

1 AN ACT relating to retail electric suppliers.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) Retail electric suppliers shall maintain adequate service through owning or*
6 *contracting for sufficient electric generation capacity to meet, with reasonable*
7 *reserves, customer demand.*

8 *(2) Within sixty (60) days of the effective date of this Act, the commission shall*
9 *promulgate administrative regulations in accordance with KRS Chapter 13A*
10 *requiring retail electric suppliers to file an integrated resource plan with the*
11 *commission triennially, unless the retail electric supplier is a distribution*
12 *company with less than ten million dollars (\$10,000,000) in annual revenue or a*
13 *distribution cooperative organized under KRS Chapter 279.*

14 *(3) Integrated resource plans shall include the utility's resource assessment and*
15 *acquisition plan for providing an adequate and reliable supply of electricity to*
16 *meet forecasted electricity requirements at the lowest possible cost of forecasted*
17 *estimates.*

18 *(4) Retail electric suppliers required to file integrated resource plans under this*
19 *section shall not purchase capacity or energy from regional transmission*
20 *organizations or independent system operators to satisfy the requirements of this*
21 *section.*

22 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
23 READ AS FOLLOWS:

24 *(1) The exclusive privilege conferred to each retail electric supplier to furnish retail*
25 *electric service within its certified territory pursuant to Section 5 of this Act shall*
26 *be a property right of the Commonwealth.*

27 *(2) In any proceeding on an application filed pursuant to subsection (6) or (7) of*

1 Section 6 of this Act regarding the acquisition, sale, or transfer of control of a
 2 retail electric supplier, the commission shall:

3 (a) Consider the amount paid in excess of the retail electric supplier's net book
 4 value to represent the value of the privilege conferred by Section 5 of this
 5 Act; and

6 (b) Have the authority, in consideration of subsection (13) of Section 6 of this
 7 Act to determine what amount of the proposed purchase price in excess of
 8 net book value, if any, should be paid to the customers of the retail electric
 9 supplier.

10 (3) As the privilege conferred to retail electric suppliers is a property right of the
 11 Commonwealth, the commission may require any excess of net book value
 12 proposed to be paid for the sale, acquisition, or transfer of control of the electric
 13 retail supplier to be passed back to customers of the retail electric supplier in the
 14 form and manner prescribed by the commission.

15 ➔Section 3. KRS 278.010 is amended to read as follows:

16 As used in KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and
 17 278.990, unless the context otherwise requires:

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

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

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

27 (a) The generation, production, transmission, or distribution of electricity to or

- 1 for the public, for compensation, for lights, heat, power, or other uses;
- 2 (b) The production, manufacture, storage, distribution, sale, or furnishing of
3 natural or manufactured gas, or a mixture of same, to or for the public, for
4 compensation, for light, heat, power, or other uses;
- 5 (c) The transporting or conveying of gas, crude oil, or other fluid substance by
6 pipeline to or for the public, for compensation;
- 7 (d) The diverting, developing, pumping, impounding, distributing, or furnishing
8 of water to or for the public, for compensation;
- 9 (e) The transmission or conveyance over wire, in air, or otherwise, of any
10 message by telephone or telegraph for the public, for compensation; or
- 11 (f) The collection, transmission, or treatment of sewage for the public, for
12 compensation, if the facility is a subdivision collection, transmission, or
13 treatment facility plant that is affixed to real property and is located in a
14 county containing a city of the first class or is a sewage collection,
15 transmission, or treatment facility that is affixed to real property, that is
16 located in any other county, and that is not subject to regulation by a
17 metropolitan sewer district or any sanitation district created pursuant to KRS
18 Chapter 220;
- 19 (4) "Retail electric supplier" means any person, firm, corporation, association, or
20 cooperative corporation, excluding municipal corporations, engaged in the
21 furnishing of retail electric service;
- 22 (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS
23 278.017;
- 24 (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is
25 being or has been substantially used to supply retail electric service and includes all
26 lines from the distribution substation to the electric consuming facility but does not
27 include any transmission facilities used primarily to transfer energy in bulk;

