereof to the Department of Revenue and the commission. The Department of Revenue shall collect and pay the assessment into the State Treasury to the credit of the general expenditure fund. All such assessments shall be paid into the State Treasury through the Department of Revenue on or before July 31 of the year in which the assessments are made.
- (3) If any amount in the special fund for the maintenance of the commission remains unexpended at the end of any fiscal year, that amount shall not lapse, but shall remain credited to the account of the commission and may be used during any succeeding year.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 672, effective June 20, 2005. -- Amended 1982 Ky. Acts ch. 82, sec. 19, effective July 15, 1982; and ch. 197, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 233, sec. 25, effective June 17, 1978; and ch. 379, sec. 21, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 74, Art. II, sec. 9(1). -- Amended 1972 Ky. Acts ch. 47, sec. 5. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-53, 3952-56, 3952-57.

**2006-2008 Budget Reference.** See State/Executive Branch Budget, 2006 Ky. Acts ch. 252, Pt. I, F.20.(2), at 1181; and State/Executive Branch Budget Memorandum, 2006 Ky. Acts ch. 257, at 2636 (Final Budget Memorandum, at 947).

**278.160 Utilities to file and display general schedules of rates and conditions for service -- Adherence to schedules -- Exclusion from disclosure of confidential or proprietary provisions in special contracts.**

- (1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.
- (2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.
- (3) The provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS 61.878(1)(c)1.

**Effective:** July 14, 2000

**History:** Amended 2000 Ky. Acts ch. 138, sec. 1, effective July 14, 2000. -- Amended 1986 Ky. Acts ch. 300, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 20, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 22, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-30, 3952-31.

**278.170 Discrimination as to rates or service -- Free or reduced rate services.**

- (1) No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.
- (2) Any utility may grant free or reduced rate service to its officers, agents, or employees, and may exchange free or reduced rate service with other utilities for the benefit of the officers, agents, and employees of both utilities. Any utility may grant free or reduced rate service to the United States, to charitable and eleemosynary institutions, and to persons engaged in charitable and eleemosynary work, and may grant free or reduced rate service for the purpose of providing relief in case of flood, epidemic, pestilence, or other calamity. The terms "officers" and "employees," as used in this subsection, include furloughed, pensioned, and superannuated officers and employees, and persons who have become disabled or infirm in the service of the utility. Notice must be given to the commission and its agreement obtained for such reduced rate service except in case of an emergency, in which case the commission shall be notified at least five (5) days after the service is rendered.
- (3) Upon obtaining commission approval of a tariff setting forth terms and conditions of service the commission deems necessary, a utility as defined in KRS 278.010(3)(d) may grant free or reduced rate service for the purpose of fighting fires or training firefighters to any city, county, urban-county, charter county, fire protection district, or volunteer fire protection district. Any tariff under this section shall require the water user to maintain estimates of the amount of water used for fire protection and training, and to report this water usage to the utility on a regular basis.
- (4) The commission may determine any question of fact arising under this section.

**Effective:** July 15, 1996

**History:** Amended 1996 Ky. Acts ch. 141, sec. 2, effective July 15, 1996. -- Amended 1982 Ky. Acts ch. 82, sec. 21, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 23, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 11, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-32.

**278.172 Rate classification for certain entities.**

Every utility which serves a volunteer fire department or other entity eligible for aid under KRS 95A.262, shall supply such service at the lowest rate available under its tariffs to customers with comparable consumption amounts, including residential or farm rates.

**Effective:** July 14, 1992

**History:** Amended 1992 Ky. Acts ch. 381, sec. 11, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 149, sec. 3, effective July 13, 1990.

**278.180 Changes in rates, how made.**

- (1) Except as provided in subsection (2) of this section, no change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. The commission may order a rate change only after giving an identical notice to the utility. The commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations.
- (2) The commission, upon application of any utility, may prescribe a less time within which a reduction of rates may be made.

**Effective:** July 15, 1986

**History:** Amended 1986 Ky. Acts ch. 300, sec. 2, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 22, effective July 15, 1982; and ch. 242, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 24, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 12, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-15.

**278.183 Surcharge to recover costs of compliance with environmental requirements for coal combustion wastes and by-products -- Environmental compliance plan, review and adjustment.**

- (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 to:
  - (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.

- (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.

**Effective:** July 14, 1992

**History:** Created 1992 Ky. Acts ch. 102, sec. 1, effective July 14, 1992.

**278.185 Notification to customers of proposed rate change by sewerage corporations.**

- (1) The Public Service Commission shall require that all sewerage corporations under its jurisdiction shall, when submitting an application for a rate change, notify all its customers of the application.
- (2) Notification to the customers of the rate change application shall be in writing and shall include an estimate of the probable financial impact upon the customers.
- (3) The cost of notifying customers of a rate change shall be borne by the sewerage corporation.
- (4) The commission shall make such reasonable rules and regulations as are deemed necessary to further the purpose of this section.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 23, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 25, effective April 1, 1979. -- Created 1976 Ky. Acts ch. 82, sec. 1, effective March 29, 1976.

**278.190 Procedure when new schedule of rates filed -- Suspension of new rate schedule -- Burden of proof -- Refunds.**

- (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.
- (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 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.

**Effective:** July 14, 1992

**History:** Amended 1992 Ky. Acts ch. 308, sec. 2, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 111, sec. 123, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 82, sec. 24, effective July 15, 1982; and ch. 242, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 26, effective April 1, 1979. -- Amended 1952 Ky. Acts ch. 46, sec. 2, effective March 5, 1952. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-16.

**278.192 Test period for proposed rate increase.**

- (1) For the purpose of justifying the reasonableness of a proposed general increase in rates, the commission shall allow a utility to utilize either an historical test period of twelve (12) consecutive calendar months, or a forward-looking test period corresponding to the first twelve (12) consecutive calendar months the proposed increase would be in effect after the maximum suspension provided in KRS 278.190(2).
- (2)
  - (a) Any application utilizing a forward-looking test period shall include a base period to be filed with the application, which begins not more than nine (9) months prior to the date of filing, consisting of not less than six (6) months of actual historical data and not more than six (6) months of estimated data at the time of filing.
  - (b) Actual results for the estimated months of the base period shall be filed no later than forty-five (45) days after the last day of the base period.
  - (c) Upon the filing of an application for a proposed increase in rates based on either a historical or a forward-looking test period, any intervening party in opposition to such application shall have the right to examine all data, including individual invoices, which comprise the actual expenditures of the utility incurred for ratemaking purposes for the preceding twelve (12) month period immediately prior to the filing date.

**Effective:** July 14, 1992

**History:** Created 1992 Ky. Acts ch. 308, sec. 1, effective July 14, 1992.

**278.200 Power to regulate rates and service standards fixed by agreement with city.**

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 25, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 27, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-27.

**278.210 Examination and testing of meters and meter-testing devices.**

- (1) The commission may provide instruments for, and carry on, the examination and testing of any meter or appliance used to measure the product or service of any utility, and the examination and testing of any instrument used by a utility to test the accuracy of any meter or appliance used to measure its products or services.
- (2) Any patron of a utility may, upon request and payment of the fees fixed by the commission, have a test made of the meter or appliance by which his use of the products or services of the utility is measured.
- (3) The commission may establish reasonable fees for testing such meters and appliances at the request of a patron of a utility. If the appliance is found to be commercially defective or inaccurate to the extent of more than two percent (2%) to the disadvantage of the patron, the fees shall be repaid to the patron and paid by the utility.
- (4) If a utility demonstrates through sample testing that no statistically significant number of its meters over-register above the limits set out in subsection (3) of this section, the meter testing frequency shall be that which is determined by the utility to be cost effective. This determination by the utility shall be based on established scientific, engineering, and economic methods and shall be documented in an application properly filed with the commission.

**Effective:** July 15, 1998

**History:** Amended 1998 Ky. Acts ch. 218, sec. 1, effective July 15, 1998. -- Amended 1982 Ky. Acts ch. 82, sec. 26, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 28, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-26.

**278.212 Filing of plans for electrical interconnection with merchant electric generating facility -- Costs of upgrading existing grid.**

- (1) No utility shall begin the construction or installation of any property, equipment, or facility to establish an electrical interconnection with a merchant electric generating facility in excess of ten megawatts (10MW) until the plans and specifications for the electrical interconnection have been filed with the commission.
- (2) Notwithstanding any other provision of law, any costs or expenses associated with upgrading the existing electricity transmission grid, as a result of the additional load caused by a merchant electric generating facility, shall be borne solely by the person constructing the merchant electric generating facility and shall in no way be borne by the retail electric customers of the Commonwealth.

**Effective:** April 24, 2002

**History:** Created 2002 Ky. Acts ch. 365, sec. 11, effective April 24, 2002.

**278.214 Curtailment of service by utility or generation and transmission cooperative.**

When a utility or generation and transmission cooperative engaged in the transmission of electricity experiences on its transmission facilities an emergency or other event that necessitates a curtailment or interruption of service, the utility or generation and transmission cooperative shall not curtail or interrupt retail electric service within its certified territory, or curtail or interrupt wholesale electric energy furnished to a member distribution cooperative for retail electric service within the cooperative's certified territory, except for customers who have agreed to receive interruptible service, until after service has been interrupted to all other customers whose interruption may relieve the emergency or other event.

**Effective:** April 24, 2002

**History:** Created 2002 Ky. Acts ch. 365, sec. 12, effective April 24, 2002.

**278.216 Site compatibility certificate -- Site assessment report -- Commission action on application.**

- (1) Except for a utility as defined under KRS 278.010(9) that has been granted a certificate of public convenience and necessity prior to April 15, 2002, no utility shall begin the construction of a facility for the generation of electricity capable of generating in aggregate more than ten megawatts (10MW) without having first obtained a site compatibility certificate from the commission.
- (2) An application for a site compatibility certificate shall include the submission of a site assessment report as prescribed in KRS 278.708(3) and (4), except that a utility which proposes to construct a facility on a site that already contains facilities capable of generating ten megawatts (10MW) or more of electricity shall not be required to comply with setback requirements established pursuant to KRS 278.704(3). A utility may submit and the commission may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report.
- (3) The commission may deny an application filed pursuant to, and in compliance with, this section. The commission may require reasonable mitigation of impacts disclosed in the site assessment report including planting trees, changing outside lighting, erecting noise barriers, and suppressing fugitive dust, but the commission shall, in no event, order relocation of the facility.
- (4) The commission may also grant a deviation from any applicable setback requirements on a finding that the proposed facility is designed and located to meet the goals of this section and KRS 224.10-280, 278.010, 278.212, 278.214, 278.218, and 278.700 to 278.716 at a distance closer than those provided by the applicable setback requirements.
- (5) Nothing contained in this section shall be construed to limit a utility's exemption provided under KRS 100.324.
- (6) Unless specifically stated otherwise, for the purposes of this section, "utility" has the same meaning as in KRS 278.010(3)(a) or (9).

**Effective:** June 24, 2003

**History:** Amended 2003 Ky. Acts ch. 150, sec. 3, effective June 24, 2003. -- Created 2002 Ky. Acts ch. 365, sec. 13, effective April 24, 2002.

**278.218 Approval of commission for change in ownership or control of assets owned by utility.**

- (1) No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:
  - (a) The assets are to be transferred by the utility for reasons other than obsolescence; or
  - (b) The assets will continue to be used to provide the same or similar service to the utility or its customers.
- (2) The commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.

**Effective:** April 24, 2002

**History:** Created 2002 Ky. Acts ch. 365, sec. 14, effective April 24, 2002.

### **278.220 Uniform system of accounts for utilities.**

The commission may establish a system of accounts to be kept by utilities subject to its jurisdiction, or may classify utilities and establish a system of accounts for each class, and may prescribe the manner in which such accounts shall be kept. The system established shall conform as nearly as practicable to the uniform system of accounts prescribed by the National Association of Regulatory Utility Commissioners, except that the system established for telephone and telegraph companies shall conform as nearly as practicable to the system adopted or approved by the Federal Communications Commission and the system established for gas and electric companies shall conform as nearly as practicable to the system adopted or approved by the Federal Energy Regulatory Commission.

**Effective:** July 15, 1986

**History:** Amended 1986 Ky. Acts ch. 300, sec. 3, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 27, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 29, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-22.

**278.2201 Prohibition against subsidy of nonregulated activity -- Separate accounting.**

A utility shall not subsidize a nonregulated activity provided by an affiliate or by the utility itself. The commission shall require all utilities providing nonregulated activities, either directly or through an affiliate, to keep separate accounts and allocate costs in accordance with procedures established by the commission. The commission may promulgate administrative regulations that will assist the commission in enforcing this section.

**Effective:** July 14, 2000

**History:** Created 2000 Ky. Acts ch. 511, sec. 2, effective July 14, 2000.

**278.2203 Cost allocation of regulated and nonregulated activity.**

- (1) A utility that engages in a nonregulated activity shall identify all costs of the nonregulated activity and report the costs in accordance with the guidelines in the USoA and the cost allocation methods described in subsection (2) of this section.
- (2) In allocating costs between regulated and nonregulated activities, a utility shall utilize one (1) of the following cost allocation methods:
  - (a) The fully distributed cost method; or
  - (b) A cost allocation method recognized or mandated by the rules of the SEC promulgated pursuant to 15 U.S.C. sec. 79, et seq., or promulgated by the FERC or by the USDA.
- (3) A utility's compliance with federal cost allocation methods shall constitute compliance with the provisions of KRS 278.010 to 278.450.
- (4) Notwithstanding subsections (1) to (3) of this section, a utility may report an incidental nonregulated activity as a regulated activity if:
  - (a) The revenue from the aggregate total of the utility's nonregulated incidental activities does not exceed the lesser of two percent (2%) of the utility's total revenue or one million dollars (\$1,000,000) annually; and
  - (b) The nonregulated activity is reasonably related to the utility's regulated activity.
- (5) Nothing contained in this section shall be construed as requiring a utility to violate any cost allocation methods required to be employed under any service agreement validly existing as of July 14, 2000, for the term of the existing agreement, except where the commission makes the determination that a service agreement was executed for the purpose of avoiding provisions of KRS 278.010 to 278.450.

**Effective:** July 14, 2000

**History:** Created 2000 Ky. Acts ch. 511, sec. 3, effective July 14, 2000.

**278.2205 Cost allocation manual for nonregulated activity -- Contents -- Maintenance.**

- (1) Any utility that engages in a nonregulated activity whose revenue exceeds the amount provided for incidental nonregulated activities under KRS 278.2203(4)(a), shall develop and maintain a CAM as described in subsections (2) to (5) of this section.
- (2) A CAM shall contain the following information for a utility's jurisdictional operations in the Commonwealth:
  - (a) A list of regulated and nonregulated divisions within the utility;
  - (b) A list of all regulated and nonregulated affiliates of the utility to which the utility provides services or products and where the affiliates provide nonregulated activities as defined in KRS 278.010(21);
  - (c) A list of services and products provided by the utility, an identification of each as regulated or nonregulated, and the cost allocation method generally applicable to each category;
  - (d) A list of incidental, nonregulated activities that are subject to the provisions of KRS 278.2203(4);
  - (e) A description of the nature of transactions between the utility and the affiliate; and
  - (f) For each USoA account and subaccount, a report that identifies whether the account contains costs attributable to regulated operations and nonregulated operations. The report shall also identify whether the costs are joint costs that cannot be directly identified. A description of the methodology used to apportion each of these cost shall be included and the allocation methodology shall be consistent with the provisions of KRS 278.2203.
- (3) Within two hundred seventy (270) days of July 14, 2000, the utility shall file:
  - (a) A statement with the commission that certifies the CAM has been developed and will be adopted by the management, effective with the beginning of the next calendar year. The statement shall be signed by an officer of the utility; and
  - (b) One (1) copy of the CAM.
- (4) Within sixty (60) days of any material change in matters required to be listed in the CAM, the utility shall amend the CAM to reflect the change.
- (5) The CAM shall be available for public inspection at the utility and at the commission.
- (6) The CAM shall be filed as part of the initial filing requirement in a proceeding involving an application for an adjustment in rates pursuant to KRS 278.190.

**Effective:** July 14, 2000

**History:** Created 2000 Ky. Acts ch. 511, sec. 4, effective July 14, 2000.

**278.2207 Transactions between utility and affiliate -- Pricing requirements -- Request for deviation.**

- (1) The terms for transactions between a utility and its affiliates shall be in accordance with the following:
  - (a) Services and products provided to an affiliate by the utility pursuant to a tariff shall be at the tariffed rate, with nontariffed items priced at the utility's fully distributed cost but in no event less than market, or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology.
  - (b) Services and products provided to the utility by an affiliate shall be priced at the affiliate's fully distributed cost but in no event greater than market or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology.
- (2) A utility may file an application with the commission requesting a deviation from the requirements of this section for a particular transaction or class of transactions. The utility shall have the burden of demonstrating that the requested pricing is reasonable. The commission may grant the deviation if it determines the deviation is in the public interest.
- (3) Nothing in this section shall be construed to interfere with the commission's requirement to ensure fair, just, and reasonable rates for utility services.

**Effective:** July 14, 2000

**History:** Created 2000 Ky. Acts ch. 511, sec. 5, effective July 14, 2000.

**278.2209 Documentation regarding cost allocation.**

In any formal commission proceeding in which cost allocation is at issue, a utility shall provide sufficient information to document that its cost allocation procedures and affiliate transaction pricing are consistent with the provisions of this chapter.

**Effective:** July 14, 2000

**History:** Created 2000 Ky. Acts ch. 511, sec. 6, effective July 14, 2000.

**278.2211 Remedies for noncompliance utility and affiliate -- Access to records --  
Disallowance of costs -- Audit.**

- (1) If the commission finds that a utility has not complied with any provision of this chapter for any transaction between a utility and its affiliate, or if a utility has failed to provide sufficient evidence of its compliance, then the commission may:
  - (a) Access the books and records of a utility's nonregulated affiliate; and
  - (b) Order that the costs attached to any transactions be disallowed from rates.
- (2) If, after inspecting an affiliate's books and records, the commission finds that a utility has not complied with any provision of KRS 278.010 to 278.450, the commission may perform a financial audit of the utility's affiliate to the extent necessary to ensure compliance with KRS 278.010 to 278.450.

**Effective:** July 14, 2000

**History:** Created 2000 Ky. Acts ch. 511, sec. 7, effective July 14, 2000.

**278.2213 Separate recordkeeping for utility and affiliate -- Prohibited business practices -- Confidentiality of information -- Notice of service available from competitor.**

The provisions of this section shall govern a public utility company's activities related to the sharing of information, databases, and resources between its employees or an affiliate involved in the marketing or the provision of nonregulated activities and its employees or an affiliate involved in the provision of regulated activities.

