

Statutory basis for rate recovery of the cost of environmental controls by electric utilities in Kentucky

*Joint Interim Committee on Agriculture and
Natural Resources*

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Two applicable statutory mechanisms:

- Principal mechanism: Environmental surcharge KRS 278.183
- Also: certificate of public convenience and necessity (CPCN) KRS 278.020 (1)

Operation of both mechanisms is determined by statute, regulation and legal precedent

The environmental surcharge:

- Adopted by Kentucky General Assembly in 1992 – effective January 1, 1993
- Principally a response to federal Clean Air Act Amendments of 1990, which set limits on sulfur dioxide and nitrogen oxide emissions from coal-fired power plants
- Process is similar to rate case – allows intervenors, discovery, hearings, etc.

The environmental surcharge:

Section 1

... 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...

The environmental surcharge:

Section 1 (cont.)

... 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.

The environmental surcharge:

Section 1 (cont.)

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.

The environmental surcharge:

Sections 2-5

- Set the process by which utilities apply for an environmental surcharge and the PSC's consideration thereof
- Process is similar to ratemaking in its consideration of reasonable costs and rates of return
- Surcharge appears as separate line item in the bill, either as an additional increment or as a credit
- At two-year intervals, PSC may, as appropriate, roll environmental surcharges into base rates

The environmental surcharge:

Key points:

- **Presumption of compliance with environmental mandates**
- **Presumption of recovery of costs of complying with environmental mandates**
- **Utility entitled to rate of return on environmental investments**
- **Reasonability standard applies to compliance plan and rate surcharge**
- **If compliance plan include construction of facilities, utilities may file for CPCN as part of compliance plan**

The CPCN process:

Key points:

- Statute is general – parameters of PSC decision have evolved over time through legal precedents
- Applicant must show a need for proposed facility
- Utility must show it has considered reasonable options
- Wasteful duplication is not allowed
- “Least cost” principle flows from absence of wasteful duplication
- Grant of a CPCN leads to a presumption of future cost recovery

QUESTIONS