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Orba F. Traylor
Ashland College

Roy H. Owsley
Kentucky Municipal League

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LEGISLATION

THE PUBLIC SERVICE COMMISSION OF KENTUCKY

ORBA F. TRAYLOR* and ROY H. OWSLEY†

Beginning in 1907 with Wisconsin and New York, the burden of utility regulation has been shifted steadily from local control to the states by the establishment of centralized utility commissions so that today every state has a commission with some control over utilities with the exception of Delaware.¹ The action of the Kentucky legislature creating a public service commission in 1934 where there had been none before has significance because Kentucky and Arkansas were the only states taking such action during the depression.² Most of the more progressive jurisdictions from the point of view of utility regulation had already departed from using railroad commissions as permanent regulatory bodies.³

Publicized very little, the creation of the Kentucky public service commission may be one of the greater accomplishments of the Laffoon administration although the act creating the commission was not initiated and planned as an administration measure.⁴ But while there is nothing to indicate that the act

*Professor of Business Administration, Ashland College; Member Legal Publications Board, Northwestern University School of Law.
†Field Consultant, Kentucky Municipal League; Kentucky Correspondent for “Public Management” and “The Municipal Year Book”.

Indebtedness is due Dr. Paul J. Raver, Chief, Section of Rates and Research, Illinois Commerce Commission, and Professor Charles B. Elder, Northwestern University School of Law, for having edited the manuscript. The writers are especially indebted to Mr. Louis Cox, Secretary of the Public Service Commission of Kentucky, and Professor L. H. Carter of the University of Kentucky, for having checked its accuracy.

²Baldwin’s Kentucky Statutes Service (1934), c. 104a. The public utility act being short, further reference to it will be omitted.
³Mosher and Crawford, supra, note 1 at 14, and Jones and Bigham, Principles of Public Utilities (1931), p. 157 ff.
⁴“Proposed Law Would Establish Commission in Kentucky,” 23 Gas Age-Record 288 (March 24, 1934); “Kentucky Puts Utilities Under State Control; Commission Gets Full Power Over Rate Fixing,” Ibid. 313 (March 31, 1934); “House Passes Bill to Create Public Service Commission,” 13 Pub. Util. Fort. 424 (March 29, 1934); “Kentucky Commission Voted,” Ibid. 484 (April 12, 1934); “Utility Commission Bill Becomes Law,” Ibid. 544 (April 26, 1934); and U. S. News (April 9, 1934), at 11. Nowhere does it appear how there was any definite
was given active administration support in the House of Representatives, it was freely reported, and apparently generally understood, that the bill was supported in the Senate by administration forces at the insistence of the minority group in return for the latter's support of the administration's general program of legislation.\(^5\)

It seems to be generally believed that the act had the backing of the large utility companies of the state,\(^6\) but, be that as it may, its passage was probably due at least in part to the fact that the forces behind the legislation are part of the general tide of utility legislation which has swept the nation during the depression.\(^7\) However, the need for a public utility commission had been pointed out for sometime by Mr. Louis Cox, the first secretary of the Commission.\(^8\)

\(^5\) "Kentucky Commission Voted," supra, note 4; see also Louisville Courier-Journal (March 6, 1934), p. 1, col. 1; Ibid. (March 8, 1934), p. 1, col. 1. It is perhaps significant also that only one Republican member of the Senate voted against the bill, and that all but three of the Democratic Senators generally known to be aligned with the administration group of Democrats voted for the bill. These three were Senators Gibson, Mayer and Murphy, all of whom represented larger cities having municipal plants, the officials of which cities bitterly opposed the passage of the act chiefly because municipally owned plants were included in the Commission's jurisdiction. All the other nine Democratic Senators who voted against the bill were of the "anti-administration" group [for vote on the bill, see Senate Journal, Vol. 4, p. 4166 (Reg. Sess. 1934)].

\(^6\) This was repeatedly charged by spokesmen for a delegation which requested the governor to veto the bill (see Courier-Journal of March 11, 1934, p. 1, col. 6). Similar charges were made by Senator Gibson and others on the floor of the Senate during debate on the bill (see Courier-Journal of March 9, 1934, p. 1, col. 3). See also Courier-Journal (February 23, 1936), Section 3, p. 2, col. 1; and The Louisville Times (May 9, 1934), p. 12.


