

278.190 Procedure when new schedule of rates filed -- Suspension of new rate schedule -- Burden of proof -- Refunds.

- (1) Whenever any utility files with the commission any schedule stating new rates, the commission may, upon its own motion, or upon complaint as provided in KRS 278.260, and upon reasonable notice, hold a hearing concerning the reasonableness of the new rates.
- (2) Pending the hearing and the decision thereon, and after notice to the utility, the commission may, at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service, but not for a longer period than five (5) months beyond the time when it would otherwise go into effect if an historical test period is used, or longer than six (6) months if a forward-looking test period is used, pursuant to KRS 278.192; and after such hearing, either completed before or after the rate, charge, classification, or service goes into effect, the commission may make those orders with reference thereto as it deems proper in the matter. If the proceeding has not been concluded and an order made at the expiration of five (5) months, or six (6) months, as appropriate, the utility may place the proposed change of rate, charge, classification, or service in effect at the end of that period after notifying the commission, in writing, of its intention so to do. Where increased rates or charges are thus made effective, the commission may, by order, require the interested utility or utilities to maintain their records in a manner as will enable them, or the commission, or any of its customers, to determine the amounts to be refunded and to whom due in the event a refund is ordered, and upon completion of the hearing and decision may, by further order, require such utility or utilities to refund to the persons in whose behalf the amounts were paid that portion of the increased rates or charges as by its decision shall be found unreasonable. Provided, however, if the commission, at any time, during the suspension period, finds that the company's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the period, the commission may, after any hearing or hearings, permit all or a portion of the rates to become effective under terms and conditions as the commission may, by order, prescribe.
- (3) At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility, and the commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible, and in any event not later than ten (10) months after the filing of such schedules.
- (4) If the commission, by order, directs any utility to make a refund, as hereinabove provided, of all or any portion of the increased rates or charges, the utility shall make the refund within sixty (60) days after a final determination of the proceeding by an order of the court or commission with or without interest in the discretion of the commission. If the utility fails to make the refund within sixty (60) days after the final determination, any party entitled to a refund may, after ten (10) days' written demand, bring an action in any court of competent jurisdiction of this state,

and may recover, in addition to the amount of the refund due, legal interest, court costs, and reasonable attorney's fees. No such action may be maintained unless instituted within one (1) year after the final determination. Any number of persons entitled to refunds may join in as plaintiffs in a single action and the court shall render a judgment severally for each plaintiff as his interest may appear.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 308, sec. 2, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 111, sec. 123, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 82, sec. 24, effective July 15, 1982; and ch. 242, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 26, effective April 1, 1979. -- Amended 1952 Ky. Acts ch. 46, sec. 2, effective March 5, 1952. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-16.