- (1) A utility and its affiliate shall be separate corporate entities and maintain separate books and records. If a utility and nonregulated affiliate have common officers, directors, or employees, the fees, compensation, and expenses of the individuals involved shall be subject to the cost allocation requirements set forth in KRS 278.2203 and 278.2207. Any utility that provides nonregulated activities shall separately account for all investments, revenues, and expenses in accordance with its filed cost allocation manual.
- (2) A utility shall not provide advertising space in its billing envelope to its affiliates or for its nonregulated activities unless it offers the same to competing service providers on the same terms it provides to its affiliates. This subsection applies to nonregulated activities only.
- (3) A utility shall not attempt to persuade customers to do business with its affiliates by offering rebates or discounts on tariffed services.
- (4) All utility company employees engaged in the merchant function shall abide by all standards promulgated by applicable FERC orders and regulations.
- (5) No utility employee shall share any confidential customer information with the utility's affiliates unless the customer has consented in writing, or the information is publicly available or is simultaneously made publicly available.
- (6) All dealings between a utility and a nonregulated affiliate shall be at arm's length.
- (7) Employees transferring from the utility to an affiliate shall not disclose to the affiliate confidential information or take with them any competitively sensitive materials.
- (8) Neither a utility nor its employees or agents shall solicit business on behalf of an affiliate or for its nonutility services.
- (9) A utility that carries out any research and development or joint marketing and promotion with its affiliate for its nonregulated activities shall be subject to the cost allocation requirements set forth in KRS 278.2203.
- (10) Except as provided in subsection (5) of this section, if a utility is engaged in a nonregulated activity, marketing employees for the nonregulated activity shall not have access to the customer information provided to the utility when the customer places an order for regulated service.
- (11) A utility shall not provide any type of undue preferential treatment to a nonregulated affiliate to the detriment of a competitor.
- (12) A utility shall notify the customer that competing suppliers of a nonregulated service exist if:

- (a) The utility receives a request for a recommendation from a customer seeking a specific service which is offered by the utility's affiliate or by the utility itself; and
  - (b) The utility mentions itself or its affiliate when making the recommendation to the customer.
- (13) The utility's name, trademark, brand, or logo shall not be used by a nonregulated affiliate in any type of visual or audio media without a disclaimer. The commission shall develop specifications for the disclaimer. The disclaimer shall be approved by the commission prior to use in any advertisement by the utility's affiliate.
- (14) A utility shall not enter into any arrangements for financing nonregulated activities through an affiliate that would permit a creditor upon default to have recourse to the assets of the utility.
- (15) A utility shall inform the commission of all new nonregulated activities begun by itself or by the utility's affiliate within a time to be set by the commission.
- (16) Start-up costs associated with the formation of a nonregulated affiliate shall not be included in the utility's rate base.
- (17) The commission may require the utility to file annual reports of information related to affiliate transactions when necessary to monitor compliance with these guidelines.

**Effective:** July 14, 2000

**History:** Created 2000 Ky. Acts ch. 511, sec. 8, effective July 14, 2000.

**278.2215 Exemptions.**

The provisions of KRS 278.2201 to 278.2213 and KRS 278.2215 and 278.2219 shall not apply to telecommunications utilities, telecommunications services, nonprofit water or sewer utilities, or water districts.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 114, sec. 3, effective July 12, 2006. -- Created 2000 Ky. Acts ch. 511, sec. 9, effective July 14, 2000.

**278.2219 Waiver or deviation from requirements of KRS 278.2201 to 278.2213.**

- (1) Notwithstanding any provisions in KRS 278.2201 to the contrary, a utility may apply to the commission for a waiver or deviation from any or all provisions of KRS 278.2201 to 278.2213.
- (2) The utility's application to the commission shall:
  - (a) Demonstrate the basis of the utility's need to be granted a waiver or deviation; and
  - (b) Contain, if appropriate, documentation regarding the costs and benefits of compliance with the provisions of KRS 278.2201 to 278.2213.
- (3) The commission shall grant a waiver or deviation if the commission finds that compliance with the provisions of KRS 278.2201 to 278.2213 is impracticable or unreasonable. The findings of the commission shall be a final appealable order.

**Effective:** July 14, 2000

**History:** Created 2000 Ky. Acts ch. 511, sec. 10, effective July 14, 2000.

**278.225 Time limitation on billing -- Liability for unbilled service.**

All service supplied by a utility shall be billed within two (2) years of the service. No customer shall be liable for unbilled service after two (2) years from the date of the service, unless the customer obtained the service through fraud, theft, or deception.

**Effective:** July 15, 1994

**History:** Created 1994 Ky. Acts ch. 143, sec. 1, effective July 15, 1994.

**278.230 Access to property, books and records of utilities -- Reports and information may be required.**

- (1) The commissioners and the officers and employees of the commission may, during all reasonable hours, enter upon the premises of any utility subject to its jurisdiction for the purpose of examining any books or records, or for making any examination or test, or for exercising any power provided for in this chapter, and may set up and use on such premises apparatus and appliances necessary for any such examination or test. The utility shall have the right to be represented at the making of any such examination, test or inspection.
- (2) The books, accounts, papers and records of the utility shall be available to the commission for inspection and examination. If the books, accounts, papers and records are not within the state, the commission may, by notice and order, require their production or the production of verified copies at such time and place as it designates, any expense incurred to be borne by the utility so ordered.
- (3) Every utility, when required by the commission, shall file with it any reports, schedules, classifications or other information that the commission reasonably requires. The commission shall prepare and distribute to the utilities blank forms for any information required under this chapter. All such reports shall be under oath when required by the commission.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 28, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 30, effective April 11, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-13, 3952-20, 3952-23.

**278.240 Certified copies of commission's records -- Use as evidence.**

Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner, or by the executive director under the seal of the commission, to be true copies of the originals, shall be evidence in like manner as the originals in all matters before the commission and in courts of competent jurisdiction.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 166, sec. 2, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 29, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 31, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-41.

**278.250 Investigation of condition of utility.**

Whenever it is necessary in the performance of its duties, the commission may investigate and examine the condition of any utility subject to its jurisdiction. In conducting such investigation, the commission may proceed with or without a hearing as it deems best, but shall make no order without giving a hearing to the parties affected thereby.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 30, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 32, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-21.

### **278.255 Periodic management and operation audits.**

- (1) The commission shall provide for periodic management and operation audits of each utility with annual intra-Kentucky assessable revenue as of December 31, 1983, under KRS 278.150(1) not less than one hundred million dollars (\$100,000,000) to investigate management effectiveness and operating efficiency. The commission shall complete or provide for a full and comprehensive audit of each such utility prior to January 1, 1990. 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. 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) 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.
- (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 filed with the commission and shall be open to public inspection.

**Effective:** July 13, 1984

**History:** Created 1984 Ky. Acts ch. 46, sec. 1, effective July 13, 1984.

**278.260 Jurisdiction over complaints as to rates or service -- Investigations -- Hearing.**

- (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. 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.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 242, sec. 3, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 33, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-33.

**278.270 Orders by commission as to rates.**

Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that any rate is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by order prescribe a just and reasonable rate to be followed in the future.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 31, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 34, effective April 1, 1979 -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-14.

**278.272 Consideration of natural gas purchasing transactions in determining just and reasonable rates -- Limitation of authorized rate of return for natural gas operations.**

In determining just and reasonable rates, the commission shall investigate and review natural gas purchasing transactions of a utility, whose rates for retail sales of natural gas are regulated by the commission, from an affiliate. The commission shall limit the authorized rate of return of the utility for its natural gas operations to a level which, when considered with the level of profit or return the affiliate earns on natural gas transactions to such utility, is just and reasonable.

**Effective:** July 13, 1984

**History:** Created 1984 Ky. Acts ch. 38, sec. 1, effective July 13, 1984.

**278.274 Review of natural gas utility's purchasing practices in determining reasonableness of proposed rates -- Reduction of rates by commission.**

- (1) In determining whether proposed natural gas utility rates are just and reasonable, the commission shall review the utility's gas purchasing practices. The commission may disallow any costs or rates which are deemed to result from imprudent purchasing practices on the part of the utility.
- (2) When proposing new rates, the utility shall be required to prove that the proposal is just and reasonable in accordance with the requirements of this section.
- (3) It shall be presumed that natural gas purchases from affiliated companies are not conducted at arm's length.
  - (a) For purposes of this subsection, affiliated companies shall be defined as those in which one (1) or more of the owners control or have the right to control the business affairs of all affected companies.
  - (b) In instances in which a utility purchases natural gas from an intrastate affiliate, the commission shall assume jurisdiction of the affiliated company as though it were a utility as defined in KRS 278.010. The commission's jurisdiction shall extend to that extent necessary to ensure that the rates charged the utility and ultimately to the consumer are just and reasonable.
  - (c) If the commission determines that the rates charged by the utility are not just and reasonable in that the cost of natural gas purchased from the affiliated company is unjust or unreasonable, the commission may reduce the purchased gas component of the utility's rates by the amount deemed to be unjust or unreasonable.
  - (d) The commission may also reduce the rate charged by the affiliated company by the same amount.

**Effective:** July 13, 1984

**History:** Created 1984 Ky. Acts ch. 40, sec. 1, effective July 13, 1984.

**278.280 Orders by commission as to service -- Extension of service.**

- (1) Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that the rules, regulations, practices, equipment, appliances, facilities or service of any utility subject to its jurisdiction, or the method of manufacture, distribution, transmission, storage or supply employed by such utility, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation.
- (2) The commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility, and, on proper demand and tender of rates, the utility shall furnish the commodity or render the service within the time and upon the conditions provided in the rules.
- (3) Any person or group of persons may come before the commission and by petition ask that any utility subject to its jurisdiction be compelled to make any reasonable extension. The commission shall hear and determine the reasonableness of the extension, and sustain or deny the petition in whole or in part.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 32, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 35, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-18, 3952-25.

**278.285 Demand-side management plans -- Review and approval of proposed plans and mechanisms -- Assignment of costs -- Home energy assistance programs.**

- (1) The commission may determine the reasonableness of demand-side management plans proposed by any utility under its jurisdiction. Factors to be considered in this determination include, but are not limited to, the following:
  - (a) The specific changes in customers' consumption patterns which a utility is attempting to influence;
  - (b) The cost and benefit analysis and other justification for specific demand-side management programs and measures included in a utility's proposed plan;
  - (c) A utility's proposal to recover in rates the full costs of demand-side management programs, any net revenues lost due to reduced sales resulting from demand-side management programs, and incentives designed to provide positive financial rewards to a utility to encourage implementation of cost-effective demand-side management programs;
  - (d) Whether a utility's proposed demand-side management programs are consistent with its most recent long-range integrated resource plan;
  - (e) Whether the plan results in any unreasonable prejudice or disadvantage to any class of customers;
  - (f) The extent to which customer representatives and the Office of the Attorney General have been involved in developing the plan, including program design, cost recovery mechanisms, and financial incentives, and if involved, the amount of support for the plan by each participant, provided however, that unanimity among the participants developing the plan shall not be required for the commission to approve the plan;
  - (g) The extent to which the plan provides programs which are available, affordable, and useful to all customers; and
  - (h) Next-generation residential utility meters that can provide residents with amount of current utility usage, its cost, and can be capable of being read by the utility either remotely or from the exterior of the home.
- (2) A proposed demand-side management mechanism including:
  - (a) Recover the full costs of commission-approved demand-side management programs and revenues lost by implementing these programs;
  - (b) Obtain incentives designed to provide financial rewards to the utility for implementing cost-effective demand-side management programs; or
  - (c) Both of the actions specifiedmay be reviewed and approved by the commission as part of a proceeding for approval of new rate schedules initiated pursuant to KRS 278.190 or in a separate proceeding initiated pursuant to this section which shall be limited to a review of demand-side management issues and related rate-recovery issues as set forth in subsection (1) of this section and in this subsection.
- (3) The commission shall assign the cost of demand-side management programs only to the class or classes of customers which benefit from the programs. The commission

shall allow individual industrial customers with energy intensive processes to implement cost-effective energy efficiency measures in lieu of measures approved as part of the utility's demand-side management programs if the alternative measures by these customers are not subsidized by other customer classes. Such individual industrial customers shall not be assigned the cost of demand-side management programs.

- (4) Home energy assistance programs may be part of a demand-side management program. In considering a home energy assistance program, the commission shall only utilize the criteria set forth in subsections (1)(f) and (3) of this section.

**Effective:** July 15, 2008

**History:** Amended 2008 Ky. Acts ch. 139, sec. 19, effective July 15, 2008. -- Amended 2001 Ky. Acts ch. 11, sec. 2, effective June 21, 2001. -- Created 1994 Ky. Acts ch. 238, sec. 2, effective July 15, 1994.

**278.287 Voluntary energy cost assistance fund -- Customer contributions -- Time of and eligibility for disbursements -- Biennial reports -- Administration costs.**

- (1) As used in this section:
  - (a) "Voluntary energy cost assistance fund" means a fund that shall:
    1. Be administered by a utility or provider for the purpose of receiving voluntary contributions from customers and disbursing subsidies to customers;
    2. Be administered in coordination with one (1) or more community action agencies that assist the Cabinet for Health and Family Services in administering federal Low-Income Home Energy Assistance Program (LIHEAP) funding; and
    3. Be maintained in trust and separate from any customer assistance program otherwise implemented by the utility or provider;
  - (b) "Provider" means any person or persons, excluding an electric power system owned and operated by a municipality, that provide service to retail customers and that own, control, operate, or manage any facility used or to be used for or in connection with any activity described in KRS 278.010(3)(a) or (b) but are not regulated by KRS Chapter 278; and
  - (c) "Fund" means a voluntary energy cost assistance fund.
- (2) Any utility as defined in KRS 278.010(3)(a) or (b) that provides service to retail customers and that does not already administer an energy assistance program prior to July 12, 2006, may establish a fund.
- (3) Any provider that does not already administer an energy assistance program prior to July 12, 2006, may establish a fund.
- (4) A customer's voluntary monthly contribution amount to the fund shall be:
  - (a) An amount equal to the difference of the customer's monthly bill and the amount of the next highest whole dollar; or
  - (b) A standard amount not to exceed one dollar (\$1).
- (5) A customer may make a special contribution to the fund at any time in any amount.
- (6) Annual disbursements from the fund may be made in November and December of each year by the utility or provider upon the recommendation of a community action agency for the purpose of providing a utility or provider bill subsidy for residential customers who:
  - (a) Use electricity or natural or manufactured gas as a principal source of home energy;
  - (b) Are responsible for their home heating costs either directly or indirectly as an undesignated portion of the rent;
  - (c) Have a total household income that is at or below one hundred ten percent (110%) of the federal poverty guidelines as defined in KRS 205.5621;
  - (d) Have liquid monetary resources that do not exceed one thousand five hundred dollars (\$1,500) if those liquid monetary resources are not used for the

- medical and living expenses of a household member with a catastrophic illness;
- (e) Have liquid monetary resources that do not exceed four thousand dollars (\$4,000) if those liquid monetary resources are used for the medical and living expenses of a household member with a catastrophic illness; and
  - (f) Are customers of the utility or provider.
- (7) If available, additional disbursements from the fund may be made from January 1 through March 15 of each year by the utility or provider upon the recommendation of a community action agency for the purpose of providing a utility or provider bill subsidy for residential customers who:
- (a) Use electricity or natural or manufactured gas as a principal source of home energy;
  - (b) Are responsible for their home heating costs either directly or indirectly as an undesignated portion of the rent;
  - (c) Have a total household income that is at or below one hundred ten percent (110%) of the federal poverty guidelines as defined in KRS 205.5621;
  - (d) Have liquid monetary resources that do not exceed one thousand five hundred dollars (\$1,500) if those liquid monetary resources are not used for the medical and living expenses of a household member with a catastrophic illness;
  - (e) Have liquid monetary resources that do not exceed four thousand dollars (\$4,000) if those liquid monetary resources are used for the medical and living expenses of a household member with a catastrophic illness; and
  - (f) Are utility or provider customers who:
    - 1. Have received a disconnect notice from the utility or provider;
    - 2. Are within four (4) days of running out of fuel oil, propane, kerosene, wood, or coal; or
    - 3. Have received an eviction notice for nonpayment of rent, when heat is included as an undesignated portion of the rent.
- (8) If available, additional summer cooling disbursements from the fund may be made on a one (1) time basis from May through August of each year by the utility or provider upon the recommendation of a community action agency for the purpose of providing an air-conditioning unit to residential customers who:
- (a) Are responsible for their home heating costs either directly or indirectly as an undesignated portion of the rent;
  - (b) Have a total household income that is at or below one hundred ten percent (110%) of the federal poverty guidelines as defined in KRS 205.5621;
  - (c) Have liquid monetary resources that do not exceed one thousand five hundred dollars (\$1,500) if those liquid monetary resources are not used for the medical and living expenses of a household member with a catastrophic illness;

- (d) Have liquid monetary resources that do not exceed four thousand dollars (\$4,000) if those liquid monetary resources are used for the medical and living expenses of a household member with a catastrophic illness;
- (e) Are customers of the utility or provider;
- (f) Do not have access to an air conditioner; and
- (g) Have a household member who:
  - 1. Has a health condition or disability that requires cooling to prevent further deterioration as verified by a physician's statement;
  - 2. Is sixty-five (65) years of age or older; or
  - 3. Is under the age of six (6).
- (9) For the six (6) month period from January 1 to June 30 of each year, each utility or provider that administers a fund shall provide a detailed report of costs in administering the fund and a detailed report of receipts to and disbursements from the fund to the commission no later than July 31, and for the six (6) month period from July 1 to December 31, no later than January 31 of the following year. Any balances remaining in the fund at the end of a year shall remain in the fund for use in succeeding years.
- (10) The commission shall require all utilities as defined in KRS 278.010(3)(a) and (b) that administer a fund and provide service to retail customers in Kentucky to develop and implement a mechanism for soliciting and receiving contributions to the fund. The mechanism and format shall be approved by the commission and may include but shall not be limited to a check-the-box format. Contributions shall be made as described in subsections (4) and (5) of this section.
- (11) Any provider that administers a fund shall comply with the requirements to implement a mechanism for soliciting and receiving contributions to the fund as provided in subsection (10) of this section.
- (12) Those utilities and providers that are already administering an energy assistance program prior to July 12, 2006, shall not be subject to subsections (9), (10), and (11) of this section.
- (13) All contributions to the fund shall be voluntary and shall be uniformly assessed monthly, except in the case of a special contribution, which can be made in any amount at any time, for all customers of the utility or provider. A customer shall not be subject to making contributions until such time as his or her intent is submitted to the applicable utility in a manner prescribed by the commission. A customer who no longer wishes to contribute to the fund shall be exempted from making further contributions to the fund once his or her intent is submitted to the applicable utility in a manner prescribed by the commission.
- (14) Contributions received by utilities or providers, together with any interest accruing thereon, shall be transferred to the fund immediately upon receipt.
- (15) A utility or provider that administers a fund may recover up to three percent (3%) of each contribution received for its costs in administering the fund. The commission shall allow any additional, reasonable cost a utility incurs in administering the

receipt and disbursement of contributions to the fund in the cost of service of the utility for ratemaking purposes.