- 1 (7) "Retail electric service" means electric service furnished to a consumer for ultimate
2 consumption, but does not include wholesale electric energy furnished by an
3 electric supplier to another electric supplier for resale;
- 4 (8) "Electric-consuming facilities" means everything that utilizes electric energy from a
5 central station source;
- 6 (9) "Generation and transmission cooperative" or "G&T" means a utility formed under
7 KRS Chapter 279 that provides electric generation and transmission services;
- 8 (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that
9 provides retail electric service;
- 10 (11) "Facility" includes all property, means, and instrumentalities owned, operated,
11 leased, licensed, used, furnished, or supplied for, by, or in connection with the
12 business of any utility;
- 13 (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation
14 for service rendered or to be rendered by any utility, and any rule, regulation,
15 practice, act, requirement, or privilege in any way relating to such fare, toll, charge,
16 rental, or other compensation, and any schedule or tariff or part of a schedule or
17 tariff thereof;
- 18 (13) "Service" includes any practice or requirement in any way relating to the service of
19 any utility, including the voltage of electricity, the heat units and pressure of gas,
20 the purity, pressure, and quantity of water, and in general the quality, quantity, and
21 pressure of any commodity or product used or to be used for or in connection with
22 the business of any utility, but does not include Voice over Internet Protocol (VoIP)
23 service;
- 24 (14) "Adequate service" means having sufficient capacity, including generating
25 capacity, to meet the maximum estimated requirements of the customer to be
26 served during the year following the commencement of permanent service and to
27 meet the maximum estimated requirements of other actual customers to be supplied

- 1 from the same lines or facilities across each~~[during such]~~ year and to assure such
2 customers of reasonable continuity of service;
- 3 (15) "Commission" means the Public Service Commission of Kentucky;
- 4 (16) "Commissioner" means one (1) of the members of the commission;
- 5 (17) "Demand-side management" means any conservation, load management, or other
6 utility activity intended to influence the level or pattern of customer usage or
7 demand, including home energy assistance programs;
- 8 (18) "Affiliate" means a person that controls or that is controlled by, or is under common
9 control with, a utility;
- 10 (19) "Control" means the power to direct the management or policies of a person
11 through ownership, by contract, or otherwise;
- 12 (20) "CAM" means a cost allocation manual which is an indexed compilation and
13 documentation of a company's cost allocation policies and related procedures;
- 14 (21) "Nonregulated activity" means the provision of competitive retail gas or electric
15 services or other products or services over which the commission exerts no
16 regulatory authority;
- 17 (22) "Nonregulated" means that which is not subject to regulation by the commission;
- 18 (23) "Regulated activity" means a service provided by a utility or other person, the rates
19 and charges of which are regulated by the commission;
- 20 (24) "USoA" means uniform system of accounts which is a system of accounts for
21 public utilities established by the FERC and adopted by the commission;
- 22 (25) "Arm's length" means the standard of conduct under which unrelated parties, each
23 party acting in its own best interest, would negotiate and carry out a particular
24 transaction;
- 25 (26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class
26 of customer, activity, or business unit that is attributable to another;
- 27 (27) "Solicit" means to engage in or offer for sale a good or service, either directly or

- 1 indirectly and irrespective of place or audience;
- 2 (28) "USDA" means the United States Department of Agriculture;
- 3 (29) "FERC" means the Federal Energy Regulatory Commission;
- 4 (30) "SEC" means the Securities and Exchange Commission;
- 5 (31) "Commercial mobile radio services" has the same meaning as in 47 C.F.R. sec. 20.3
- 6 and includes the term "wireless" and service provided by any wireless real time two
- 7 (2) way voice communication device, including radio-telephone communications
- 8 used in cellular telephone service, personal communications service, and the
- 9 functional or competitive equivalent of a radio-telephone communications line used
- 10 in cellular telephone service, a personal communications service, or a network radio
- 11 access line; and
- 12 (32) "Voice over Internet Protocol" or "VoIP" has the same meaning as in federal law.

13 ➔Section 4. KRS 278.016 is amended to read as follows:

14 It is hereby declared to be in the public interest that, in order to encourage the orderly

15 development of retail electric service, to avoid wasteful duplication of distribution

16 facilities, to avoid unnecessary encumbering of the landscape of the Commonwealth of

17 Kentucky, to prevent the waste of materials and natural resources, for the public

18 convenience and necessity and to minimize disputes between retail electric suppliers

19 which may result in inconvenience, diminished efficiency and higher costs in serving the

20 consumer, the state be divided into geographical areas, establishing the areas within

21 which each retail electric supplier *has the privilege*~~[is]~~ to provide the retail electric

22 service as provided in KRS 278.016 to 278.020 and, except as otherwise provided, no

23 retail electric supplier shall furnish retail electric service in the certified territory of

24 another retail electric supplier.