\(^8\) The best article written in anticipation of the creation of the Commission is that of Cox, The Regulation of Public Utilities, Other Than Railroads, By State Administrative Commissions, 20 Ky. L. J. 133 (1933). Also see Cox, The Abrogation of Public Utility Rate Contracts, 21 ibid. 129 (1933), which establishes the proposition that a state regulatory commission has complete control over rate contracts and considers what the situation would be if a utility commission were established in Kentucky.
LEGISLATIVE HISTORY

With the utility committee of the House practically unanimous for the bill which Mr. Cox had written and there being very little discussion on the floor of the House when the bill came up for passage, the bill was passed in the House by a vote of 62 to 19 after a motion to table the measures was rejected 66 to 10. A few days later it passed the Senate with a vote of 24 to 13 after a series of amendments were rejected.

The bill was introduced in the House by Representative Webb who later amended the measure to give the Commission the power to change existing utility rates because one of the purposes of the bill was to regulate existing rates considered exorbitant. The bill had the active support of Representative Beatty, chairman of the House utility committee, presumably because of the need for a utility commission as well as a railroad commission to settle utility matters as they might come up from time to time. This need was made manifest by the delay in the settlement of rates and franchise asked for by the Central Kentucky Natural Gas Company of Lexington, Kentucky. Representative Wallace Brown unsuccessfully tried to exempt municipally owned plants from the control of the Commission. An amendment by Representative Gilbert to make conveyors of electricity common carriers was adopted 44 to 27, the purpose of the amendment being to put electric companies in the same classification as other utilities classified as common carriers.

In the Senate there was quite a fight. It was through the parliamentary procedure of Senator Hiram Brock that the bill was finally passed, after some four hours of debate. Senator John Sugg had introduced a similar bill in the Senate, but when the House bill was passed he consented to its substitution for his
Although the vote in the Senate was more evenly divided (24 to 13), this did not keep the Senate from rejecting all amendments.

The strongest opposition to the bill came from the municipally owned utilities. Governor Laffoon, after having been requested by officials and civic leaders of numerous cities of the state to veto the bill because it did not exempt municipally owned plants from the jurisdiction of the commission, allowed it to become law without his signature. After voicing his belief that municipally owned plants should have been exempted, he stated that “its beneficial effects in Kentucky will depend entirely upon the manner of its administration.”

PROVISIONS OF THE ACT
1. Commission Organization and Jurisdiction

Organization. The Kentucky Public Service Commission which is created by the measure seems to have been inspired by a desire for regulation, and not necessarily because of economy of expenditure, since the Railroad Commission was left intact with control over transport utilities.

The Commission is to consist of three full-time members with four-year overlapping terms; the commissioner with the

Correspondence with Mr. Louis Cox, Secretary of the Public Service Commission of Kentucky (October 7, 1935).


This bill has occasioned the greatest contrariety of opinion amongst the citizens of Kentucky of any bill that was passed by the recent session of the general assembly. The governor has been importuned by many citizens of the commonwealth who are vitally interested in municipally owned utility plants to veto the bill for many reasons assigned by them. A greater number of citizens who are users of utility services of various kinds have insisted that the governor approve this bill.

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The scope of regulation authorized by the Act in not being as extensive as in some other jurisdictions probably makes three members sufficient. See infra, 455 ff.

The shortness of the tenure of the commissioners may be criticizable, but due to overlapping terms and the duties of the members not being as involved as they are in some jurisdictions, such criticism may not be so important.
longest term in office is to act as chairman. Commissioners are appointed by the Governor with the advice and consent of the Senate\textsuperscript{22} with an annual salary of $5,000.00.\textsuperscript{23} The provisions that each commissioner must be a resident of Kentucky and have resided in Kentucky for at least three years prior to his appointment may militate against the securing of as good a personnel as would otherwise be possible. The legislators are to be commended, however, in attempting to free the commissioners from political influence by providing that only two shall belong to the same party and that "if any of said commissioners becomes candidate for public office or becomes a member of any political party committee his office as commissioner shall be vacated \textit{ipso facto}."\textsuperscript{24} Furthermore, no member of the commission shall be eligible for election to any public office until two years after he has ceased to be a commissioner.\textsuperscript{25} Commissioners are removable by the Governor for cause subject to a hearing and appeal to the courts.\textsuperscript{26} While a majority is a quorum, any investigation, inquiry or hearing may be delegated by the Commission to one of the commissioners, the findings of whom become those of the Commission upon its approval.\textsuperscript{27}