**Effective:** July 12, 2006

**History:** Created 2006 Ky. Acts ch. 231, sec. 1, effective July 12, 2006.

**278.290 Valuation of utility property in connection with rates, service or issuance of securities -- Unit rate base.**

- (1) Subject to the provisions of subsection (2) of this section, the commission may ascertain and fix the value of the whole or any part of the property of any utility in so far as the value is material to the exercise of the jurisdiction of the commission, and may make revaluations from time to time and ascertain the value of all new construction, extensions and additions to the property of the utility. In fixing the value of any property under this subsection, the commission shall give due consideration to the history and development of the utility and its property, original cost, cost of reproduction as a going concern, capital structure, and other elements of value recognized by the law of the land for rate-making purposes.
- (2) The commission shall not value or revalue the property of any utility unless the valuation or revaluation is necessary or advisable in order to determine the legality or reasonableness of any rate or service or of the issuance of securities, and then only after an investigation affecting the rate, service or securities has been instituted by the commission upon complaint or application or upon its own motion, and a hearing has been held on reasonable notice.
- (3) In any rate investigation where the utility serves two (2) or more municipalities, the commission may, in computing the rate of return on the property used and useful, take as the base for the computation the valuation of the system as a whole, but may make a differential in the case of an individual municipality in proportion to the increased cost of service, if the utility can show that such a differential should be allowed.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 33, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 36, effective April 1, 1979. -- Amended 1952 Ky. Acts ch. 46, sec. 3, effective March 5, 1952. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-17, 3952-19.

**278.300 Issuance or assumption of securities by utilities.**

- (1) No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.
- (2) Application for authority to issue or assume securities or evidences of indebtedness shall be made in such form as the commission prescribes. Every such application shall be made under oath, and shall be signed and filed on behalf of the utility by its president, or by a vice president, auditor, comptroller, or other executive officer having knowledge of the matters set forth and duly designated by the utility. Every such application shall be placed at the head of the docket of the commission and disposed of promptly within sixty (60) days after it is filed with the commission, unless it is necessary for good cause to continue the application for longer time than sixty (60) days, in which case the order making the continuance shall state fully the facts that make it necessary.
- (3) The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.
- (4) The commission may grant or deny the application in whole or in part, or may grant it with such modifications and upon such terms and conditions as the commission deems necessary or appropriate. The order of the commission shall specify that the securities or evidences of indebtedness, or the proceeds thereof, shall be used only for the lawful purposes specified in the application, and both the application of the utility and the order of the commission shall state in general terms the purpose of the issuance or assumption.
- (5) A copy of any order made and entered by the commission under this section, duly certified by the executive director of the commission, shall be sufficient evidence for all purposes of full and complete compliance by the utility with all procedural and other matters required precedent to the entry of the order.
- (6) Securities and evidences of indebtedness issued and obligations and liabilities assumed by a utility, for which, under the provisions of this section, the authorization of the commission is required, shall comply with the terms and conditions of the order of authorization entered prior to the issue or assumption, and where the order has been fully complied with the validity of the issue or assumption shall not be affected by a failure to comply with any provision of this section or rule of the commission relating to procedure or other matters preceding the entry of the order of authorization or order supplemental thereto.
- (7) The commission may require periodical or special reports from the utility issuing any security or evidence of indebtedness. The report shall show, in such detail as the

commission requires, the disposition made of such securities or evidences of indebtedness, and the application of the proceeds thereof.

- (8) This section does not apply to notes issued by a utility, for proper purposes and not in violation of law, that are payable at periods of not more than two (2) years from the date thereof, or to like notes, payable at a period of not more than two (2) years from date thereof, that are issued to pay or refund in whole or in part any such notes, or to renewals of such notes from time to time, not exceeding in the aggregate six (6) years from the date of the issue of the original notes so renewed or refunded.
- (9) Nothing in this section implies any guarantee of securities or evidences of indebtedness by the state, or any obligation on the part of the state with respect thereto, and nothing in this section limits the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity.
- (10) This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof, but the commission may appear as a party to any proceeding filed or pending before any federal agency if the issuance of the securities or evidences of indebtedness will materially affect any utility over which the commission has jurisdiction.
- (11) This section also does not apply to the issuance of securities or evidence of indebtedness by a utility principally engaged in transportation of gas by pipeline in interstate commerce and subject to the supervision, control or jurisdiction of the federal government or any agency, board or commission thereof.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 166, sec. 3, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 34, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 37, effective April 1, 1979. -- Amended 1972 Ky. Acts ch. 9, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-24.

**278.310 Rules for hearings and investigations.**

All hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission, and in the conduct thereof neither the commission nor the commissioner shall be bound by the technical rules of legal evidence.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 35, effective July 15, 1982; and ch. 242, sec. 4, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 38, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-34.

**Legislative Research Commission Note.** This section was amended by two 1982 Acts which do not appear to be in conflict and have been compiled together.

### **278.320 Process.**

The commission and each of the commissioners may issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the commission, and such process shall extend to all parts of the state. Service of process in all proceedings brought before or initiated by the commission may be made by certified mail, return receipt requested or by registered mail, or in the same manner as other process in civil cases, as the commission directs.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 36, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 114, sec. 65, effective July 15, 1980. --- Amended 1978 Ky. Acts ch. 379, sec. 39, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 315, sec. 43. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-37.

### **278.330 Witnesses.**

The commission and each of the commissioners, for the purposes mentioned in the preceding sections of this chapter, may administer oaths, examine witnesses, and certify official acts. If any person fails to comply with any lawful order of the commission or of any commissioner, or with process, or if any witness refuses to testify concerning any matter on which he may lawfully be interrogated, any Circuit Judge, on application of the commission or of a commissioner, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the circuit court or a refusal to testify therein. Witnesses summoned before the commission, and witnesses whose depositions are taken pursuant to the provisions of the preceding sections of this chapter, and the officer taking the depositions, shall be entitled to the same fees as are paid for like services in circuit courts, the fees to be paid by the party in whose behalf the witness is subpoenaed.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 37, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 40, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-38.

### **278.340 Depositions.**

The commission itself may take depositions, or grant deposition rights at its discretion to any party in a proceeding before the commission. Depositions in commission proceedings shall be taken in accordance with the Rules of Civil Procedure.

**Effective:** July 13, 1990

**History:** Amended 1990 Ky. Acts ch. 215, sec. 1, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 82, sec. 38, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 41, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-39.

**278.350 Incriminating evidence -- Immunity of witnesses.**

No person shall be excused from testifying or from producing any book, paper or account at any inquiry by, or hearing before, the commission or any commissioner, upon the ground that the testimony or the book, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture. No person shall be prosecuted or subjected to any forfeiture or penalty for, or on account of, anything concerning which he was compelled to testify under oath or to produce documentary evidence, except that no person so testifying shall be exempt from prosecution or punishment for perjury committed by him in his testimony.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 39, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 42, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-40.

**278.360 Record of contested proceedings on formal hearing.**

A full and complete record shall be kept of all contested proceedings had before the commission or any commissioner on any formal hearing and may, at the commission's discretion, be made in videotape or other format in accordance with the Kentucky Rules of Civil Procedure. A stenographic transcript shall not be required. However, a party to a proceeding may, by motion to the commission made prior to the hearing, request that a stenographic transcript be made by a reporter approved by the commission. The commission shall not deny the motion except for a finding of good cause.

**Effective:** June 24, 2003

**History:** Amended 2003 Ky. Acts ch. 83, sec. 1, effective June 24, 2003. -- Amended 1982 Ky. Acts ch. 82, sec. 40, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 43, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-43.

**278.370 Recording of order, finding, authorization or certificate -- How proved to be in effect.**

Every order, finding, authorization or certificate issued or approved by the commission under any of the preceding provisions of this chapter shall be in writing and shall be entered on the records of the commission. A certificate under the seal of the commission that any such order, finding, authorization or certificate has not been modified, stayed, suspended or revoked shall be received as evidence in any proceeding as to the facts stated therein.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 41, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 44, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-42.

**278.380 Service of orders.**

The commission shall deliver a certified copy of any order issued by it to each party to the proceeding in which the order was made, and to an officer or agent of the utility affected thereby. Notwithstanding any statute to the contrary, the commission may deliver its orders by means of electronic transmission rather than by United States mail in those proceedings where each party and each utility to be affected by the order has filed with the commission a written statement that it waives any right to service of commission orders by mail and that it, or its authorized agent, possesses the facilities to receive electronic transmissions. When service of a commission order is by electronic transmission, mailing shall be deemed to have occurred on the date the transmission of the order is completed.

**Effective:** July 15, 1998

**History:** Amended 1998 Ky. Acts ch. 120, sec. 32, effective July 15, 1998. -- Amended 1982 Ky. Acts ch. 82, sec. 42, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 45, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-35.

**278.390 Enforcement of orders.**

The commission may compel obedience to its lawful orders by mandamus, injunction or other proper proceedings in the Franklin Circuit Court or any other court of competent jurisdiction, and such proceedings shall have priority over all pending cases. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 43, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 46, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-13.

### **278.400 Rehearing.**

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three (3) days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 142, sec. 1, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 44, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 47, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-36.

**278.410 Action to review order of commission -- Institution -- Answer -- Injunction.**

- (1) Any party to a commission proceeding or any utility affected by an order of the commission may, within thirty (30) days after service of the order, or within twenty (20) days after its application for rehearing has been denied by failure of the commission to act, or within twenty (20) days after service of the final order on rehearing, when a rehearing has been granted, bring an action against the commission in the Franklin Circuit Court to vacate or set aside the order or determination on the ground that it is unlawful or unreasonable. Service of a commission order is complete three (3) days after the date the order is mailed. Notice of the institution of such action shall be given to all parties of record before the commission.
- (2) The answer of the commission shall be served and filed within twenty (20) days after service of the complaint. The action shall then be at issue and stand ready for trial upon ten (10) days' notice to either party, on the equity side of the docket of the court. The answer need not deny verbatim the allegations of the petition, but a general denial thereof on behalf of the commission shall be sufficient.
- (3) Injunctive relief may be granted by the Circuit Court in the manner and upon the terms provided by law.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 142, sec. 2, effective July 15, 1994. -- Amended 1978 Ky. Acts ch. 379, sec. 48, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 13, effective March 29, 1976. -- Amended 1952 Ky. Acts ch. 46, sec. 4, effective March 5, 1952. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-44, 3952-45, 3952-46.

**278.420 Designation and filing of record -- Cost.**

- (1) In any action filed against the commission because of its order in a proceeding before it, the commission shall file a certified copy of the designated record and evidence with the court in which the action is pending.
- (2) Unless an agreed statement of the record is filed with the court, the filing party shall designate, within ten (10) days after an action is filed, the portions of the record necessary to determine the issues raised in the action. Within ten (10) days after the service of the designation or within ten (10) days after the court enters an order permitting any other party to intervene in the action, whichever occurs last, any other party to the action may designate additional portions for filing. The court may enlarge the ten (10) day period where cause is shown. Additionally, the court may require or permit subsequent corrections or additions to the record.
- (3) The cost of preparing and certifying the record shall be taxed and paid to the commission as directed by the court upon final determination of the action. As a part of this determination, the court may tax a party for the cost of preparing portions of the record not deemed reasonably necessary to the disposition of the action. Copies of the designated record shall be furnished at cost to any party to the action.

**Effective:** July 13, 1990

**History:** Amended 1990 Ky. Acts ch. 149, sec. 1, effective July 13, 1990; and ch. 354, sec. 2, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 82, sec. 45, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 49, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-48.

**Legislative Research Commission Note (7/13/90).** This section was amended by identical amendments in two 1990 Acts, which have been compiled together.

**278.430 Burden of proof.**

In all trials, actions or proceedings arising under the preceding provisions of this chapter or growing out of the commission's exercise of the authority or powers granted to it, the party seeking to set aside any determination, requirement, direction or order of the commission shall have the burden of proof to show by clear and satisfactory evidence that the determination, requirement, direction or order is unreasonable or unlawful.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 46, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 50, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-49.

**278.440 Evidence to be heard by court -- Remand.**

Any action brought under KRS 278.410 shall be heard and decided by the court upon the evidence submitted to the commission as shown by the record, and no other evidence shall be received. If any party satisfies the court that evidence has been discovered since the hearing before the commission that could not have been obtained for use at that hearing by the exercise of reasonable diligence and will materially affect the merits of the case, the court may remand the record and proceedings to the commission, with directions to take the newly-discovered evidence, and after consideration thereof, enter and file a proper order, which may be reviewed in the same manner as any other final order of the commission.

**Effective:** July 13, 1990

**History:** Amended 1990 Ky. Acts ch. 149, sec. 2, effective July 13, 1990; and ch. 354, sec. 3, effective July 13, 1990. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-47, 3952-50.

**Legislative Research Commission Note.** (7/13/90). This section was amended by identical amendments in two 1990 Acts, which have been compiled together.

### **278.450 Judgment of Circuit Court -- Appeal to Court of Appeals.**

Upon final submission of any action brought under KRS 278.410, the Circuit Court shall enter a judgment either sustaining the order of the commission or setting it aside or vacating it in whole or in part, or modifying it, or remanding it to the commission with instructions. Any final order of the commission, on remand of the proceedings, shall be subject to court review in the same manner as any other final order of the commission. Either party to the action may appeal from the judgment of the Circuit Court to the Court of Appeals in accordance with the Rules of Civil Procedure.

**Effective:** October 1, 1942

**History:** Amended 1976 Ky. Acts ch. 62, sec. 111. -- Amended 1960 Ky. Acts ch. 104, sec. 18, effective June 16, 1960. -- Amended 1952 Ky. Acts ch. 46, sec. 5. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-50, 3952-51.

**278.455 Reduction of operating expenses by G&T or distribution cooperative --  
Effect on rates -- Authority for administrative regulations.**

- (1) Notwithstanding any other statute to the contrary, a G&T or distribution cooperative may at any time decrease regulated operating revenues by an amount to be determined solely by the cooperative utility. If the revenue reduction is allocated among and within the consumer classes on a proportional basis that will result in no change in the rate design currently in effect, the revised rates and tariffs shall be authorized and made permanent on the proposed effective date.
- (2) Notwithstanding any other statute, any revenue increase authorized by the Public Service Commission or any revenue decrease authorized in subsection (1) of this section that is to flow through the effects of an increase or decrease in wholesale rates may, at the distribution cooperative's discretion, be allocated to each class and within each tariff on a proportional basis that will result in no change in the rate design currently in effect. In the event of an increase in the wholesale rates and tariffs of the wholesale supplier by the Public Service Commission, the rates and tariffs of the distribution cooperative that have been revised on a proportional basis to result in no change in the rate design shall be authorized and shall become effective on the same date as those of the wholesale supplier. In those cases where an interim increase in the power supplier's wholesale rates is authorized, the distribution cooperative's flow through rates shall be interim. The distribution cooperative's permanent rates and tariffs shall become effective on the date that the wholesale supplier's permanent rates become effective as ordered by the commission.
- (3) Any rate increase or decrease as provided for in subsections (1) and (2) of this section shall not apply to special contracts under which the rates are subject to change or adjustment only as stipulated in the contract.
- (4) The Public Service Commission shall promulgate administrative regulations pursuant to KRS Chapter 13A to establish filing requirements and notice requirements to the commission, the Attorney General, and the public under this section.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 188, sec. 2, effective July 15, 1998.

**278.457 Commission's duty to transmit information concerning abandonment of railroad corridor to Department of Parks and Railtrail Development Office.**

The Public Service Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Governor's Office for Local Development any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

**Effective:** June 26, 2007

**History:** Amended 2007 Ky. Acts ch. 47, sec. 93, effective June 26, 2007. -- Created 2000 Ky. Acts ch. 338, sec. 11, effective July 14, 2000.

**278.460 Utilities to pay interest on deposits required of patrons -- Rates for water districts and water associations -- Administrative regulations.**

- (1) Except as provided in subsection (2) of this section, a utility shall pay interest at six percent (6%) annually on amounts required to be deposited by patrons to secure utility service.
- (2) No water district organized under KRS Chapter 74 nor water association organized under KRS Chapter 273 shall pay interest that exceeds the rate it receives in interest, nor shall the interest payable to the customer at any time exceed six percent (6%) annually on amounts required to be deposited by patrons to secure water accounts.
- (3) The commission may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to implement this section.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 221, sec. 1, effective July 15, 1994. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 2223-1.

**278.465 Definitions for KRS 278.465 to 278.468.**

As used in KRS 278.465 to 278.468:

- (1) "Eligible customer-generator" means a customer of a retail electric supplier who owns and operates an electric generating facility that is located on the customer's premises, for the primary purpose of supplying all or part of the customer's own electricity requirements.
- (2) "Eligible electric generating facility" means an electric generating facility that:
  - (a) Is connected in parallel with the electric distribution system;
  - (b) Generates electricity using:
    1. Solar energy;
    2. Wind energy;
    3. Biomass or biogas energy; or
    4. Hydro energy; and
  - (c) Has a rated capacity of not greater than thirty (30) kilowatts.
- (3) "Kilowatt hour" means a measure of electricity defined as a unit of work of energy, measured as one (1) kilowatt of power expended for one (1) hour.
- (4) "Net metering" means measuring the difference between the electricity supplied by the electric grid and the electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period.

**Effective:** July 15, 2008

**History:** Amended 2008 Ky. Acts ch. 138, sec. 1, effective July 15, 2008. -- Created 2004 Ky. Acts ch. 193, sec. 1, effective July 13, 2004.