25 ➔Section 5. KRS 278.018 is amended to read as follows:

- 26 (1) Except as otherwise provided herein, each retail electric supplier shall have the
- 27 exclusive *privilege*~~[right]~~ to furnish retail electric service to all electric-consuming

1 facilities located within its certified territory, and shall not furnish, make available,
2 render or extend its retail electric service to a consumer for use in electric-
3 consuming facilities located within the certified territory of another retail electric
4 supplier; provided that any retail electric supplier may extend its facilities through
5 the certified territory of another retail electric supplier, if such extension is
6 necessary for such supplier to connect any of its facilities or to serve its consumers
7 within its own certified territory. In the event that a new electric-consuming facility
8 should locate in two (2) or more adjacent certified territories, the commission shall
9 determine which retail electric supplier shall serve said facility based on criteria in
10 KRS 278.017(3).

11 (2) Except as provided in subsections (3) and (5) of this section, any new electric-
12 consuming facility located in an area which has not as yet been included in a map
13 issued by the commission, pursuant to KRS 278.017(2), or certified, pursuant to
14 KRS 278.017(4), shall be furnished retail electric service by the retail electric
15 supplier which has an existing distribution line in closer proximity to such electric-
16 consuming facility than is the nearest existing distribution line of any other retail
17 electric supplier. Any disputes under this subsection shall be resolved by the
18 commission.

19 (3) The commission may, after a hearing had upon due notice, make such findings as
20 may be supported by proof as to whether any retail electric supplier operating in a
21 certified territory is rendering or proposes to render adequate service to an electric-
22 consuming facility and in the event the commission finds that such retail electric
23 supplier is not rendering or does not propose to render adequate service, the
24 commission may enter an order specifying in what particulars such retail electric
25 supplier has failed to render or propose to render adequate service and order that
26 such failure be corrected within a reasonable time, such time to be fixed in such
27 order.

1 (4) The commission may, after a hearing had upon due notice, make such findings
2 as may be supported by proof as to whether any retail electric supplier is not
3 rendering adequate service as a result of having insufficient electric generation
4 capacity to meeting the customer demand in accordance with Section 1 of this
5 Act, and in the event the commission finds that the retail electric supplier is not
6 rendering or does not propose to render adequate service, the commission may
7 enter an order:

8 (a) Specifying how the retail electric supplier has failed to render or propose to
9 render adequate service; and

10 (b) Requiring the failure be corrected within a reasonable time as determined
11 by the commission and fixed in the order.

12 (5) If, pursuant to subsection (3) or (4) of this section, the retail electric supplier so
13 ordered to correct such failure fails to comply with such order, the commission may
14 authorize another retail electric supplier to furnish retail electric service to the
15 facilities within the initial retail electric supplier's certified territory necessary to
16 ensure each facility is provided adequate service~~[such facility].~~

17 ~~(6)~~~~(4)~~ Except as provided in subsection (3) of this section, no retail electric supplier
18 shall furnish, make available, render or extend retail electric service to any electric-
19 consuming facility to which such service is being lawfully furnished by another
20 retail electric supplier on June 16, 1972, or to which retail electric service is
21 lawfully commenced thereafter in accordance with this section by another retail
22 electric supplier.

23 ~~(7)~~~~(5)~~ The provisions of KRS 278.016 to 278.020 shall not preclude any retail
24 electric supplier from extending its service after June 16, 1972, to property and
25 facilities owned and operated by said retail electric supplier.

26 ~~(8)~~~~(6)~~ Notwithstanding the effectuation of certified territories established by or
27 pursuant to KRS 278.016 to 278.020, and the exclusive right to service within such

1 territory, a retail electric supplier may contract with another retail electric supplier
2 for the purpose of allocating territories and consumers between such retail electric
3 suppliers and designating which territories and consumers are to be served by which
4 of said retail electric suppliers. Notwithstanding any other provisions of law, a
5 contract between retail electric suppliers as herein provided when approved by the
6 commission shall be valid and enforceable. The commission shall approve such a
7 contract if it finds that the contract will promote the purposes of KRS 278.016 and
8 will provide adequate and reasonable service to all areas and consumers affected
9 thereby.

