



State of Tennessee

PUBLIC CHAPTER NO. 245

HOUSE BILL NO. 191

By Representative McCormick

Substituted for: Senate Bill No. 197

By Senator Norris

AN ACT to amend Tennessee Code Annotated, Section 8-27-201; Title 65, Chapter 2; Section 65-4-303; Section 65-5-101; Section 65-5-103 and Section 65-1-102, relative to the Tennessee Regulatory Authority and the regulation of public utilities and carriers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-27-201(g), is amended by deleting the subsection and substituting instead the following:

(g)

(1) "State employee":

(A) Means

(i) Any person who is a state official, including members of the general assembly and legislative officials elected by the general assembly;

(ii) Any person who is employed in the service of, and whose compensation is payable by, the state;

(iii) Any person who is employed by the state whose compensation is paid, in whole or in part, from federal or other funds; or

(iv) Any director of the Tennessee regulatory authority;
and

(B) Does not include any person performing services on a contractual or percentage basis.

(2) The committee shall, subject to the availability of funds as certified by the commissioner of finance and administration, have the authority to establish additional criteria that must be met by a state employee to be eligible for participation in any insurance plan offered by the committee; provided, that persons currently participating in any plan offered by the committee who are not state employees as defined in this subsection (g) shall remain eligible to participate until such time as coverage is provided by an alternative state administered plan offered by the committee.

SECTION 2. Tennessee Code Annotated, Section 65-1-102(b), is amended by deleting the subsection and substituting instead the following:

(b) No person who owns, in an individual capacity or jointly with another person, any bonds, stocks, equity interest or other property in any business or entity regulated by the Tennessee regulatory authority, or who is an agent or employee in any way of any such business or entity, shall be eligible to serve as a director of the Tennessee regulatory authority.

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SECTION 3. Tennessee Code Annotated, Section Title 65, Chapter 2, is amended by adding the following language as a new section:

65-2-122

(a) The authority may establish optional services that may be purchased by regulated entities or other unregulated service providers, which are related to the exercise, administration or enforcement of jurisdiction delegated to the authority by state or federal law.

(b) The establishment of charges for services described in subsection (a) shall be cost-based.

(c) No charge for services as established in this section shall be applied to any party that does not expressly elect to use such services, and no party shall be required to elect to use such optional services as a condition of initiating any case before the authority.

SECTION 4. Tennessee Code Annotated, Section 65-4-303, is amended by deleting the section and substituting instead the following:

(a) The amount of the fee provided for in this section shall be measured by the amount of the gross receipts from intrastate operations of each public utility in excess of five thousand dollars (\$5,000).

(b)

(1) Except as provided in subdivision (b)(2), "gross receipts from intrastate operations":

(A) Means total revenues, before any deductions, which are recognized by the authority as utility revenue for the purpose of setting intrastate rates under chapter 5 of this title; and

(B) Does not include any revenues from directory operations; provided, the exclusion of these revenues from directory operations shall not affect the power of the authority to include or exclude these revenues in setting intrastate rates.

(2) For companies that elect market regulation pursuant to § 65-5-109(m), "gross receipts from intrastate operations" means the total revenue derived from the provision of intrastate services to non-affiliated telecommunications carriers, including specifically revenue from interconnection, collocation, billing and collection, inter-carrier compensation, services sold for resale and carrier access; provided, revenue derived from the provision of retail services and products to consumers that are not telecommunications carriers is excluded.

(c)

(1) The fee fixed and assessed against and to be paid by each public utility shall be due and payable on or before April 1, 2014, and each April 1 thereafter, and shall be based on the previous calendar year's gross receipts from intrastate operations. The fee shall be four dollars and twenty-five cents (\$4.25) per one thousand dollars (\$1,000) of such gross receipts over five thousand dollars (\$5,000), except as set forth in subdivision (c)(2) for companies that provide telecommunications services.