**278.466 Availability of net metering -- Type, expense, and installation of meter -- Calculation of electricity billed -- Rules applicable to billing -- Safety and power quality standards -- Transferability of installation.**

- (1) Each retail electric supplier shall make net metering available to any eligible customer-generator that the supplier currently serves or solicits for service. If the cumulative generating capacity of net metering systems reaches one percent (1%) of a supplier's single hour peak load during the previous year, the obligation of the supplier to offer net metering to a new customer-generator may be limited by the commission.
- (2) Each retail electric supplier serving a customer with eligible electric generating facilities shall use a standard kilowatt-hour meter capable of registering the flow of electricity in two (2) directions. Any additional meter, meters, or distribution upgrades needed to monitor the flow in each direction shall be installed at the customer-generator's expense. If additional meters are installed, the net metering calculation shall yield the same result as when a single meter is used.
- (3) The amount of electricity billed to the eligible customer-generator using net metering shall be calculated by taking the difference between the electricity supplied by the retail electric supplier to the customer and the electricity generated and fed back by the customer. If time-of-day or time-of-use metering is used, the electricity fed back to the electric grid by the eligible customer-generator shall be net-metered and accounted for at the specific time it is fed back to the electric grid in accordance with the time-of-day or time-of-use billing agreement currently in place.
- (4) Each net metering contract or tariff shall be identical, with respect to energy rates, rate structure, and monthly charges, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator.
- (5) The following rules shall apply to the billing of net electricity:
  - (a) The net electricity produced or consumed during a billing period shall be read, recorded, and measured in accordance with metering practices prescribed by the commission;
  - (b) If the electricity supplied by the retail electric supplier exceeds the electricity generated and fed back to the supplier during the billing period, the customer-generator shall be billed for the net electricity supplied in accordance with subsections (3) and (4) of this section;
  - (c) If the electricity fed back to the retail electric supplier by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be credited for the excess kilowatt hours in accordance with subsections (3) and (4) of this section. This electricity credit shall appear on the customer-generator's next bill. Credits shall carry forward for the life of the customer-generator's account;
  - (d) If a customer-generator closes his account, no cash refund for residual generation-related credits shall be paid; and

- (e) Excess electricity credits are not transferable between customers or locations.
- (6) Electric generating systems and interconnecting equipment used by eligible customer-generators shall meet all applicable safety and power quality standards established by the National Electrical Code (NEC), Institute of Electrical and Electronics Engineers (IEEE), and accredited testing laboratories such as Underwriters Laboratories.
- (7) An eligible customer-generator installation is transferable to other persons or service locations upon notification to the retail electric supplier and verification that the installation is in compliance with the applicable safety and power quality standards in KRS 278.467 and in subsection (6) of this section.
- (8) Any upgrade of the interconnection between the retail electric supplier and the customer-generator that is required by commission-approved tariffs for the purpose of allowing net metering shall be made at the expense of the customer-generator.

**Effective:** July 15, 2008

**History:** Amended 2008 Ky. Acts ch. 138, sec. 2, effective July 15, 2008. -- Created 2004 Ky. Acts ch. 193, sec. 2, effective July 13, 2004.

**278.467 Jurisdiction over disputes -- Guidelines -- Forms -- Posting on Web site.**

- (1) The commission shall have original jurisdiction over any dispute between a retail electric supplier and an eligible customer-generator, regarding net metering rates, service, standards, performance of contracts, and testing of net meters.
- (2) No later than one hundred eighty (180) days from July 15, 2008, the Public Service Commission shall develop interconnection and net metering guidelines for all retail electric suppliers operating in the Commonwealth. The guidelines shall meet the requirements of KRS 278.466(6).
- (3) No later than ninety (90) days from the issuance by the Public Service Commission of the guidelines required under subsection (2) of this section, each retail electric supplier shall file with the commission a net metering tariff and application forms to comply with those guidelines. All retail electric suppliers shall make their net metering tariff and interconnection practices easily available to the public by posting the tariff and practices on their Web sites.

**Effective:** July 15, 2008

**History:** Amended 2008 Ky. Acts ch. 138, sec. 3, effective July 15, 2008. -- Created 2004 Ky. Acts ch. 193, sec. 3, effective July 13, 2004.

**278.468 KRS 278.465 to 278.468 not applicable to certain United States agencies or instrumentalities.**

Nothing in KRS 278.465 to 278.468 shall apply to a United States corporate agency or instrumentality of the United States government, or a distributor of electric power primarily supplied by such a corporate agency or instrumentality of the United States government.

**Effective:** July 13, 2004

**History:** Created 2004 Ky. Acts ch. 193, sec. 4, effective July 13, 2004.

**278.470 Companies transporting oil or gas by pipeline are common carriers.**

Every company receiving, transporting or delivering a supply of oil or natural gas for public consumption is declared to be a common carrier, and the receipt, transportation and delivery of natural gas into, through and from a pipeline operated by any such company is declared to be a public use.

**Effective:** October 1, 1942

**History:** Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3766b-1b.

**278.480 Pipeline companies may deliver oil or gas on order of person in possession.**

Any common carrier of crude petroleum or gas by pipeline may accept for transportation any oil or gas offered to it for that purpose by a person in possession, and shall redeliver it upon the order of the consignor unless prevented by order of a court of competent jurisdiction, and shall not be liable therefor to a true owner out of possession, except from the time that the order of court is served upon it in the same manner as a summons in a civil action.

**Effective:** October 1, 1942

**History:** Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3766b-1a.

**278.485 Gas pipeline company to furnish gas -- When -- Rates -- Duty of person applying for gas service and gas pipeline company -- Abandonment of gas wells -- Discontinuance of service -- Right to tap a gathering line.**

Every gas pipeline company obtaining gas from producing wells located within this state, upon the request of the owner of the property on or over which any producing well or gas gathering pipeline is located or the owner of real estate whose property and point of desired service is located within one-half (1/2) air-mile of said company's producing gas well or gas gathering pipeline, shall furnish gas service to such owner and applicant, subject to and upon the following terms, conditions, and provisions, to-wit:

- (1) The gas service shall be furnished at rates and minimum monthly charges determined by the Public Service Commission.
- (2) The applicant for such gas service shall construct or cause to be constructed, and shall maintain and keep in good repair, the service lines, and shall provide and install or cause to be installed, and keep in good repair, the necessary automatic gas regulators, and shall pay the entire cost thereof. The company, at its own expense, shall provide, install, and maintain the necessary gas meters.
- (3) The construction of each service line; the installation, type, and number of automatic gas regulators and gas meter or meters, and the connection thereof with the gas producing well or pipeline shall be under the supervision of the Public Service Commission or an agent thereof; and shall conform to such standards of safety, location, and convenience as may be prescribed by said commission.
- (4) Neither the gas producer nor the gas pipeline company shall be responsible for maintaining any fixed or specified gas pressure. Neither the gas producer nor the gas pipeline company shall be liable for any accident or accidental injuries or damages which may result from any defect or failure of any automatic gas regulator or for any leakage or other defect or failure of any service line installed or constructed by the applicant.
- (5) Nothing in this section shall be construed as requiring any gas pipeline company to serve any such owner of property or applicant from any line or lines that have been held to be subject to federal jurisdiction by order of the Federal Energy Regulatory Commission or a court of competent jurisdiction. The provisions of this section shall apply only to producing gas wells and to gas pipelines commonly known as gathering lines.
- (6) Nothing in this section shall be construed to restrict the right of any gas pipeline company to abandon any gas well or any gathering pipeline, or any part thereof, and to remove any such abandoned pipeline or lines. If service to any customer is terminated because of lack of gas for a period of six (6) months in a pipeline or line which served him, the company shall remove a portion of the main line so as to render it inoperable.
- (7) Subject to the rules and regulations of the Public Service Commission, any service may be disconnected and discontinued by the company for failure of the customer to pay any bill as and when due and payable.

- (8) Every gas pipeline company obtaining gas from producing wells within the state shall offer each surface owner the right of a tap or hookup for natural gas from any gathering line which crosses the surface owner's property. The cost of the tap or hookup shall be borne by the consumer.

**Effective:** July 14, 1992

**History:** Amended 1992 Ky. Acts ch. 399, sec. 2, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 212, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 82, sec. 47, effective July 15, 1982; ch. 242, sec. 5, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 51, effective April 1, 1979. -- Amended 1956 Ky. Acts ch. 49, sec. 1, effective May 18, 1956. -- Created 1952 Ky. Acts ch. 160, sec. 1.

**278.490 Transportation of oil or gas received from connecting lines.**

Each company engaged in the receipt, transportation or delivery of oil or natural gas for public consumption shall at all reasonable times receive, for transportation and delivery, from such pipes as may be connected up with any main or tributary line, all oil or gas that may be held and stored or ready for delivery, if the main or tributary line has the means or capacity to receive, transport or deliver the oil or gas that is offered. If the main or tributary line is operating to such capacity that it is impossible or impracticable to receive or transport all the oil or gas offered from the connecting lines, the company operating the main or tributary line shall receive and transport the oil or gas that is offered on a proportionate basis, based on the daily production of each producer whose oil or gas is offered for transportation.

**Effective:** October 1, 1942

**History:** Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3766b-1c, 3766b-1d.

**278.495 Authority to regulate safety aspects of natural gas facilities.**

- (1) As used in this section, "master meter system" means a pipeline system for distributing gas within a definable area, such as, but not limited to, a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer, who either purchases the gas directly through a meter or by other means, such as through rents.
- (2) Notwithstanding any other provision of law, the commission shall have the authority to regulate the safety of natural gas facilities which are:
  - (a) Owned or operated by any public utility, county, or city, and used to distribute natural gas at retail; or
  - (b) Comprising a master meter system.

The commission may exercise this authority in conjunction with, and pursuant to, its authority to enforce any minimum safety standard adopted by the United States Department of Transportation pursuant to 49 U.S.C. sec. 60101 et seq., or any amendments thereto, and may promulgate administrative regulations consistent with federal pipeline safety laws in accordance with provisions of KRS Chapter 13A as are necessary to promote pipeline safety in the Commonwealth. In exercising this authority, however, the commission shall consider the impact of any action it takes on small businesses engaged in the installation and servicing of gas lines, master meter systems, or related equipment and shall act so as to assure that no unfair competitive advantage is given to utilities over such small businesses.

**Effective:** July 14, 2000

**History:** Amended 2000 Ky. Acts ch. 249, sec. 1, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 152, sec. 1, effective July 15, 1994.

**278.500** Repealed, 1948.

**Catchline at repeal:** Condemnation of property for pipe line.

**History:** Repealed 1948 Ky. Acts ch. 184, sec. 1; and ch. 186, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3766b-1.

**278.501** Repealed, 1966.

**Catchline at repeal:** Condemnation for oil or gas pipeline storage facilities used in connection therewith.

**History:** Repealed 1966 Ky. Acts ch. 255, sec. 283. -- Amended 1954 Ky. Acts ch. 230, sec. 1. -- Created 1948 Ky. Acts ch. 184, sec. 1.

**278.502 Condemnation for pipelines and related facilities, including rights of ingress and egress.**

Any corporation or partnership organized for the purpose of, and any individual engaged in or proposing to engage in, constructing, maintaining, or operating oil or gas wells or pipelines for transporting or delivering oil or gas, including oil and gas products, in public service may, if it is unable to contract or agree with the owner after a good faith effort to do so, condemn the lands and material or the use and occupation of the lands that are necessary for constructing, maintaining, drilling, utilizing, and operating pipelines, underground oil or gas storage fields, and wells giving access thereto and all necessary machinery, equipment, pumping stations, appliances, and fixtures, including tanks and telephone lines, and other communication facilities, for use in connection therewith, and the necessary rights of ingress and egress to construct, examine, alter, repair, maintain, operate, or remove such pipelines or underground gas storage fields, to drill new wells and utilize existing wells in connection therewith, and remove pipe, casing, equipment, and other facilities relating to such underground storage fields and access wells. The proceedings for condemnation shall be as provided in the Eminent Domain Act of Kentucky.

**Effective:** July 14, 1992

**History:** Amended 1992 Ky. Acts ch. 399, sec. 1, effective July 14, 1992. -- Amended 1976 Ky. Acts ch. 140, sec. 112, effective June 19, 1976. -- Amended 1966 Ky. Acts ch. 255, sec. 226. -- Created 1948 Ky. Acts ch. 186, sec. 1.

**278.504 Definitions for KRS 278.505 to 278.507.**

As used in KRS 278.505 to 278.507, unless the context requires otherwise:

- (1) "Intrastate pipeline" means any utility or any other person engaged in natural gas transportation in intrastate commerce, for compensation, to or for another person or to or for the public, but shall not include any part of any pipeline dedicated to storage or gathering or low pressure distribution of natural gas;
- (2) "Interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act or the Natural Gas Policy Act of 1978;
- (3) "Local distribution company" means any utility or any other person, other than an interstate pipeline or an intrastate pipeline, engaged in transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption, but shall not include any part of any pipeline primarily used for storage or gathering or low pressure distribution of natural gas;
- (4) "Intrastate commerce" includes the production, gathering, treatment, processing, transportation and delivery of natural gas entirely within the Commonwealth which is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act or the Natural Gas Policy Act of 1978;
- (5) "Transportation" includes exchange, backhaul, displacement or other means of transportation; and
- (6) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest.

**Effective:** July 13, 1984

**History:** Created 1984 Ky. Acts ch. 39, sec. 1, effective July 13, 1984.

**278.505 Transportation of natural gas in intrastate commerce by pipelines or local distribution companies with unused excess capacity.**

- (1) The Public Service Commission may, by rule or order, authorize and require the transportation of natural gas in intrastate commerce by intrastate pipelines, or by local distribution companies with unused or excess capacity not needed to meet existing obligations of the pipeline or distribution company, for any person for one (1) or more uses, as defined by the commission by rule, in the case of:
  - (a) Natural gas sold by a producer, pipeline or other seller to such person; or
  - (b) Natural gas produced by such person.
- (2) The rates and charges of any intrastate pipeline or local distribution company with respect to any transportation authorized and required under this section shall be fair and reasonable.
- (3) Nothing in this section is intended to relieve any intrastate pipeline of further obligations as a common carrier under KRS 278.470, 278.480, and 278.490.

**Effective:** July 13, 1984

**History:** Created 1984 Ky. Acts ch. 39, sec. 2, effective July 13, 1984.

**278.506 Gas to meet pipeline quality standards -- Delivery and curtailment provisions.**

All natural gas, authorized and required to be transported pursuant to KRS 278.505 shall:

- (1) Be of the same quality and meet the same specifications as that natural gas being purchased by the intrastate pipeline or local distribution company as contained in the Federal Energy Regulatory Commission tariff applicable to the intrastate pipeline or local distribution company's natural gas supplier;
- (2) Be delivered to the intrastate pipeline or local distribution company by the person for whom the natural gas is to be transported at a point in the system technically capable of receiving gas at the proposed delivery rate and proper pressure;
- (3) Be transported pursuant to a written contract between the parties setting forth specific arrangements as to volumes to be transported, points of delivery, method of metering, timing of receipts and deliveries of gas and other matters relating to individual customer circumstances;
- (4) Not be transported if the performance of this service would detrimentally affect the ability of the intrastate pipeline or local distribution company to supply regular gas service to its customers;
- (5) Be subject to curtailment and interruption when in the judgment of the intrastate pipeline or local distribution company, said curtailment or interruption is necessary to enable the maintenance of deliveries to residential and other high priority customers or to respond to an emergency.

**Effective:** July 13, 1984

**History:** Created 1984 Ky. Acts ch. 39, sec. 3, effective July 13, 1984.

**278.507 Public Service Commission's policy to facilitate greater use of natural gas produced in Kentucky -- Commission's duties and prohibited activities.**

- (1) It shall be the policy of the Public Service Commission to facilitate greater utilization of the natural gas produced or available for production within the state, where this can be done without detriment to the customers of utilities under jurisdiction of the commission.
- (2) This policy may be implemented by requiring the transportation of natural gas in intrastate commerce for persons who own or have purchased gas, as provided in KRS 278.505.
- (3) The commission shall maintain at its offices for public inspection all rates and charges for natural gas transportation which are filed with the commission, and copies of federal or state rules which govern transportation of natural gas.
- (4) The commission may implement this policy by gathering and maintaining, for public inspection, various information concerning natural gas markets. Such information may include, but not by way of limitation:
  - (a) Lists of producers of undedicated natural gas, together with such descriptions of available quantity, location or price as may be available to the commission;
  - (b) Lists of persons seeking a supply of natural gas, together with such descriptions as may be available to the commission;
  - (c) Sources of legal or technical expertise in natural gas procurement or marketing, which may be available to the commission;
  - (d) Transportation contracts filed with the commission, except to the extent that the parties to such contracts have requested that portions of these contracts be treated as confidential.
- (5) The commission may adopt or develop model contracts or forms if it determines that such models would simplify negotiations between parties in the direct sale of natural gas.
- (6) The commission shall not implement this policy by engaging directly in the procurement or marketing of natural gas as an agent of any person.
- (7) The commission shall not regulate contracts between producers and purchasers of natural gas except to the extent that any party or parties to the contract are otherwise subject to commission regulation and commission review of contracts under this chapter.

**Effective:** July 13, 1984

**History:** Created 1984 Ky. Acts ch. 39, sec. 4, effective July 13, 1984.

**278.508 Exemption of sale of natural gas used as a motor vehicle fuel from regulation -- Regulation of transportation, distribution, or delivery of natural gas used as a motor vehicle fuel.**

- (1) Notwithstanding any other provisions of this chapter, the rates, terms, and conditions of service for the sale of natural gas to a compressed natural gas fuel station, retailer, or to any end-user for use as a motor vehicle fuel, shall not be subject to regulation by the Kentucky Public Service Commission. Any utility provider of such a nonregulated service shall keep separate records and books of account adequate to allow the commission to allocate costs and revenues and to perform other acts that will assist the commission in enforcing this section.
- (2) The transportation, distribution, or delivery of natural gas to any compressed natural gas fuel station, retailer, or any end-user for use as a motor vehicle fuel, shall continue to be subject to regulation by the Kentucky Public Service Commission. Upon request by the utility, the commission shall set flexible rates which provide a fair opportunity to compete with other motor fuels. Price adjustment pursuant to these flexible rates are not rate changes for purposes of this chapter.
- (3) The sales or transportation transactions described in this section shall not adversely affect the regulated utility's cost or costs, or the availability of natural gas to its utility sales customers.

**Effective:** July 14, 1992

**History:** Created 1992 Ky. Acts ch. 273, sec. 1, effective July 14, 1992.

**278.5085 Presumption of reasonableness of supply contract for natural gas produced from coal through gassification process.**

If a gas distribution utility as defined in KRS 278.010(3)(b) enters into a twenty (20) year supply contract with any person for pipeline quality synthetic natural gas produced from coal through a gasification process, the commission shall find the transaction reasonable and shall allow the utility to recover the cost of the synthetic natural gas if:

- (1) The only coal used in the gasification process is coal subject to the tax imposed under KRS 143.020;
- (2) The price per million British thermal units (BTU) is no greater than the long-term market price derived from the simple average of the Henry Hub monthly futures prices for natural gas as reported by the New York Mercantile Exchange (NYMEX) for the sixty (60) months immediately following the effective date of the contract, adjusted annually based upon the change in the Annual Consumer Price Index for All Urban Consumers for the Midwest Region as published in April by the United States Department of Labor, Bureau of Labor Statistics, or a suitable Consumer Price Index calculation if this Consumer Price Index is not available. The total price adjustment over the life of the contract shall not exceed one dollar and fifty cents (\$1.50) per million BTU; and
- (3) The utility's aggregate long-term supply contracts for the purchase of synthetic natural gas produced from coal through the gasification process do not exceed twenty five-percent (25%) of the annual system supply requirements of the utility, by volume, as measured in thousand cubic foot units (Mcf) at the time the utility enters into the contract.

