The following bill was reported to the House from the Senate and ordered to be printed.
AN ACT relating to the Public Service Commission.

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

Section 1. KRS 278.020 is amended to read as follows:

(1) (a) 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:

1. Retail electric suppliers for service connections to electric-consuming
facilities located within its certified territory;

2. Ordinary extensions of existing systems in the usual course of business;

or

3. [(2.)] A water district created under KRS Chapter 74 or a water association
formed under KRS Chapter 273 that undertakes a waterline extension or
improvement project if the water district or water association is a Class
A or B utility as defined in the uniform system of accounts established
by the commission according to KRS 278.220 and:

a. The water line extension or improvement project will not cost
more than five hundred thousand dollars ($500,000); or

b. The water district or water association will not, as a result of the
water line extension or improvement project, incur obligations
requiring commission approval as required by KRS 278.300.

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

until that person has obtained from the Public Service Commission a
certificate that public convenience and necessity require the service or
construction.
(b) 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.

(c) 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.

(d) 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.

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

(4) 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.

(5) 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.
(6) 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.

(7) 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.

(8) Subsection (7) 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 (7) 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.

(9) 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.

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

(11) The commission shall not accept for filing an application requesting authority to
abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease
providing services unless the applicant has provided written notice of the filing to
the following:
(a) Kentucky Division of Water;
(b) Office of the Attorney General; and
(c) The county judge/executive, mayor, health department, planning and zoning
commission, and public sewage service provider of each county and each city
in which the utility provides utility service.

(12) The commission may grant any application requesting authority to abandon
facilities that provide services as set forth in KRS 278.010(3)(f) or to cease
providing services upon terms and conditions as the commission deems necessary
or appropriate, but not before holding a hearing on the application and no earlier
than ninety (90) days from the date of the commission's acceptance of the
application for filing, unless the commission finds it necessary for good cause to act
upon the application earlier.

(13) 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.

Section 2. KRS 278.183 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter, effective January 1, 1993, a
utility shall be entitled to the current recovery of its costs of complying with the
Federal Clean Air Act as amended and those federal, state, or local environmental
requirements which apply to coal combustion wastes and by-products from facilities
utilized for production of energy from coal in accordance with the utility's
compliance plan as designated in subsection (2) of this section. These costs shall
include a reasonable return on construction and other capital expenditures and
reasonable operating expenses for any plant, equipment, property, facility, or other
action to be used to comply with applicable environmental requirements set forth in
this section. Operating expenses include all costs of operating and maintaining
environmental facilities, income taxes, property taxes, other applicable taxes, and
depreciation expenses as these expenses relate to compliance with the
environmental requirements set forth in this section.

(2) Recovery of costs pursuant to subsection (1) of this section that are not already
included in existing rates shall be by environmental surcharge to existing rates
imposed as a positive or negative adjustment to customer bills in the second month
following the month in which costs are incurred. Each utility, before initially
imposing an environmental surcharge pursuant to this subsection, shall thirty (30)
days in advance file a notice of intent to file said plan and subsequently submit to
the commission a plan, including any application required by KRS 278.020(1), for
complying with the applicable environmental requirements set forth in subsection (1) of this section. The plan shall include the utility's testimony concerning a reasonable return on compliance-related capital expenditures and a tariff addition containing the terms and conditions of a proposed surcharge as applied to individual rate classes. Within six (6) months of submittal, the commission shall conduct a hearing upon the request of a party, and shall, regardless of whether or not a hearing is requested:

(a) Consider and approve the plan and rate surcharge if the commission finds the plan and rate surcharge reasonable and cost-effective for compliance with the applicable environmental requirements set forth in subsection (1) of this section;

(b) Establish a reasonable return on compliance-related capital expenditures; and

(c) Approve the application of the surcharge.

(3) The amount of the monthly environmental surcharge shall be filed with the commission ten (10) days before it is scheduled to go into effect, along with supporting data to justify the amount of the surcharge which shall include data and information as may be required by the commission. At six (6) month intervals, the commission shall review past operations of the environmental surcharge of each utility, and after hearing, as ordered, shall, by temporary adjustment in the surcharge, disallow any surcharge amounts found not just and reasonable and reconcile past surcharges with actual costs recoverable pursuant to subsection (1) of this section. Every two (2) years the commission shall review and evaluate past operation of the surcharge, and after hearing, as ordered, shall disallow improper expenses, and to the extent appropriate, incorporate surcharge amounts found just and reasonable into the existing base rates of each utility.

(4) The commission may employ competent, qualified independent consultants to assist the commission in its review of the utility's plan of compliance as specified in
subsection (2) of this section. The cost of any consultant shall be included in the surcharge approved by the commission.

(5) The commission shall retain all jurisdiction granted by this section and KRS 278.020 to review the environmental surcharge authorized by this section and any complaints as to the amount of any environmental surcharge or the incorporation of any environmental surcharge into the existing base rate of any utility.

Section 3. The following KRS sections are repealed:

278.510 Consolidation of telephone lines.

278.545 Countywide service by major telephone company required, when.