(2)

(i) Notwithstanding the calculations in subdivision (c)(1), the minimum inspection fee for companies that elect market regulation pursuant to § 65-5-109(m) shall be forty-nine percent (49%) of the inspection fee that was due by such company on April 1, 2012. Such

companies shall file with their fee payments a calculation of both the fee as calculated under subdivision (c)(1) and the alternative minimum calculation established in this subdivision (c)(2)(i).

(ii) Notwithstanding the calculation in subdivision (c)(1), the maximum inspection fee for a company providing telecommunications services that does not elect to enter market regulation shall be the inspection fee that was due by such company on April 1, 2012.

(iii) In no event, however, shall the minimum inspection fee for any telecommunications service company be less than one hundred dollars (\$100).

(d) The fee shall be due and payable on or before April 1, 2014, and each April 1 thereafter.

(e) The fee provided for in this section may be recovered by a public utility operating under rate of return regulation through either a rate case proceeding pursuant to § 65-5-103 or through a separate recovery mechanism to be determined by the authority. Nothing in this section shall alter the manner in which public utilities that operate under price regulation or market regulation, pursuant to § 65-5-109, may set rates. Nothing in this section shall alter the limitations on the jurisdiction of the authority over market-regulated companies in § 65-5-109. A public utility may recoup its inspection fees by including a line item on its subscribers' bills.

SECTION 5. Tennessee Code Annotated, Section 65-5-103, is amended by adding the following language as a new subsection:

(d) The authority is authorized to implement alternative regulatory methods to allow for public utility rate reviews and cost recovery in lieu of a general rate case proceeding before the authority.

(1)

(A) For all alternative regulatory methods, the authority is authorized to develop minimum filing requirements and procedural schedules; provided, however, a final determination of the authority pursuant to any alternative regulatory method be made by the authority no later than one hundred twenty (120) days from the initial filing by the public utility.

(B) If the authority denies an alternative regulatory method filed by a public utility, the authority shall set forth with specificity the reasons for its denial and the public utility shall have the right to re-file, without prejudice, an amended plan or amendment within sixty (60) days of the issuance of a final order. The authority shall thereafter have sixty (60) days to approve or deny the amended plan or amendment.

(2)

(A) A public utility may request and the authority may authorize a mechanism to recover the operational expenses, capital costs or both, if such expenses or costs are found by the authority to be in the public interest, related to any one (1) of the following:

(i) Safety requirements imposed by the state or federal government;

(ii) Insuring the reliability of the public utility plant in service; or

(iii) Weather-related natural disasters.

(B) The authority shall grant recovery and shall authorize a separate recovery mechanism or adjust rates to recover operational expenses, capital costs or both associated with the investment in such safety and reliability facilities, including the return on safety and reliability investments at the rate of return approved by the authority at the public utility's most recent general rate case pursuant to §§ 65-5-101 and 65-5-103(a), upon a finding that such mechanism or adjustment is in the public interest.

(3)

(A) A public utility may request and the authority may authorize a mechanism to recover the operational expenses, capital costs or both related to the expansion of infrastructure for the purpose of economic development, if such expenses or costs are found by the authority to be in the public interest. Expansion of economic development infrastructure may include, but is not limited to, the following:

(i) Infrastructure and equipment associated with alternative motor vehicle transportation fuel;

(ii) Infrastructure and equipment associated with combined heat and power installations in industrial or commercial sites; and

(iii) Infrastructure that will provide opportunities for economic development benefits in the area to be directly served by the infrastructure.

(B) The authority shall grant recovery and shall authorize a separate recovery mechanism or adjust rates to recover operational expenses, capital costs or both associated with the investment in such economic development facilities, including the return on such economic development investments at the rate of return approved by the authority at the public utility's most recent general rate case pursuant to §§ 65-5-101 and 65-5-103(a), upon a finding that such mechanism or adjustment is in the public interest.