**Effective:** July 12, 2006

**History:** Created 2006 Ky. Acts ch. 55, sec. 1, effective July 12, 2006.

**Legislative Research Commission Note (7/12/2006).** A reference to "million cubic foot units (Mcf)" in subsection (3) of 2006 Ky. Acts ch. 55 has been changed in codification by the reviser of statutes to correct a drafting error to read "thousand cubic foot units (Mcf)" to conform with the U. S. Census Bureau's Harmonized Commodity Description and Coding System which collects information based on the metric standard.

**278.509 Recovery of costs for investment in natural gas pipeline replacement programs.**

Notwithstanding any other provision of law to the contrary, upon application by a regulated utility, the commission may allow recovery of costs for investment in natural gas pipeline replacement programs which are not recovered in the existing rates of a regulated utility. No recovery shall be allowed unless the costs shall have been deemed by the commission to be fair, just, and reasonable.

**Effective:** June 20, 2005

**History:** Created 2005 Ky. Acts ch. 148, sec. 2, effective June 20, 2005.

**278.510 Consolidation of telephone lines.**

- (1) No telephone company doing an exchange business in a city shall consolidate with any other telephone company doing an exchange business in the same city, or purchase, lease or operate the plant or line of any such company, until the proper city authorities have found, after such investigation as they deem necessary, that no substantial public benefits result from the separate existence of the companies and that actual competitive conditions do not exist, and have stated their finding in a resolution consenting to such consolidation, lease, sale or operating arrangement.
- (2) No telephone company doing a toll line business shall consolidate with any other company doing a like business whose lines serve the same communities or localities, or purchase, lease or operate the plant or lines of any such company until the Public Service Commission has found, after such investigation as it deems necessary, that no substantial public benefits result from the separate existence of the companies and that actual competitive conditions do not exist, and has stated its finding in a resolution consenting to such consolidation, lease, sale or operating arrangement. Whenever a joint application of two (2) or more such telephone companies requesting such finding and consent is filed with the Public Service Commission, the commission shall make such investigation, hold such hearings, examine such witnesses and require the production of such books, papers, and records as it deems pertinent to the determination of the application, and shall grant or withhold such consent as the facts warrant.
- (3) The Public Service Commission shall have jurisdiction of those matters set out in Section 201 of the Constitution that relate to telephone companies, and shall enter in its minutes a record of its acts in relation thereto.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 48, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 52, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4679e-1, 4679e-2, 4679e-4.

**278.512 Legislative findings -- Exemption of telecommunications product or service from regulation.**

- (1) The legislature finds and determines that:
  - (a) Competition and innovation have become commonplace in the provision of certain telecommunications services in Kentucky and the United States;
  - (b) Flexibility in the regulation of the rates of providers of telecommunications service is essential to the well-being of this state, its economy, and its citizens; and
  - (c) The public interest requires that the Public Service Commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in a changing environment, giving due regard to the interests of consumers, the public, the providers of the telecommunications services, and the continued availability of good telecommunications service.
- (2) Notwithstanding any other statute to the contrary, the commission may, on its own motion or upon motion of a telecommunications utility, after notice and opportunity for comment, and hearing if requested, exempt to the extent it deems reasonable, services or products related to telecommunications utilities or persons who provide telecommunications services or products from any or all of the provisions of this chapter, or may adopt alternative requirements for establishing rates and charges for any service by a method other than that which is specified in this chapter, if the commission finds by clear and satisfactory evidence that it is in the public interest. No exemption shall be granted under this statute which preempts, without notice and without hearing, if requested, the existing rights and obligations of a local exchange company to serve a territory under a tariff approved by the Public Service Commission. Any party which seeks an exemption shall certify to the commission at the time of the filing that he has notified the affected local exchange company by registered mail of the filing of a petition for exemption, and of the right of the local exchange company to request a hearing within thirty (30) days of the notification.
- (3) In determining public interest, the commission shall consider the following:
  - (a) The extent to which competing telecommunications services are available from competitive providers in the relevant market;
  - (b) The existing ability and willingness of competitive providers to make functionally equivalent or substitute services readily available;
  - (c) The number and size of competitive providers of service;
  - (d) The overall impact of the proposed regulatory change on the continued availability of existing services at just and reasonable rates;
  - (e) The existence of adequate safeguards to assure that rates for services regulated pursuant to this chapter do not subsidize exempted services;
  - (f) The impact of the proposed regulatory change upon efforts to promote universal availability of basic telecommunications services at affordable rates

and upon the need of telecommunications companies subject to the jurisdiction of the commission to respond to competition;

- (g) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or products;
  - (h) The overall impact on customers of a proposed change to streamline regulatory treatment of small or nonprofit carriers; and
  - (i) Any other factors the commission may determine are in the public interest.
- (4) When the commission exempts a telecommunications product or service from all of the provisions of this chapter, the investment, revenues, and expenses associated with the service or product shall not be considered by the commission in setting rates for the telecommunications company's regulated services. This provision shall only apply to telecommunication products or services which the commission exempts after July 14, 1992. Nothing herein shall prohibit the commission from having access to and from examining the books and records of the exempted product or service in order to determine compliance with the commission's rules respecting allocation of cost when setting rates for the telecommunications company's regulated services.
- (5) The Public Service Commission shall retain jurisdiction over persons and services which are exempted from regulation under this section, or for which alternative regulatory requirements have been established pursuant to this section. The commission, on its own motion, or upon the motion of any person, after notice and hearing, if requested, may vacate or modify any orders granting an exemption or establishing alternative requirements if it determines by clear and satisfactory evidence that the findings upon which the order was based are no longer valid, or that the exemption or modifications are no longer in the public interest.
- (6) In granting or vacating exemptions, the Public Service Commission shall not be discriminatory or preferential but may treat services and utilities differently if reasonable and not detrimental to the public interest.
- (7) The provisions of KRS 367.150(8) and 367.160, concerning the role of the Attorney General, shall apply to all proceedings under this section.

**Effective:** July 14, 1992

**History:** Created 1992 Ky. Acts ch. 306, sec. 1, effective July 14, 1992.

**278.514 Exempted service not to be subsidized by nonexempted, regulated telecommunications services.**

- (1) Revenues derived from nonexempted, regulated telecommunications services, whether essential or nonessential, shall not be used to subsidize or otherwise give advantage to any person providing an exempted service. The commission shall require a provider of any exempted service to keep separate accounts, to allocate cost in accordance with procedures established by the commission, and may require other acts that will assist the commission in enforcing this section. Any person requesting an exemption or providing a service exempted pursuant to KRS 278.512 shall have the burden of proof to show compliance with this requirement.
- (2)
  - (a) Except as provided in subsection (2)(b) of this section, any telecommunications utility that willfully violates subsection (1) of this section shall be subject to a penalty no greater than the revenue requirement effect of moneys determined to have been misallocated in the violation. For the purpose of calculating the penalty under this section, the commission shall not use a period longer than five (5) years.
  - (b) A local exchange carrier with fewer than thirty-five thousand (35,000) access lines who willfully violates subsection (1) of this section shall be subject to the penalties prescribed in KRS 278.990(1).

**Effective:** July 14, 1992

**History:** Created 1992 Ky. Acts ch. 306, sec. 2, effective July 14, 1992.

**278.516 Alternative regulation process for small telephone utilities -- Findings -- Definitions -- Procedures -- Withdrawal.**

- (1) The legislature finds and determines that:
  - (a) Small telephone utilities lack the resources to fully participate in the existing regulatory processes, particularly under traditional rate of return and certificate of public convenience and necessity regulation;
  - (b) Regulation, if not tailored specifically to the needs of small telephone utilities, can retard the growth and development of small telephone utilities by requiring the expenditure of excessive time and money responding to and addressing regulatory processes instead of devoting those resources to customer service and more productive business concerns and issues; and
  - (c) It is in the public interest to provide regulatory flexibility to small telephone utilities to better enable them to adjust to the competition and innovation that has come and is coming to the telecommunications industry as found and determined by the legislature at KRS 278.512(1).
- (2) In addition to the definitions set forth at KRS 278.010, the following definitions shall apply to this section:
  - (a) "Telephone utility" means a telephone utility as defined at KRS 278.010(3)(e) except that it includes local exchange carriers only;
  - (b) "Local exchange carrier" means a traditional wireline telephone utility which provides its subscribers with access to the national public switched telephone network;
  - (c) "Traditional wireline telephone utility" means one whose delivery of its telephone utility services is characterized by the predominant use of wire or wireline connections carrying communications transmissions between the subscriber of the utility and the national public switched telephone network;
  - (d) "Small telephone utility" means a local exchange carrier providing telephone utility service and having not more than fifty thousand (50,000) access lines in Kentucky;
  - (e) "Largest telephone utility" means the local exchange carrier providing telephone utility service in Kentucky and having the greatest number of access lines in Kentucky;
  - (f) "Access lines" mean the telephone lines provided by a local exchange carrier. In calculating the number of access lines provided by a local exchange carrier, the number of access lines provided by all telephone utilities under common ownership or control, as defined in KRS 278.020(6), with that telephone utility shall be counted;
  - (g) "GDP" means the real Gross Domestic Product Price Index, as it may be amended from time to time, as it is published by the Bureau of Economic Analysis of the United States Department of Commerce;

- (h) "Annual percent change in the GDP" means, for any given calendar year, the annual percentage change in the GDP as it is calculated by the Bureau of Economic Analysis of the United States Department of Commerce;
  - (i) "Basic business rate" and "basic residential rate" mean the total rates or charges which must be paid by a business or residential subscriber, respectively, to a local exchange carrier in order to receive, outside of a standard metropolitan statistical area, telephone utility service within a specified geographic area for local calling and for which tariffed rates or charges are assessed, regardless of the amount of use of local calling;
  - (j) "Standard metropolitan statistical area" means any area in Kentucky designated as such, or as a part thereof, pursuant to 44 U.S.C. sec. 3504(d)(3) and 31 U.S.C. sec. 1104(d), as they may be amended, by the Office of Management and Budget of the Executive Office of the President of the United States; provided, however, that for purposes of this section, "standard metropolitan statistical area" shall include only the two (2) largest, as measured by population, standard metropolitan statistical areas, regardless of whether that area is located wholly or partially in Kentucky;
  - (k) "Basic business service" or "basic residential service" means the service for which basic business rates or basic residential rates are charged;
  - (l) "Average basic business or residential rate, including zone charges," means the total revenues which should be produced by the imposition of those rates or charges divided by the number of access lines to which those rates or charges are applicable;
  - (m) "Zone charges" mean mileage or zone charges and are the charges assessed by a telephone utility on the basis of a subscriber's distance from a central office in order that the subscriber may receive basic business or residential services;
  - (n) "Subscriber" means the person or entity legally and financially responsible for the bill rendered by a telephone utility for its services;
  - (o) "Intrastate access charges" mean the charges assessed for use of the telecommunications facilities of one telephone utility by another person or entity in order to deliver to the public for compensation telephone messages originating and terminating within Kentucky;
  - (p) "Interstate access charges" mean the charges assessed for use of the telecommunications facilities of one (1) telephone utility by another person or entity in order to deliver to the public for compensation telephone messages originating or terminating, but not both, in Kentucky; and
  - (q) "Pic charges" are charges assessed by a local exchange carrier in order to implement a change in a subscriber's long distance carrier.
- (3) (a) If a small telephone utility elects to be regulated as provided in subsection (7) of this section, a small telephone utility once during any twenty-four (24) month period may adjust or implement each of the following rates or charges: basic business rate; basic residential rate; zone charges; or installation charges for basic business or basic residential services by an amount not to exceed the

sum of the annual percentage changes in the GDP for the immediately preceding two (2) calendar years multiplied by the existing rate or charge to be adjusted. However, in no event shall a small telephone utility so adjust:

1. Its basic business rate, including zone charges, if the resulting average basic business rate, including zone charges, would thereby exceed the average basic business rate, including zone charges, of the largest telephone utility;
  2. Its basic residential rate, including zone charges, if the resulting average basic residential rate would thereby exceed the average basic residential rate including zone charges, of the largest telephone utility; or
  3. If its average basic business rate, including zone charges, its average basic residential rate, including zone charges, or its installation charges for basic business or basic residential services would be increased by more than twenty percent (20%).
- (b) At least sixty (60) calendar days before the effective date of such an adjustment of its rates or charges, a small telephone utility shall file a copy of its revised rates and tariffs with the commission and shall mail notice of the proposed rate adjustment to each affected subscriber and the commission. The notice shall state:
1. The GDP for the preceding two (2) calendar years;
  2. The amount by which any of the small telephone utility's rates or charges identified in subsection (3)(a) of this section will be adjusted; and
  3. The right of subscribers to object to the adjustment and request commission review by filing a letter or petition with the commission.
- (c) If by the forty-fifth calendar day following the date of the notice to subscribers of such a proposed adjustment to its rates or charges, the commission has received letters or petitions requesting commission review of the adjustment signed by at least five hundred (500) subscribers or five percent (5%) of subscribers, whichever is greater, the commission shall immediately notify the small telephone utility of this fact, and the proposed rate adjustment shall not become effective as scheduled. The small telephone utility may withdraw the proposed rate or charge adjustment, or if it decides to proceed, the commission shall review the proposed rate adjustment as though no election had been made pursuant to subsection (7) of this section.
- (4) Any other provision of this chapter notwithstanding, a small telephone utility which has elected to be regulated pursuant to this section may adjust any of its rates, charges, or tariffs, except for:
- (a) Its basic business rate;
  - (b) Its basic residential rate;
  - (c) Its zone charges;
  - (d) Its installation charges for basic business or basic residential services;
  - (e) Its access charges; or

(f) Its pic charges,

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

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

(a) Adjust its intrastate access charges if the adjustment requires the small telephone utility's access charge customers, including interexchange carriers, to pay intrastate access charges at levels exceeding the small telephone utility's interstate access charge levels; or

(b) Adjust its intrastate pic charges if the adjustment requires the small telephone utility's customers to pay intrastate pic charges at levels exceeding the small telephone utility's interstate pic charge levels.

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

(6) The rates, charges, earnings, or revenues of a small telephone utility which has elected to be regulated pursuant to this section and is in compliance with the provisions of this section shall be deemed by the commission to be in compliance with KRS 278.030(1).

(7) A small telephone utility may elect, at any time, to be regulated by the provisions, in their entirety only, of this section by filing a verified resolution of the utility's board of directors, or other governing body, so electing with the commission. An election shall be effective immediately upon filing with the commission and shall remain effective until withdrawn by the filing with the commission of a verified resolution of the small telephone utility's board of directors or other governing body; provided, however, that all resolutions of election or withdrawal shall remain in effect for at least one (1) year from the date of their filing with the commission. A resolution electing to be regulated by the provisions of this section shall mean that the small telephone utility so electing shall be regulated by this section and shall not be regulated by KRS 278.020(1) and 278.300. Nothing in this section, however, shall be construed to alter the applicability of KRS 278.020(4) or 278.030(2) to small telephone utilities electing to be regulated by the provisions of this section.

(8) A small telephone utility which has elected to be regulated pursuant to this section may file an application with the commission pursuant to KRS 278.020(1), and, if a utility does so, that application shall be deemed to have been granted unless within thirty (30) calendar days following the filing of the application, the commission denies the application. If the application is denied or none is filed, the small telephone utility electing to be regulated pursuant to this section may engage in the construction of the plant or facilities, or the purchase of equipment or properties, to provide the services described in KRS 278.010(3)(e). However, if the small telephone utility subsequently files a resolution of withdrawal under subsection (7) of this section, the increased value of property that resulted from any construction

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

**Effective:** July 13, 2004

**History:** Amended 2004 Ky. Acts ch. 75, sec. 2, effective July 13, 2004. -- Created 1996 Ky. Acts ch. 71, sec. 1, effective July 15, 1996.

**278.520 Transmission of long distance messages from other telephone lines.**

Telephone companies operating exchanges in different cities shall receive and transmit each other's messages without unreasonable delay or discrimination. The telephone exchange receiving any message from the exchange in which the message originated, and each other connecting exchange through which the message must be routed in order to reach its destination, shall switch the message through its exchange without unreasonable delay or discrimination and with the same promptness with which messages originating and ending on its own lines are handled, by causing the talking circuit to be connected over the toll line leading through or from the receiving exchange through any other connecting exchanges to the point of destination. It is the intention of this section to compel the connecting up and usage of toll wires through the various intervening exchanges between the exchange in which the messages originate and the point of destination, so that the party requesting service may be able to hold a conversation with the party called for at the point of destination.

**Effective:** October 1, 1942

**History:** Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4679f-1.

**278.530 Procedure to compel connection with telephone exchange or line.**

- (1) Whenever any telephone company desires to connect its exchange or lines with the exchange or lines of another telephone company and the latter refuses to permit this to be done upon reasonable terms, rates and conditions, the company desiring the connection may proceed as provided in subsection (2) or as provided in subsection (3) of this section.
- (2) The company desiring the connection may file a written statement with the Public Service Commission setting out the reasons why the connection is desired and the points at which the connection should be made, and giving the name and address of the owner or chief officer residing in this state of each company with which the connection is desired. The executive director of the commission shall thereupon cause a copy of the written statement to be served upon the companies owning or operating such lines or exchanges, by mailing a copy to the owner or chief officer residing in this state, and shall fix a date, not earlier than ten (10) days from the date of mailing the notice, for the hearing of the application. Upon the day so fixed for the hearing, the companies may respond in writing to the application, and either side may introduce such testimony as it desires and be heard by attorneys. After the hearing is completed the commission shall make its finding and enter it in a book to be kept for that purpose, and shall mail a copy thereof to each side; and if the commission directs the connection to be made it shall indicate the points where the connection is to be made, the number of wires to be connected, the terms and conditions and the rates to be charged, and the division of the rates charged between the companies handling the messages. The cost of making the connection shall be borne equally by the parties. If any company refuses to make a connection for a period of thirty (30) days after the finding of the commission directing the connection to be made, the company desiring the connection may make the connection and may recover one-half (1/2) of the cost thereof from the company so refusing.
- (3) In lieu of the procedure provided in subsection (2) of this section, the company desiring the connection may compel the connection upon reasonable terms by suit in equity in the Franklin Circuit Court or in the Circuit Court of the county in which the company making the demand resides or has its chief office in this state, and the court shall, by mandatory injunction, compel the physical connection of the wires and interchange of messages, and enforce the same by contempt proceedings and in the same manner that other mandatory injunctions are enforced.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 166, sec. 4, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 49, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 53, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4679f-2, 4679f-3.