10 ➔Section 6. KRS 278.020 is amended to read as follows:

- 11 (1) (a) No person, partnership, public or private corporation, or combination thereof
12 shall commence providing utility service to or for the public or begin the
13 construction of any plant, equipment, property, or facility for furnishing to the
14 public any of the services enumerated in KRS 278.010, except:
- 15 1. Retail electric suppliers for service connections to electric-consuming
16 facilities located within its certified territory;
 - 17 2. Ordinary extensions of existing systems in the usual course of business;
18 or
 - 19 3. A water district created under KRS Chapter 74 or a water association
20 formed under KRS Chapter 273 that undertakes a waterline extension or
21 improvement project if the water district or water association is a Class
22 A or B utility as defined in the uniform system of accounts established
23 by the commission according to KRS 278.220 and:
 - 24 a. The water line extension or improvement project will not cost
25 more than five hundred thousand dollars (\$500,000); or
 - 26 b. The water district or water association will not, as a result of the
27 water line extension or improvement project, incur obligations

1 requiring commission approval as required by KRS 278.300.

2 In either case, the water district or water association shall not, as a result
3 of the water line extension or improvement project, increase rates to its
4 customers;

5 until that person has obtained from the Public Service Commission a
6 certificate that public convenience and necessity require the service or
7 construction.

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

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

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

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

1 constitute an exercise of authority under the certificate.

2 (2) For the purposes of this section, construction of any electric transmission line of
3 one hundred thirty-eight (138) kilovolts or more and of more than five thousand
4 two hundred eighty (5,280) feet in length shall not be considered an ordinary
5 extension of an existing system in the usual course of business and shall require a
6 certificate of public convenience and necessity. However, ordinary extensions of
7 existing systems in the usual course of business not requiring such a certificate shall
8 include:

9 (a) The replacement or upgrading of any existing electric transmission line; or

10 (b) The relocation of any existing electric transmission line to accommodate
11 construction or expansion of a roadway or other transportation infrastructure;
12 or

13 (c) An electric transmission line that is constructed solely to serve a single
14 customer and that will pass over no property other than that owned by the
15 customer to be served.

16 (3) Prior to granting a certificate of public convenience and necessity to construct
17 facilities to provide the services set forth in KRS 278.010(3)(f), the commission
18 shall require the applicant to provide a surety bond, or a reasonable guaranty that
19 the applicant shall operate the facilities in a reasonable and reliable manner for a
20 period of at least five (5) years. The surety bond or guaranty shall be in an amount
21 sufficient to ensure the full and faithful performance by the applicant or its
22 successors of the obligations and requirements of this chapter and of all applicable
23 federal and state environmental requirements. However, no surety bond or guaranty
24 shall be required for an applicant that is a water district or water association or for
25 an applicant that the commission finds has sufficient assets to ensure the continuity
26 of sewage service.

27 (4) No utility shall exercise any right or privilege under any franchise or permit, after

1 the exercise of that right or privilege has been voluntarily suspended or
2 discontinued for more than one (1) year, without first obtaining from the
3 commission, in the manner provided in subsection (1) of this section, a certificate of
4 convenience and necessity authorizing the exercise of that right or privilege.

5 (5) No utility shall apply for or obtain any franchise, license, or permit from any city or
6 other governmental agency until it has obtained from the commission, in the
7 manner provided in subsection (1) of this section, a certificate of convenience and
8 necessity showing that there is a demand and need for the service sought to be
9 rendered.

10 (6) No person shall acquire or transfer ownership of, or control, or the right to control,
11 any utility under the jurisdiction of the commission by sale of assets, transfer of
12 stock, or otherwise, or abandon the same, without prior approval by the
13 commission. The commission shall grant its approval if the person acquiring the
14 utility has the financial, technical, and managerial abilities to provide reasonable
15 service.

16 (7) No individual, group, syndicate, general or limited partnership, association,
17 corporation, joint stock company, trust, or other entity (an "acquirer"), whether or
18 not organized under the laws of this state, shall acquire control, either directly or
19 indirectly, of any utility furnishing utility service in this state, without having first
20 obtained the approval of the commission. Any acquisition of control without prior
21 authorization shall be void and of no effect. As used in this subsection, the term
22 "control" means the possession, directly or indirectly, of the power to direct or
23 cause the direction of the management and policies of a utility, whether through the
24 ownership of voting securities, by effecting a change in the composition of the
25 board of directors, by contract or otherwise. Control shall be presumed to exist if
26 any individual or entity, directly or indirectly, owns ten percent (10%) or more of
27 the voting securities of the utility. This presumption may be rebutted by a showing

