Legal Framework for Utility Regulation in Kentucky

Presentation to the Georgian National Energy and Water Supply Regulatory Commission

Kutaisi, Georgia
September 2010

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LEGAL FRAMEWORK FOR REGULATION IN KENTUCKY

ORDER OF PRESENTATION

- PSC’s Authority: Sources/Limitations
- PSC Jurisdiction
- Regulatory Powers
- Judicial Review
LEGAL FRAMEWORK FOR REGULATION IN KENTUCKY

- PSC AUTHORITY: SOURCES/LIMITATIONS
  - U.S. Constitution
  - U.S. Statutes
  - Enabling Statute – KRS Chapter 278
LEGAL FRAMEWORK FOR REGULATION IN KENTUCKY

- **U.S. CONSTITUTION**
  - All powers not expressly conferred to Federal Government conferred to States
  - Commerce Clause: Federal Government has plenary authority over interstate commerce
  - 14th Amendment: States cannot deprive persons of property without due process of law
LEGAL FRAMEWORK FOR REGULATION IN KENTUCKY

- **U.S. STATUTES**
  - Federal Gas Pipeline Safety Act
  - 1996 Telecommunications Act
  - 1934 Federal Power Act
LEGAL FRAMEWORK FOR REGULATION IN KENTUCKY

- **PSC ACT OF 1934**
  - Created Commission
  - Established PSC Jurisdiction
  - Established PSC Powers
  - Ky Courts:
    - PSC is creature of statute
    - PSC has only those powers expressly authorized by statute and necessarily implied
LEGAL FRAMEWORK FOR REGULATION IN KENTUCKY

- **PSC JURISDICTION**
  - Exclusive Jurisdiction Over Rates and Service of Utilities
  - What is a Utility?
  - Entities Excluded from Definition of Utility
  - What is a rate?
  - What is service?
LEGAL FRAMEWORK FOR REGULATION IN KENTUCKY

PSC JURISDICTION: NON-UTILITY

- Farm-Taps
- Enforcement of U.S. Pipeline Safety Laws in Kentucky
LEGAL FRAMEWORK FOR REGULATION IN KENTUCKY

- REGULATORY POWERS
  - Certificates of Public Convenience & Necessity
  - PSC Approval of Transfer of Control
  - PSC Approval of Issuance of Securities/Evidences of Indebtedness
  - PSC Review/Approval of Rate/Adjustments
LEGAL FRAMEWORK FOR REGULATION IN KENTUCKY

REGULATORY POWERS

- Filed Rate Doctrine (KRS 278.160)
- Rate/Service Investigations
- Management Audits
- Accounting/Recordkeeping Requirements
LEGAL FRAMEWORK FOR REGULATION IN KENTUCKY

REGULATORY POWERS

- Assessment of Penalties
LEGAL FRAMEWORK FOR REGULATION IN KENTUCKY

JUDICIAL REVIEW

• PSC Orders Subject to Judicial Review
• Affected Party May Bring Action For Review in Franklin Circuit Court
• PSC Order may be set aside if unlawful or unreasonable
JUDICIAL REVIEW

- Unlawful: Order violates a statute or state or federal constitution
- Unreasonable: Evidence presents no room for difference of opinion among reasonable minds.
- Burden of Proof on Party Challenging Order
JUDICIAL REVIEW

- Right to Appeal Franklin Circuit Court Decision to Kentucky Court of Appeals
Questions?