**278.535 Switching of telecommunications provider -- Penalty -- Administrative regulations.**

- (1) As used in this section:
  - (a) "Telecommunications provider" or "provider" means a person that provides one (1) or more telecommunications services for compensation, and its successors in interest by way of acquisition or merger, and includes a provider of regulated and unregulated intrastate services offered to customers for the transmission of two-way, interactive communications. "Telecommunications provider" or "provider" does not include a provider of commercial mobile radio services as defined in 47 U.S.C. sec. 332(d)(1).
  - (b) "Letter of agency" means a written statement that authorizes a change of the customer's telecommunications provider and bears the customer's signature.
- (2) A customer of a telecommunications provider shall not be switched to another provider without the customer's letter of agency or the electronically recorded authorization of the customer, indicating that the customer knowingly approved the specific details of the switch. The requirement of a written or electronically recorded authorization shall not apply if the customer initiates a call to the customer's local telephone service provider to request that his long-distance provider be changed. When a customer's service is changed, the new provider shall maintain for one (1) year a record of nonpublic customer-specific information that establishes that the customer authorized the change. In any dispute, the burden of proof to show that the customer knowingly authorized the change shall be on the provider that claims to have obtained customer authorization for the switch.
- (3) If a letter of agency is combined with an inducement, or with information on a subject other than the change of a customer's telecommunications provider, whether or not the letter of agency can be easily severed from the rest of the document, then the language whereby a person authorizes service from the provider shall be printed in a type size as large or larger than the largest type used in the document that includes the letter of agency.
- (4) If a telecommunications provider initiates a switch of provider that the customer has not authorized under this section, that provider, upon request by the customer, shall reverse the change within five (5) business days.
- (5) The customer subjected to a change that is not verified consistent with this section or administrative regulations promulgated under this section is not responsible for any charges associated with the unauthorized change, including charges for usage subsequent to the change that are in excess of the amount the customer would have paid had the service not been changed, if the customer contacts the customer's local exchange carrier, the customer's previous provider of intrastate service, or the telecommunications provider that initiated an unauthorized change in service within one hundred eighty (180) days after receipt of the customer's first bill containing charges by the telecommunications provider that initiated the unauthorized change. A telecommunications provider that has initiated an unauthorized customer change shall:

- (a) Pay all charges associated with returning the customer to the customer's original telecommunications provider;
- (b) Return to the customer any amount paid to the provider by the customer or on the customer's behalf in excess of the amount the customer would have paid had the service not been changed; and
- (c) Upon request, provide all billing records to the original provider from which the customer was changed to enable the original provider to comply with this section.

The telecommunications provider that initiated the unauthorized change is responsible for any payment to access providers or to an underlying carrier where applicable. Failure of the customer to provide timely notice will relieve the telecommunications provider that initiated the unauthorized change of any obligations under this subsection.

- (6) If the commission finds that a provider has willfully or repeatedly violated this section or an administrative regulation promulgated under it, the commission shall order the provider to take corrective action as necessary. The commission may impose a penalty on the violator as specified in KRS 278.990(1), except that the maximum civil penalty to be assessed for each violation of this section shall be ten thousand dollars (\$10,000). The commission also may, if consistent with the public interest, suspend, restrict, or revoke any certificate or registration of the telecommunications provider, thereby denying the provider the authorization to provide telecommunications service in the Commonwealth.
- (7) The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the policies of this section.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 523, sec. 1, effective July 15, 1998.

**278.540 Acquisition of right-of-way by telephone or telegraph company --  
Condemnation.**

- (1) Any telephone company or telegraph company authorized to do business in this state shall, upon making just compensation, have the right to construct, maintain and operate its lines through any public lands of this state and on, across and along any public road, and across and under any navigable waters, but not in such a manner as to interfere with travel on the road or to obstruct the navigation of the waters.
- (2) Any telephone company authorized to do business in this state may, by contract with any person, construct, maintain and operate telephone lines on and across the real property of that person, and if it cannot obtain the right-of-way by contract it may, except as provided in KRS 416.090, condemn the right-of-way in the manner provided in the Eminent Domain Act of Kentucky.
- (3) Any telegraph company authorized to do business in this state that desires to construct, operate and maintain its lines on or along the right-of-way and structure of any railroad may, through an authorized agent, contract with the railroad company for that right.
- (4) The parts of this section relating to the rights of telephone companies do not apply to any city.

**Effective:** June 19, 1976

**History:** Amended 1976 Ky. Acts ch. 140, sec. 113, effective June 19, 1976. --  
Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat.  
secs. 4679c-1, 4679c-2, 4679d-1, 4679d-2, 4679d-3.

**278.541 Definitions for KRS 278.541 to 278.544.**

In addition to the definitions set forth in KRS 278.010 and 278.516(2), the following definitions shall apply to KRS 278.541 to 278.544:

- (1) "Basic local exchange service" means a retail telecommunications service consisting of a primary, single, voice-grade line provided to the premises of residential or business customers with the following features and functions only:
  - (a) Unlimited calls within the telephone utility's local exchange area;
  - (b) Dual-tone multifrequency dialing; and
  - (c) Access to the following:
    1. Emergency 911 telephone service;
    2. All locally available interexchange companies;
    3. Directory assistance;
    4. Operator services;
    5. Relay services; and
    6. A standard alphabetical directory listing that includes names, addresses, and telephone numbers at no additional charge.

With respect to local exchange carriers, basic local exchange service also shall include any mandatory extended area service routes accessible as a local call within that exchange area on or before July 12, 2006. Basic local exchange service does not include any features or functions other than those listed in this subsection, nor any other communications service, even if such service should include features and functions listed herein;

- (2) "Electing utility" means a telephone utility that elects to operate under KRS 278.543;
- (3) "Local exchange carrier" or "LEC" has the same meaning as defined in 47 U.S.C. sec. 153(26);
- (4) "Incumbent local exchange carrier" or "ILEC" has the same meaning as defined in 47 U.S.C. sec. 251(h);
- (5) "Nonbasic service" means all retail telecommunications services provided to a residential or business customer, all arrangements with respect to those services, and all packages of products or services; provided, however, nonbasic service includes basic local exchange service only if the customer chooses to purchase a package that includes basic local exchange service as a component of the package;
- (6) "Optional telephone feature" means any of those central office-based features that were tariffed by a local exchange carrier on or before February 1, 2006, that, where available:
  - (a) Are available to a line-side connection in a telephone switch;
  - (b) Are available on a stand-alone basis separate from a bundled offering; and
  - (c) Enhance the utility of basic local exchange service.

The term includes but is not limited to call forwarding, call waiting, and caller ID;

- (7) "Package" means combinations of retail products or services offered, whether at a single price or with the availability of the price for one (1) product or service contingent on the purchase of others; and
- (8) "Telephone utility" includes local exchange carriers and telecommunications carriers as those terms are defined in 47 U.S.C. sec. 153 and any federal regulations implementing that section, except that the definition shall not include commercial mobile radio service providers as defined in 47 U.S.C. sec. 332 and the Federal Communications Commission's lawful regulations promulgated thereunder.

**Effective:** July 12, 2006

**History:** Created 2006 Ky. Acts ch. 239, sec. 1, effective July 12, 2006.

**278.542 Effect of KRS 278.541 to 278.544 on commission's jurisdiction -- Filing by telephone utilities required.**

- (1) Nothing in KRS 278.541 to 278.544 shall affect the commission's jurisdiction with respect to:
  - (a) Any agreement or arrangement between or among ILECs;
  - (b) Any agreement or arrangement between or among ILECs and other local exchange carriers;
  - (c) Consumer complaints as to compliance with basic local exchange service obligations, and the quality of basic voice-grade service transmission for basic and nonbasic services, consistent with accepted industry standards for telecommunications services;
  - (d) The emergency 911 telephone service as set forth in KRS 65.750 to 65.760 or wireless enhanced emergency 911 systems as set forth in KRS 65.7621 to 65.7643;
  - (e) Accuracy of billing for telecommunications services, in accordance with the truth-in-billing regulations prescribed by the Federal Communications Commission;
  - (f) Assessments as set forth in KRS 278.130, 278.140, and 278.150;
  - (g) Unauthorized change of telecommunications providers or “slamming” under KRS 278.535;
  - (h) Billing of telecommunications services not ordered by or on behalf of the consumer or “cramming” to the extent that such services do not comply with the truth-in-billing regulations prescribed by the Federal Communications Commission;
  - (i) The federal Universal Service Fund and Lifeline Services Program and any Kentucky state counterpart;
  - (j) Any special telephone service programs as set forth in KRS 278.547 to 278.5499;
  - (k) Tariffs, except as expressly provided for in KRS 278.541 to 278.544;
  - (l) Setting objectives for performance as to basic local exchange service; except that the objectives shall not exceed existing commission standards or associated penalties as of July 12, 2006;
  - (m) Prohibiting price differences among retail telecommunications customers to the extent that such differences are attributable to race, creed, color, religion, sex, or national origin; or
  - (n) Ensuring that a telephone utility furnishes safe, adequate, and reasonable basic local exchange service to customers within that utility’s service area.
- (2) Telephone utilities operating pursuant to KRS 278.541 to 278.544 shall file with the commission a form containing:
  - (a) The complete name of the telephone utility;
  - (b) The physical address of its principal office; and

- (c) The name, title, and telephone number of the person responsible for answering consumer complaints on behalf of the telephone utility.
- (3) No telephone utility shall engage in predatory pricing as defined by the United States Supreme Court in *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993).
- (4) Nothing in KRS 278.541 to 278.544 shall affect the alternative regulation process for small telephone utilities as set forth in KRS 278.516.

**Effective:** July 12, 2006

**History:** Created 2006 Ky. Acts ch. 239, sec. 2, effective July 12, 2006.

**278.543 Adoption of price regulation plan -- Rate caps and adjustments --  
Jurisdiction of commission -- Exemptions -- Withdrawal from regulation  
under KRS 278.541 to 278.544.**

Any telephone utility, at its discretion and without commission approval, may elect to adopt the price regulation plan set forth below.

- (1) An election under this section shall be effective immediately upon written notification from the electing utility to the commission. The election shall remain effective until withdrawn by the electing utility.
- (2) The rate for basic local exchange service for an electing utility, other than an electing small telephone utility as defined in KRS 278.516, shall be capped for a period of sixty (60) months from the date of the election. Subject to the limitations in KRS 278.541 to 278.544, an electing utility may seek a rate adjustment for basic local exchange services according to the terms of regulation applicable to the basic local exchange services of any ILEC on June 30, 2006, or a previously approved or new price regulation proposal for basic service pursuant to KRS 278.512. These rate adjustments may become effective on or after the day following the end of the sixty (60) months.
- (3) Electing utilities shall retain on file with the commission tariffs for basic local exchange services and intrastate switched-access services. Tariffs filed in accordance with subsection (2) of this section shall be deemed valid and binding upon the effective date stated in the tariff.
- (4) An electing utility's rates for intrastate switched-access service shall not exceed its rates for this service that were in effect on the day prior to the date the utility filed its notice of election.
- (5) The commission shall have original jurisdiction over complaints as to basic local exchange service of any electing telephone utility, except that the commission shall not have jurisdiction to set, investigate, or determine rates as to any electing telephone utility other than as set forth in this section. Upon a complaint in writing made against any electing telephone utility by any person stating that basic local exchange service in which that complainant is directly interested is unreasonable, unsafe, insufficient, or unjustly discriminatory, or that basic local exchange 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. No order concerning a complaint shall be entered by the commission without a formal public hearing. A person may intervene in accordance with commission administrative regulations. The commission shall fix the time and place for the hearing and shall provide notice to the electing telephone utility and the complainant not less than twenty (20) days in advance. The commission may dismiss any complaint without a hearing if it decides that a hearing is not necessary, in the public interest, or for the protection of substantial rights. The complainant and the electing telephone utility shall be entitled to be heard in person or by an attorney and to introduce evidence.
- (6) An electing utility's rates, charges, earnings, and revenues shall be deemed to be just and reasonable under KRS 278.030 and administrative regulations promulgated

thereunder upon election. Except as set forth in KRS 278.542(1)(a) and (b), an electing telephone utility shall be exempt from KRS 278.190, 278.192, 278.200, 278.230(3), 278.255, 278.260, 278.270, 278.280, 278.290, and 278.300 and administrative regulations promulgated thereunder. The utility shall also be exempt from any rules, orders, or regulations of the commission requiring the retention or filing of financial reports, classifications, depreciation or other schedules, or any other information not required by the Federal Communications Commission.

- (7) An electing small telephone utility, as defined in KRS 278.516, may withdraw from being so regulated by providing written notice of withdrawal to the commission.
- (8) Under the following circumstances, any electing utility may withdraw from being so regulated by providing written notice to the commission:
  - (a) Upon the approval pursuant to KRS 278.512 of a company-specific alternative regulation plan; or
  - (b) Upon filing notice with the commission of its adoption of the applicable provisions of any alternative regulation plan previously approved by the commission. The adoption shall become effective upon filing of the notice.
- (9) The rates for basic local exchange service for an electing small telephone utility as defined in KRS 278.516 shall be capped for a period of twelve (12) months from the date of the election. Annually thereafter, an electing small telephone utility may not increase rates for an individual basic local exchange service by more than the increase in the annual average of the Consumer Price Index for all urban consumers for the most recent calendar year as published by the United States Department of Labor, Bureau of Labor Statistics.

**Effective:** July 12, 2006

**History:** Created 2006 Ky. Acts ch. 239, sec. 3, effective July 12, 2006.

#### **278.544 Provisions applicable to all telephone utilities.**

The following provisions of this section shall apply and be enforced equally to all telephone utilities, unless otherwise specifically stated in this section.

- (1) Telephone utilities may file with the commission schedules or tariffs reflecting the rates, terms, and conditions for nonbasic services that are generally available to all subscribers qualifying for the rates, terms, and conditions. The rates, terms, and conditions for basic and nonbasic services shall be valid upon the effective date stated in the schedule. Tariffs for nonbasic services in effect on July 12, 2006, shall continue to be effective as binding rates, terms, and conditions until withdrawn or modified by the telephone utility.
- (2) A telephone utility offering a package that includes any optional telephone features tariffed as of February 1, 2006, shall maintain schedules or tariffs on file with the commission for each such optional telephone feature available on a stand-alone basis to residential customers who purchase basic local exchange service from that telephone utility.
- (3) Notwithstanding the terms of any adopted regulation plan or any provision of law to the contrary, telephone utilities may provide nonbasic services pursuant to terms and conditions provided to the customer. Telephone utilities shall not be required to file nonbasic contracts with the commission. Telephone utilities shall permit a residential customer with nonbasic service to purchase basic local exchange service and any optional telephone feature on file in a schedule or tariff at the commission at the current rates, terms, and conditions without incurring termination charges, unless the customer has entered into an agreement containing termination charges and the customer is given thirty (30) days from receipt of the terms and conditions to cancel the agreement. If a customer cancels the agreement within thirty (30) days from receipt of the terms and conditions, termination charges are limited to the price of unreturned equipment or services, including installation, received at that point. Telephone utilities that provide services pursuant to this subsection shall provide customers with notice, as part of the terms and conditions of such services, that basic local exchange service and any optional telephone feature on file in a schedule or tariff with the commission may be purchased separately at the price posted on the company's Web site or on file with the commission.
- (4) Notwithstanding any provision of law to the contrary, nonbasic services offered pursuant to the provisions of this section shall be set by the marketplace and are not governed by KRS 278.030 and administrative regulations promulgated thereunder. The nonbasic services are exempt from action or review by the commission under KRS 278.160, 278.170, 278.180, 278.190, 278.192, 278.200, 278.230(3), 278.250, 278.255, 278.260, 278.270, 278.280, 278.290, and 278.300 and administrative regulations promulgated thereunder, except as specifically stated in KRS 278.541 to 278.544.

**Effective:** July 12, 2006

**History:** Created 2006 Ky. Acts ch. 239, sec. 4, effective July 12, 2006.

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

- (1) As used in this section:
  - (a) "Countywide local exchange telephone service" or "countywide service" means that no toll or distance charges are made for telephone calls which both originate and terminate within the geographical area of a county. A local exchange may embrace an area larger than a single county; and
  - (b) "Major telephone company" means a telephone company with annual gross operating revenues of one hundred million dollars (\$100,000,000) or more.
- (2) If a major telephone company serves all subscribers in a county but does not provide countywide service, and if at least two thousand (2,000) subscribers are not able to telephone the county seat of the county without paying toll charges, then the Public Service Commission shall by order require provision of countywide local exchange telephone service within the county no later than October 1, 1987.

**Effective:** July 15, 1986

**History:** Created 1986 Ky. Acts ch. 495, sec. 3, effective July 15, 1986.

**278.546 Legislative findings and determinations relating to telecommunications.**

Whereas, the General Assembly finds and determines that:

- (1) State-of-the-art telecommunications is an essential element to the Commonwealth's initiatives to improve the lives of Kentucky citizens, to create investment, jobs, economic growth, and to support the Kentucky Innovation Act of 2000;
- (2) Streamlined regulation in competitive markets encourages investment in the Commonwealth's telecommunications infrastructure;
- (3) Consumers in the Commonwealth have many choices in telecommunications services because competition between various telecommunications technologies such as traditional telephony, cable television, Internet and other wireless technologies has become commonplace;
- (4) Consumers benefit from market-based competition that offers consumers of telecommunications services the most innovative and economical services; and
- (5) Consumer protections against fraud and abuse, for the provision of affordable basic service, and for access to emergency services including enhanced 911 must continue.

**Effective:** July 13, 2004

**History:** Created 2004 Ky. Acts ch. 167, sec. 1, effective July 13, 2004.

**278.5461 Definitions for KRS 278.546 to 278.5462.**

In addition to the definitions in KRS 278.010 and KRS 278.516(2), for KRS 278.546 to 278.5462, the following definitions shall apply:

- (1) "Broadband" means any service that is used to deliver video or to provide access to the Internet and that consists of the offering of the capability to transmit information at a rate that is generally not less than two hundred (200) kilobits per second in at least one direction; or any service that combines computer processing, information storage, and protocol conversion to enable users to access Internet content and services. Nothing in this definition shall be construed to include any intrastate service, other than digital subscriber line service, tariffed at the commission as of July 15, 2004.
- (2) "Local exchange carrier" means any company certified by the commission to provide local exchange telecommunications service in the Commonwealth on or before June 30, 1995.