1 that ownership does not in fact confer control. Application for any approval or
2 authorization shall be made to the commission in writing, verified by oath or
3 affirmation, and be in a form and contain the information as the commission
4 requires. The commission shall approve any proposed acquisition when it finds that
5 the same is to be made in accordance with law, for a proper purpose and is
6 consistent with the public interest. The commission may make investigation and
7 hold hearings in the matter as it deems necessary, and thereafter may grant any
8 application under this subsection in whole or in part and with modification and
9 upon terms and conditions as it deems necessary or appropriate. The commission
10 shall grant, modify, refuse, or prescribe appropriate terms and conditions with
11 respect to every such application within sixty (60) days after the filing of the
12 application therefor, unless it is necessary, for good cause shown, to continue the
13 application for up to sixty (60) additional days. The order continuing the application
14 shall state fully the facts that make continuance necessary. In the absence of that
15 action within that period of time, any proposed acquisition shall be deemed to be
16 approved.

- 17 (8) Subsection (7) of this section shall not apply to any acquisition of control of any:
- 18 (a) Utility which derives a greater percentage of its gross revenue from business
19 in another jurisdiction than from business in this state if the commission
20 determines that the other jurisdiction has statutes or rules which are applicable
21 and are being applied and which afford protection to ratepayers in this state
22 substantially equal to that afforded such ratepayers by subsection (7) of this
23 section;
- 24 (b) Utility by an acquirer who directly, or indirectly through one (1) or more
25 intermediaries, controls, or is controlled by, or is under common control with,
26 the utility, including any entity created at the direction of such utility for
27 purposes of corporate reorganization; or

1 (c) Utility pursuant to the terms of any indebtedness of the utility, provided the
2 issuance of indebtedness was approved by the commission.

3 (9) In a proceeding on an application filed pursuant to this section, any interested
4 person, including a person over whose property the proposed transmission line will
5 cross, may request intervention, and the commission shall, if requested, conduct a
6 public hearing in the county in which the transmission line is proposed to be
7 constructed, or, if the transmission line is proposed to be constructed in more than
8 one county, in one of those counties. The commission shall issue its decision no
9 later than ninety (90) days after the application is filed, unless the commission
10 extends this period, for good cause, to one hundred twenty (120) days. The
11 commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its
12 discretion, it deems it necessary to hire a competent, qualified and independent firm
13 to assist it in reaching its decision. The issuance by the commission of a certificate
14 that public convenience and necessity require the construction of an electric
15 transmission line shall be deemed to be a determination by the commission that, as
16 of the date of issuance, the construction of the line is a prudent investment.

17 (10) The commission shall not approve any application under subsection (6) or (7) of
18 this section for the transfer of control of a utility described in KRS 278.010(3)(f)
19 unless the commission finds, in addition to findings required by those subsections,
20 that the person acquiring the utility has provided evidence of financial integrity to
21 ensure the continuity of sewage service in the event that the acquirer cannot
22 continue to provide service.

23 (11) The commission shall not accept for filing an application requesting authority to
24 abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease
25 providing services unless the applicant has provided written notice of the filing to
26 the following:

27 (a) Kentucky Division of Water;

- 1 (b) Office of the Attorney General; and
- 2 (c) The county judge/executive, mayor, health department, planning and zoning
- 3 commission, and public sewage service provider of each county and each city
- 4 in which the utility provides utility service.
- 5 (12) The commission may grant any application requesting authority to abandon
- 6 facilities that provide services as set forth in KRS 278.010(3)(f) or to cease
- 7 providing services upon terms and conditions as the commission deems necessary
- 8 or appropriate, but not before holding a hearing on the application and no earlier
- 9 than ninety (90) days from the date of the commission's acceptance of the
- 10 application for filing, unless the commission finds it necessary for good cause to act
- 11 upon the application earlier.
- 12 (13) *In a proceeding on an application filed pursuant to subsection (6) or (7) of this*
- 13 *section regarding the acquisition, sale, or transfer of control of a retail electric*
- 14 *supplier, the commission shall have the authority to determine whether public*
- 15 *ownership is more beneficial than private ownership, based on which ownership*
- 16 *may achieve lower rates. A determination may include a review of the price paid*
- 17 *for the acquisition, sale, or transfer of control, and the likelihood public*
- 18 *ownership would have been possible based on the sale price. For purposes of this*
- 19 *section, a retail electric supplier organized under KRS Chapter 279 shall be*
- 20 *deemed to have public ownership.*
- 21 **(14)** If any provision of this section or the application thereof to any person or
- 22 circumstance is held invalid, the invalidity shall not affect other provisions or
- 23 applications of this section which can be given effect without the invalid provision
- 24 or application, and to that end the provisions are declared to be severable.