(4)

(A) A public utility may request and the authority may authorize a mechanism to recover expenses associated with efforts to promote economic development in its service territory, if such expenses are found by the authority to be in the public interest.

(i) Efforts to promote economic development may include, but are not limited to, foregone revenues associated with economic development riders and rates.

(ii) Expenses described in subdivision (d)(4)(A)(i) may be reflected in cost of service and be subject to recovery through the annual review process in subdivision (d)(6).

(B) Upon a finding that expenses to promote economic development have been incurred, the authority shall authorize a separate recovery mechanism or adjust rates to recover such expenses or grant recovery through the annual review process set forth in subdivision (d)(6), upon a finding that such mechanism or adjustment is in the public interest.

(5)

(A) A public utility may request and the authority may authorize a mechanism to recover the operational expenses, capital costs or both related to other programs that are in the public interest.

(B) A utility may request and the authority may authorize a mechanism to allow for and permit a more timely adjustment of rates resulting from changes in essential, non-discretionary expenses, such as fuel and power and chemical expenses.

(C) Upon a finding that such programs are in the public interest, the authority shall grant recovery and shall authorize a separate recovery mechanism or adjust rates to recover operational expenses, capital costs or both associated with the investment in other programs, including the rate of return approved by the authority at the public utility's most recent general rate case pursuant to §§ 65-5-101 and 65-5-103(a).

(6)

(A) A public utility may opt to file for an annual review of its rates based upon the methodology adopted in its most recent rate case pursuant to §§ 65-5-101 and 65-5-103(a), if applicable.

(B) In order for a public utility to be eligible to make an election to opt into an annual rate review, the public utility must have engaged in a general rate case pursuant to §§ 65-5-101 and 65-5-103(a) within the last five (5) years; provided, however, the authority may waive such requirement or increase the eligibility period upon a finding that doing such would be in the public interest.

(C) Pursuant to the procedures set forth in subdivision (d)(1), the authority shall review the annual filing by the public utility within one hundred twenty (120) days of receipt and order the public utility to make the adjustments to its tariff rates to provide that the public utility earns the authorized return on equity established in the public utility's most recent general rate case pursuant to §§ 65-5-101 and 65-5-103(a).

(D)

(i) A public utility may terminate an approved annual review plan only by filing a general rate case pursuant to §§ 65-5-101 and 65-5-103(a).

(ii) The authority may terminate an approved annual review plan only after citing the public utility to appear and show cause why the authority should not take such action pursuant to the procedures in § 65-2-106.

(iii) The authority or the public utility may propose a modification to the approved annual review plan for consideration by the authority. The authority shall determine whether any proposed modification is in the public interest and should be approved within the time frame set forth in subdivision (d)(6)(C). If the authority denies a modification to the approved annual review plan, the authority shall set forth with specificity the reasons for its denial.

(7) In addition to the alternative regulatory methods described in this subsection (d), a public utility may opt to file for other alternative regulatory methods. Upon a filing by a public utility for an alternative method not prescribed, the authority is empowered to adopt policies or procedures, that would permit a more timely review and revisions of the rates, tolls, fares, charges, schedules, classifications or rate structures of public utilities, and that would further streamline the regulatory process and reduce the cost and time associated with the ratemaking processes in §§ 65-5-101 and 65-5-103(a).

(e) For purposes of this section, the term "public utility" does not include a telecommunications carrier that elects market regulation pursuant to § 65-5-109.

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SECTION 6. This act shall take effect upon becoming law, the public welfare requiring it.

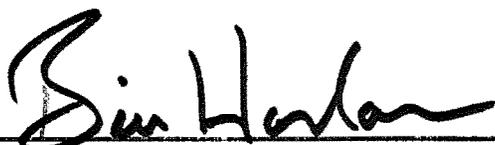
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PASSED: APRIL 8, 2013


BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES


RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 19th day of April 2013


BILL HASLAM, GOVERNOR