**Effective:** July 13, 2004

**History:** Created 2004 Ky. Acts ch. 167, sec. 2, effective July 13, 2004.

**278.54611 Commission's jurisdiction over commercial mobile radio service, interconnection agreements, customer complaints, telecommunications carriers, and cellular towers.**

- (1) The provision of commercial mobile radio services shall be market-based and not subject to Public Service Commission regulation. Notwithstanding any other provision of law to the contrary, except as provided in subsections (2) to (5) of this section, the commission shall not impose any requirement upon a commercial mobile radio services provider with respect to the following:
  - (a) The availability of facilities or equipment used to provide commercial mobile radio services; or
  - (b) The rates, terms, and conditions for, or entry into, the provision of commercial mobile radio service.
- (2) The provisions of this section do not limit or modify the commission's authority to arbitrate and enforce interconnection agreements.
- (3) The commission shall retain jurisdiction to assist in the resolution of consumer complaints.
- (4) The commission may develop standards that are generally applicable to companies that are designated and operate as eligible telecommunications carriers, pursuant to 47 U.S.C. sec. 214(e), or as carriers of last resort. The commission may exercise its authority to ensure that these carriers, including commercial mobile radio service providers that receive eligible telecommunications carrier status, comply with those standards.
- (5) The commission shall retain jurisdiction over cellular towers pursuant to KRS 278.665.

**Effective:** June 20, 2005

**History:** Created 2005 Ky. Acts ch. 109, sec. 1, effective June 20, 2005.

**278.5462 Broadband services not subject to state regulation -- Application of requirements of federal statutes and regulations -- Consumer complaints -- Telephone utility provision of service to competing local exchange.**

- (1) The provision of broadband services shall be market-based and not subject to state administrative regulation. Notwithstanding any other provision of law to the contrary except as provided in subsections (3) and (4) of this section, no agency of the state shall impose or implement any requirement upon a broadband service provider with respect to the following:
  - (a) The availability of facilities or equipment used to provide broadband services; or
  - (b) The rates, terms or conditions for, or entry into, the provision of broadband service.
- (2) Any requirement imposed upon broadband service in existence as of July 15, 2004, is hereby voided upon enactment of KRS 278.546 to 278.5462. The provisions of this section do not limit or modify the duties of a local exchange carrier or an affiliate of a local exchange carrier to provide unbundled access to network elements or the commission's authority to arbitrate and enforce interconnection agreements, including provisions related to remote terminals and central office facilities, to the extent required under 47 U.S.C. secs. 251 and 252, and any regulations issued by the Federal Communications Commission at rates determined in accordance with the standards established by the Federal Communications Commission pursuant to 47 C.F.R. secs. 51.503 to 51.513, inclusive of any successor regulations. Nothing contained in KRS 278.546 to 278.5462 shall be construed to preclude the application of access or other lawful rates and charges to broadband providers. Nothing contained in KRS 278.546 to 278.5462 shall preclude, with respect to broadband services, access for those service providers that use or make use of the publicly switched network.
- (3) The commission shall have jurisdiction to investigate and resolve consumer service complaints.
- (4) No telephone utility shall refuse to provide wholesale digital subscriber line service to competing local exchange carriers on the same terms and conditions, filed in tariff with the Federal Communications Commission, that it provides to Internet service providers.

**Effective:** July 13, 2004

**History:** Created 2004 Ky. Acts ch. 167, sec. 3, effective July 13, 2004.

**278.547 Definitions for KRS 278.547 to 278.5499.**

As used in KRS 278.547 to 278.5499, unless the context requires otherwise:

- (1) "Specialized telecommunications equipment" means devices such as, but not limited to telecommunications devices for the deaf, amplified phones, loud ringers, visual alert signalers, tactile signalers, captioned telephones, and appropriate wireless devices.
- (2) "Telecommunications relay service" means a procedure by which a deaf, hard-of-hearing, or speech-impaired user of specialized telecommunications equipment can communicate with an intermediary party, who then verbally relays the first party's message or request to a third party, or vice versa. The service includes, but is not limited to the switching, transmitting, and the voice and typed translation of calls.
- (3) "Telecommunications Access Program" means the program to furnish specialized telecommunications equipment to deaf, hard-of-hearing, and speech-impaired persons in order that they may use the telecommunications relay service. The program shall include maintenance and repair of the equipment.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 23, sec. 3, effective July 1, 2006. -- Amended 1994 Ky. Acts ch. 237, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 144, sec. 15, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 5, sec. 1, effective July 13, 1990.

**278.548 Telecommunications relay service program.**

The commission shall establish a program to make telecommunications relay services available not later than October 1, 1991, and shall make interstate telecommunications relay services available no later than July 1, 1992. The telecommunications relay service, whether intrastate or interstate, shall be operated seven (7) days a week for twenty-four (24) hours per day for all deaf, hard-of-hearing, or speech-impaired telephone subscribers within the Commonwealth. In order to determine the most cost effective method of providing telecommunications relay services that will meet the requirements of the deaf, hard of hearing, and speech-impaired, the commission shall initiate an investigation, conduct public hearings, and solicit the advice and counsel of the deaf, hard-of-hearing persons, and speech-impaired persons and the organizations serving them. The commission may assist the Commission on the Deaf and Hard of Hearing in the TDD distribution program established pursuant to KRS 163.525.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 237, sec. 2, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 93, sec. 1, effective March 24, 1992; and ch. 144, sec. 16, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 5, sec. 2, effective July 13, 1990.

**278.549 Rates -- Funding mechanism.**

Users of a telecommunications relay service shall pay rates no greater than the rates paid for functionally equivalent voice communication services provided without a telecommunications relay. The commission shall determine the appropriate funding mechanism for the telecommunications relay system. The telecommunications industry shall not be required to absorb the cost of funding the telecommunications relay service. The commission may use assistance from public agencies of the state or federal government or from private organizations to accomplish the purposes of KRS 278.547 to 278.549.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 237, sec. 3, effective July 15, 1994. -- Created 1990 Ky. Acts ch. 5, sec. 3, effective July 13, 1990.

**278.5499 Funding mechanism for Telecommunications Access Program.**

- (1) The Public Service Commission shall determine the appropriate funding mechanism for the Telecommunications Access Program established pursuant to KRS 163.525. The funding mechanism shall be designed to collect reasonably necessary funds, not to exceed one cent (\$.01) per access line per month, from subscribers of telecommunication utilities. The telecommunications industry shall not be required to absorb the cost of funding the Telecommunications Access Program.
- (2) The Public Service Commission shall distribute the funds collected from this funding mechanism to the Commission on the Deaf and Hard of Hearing for the purpose of implementing and operating the Telecommunications Access Program. The secretary of the cabinet to which the Commission on the Deaf and Hard of Hearing is attached by statute or executive order shall establish oversight conditions with the Commission on the Deaf and Hard of Hearing to ensure the funds are being used solely for the purposes consistent with this section and KRS 163.525.
- (3) The Public Service Commission, with the advice of the Commission on the Deaf and Hard of Hearing, shall initiate an investigation, conduct public hearings, and determine the appropriate funding mechanism for the Telecommunications Access Program no later than January 1, 1995. As part of this determination, the commission may review the funding mechanism for the telecommunications relay service pursuant to KRS 278.549. The commission shall consider whether a telecommunications utility experiences a competitive disadvantage resulting from the funding mechanism when compared to other telecommunication utilities.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 23, sec. 4, effective July 1, 2006. -- Amended 2002 Ky. Acts ch. 36, sec. 1, effective July 15, 2002. -- Created 1994 Ky. Acts ch. 237, sec. 4, effective July 15, 1994.

**2006-2008 Budget Reference.** See State/Executive Branch Budget, 2006 Ky. Acts ch. 252, Pt. I, F.20.(5), at 1182; and State/Executive Branch Budget Memorandum, 2006 Ky. Acts ch. 257, at 2637 (Final Budget Memorandum, at 948).

**278.550** Repealed, 1986.

**Catchline at repeal:** General powers and duties of interurban electric railway companies.

**History:** Repealed 1986 Ky. Acts ch. 300, sec. 5, effective July 15, 1986. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 842a-1, 842a-4.

**278.560** Repealed, 1974.

**Catchline at repeal:** City passengers, when interurbans not to take.

**History:** Repealed 1974 Ky. Acts ch. 308, sec. 64. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 842a-2.

**278.570** Repealed, 1974.

**Catchline at repeal:** Bundle racks.

**History:** Repealed 1974 Ky. Acts ch. 308, sec. 64. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 842b-1.

**278.580** Repealed, 1974.

**Catchline at repeal:** Bell to be rung or whistle sounded at crossings.

**History:** Repealed 1974 Ky. Acts ch. 308, sec. 64. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 786.

### **278.600 Definitions.**

As used in KRS 278.605 and 278.610, unless the context requires otherwise:

- (1) "Nuclear power facility" or "nuclear facility" means a nuclear fission thermal power plant;
- (2) "High level nuclear wastes" means the aqueous wastes resulting from the operation of the first cycle of the solvent extraction system or equivalent and the concentrated wastes of the subsequent extraction cycles or equivalent in a facility for reprocessing irradiated reactor fuel. High level nuclear wastes shall include spent fuel assemblies prior to fuel reprocessing;
- (3) "Certify" means to issue a certificate of public convenience and necessity under KRS 278.020;
- (4) "Technology or means for the disposal of high-level nuclear waste" means a method for the permanent and terminal disposal of high-level nuclear waste. Such disposition shall not necessarily preclude the possibility of an approved process for retrieval of such waste.

**Effective:** July 13, 1984

**History:** Created 1984 Ky. Acts ch. 15, sec. 1, effective July 13, 1984.

**278.605 Construction prohibited until means for disposal of high level nuclear waste approved by United States government.**

No construction shall commence on a nuclear power facility in the Commonwealth until the Public Service Commission finds that the United States government, through its authorized agency, has identified and approved a demonstrable technology or means for the disposal of high level nuclear waste.

**Effective:** July 13, 1984

**History:** Created 1984 Ky. Acts ch. 15, sec. 2, effective July 13, 1984.

**278.610 Requirements for certification of nuclear power facility.**

If the requirements of KRS 278.605 have been met, the Public Service Commission may certify a nuclear power facility if it finds that:

- (1) Specific facilities with adequate capacity to contain high-level nuclear waste are in actual operation, or will be in operation at the time the nuclear power facility being certified requires the means for the disposal of high level nuclear waste;
- (2) The plan for disposal of high level nuclear waste for the nuclear facility to be certified is in full conformity with the technology approved by the authorized agency of the United States government; and
- (3) The cost of disposal of high level nuclear waste from the nuclear facility to be certified is known with reasonable certainty, such that an accurate economic assessment of the proposal can be completed.

**Effective:** July 13, 1984

**History:** Created 1984 Ky. Acts ch. 15, sec. 3, effective July 13, 1984.

**278.650 Procedures for proposals to construct antenna towers in an area outside the jurisdiction of a planning commission -- Hearing -- Building permit fee.**

If an applicant proposes construction of an antenna tower for cellular telecommunications services or personal communications services which is to be located in an area outside the jurisdiction of a planning commission, the applicant shall apply to the Public Service Commission for a certificate of public convenience and necessity pursuant to KRS 278.020(1), 278.665, and this section. The commission shall convene a local public hearing on the application upon the receipt of a request from the local governing body or from not less than three (3) interested persons that reside in a county or municipal corporation in which the tower is proposed to be constructed. In reviewing the application, the commission may take into account the character of the general area concerned and the likely effects of the installation on nearby land uses and values. A local government may charge a fee for a building permit, in connection with the construction or alteration of any structure for cellular telecommunications services or personal communication services, if the fee does not exceed that charged for any other commercial structure of comparable cost of construction.

**Effective:** April 23, 2002

**History:** Amended 2002 Ky. Acts ch. 343, sec. 6, effective April 23, 2002; and ch. 346, sec. 222, effective July 15, 2002. -- Created 1996 Ky. Acts ch. 383, sec. 2, effective July 15, 1996.

**Legislative Research Commission Note (4/23/2002).** This section was amended by 2002 Ky. Acts ch. 343, sec. 6, and ch. 346, sec. 222, which appear to be in conflict. The changes made by ch. 346 are revisory in nature, while the changes made by ch. 343 are substantive. The changes of ch. 343 have been allowed to prevail. Cf. KRS 7.123.

**278.660** Repealed, 2002.

**Catchline at repeal:** Confidentiality of uniform application and updates -- Penalty for violation.

**History:** Repealed 2002 Ky. Acts ch. 343, sec. 8, effective April 23, 2002. -- Created 1998 Ky. Acts ch. 231, sec. 5, effective July 15, 1998.

**278.665 Administrative regulations governing cellular antenna towers to be constructed outside the jurisdiction of a planning commission.**

- (1) The commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the minimum content of an application for a certificate of convenience and necessity to construct cellular antenna towers for areas outside the jurisdiction of a planning commission.
- (2) The commission, in establishing the public notice requirements of an application as provided for in subsection (1) of this section, shall distinguish between areas of low and high population densities. At a minimum, when the site of the proposed cellular antenna tower is outside of an incorporated city, the commission shall require that every person who owns property contiguous to the property where the proposed cellular antenna tower will be located receives notice by certified mail, return receipt requested, of the proposed construction, given the commission docket number under which the application will be processed, and informed of the opportunity to intervene in the commission proceedings on the application.

**Effective:** April 23, 2002

**History:** Amended 2002 Ky. Acts ch. 343, sec. 7, effective April 23, 2002; and ch. 346, sec. 223, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 103, sec. 1, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 231, sec. 4, effective July 15, 1998.

**Legislative Research Commission Note (4/23/2002).** This section was amended by 2002 Ky. Acts ch. 343, sec. 7, and ch. 346, sec. 223, which appear to be in conflict. The changes made by ch. 346 are revisory in nature, while the changes made by ch. 343 are substantive. The changes of ch. 343 have been allowed to prevail. Cf. KRS 7.123.

## **278.700 Definitions for KRS 278.700 to 278.716.**

As used in KRS 278.700 to 278.716, unless the context requires otherwise:

- (1) "Board" means the Kentucky State Board on Electric Generation and Transmission Siting created in KRS 278.702;
- (2) "Merchant electric generating facility" means, except for a qualifying facility as defined in subsection (7) of this section, an electricity generating plant, together with associated facilities, that:
  - (a) Is capable of operating at a capacity of ten megawatts (10MW) or more; and
  - (b) Sells the electricity it produces in the wholesale market, at rates and charges not regulated by the Public Service Commission;
- (3) "Person" means any individual, corporation, public corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust, estate, two (2) or more persons having a joint or common interest, or any other entity, and no portion of KRS 224.10-280, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 shall apply to a utility owned by a municipality unless the utility is a merchant plant as defined in this section;
- (4) "Commence to construct" means physical on-site placement, assembly, or installation of materials or equipment which will make up part of the ultimate structure of the facility. In order to qualify, these activities must take place at the site of the proposed facility or must be site-specific. Activities such as site clearing and excavation work will not satisfy the commence to construct requirements;
- (5) "Nonregulated electric transmission line" means an electric transmission line and related appurtenances for which no certificate of public convenience and necessity is required; which is not operated as an activity regulated by the Public Service Commission; and which is capable of operating at or above sixty-nine thousand (69,000) volts;
- (6) "Residential neighborhood" means a populated area of five (5) or more acres containing at least one (1) residential structure per acre; and
- (7) "Qualifying facility" means a cogeneration facility as defined in 16 U.S.C. sec. 796(18)(b) which does not exceed a capacity of one hundred fifty megawatts (150MW) that is located on site at a manufacturer's plant and that uses steam from the cogeneration facility in its manufacturing process, or an industrial energy facility as defined in KRS 224.01-010 that does not generate more than one hundred fifty megawatts (150MW) for sale and has received all local planning and zoning approvals.

**Effective:** June 26, 2007

**History:** Amended 2007 Ky. Acts ch. 73, sec. 4, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 138, sec. 1, effective July 12, 2006. -- Created 2002 Ky. Acts ch. 365, sec. 1, effective April 24, 2002.

**278.702 Kentucky State Board on Electric Generation and Transmission Siting.**

- (1) There is hereby established the Kentucky State Board on Electric Generation and Transmission Siting. The board shall be composed of seven (7) members as follows:
  - (a) The three (3) members of the Kentucky Public Service Commission;
  - (b) The secretary of the Environmental and Public Protection Cabinet or the secretary's designee;
  - (c) The secretary of the Cabinet for Economic Development or the secretary's designee;
  - (d)
    1. If the facility subject to board approval is proposed to be located in one (1) county, two (2) ad hoc public members to be appointed by the Governor from a county where a facility subject to board approval is proposed to be located:
      - a. One (1) of the ad hoc public members shall be the chairman of the planning commission with jurisdiction over an area in which a facility subject to board approval is proposed to be located. If the proposed location is not within a jurisdiction with a planning commission, then the Governor shall appoint either the county judge/executive of a county that contains the proposed location of the facility or the mayor of a city, if the facility is proposed to be within a city; and
      - b. One (1) of the ad hoc public members shall be appointed by the Governor and shall be a resident of the county in which the facility is proposed to be located.
    2. If the facility subject to board approval is proposed to be located in more than one (1) county, two (2) ad hoc public members to be chosen as follows:
      - a. One (1) ad hoc public member shall be the county judge/executive of a county in which the facility is proposed to be located, to be chosen by majority vote of the county judge/executives of the counties in which the facility is proposed to be located; and
      - b. One (1) ad hoc public member shall be a resident of a county in which the facility is proposed to be located, and shall be appointed by the Governor.

If a member has not been chosen by majority vote, as provided in subdivision a. of this subparagraph, by thirty (30) days after the filing of the application, the Governor shall directly appoint the member.
    3. Ad hoc public members appointed to the board shall have no direct financial interest in the facility proposed to be constructed.
- (2) The term of service for the ad hoc members of the board shall continue until the board issues a final determination in the proceeding for which they were appointed. The remaining members of the board shall be permanent members.

- (3) The board shall be attached to the Public Service Commission for administrative purposes. The commission staff shall serve as permanent administrative staff for the board. The members of the board identified in subsection (1)(a) to (d) of this section shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement KRS 278.700 to 278.716.
- (4) No member of the board shall receive any salary or fee for service on the board or shall have any financial interest in any facility the application for which comes before the board, but each member shall be reimbursed for actual travel and expenses directly related to service on the board.
- (5) The chairman of the Public Service Commission shall be the chairman of the board. The chairman shall designate one (1) member of the board as vice chairman. A majority of the members of the board shall constitute a quorum for the transaction of business. No vacancy on the board shall impair the right of the remaining members to exercise all of the powers of the board. The board shall convene upon the call of the chairman.

**Effective:** April 24, 2002

**History:**Created 2002 Ky. Acts ch. 365, sec. 2, effective April 24, 2002.

**Legislative Research Commission Note (6/20/2005).** 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

**278.704 Merchant electric generating facility -- Construction certificate -- Location of exhaust stack -- Setback requirement.**

- (1) No person shall commence to construct a merchant electric generating facility until that person has applied for and obtained a construction certificate for the facility from the board. The construction certificate shall be valid for a period of two (2) years after the issuance date of the last permit required to be obtained from the Environmental and Public Protection Cabinet after which the certificate shall be void. The certificate shall be conditioned upon the applicant obtaining necessary air, water, and waste permits. If an applicant has not obtained all necessary permits and has not commenced to construct prior to the expiration date of the certificate, the applicant shall be required to obtain a valid certificate from the board.
- (2) Except as provided in subsections (3), (4), and (5) of this section, no person shall commence to construct a merchant electric generating facility unless the exhaust stack of the proposed facility is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility.
- (3) If the merchant electric generating facility is proposed to be located in a county or a municipality with planning and zoning, then setback requirements from a residential neighborhood, school, hospital, or nursing home facility may be established by the planning and zoning commission. Any setback established by a planning and zoning commission for a facility in an area over which it has jurisdiction shall:
  - (a) Have primacy over the setback requirement in subsections (2) and (5) of this section; and
  - (b) Not be subject to modification or waiver by the board through a request for deviation by the applicant, as provided in subsection (4) of this section.
- (4) The board may grant a deviation from the requirements of subsection (2) of this section on a finding that the proposed facility is designed and located to meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of this section.
- (5) If the merchant electric generating facility is proposed to be located on a site of a former coal processing plant in the Commonwealth where the electric generating facility will utilize on-site waste coal as a fuel source, then the one thousand (1,000) foot property boundary requirement in subsection (2) of this section shall not be applicable; however, the applicant shall be required to meet any other setback requirements contained in subsection (2) of this section.

**Effective:** April 24, 2002

**History:**Created 2002 Ky. Acts ch. 365, sec. 3, effective April 24, 2002.

**Legislative Research Commission Note (6/20/2005).** 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

**278.706 Application for certificate to construct merchant electric generating facility -- Fees -- Replacement or repair does not constitute construction.**

- (1) Any person seeking to obtain a construction certificate from the board to construct a merchant electric generating facility shall file an application at the office of the Public Service Commission.
- (2) A completed application shall include the following:
  - (a) The name, address, and telephone number of the person proposing to construct and own the merchant electric generating facility;
  - (b) A full description of the proposed site, including a map showing the distance of the proposed site from residential neighborhoods, the nearest residential structures, schools, and public and private parks that are located within a two (2) mile radius of the proposed facility;
  - (c) Evidence of public notice that shall include the location of the proposed site and a general description of the project, state that the proposed construction is subject to approval by the board, and provide the telephone number and address of the Public Service Commission. Public notice shall be given within thirty (30) days immediately preceding the application filing to:
    1. Landowners whose property borders the proposed site; and
    2. The general public in a newspaper of general circulation in the county or municipality in which the plant is proposed to be located;
  - (d) A statement certifying that the proposed plant will be in compliance with all local ordinances and regulations concerning noise control and with any local planning and zoning ordinances. The statement shall also disclose setback requirements established by the planning and zoning commission as provided under KRS 278.704(3);
  - (e) If the facility is not proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source or in an area where a planning and zoning commission has established a setback requirement pursuant to KRS 278.704(3), a statement that the proposed site is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility, unless facilities capable of generating ten megawatts (10MW) or more currently exist on the site. If the facility is proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, a statement that the proposed site is compatible with the setback requirements provided under KRS 278.704(5). If the facility is proposed to be located in a jurisdiction that has established setback requirements pursuant to KRS 278.704(3), a statement that the proposed site is compatible with those established setback requirements;
  - (f) A complete report of the applicant's public involvement program activities undertaken prior to the filing of the application, including any use of media coverage, direct mailing, fliers, newsletters, public meetings, establishment of

a community advisory group, and any other efforts to obtain local involvement in the siting process;

- (g) A summary of the efforts made by the applicant to locate the proposed facility on a site where existing electric generating facilities are located;
  - (h) Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed facility is to be located, and upon the chief officer of each public agency charged with the duty of planning land use in the jurisdiction in which the facility is proposed to be located;
  - (i) An analysis of the proposed facility's projected effect on the electricity transmission system in Kentucky;
  - (j) An analysis of the proposed facility's economic impact on the affected region and the state;
  - (k) A detailed listing of all violations by it, or any person with an ownership interest, of federal or state environmental laws, rules, or administrative regulations, whether judicial or administrative, where violations have resulted in criminal convictions or civil or administrative fines exceeding five thousand dollars (\$5,000). The status of any pending action, whether judicial or administrative, shall also be submitted; and
  - (l) A site assessment report as specified in KRS 278.708. The applicant may submit and the board may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report.
- (3) Application fees for a construction certificate shall be set by the board and deposited into a trust and agency account to the credit of the commission.
- (4) Replacement of a merchant electric generating facility with a like facility, or the repair, modification, retrofitting, enhancement, or reconfiguration of a merchant electric generating facility shall not, for the purposes of this section and KRS 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a merchant electric generating facility.
- (5) The board shall promulgate administrative regulations prescribing fees to pay expenses associated with its review of applications filed with it pursuant to KRS 278.700 to 278.716. All application fees collected by the board shall be deposited in a trust and agency account to the credit of the Public Service Commission. If a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses associated with the application, including the board's expenses associated with legal review thereof, the board shall assess a supplemental application fee to cover the additional expenses. An applicant's failure to pay a fee assessed pursuant to this subsection shall be grounds for denial of the application.

**Effective:** April 24, 2002

**History:** Created 2002 Ky. Acts ch. 365, sec. 4, effective April 24, 2002.

**278.708 Site assessment report -- Consultant -- Mitigation measures.**

- (1) Any person proposing to construct a merchant electric generating facility shall file a site assessment report with the board as required under KRS 278.706(2)(1).
- (2) A site assessment report shall be prepared by the applicant or its designee.
- (3) A completed site assessment report shall include:
  - (a) A description of the proposed facility that shall include a proposed site development plan that describes:
    1. Surrounding land uses for residential, commercial, agricultural, and recreational purposes;
    2. The legal boundaries of the proposed site;
    3. Proposed access control to the site;
    4. The location of facility buildings, transmission lines, and other structures;
    5. Location and use of access ways, internal roads, and railways;
    6. Existing or proposed utilities to service the facility;
    7. Compliance with applicable setback requirements as provided under KRS 278.704(2), (3), or (5); and
    8. Evaluation of the noise levels expected to be produced by the facility;
  - (b) An evaluation of the compatibility of the facility with scenic surroundings;
  - (c) The potential changes in property values resulting from the siting, construction, and operation of the proposed facility for property owners adjacent to the facility;
  - (d) Evaluation of anticipated peak and average noise levels associated with the facility's construction and operation at the property boundary; and
  - (e) The impact of the facility's operation on road and rail traffic to and within the facility, including anticipated levels of fugitive dust created by the traffic and any anticipated degradation of roads and lands in the vicinity of the facility.
- (4) The site assessment report shall also suggest any mitigating measures to be implemented by the applicant including planting trees, changing outside lighting, erecting noise barriers, and suppressing fugitive dust.
- (5) The board shall have the authority to hire a consultant to review the site assessment report and provide recommendations concerning the adequacy of the report and proposed mitigation measures. The board may direct the consultant to prepare a separate site assessment report. Any expenses or fees incurred by the board's hiring of a consultant shall be borne by the applicant.
- (6) The applicant shall be given the opportunity to present evidence to the board regarding any mitigation measures. As a condition of approval for an application to obtain a construction certificate, the board may require the implementation of any mitigation measures that the board deems appropriate.

**Effective:** April 24, 2002

**History:** Created 2002 Ky. Acts ch. 365, sec. 5, effective April 24, 2002.

**278.710 Granting or denial of construction certificate -- Policy of General Assembly -- Transfer of rights and obligation.**

- (1) Within ninety (90) days of receipt of an administratively complete application, or within one hundred twenty (120) days of receipt of an administratively complete application if a hearing is requested, the board shall, by majority vote, grant or deny a construction certificate, either in whole or in part, based upon the following criteria:
  - (a) Impact of the facility on scenic surroundings, property values, the pattern and type of development of adjacent property, and surrounding roads;
  - (b) Anticipated noise levels expected as a result of construction and operation of the proposed facility;
  - (c) The economic impact of the facility upon the affected region and the state;
  - (d) Whether the facility is proposed for a site upon which existing generating facilities, capable of generating ten megawatts (10MW) or more of electricity, are currently located;
  - (e) Whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed;
  - (f) Whether the additional load imposed upon the electricity transmission system by use of the merchant electric generating facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Public Service Commission;
  - (g) Except where the facility is subject to a statewide setback established by a planning and zoning commission as provided in KRS 278.704(3) and except for a facility proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, whether the exhaust stack of the proposed merchant electric generating facility is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility. If a planning and zoning commission has established setback requirements that differ from those under KRS 278.704(2), the applicant shall provide evidence of compliance. If the facility is proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, the applicant shall provide evidence of compliance with the setback requirements provided in KRS 278.704(5);
  - (h) The efficacy of any proposed measures to mitigate adverse impacts that are identified pursuant to paragraph (a), (b), (e), or (f) of this subsection from the construction or operation of the proposed facility; and
  - (i) Whether the applicant has a good environmental compliance history.
- (2) When considering an application for a construction certificate for a merchant electric generating facility, the board may consider the policy of the General Assembly to encourage the use of coal as a principal fuel for electricity generation as set forth in KRS 152.210, provided that any facility, regardless of fuel choice,

shall comply fully with KRS 224.10-280, 278.212, 278.216, and 278.700 to 278.716.

- (3) A person that has received a construction certificate for a merchant electric generating facility shall not transfer rights and obligation under the certificate without having first applied for and received a board determination that:
  - (a) The acquirer has a good environmental compliance history; and
  - (b) The acquirer has the financial, technical, and managerial capacity to meet the obligations imposed by the terms of the approval or has the ability to contract to meet these obligations.

**Effective:** April 24, 2002

**History:** Created 2002 Ky. Acts ch. 365, sec. 6, effective April 24, 2002.

**278.712 Local public hearing -- Procedure -- Parties -- Action to vacate or set aside ruling.**

- (1) The board may convene a local public hearing upon receipt of a request by not less than three (3) interested persons that reside in a county or municipal corporation in which the facility is proposed to be constructed to consider the application for a construction certificate. The board shall convene a local public hearing in response to a request from the planning and zoning commission, mayor of a city, or county fiscal court of a jurisdiction where the facility is proposed to be located. If the facility is proposed to be located in more than one (1) county, the board may convene a local public hearing and the hearing shall be held in the county with the largest population not more than sixty (60) days after receipt of a completed application. Absent the minimum number of requests for a local public hearing, the board may conduct all evidentiary proceedings in Franklin County.
- (2) In any hearing on an application for a construction certificate, the board shall not be bound by the technical rules of legal evidence. Any hearing shall be conducted pursuant to and in conformance with rules and requirements set forth by the board in administrative regulations promulgated pursuant to KRS 278.702(2).
- (3) The parties to a proceeding before the board shall include:
  - (a) The applicant; and
  - (b) Any person having been granted the right of intervention pursuant to subsection (4) of this section.
- (4) Any interested person, including a person residing in a county or municipal corporation in which the facility is proposed to be constructed may, upon motion to the board, be granted leave to intervene as a party to a proceeding held pursuant to this section.
- (5) Any party to a proceeding held pursuant to this section or any final determination pursuant to KRS 278.710 may, within thirty (30) days after service of the board's final ruling, bring an action against the board in the Circuit Court of the county in which the facility is proposed to be constructed to vacate or set aside the ruling on grounds that the ruling is arbitrary, capricious, or otherwise unlawful or unreasonable. Any party instituting an action for review of the board's ruling in the Circuit Court of the county in which the facility is proposed to be constructed shall give notice to all parties of record in the board's proceeding.

**Effective:** April 24, 2002

**History:** Created 2002 Ky. Acts ch. 365, sec. 7, effective April 24, 2002.

**278.714 Application for certificate to construct nonregulated electric transmission line -- Granting or denial -- Public hearing -- Fee.**

- (1) No person shall commence to construct a nonregulated electric transmission line without a construction certificate issued by the board. An application for a construction certificate shall be filed at the offices of the Public Service Commission along with an application fee as set forth in subsection (5) of this section.
- (2) A completed application shall include the following:
  - (a) The name, address, and telephone number of the person proposing construction of the nonregulated transmission line;
  - (b) A full description of the proposed route of the transmission line and its appurtenances. The description shall include a map or maps showing:
    1. The location of the proposed line and all proposed structures that will support it;
    2. The proposed right-of-way limits;
    3. Existing property lines and the names of persons who own the property over which the line will cross; and
    4. The distance of the proposed line from residential neighborhoods, schools, and public and private parks within one (1) mile of the proposed facilities;
  - (c) A full description of the proposed line and appurtenances, including the following:
    1. Initial and design voltages and capacities;
    2. Length of line;
    3. Terminal points; and
    4. Substation connections;
  - (d) A statement that the proposed transmission line and appurtenances will be constructed and maintained in accordance with accepted engineering practices and the National Electric Safety Code;
  - (e) Evidence that public notice has been given by publication in a newspaper of general circulation in the general area concerned. Public notice shall include the location of the proposed line, shall state that the proposed line is subject to approval by the board, and shall provide the telephone number and address of the Public Service Commission; and
  - (f) Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed line is to be located, and upon the chief officer of each public agency charged with the duty of planning land use in the general area in which the line is proposed to be located.
- (3) Within ninety (90) days of receipt of the application, or one hundred twenty (120) days if a local public hearing is held, the board shall, by majority vote, grant or deny

the construction certificate either in whole or in part. Action to grant the certificate shall be based on the board's determination that the proposed route of the line will minimize significant adverse impact on the scenic assets of Kentucky and that the applicant will construct and maintain the line according to all applicable legal requirements. In addition, the board may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric transmission facilities in the Commonwealth. If the board determines that locating the transmission line will result in significant degradation of scenic factors or if the board determines that the construction and maintenance of the line will be in violation of applicable legal requirements, the board may deny the application or condition the application's approval upon relocation of the route of the line, or changes in design or configuration of the line.

- (4) A public hearing on an application to construct a nonregulated electric transmission line may be held in accordance with the provisions of KRS 278.712.
- (5) The board shall promulgate administrative regulations to establish an application fee for a construction certificate for a nonregulated transmission line in accordance with KRS 278.706(3).

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 137, sec. 2, effective July 12, 2006. -- Created 2002 Ky. Acts ch. 365, sec. 8, effective April 24, 2002.

**278.716 Siting fund.**

- (1) There is hereby created a trust and agency account in the Public Service Commission called the "siting fund."
- (2) All fees received by the board for the purpose of administering KRS 278.700 to 278.716 shall be deposited into the siting fund. The fund shall not lapse and all expenditures from the fund shall be used to implement KRS 278.700 to 278.716.

**Effective:** April 24, 2002

**History:** Created 2002 Ky. Acts ch. 365, sec. 9, effective April 24, 2002.

### **278.990 Penalties.**

- (1) Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.
- (2) Actions to recover the principal amount due and penalties under this chapter shall be brought in the name of the Commonwealth in the Franklin Circuit Court. Whenever any utility is subject to a penalty under this chapter, the commission shall certify the facts to its counsel, who shall bring an action for recovery of the principal amount due and the penalty. The commission may compromise and dismiss the action on terms approved by the court. The principal amount due shall be paid into the State Treasury and credited to the account of the commission, and all penalties recovered in such actions shall be paid into the State Treasury and credited to the general fund.
- (3) Any utility that fails to pay an assessment as provided for by KRS 278.130 to 278.150 shall forfeit and pay to the state one thousand dollars (\$1,000), and twenty-five dollars (\$25) for each day it fails to pay the assessment, and shall not be released thereby from its liability for the assessment.
- (4) Any utility that issues any securities or evidences of indebtedness, or assumes any obligation or liability in respect to the securities or evidences of indebtedness of any other person, or makes any sale or other disposition of securities or evidences of indebtedness, or the proceeds thereof, for purposes other than the purposes specified in the order of the commission made with respect thereto under KRS 278.300, shall be fined not more than ten thousand dollars (\$10,000).
- (5) Any utility that violates any of the provisions of KRS 278.460 shall be fined not less than one hundred dollars (\$100) for each offense.
- (6) Any company that willfully fails to receive, transport, and deliver oil or gas as required by KRS 278.490 shall, in addition to being liable in damages to the injured person, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and each day of willful failure shall constitute a separate offense.

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

**Effective:** July 13, 1990

**History:** Amended 1990 Ky. Acts ch. 354, sec. 1, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 300, sec. 4, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 50, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 54, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 308, sec. 47. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 786, 842b-2, 2223-2, 3766b-1e, 3952-24, 3952-59, 3952-61, 4679f-2, 4679f-4.

## **278.992 Penalty for certain pipeline violations.**

- (1) Any person who violates any minimum safety standard adopted by the United States Department of Transportation pursuant to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq., or any amendments thereto, or any regulation adopted and filed pursuant to KRS Chapter 13A by the Public Service Commission governing the safety of pipeline facilities or the transportation of gas as those terms are defined in the Natural Gas Pipeline Safety Act, shall be subject to a civil penalty to be assessed by the Public Service Commission not to exceed twenty-five thousand dollars (\$25,000) for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed five hundred thousand dollars (\$500,000) for any related series of violations. Any civil penalty assessed for such a violation may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the Commonwealth of Kentucky to the person charged or may be recovered in a civil action in the Franklin Circuit Court.
- (2) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by the Natural Gas Pipeline Safety Act or any regulation or order issued pursuant to it shall, upon conviction, be subject for each offense to a fine of not more than five thousand dollars (\$5,000), imprisonment for a term not to exceed one (1) year, or both.

**Effective:** July 15, 1998

**History:** Amended 1998 Ky. Acts ch. 387, sec. 1, effective July 15, 1998. -- Amended 1990 Ky. Acts ch. 402, sec. 1, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 82, sec. 51, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 55, effective April 1, 1979. -- Created 1970 Ky. Acts ch. 289, sec. 1.