\textsuperscript{22}Appointment as a method of selection has usually been considered more progressive than election because of the probability of securing better qualified men free from political influences. Mosher and Crawford, \textit{supra}, note 1, p. 54. That such a method has only been a hope is made evident by recollection of Insull's alleged political machinations in connection with the publicized case of Frank L. Smith. Wooddy, The Case of Frank L. Smith (1931). To the extent that commission regulation encroaches upon management and becomes entangled with political issues, appointment certainly will have its limitations in the future.

\textsuperscript{23}Salaries in other states have ranged from as low as $2,000.00 in Vermont to $15,000.00 in New York. Mosher and Crawford, \textit{supra}, note 1, p. 64. $5,000.00 as a maximum will likely be inadequate to attract men of as good caliber as might be desired.

\textsuperscript{24}Baldwin's Kentucky Statutes Service (1934), c. 104a. Also the non-eligibility provisions for appointment because of any official relationship to a utility subject to the Act, ownership of any stocks and bonds therein, or any pecuniary interest therein while stringent may be justified. Mosher and Crawford, \textit{supra}, note 1, p. 60.

\textsuperscript{25}This provision was not in the original bill. \textit{Cf. Journal of the House of Representatives}, Vol. 11, p. 1884 (Reg. Sess. 1934). Such a provision seems to present some hindrance towards the use of the Commission as a political stepping stone.

\textsuperscript{26}Most of the legislation enacted since 1930 has made the governor's power of removal absolute and has closed the courts to appeal by the removed commissioner. Marlett and Traylor, \textit{Public Utility Legislation in the Depression: II. Reorganization and Financing of Commissions}, \textit{supra}, note 5, p. 291.

\textsuperscript{27}This provision was a long sought for amendment by the Interstate Commerce Commission to the Interstate Commerce Act. Traylor, \textit{Recent Railroad Legislation and Developments}, \textit{supra}, note 7, 509.
Personnel. Respecting officers and employees, the Commission is specifically authorized to appoint a secretary to hold office during its pleasure at a salary of $4,000.00, who is to devote his entire time to his duties; and for counsel the attorney general shall appoint an additional assistant to be assigned to the Commission at a salary of $4,000.00. Additional employees are to be provided for in the discretion of the Commission.

Jurisdiction. The jurisdiction of the Commission extends over persons and corporations owning, controlling, operating, or managing any facilities pertaining to electricity, gas, oil, water, telephones or telegraphs, and street railways. The Commissioner of Motor Transportation still has full jurisdiction over motor vehicles. Railroads are left under the still continued Railroad Commission.

An amendment to the original bill to exempt light and water plants owned by any city or town was defeated, so that the Commission had full jurisdiction over municipally owned utilities for the first two years of its existence. However, a bill amending the 1934 act so as to exempt all municipally owned utilities from the jurisdiction of the public service commission was passed at the 1936 regular session of the Kentucky General Assembly. This bill was signed by Governor A. B. Chandler on February 21, 1936.

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28The salary of the secretary in the original bill was $3,600.00 instead of $4,000.00. Journal of the House of Representatives, Vol. 11, p. 1888 (Reg. Sess. 1934).
29 Cf. the public counsellor in Indiana created in 1933 as an independent officer of the attorney general. Ind. Acts, c. 93, sections 1-4 (1933). Kentucky, however, accords with the general practice of using the attorney general's staff.
30 Carroll's Kentucky Statutes Annotated, sec. 739j-36 (1930). The original bill in the House included in its definition of utilities subject to the jurisdiction of the Public Service Commission motor vehicles for compensation excepting taxicabs and truck service in cities or towns that were then under the control of the State Tax Commission. Journal of the House of Representatives, Vol. 11, pp. 1833-84 (Reg. Sess. 1934).
31 Carroll's Kentucky Statutes Annotated, sec. 821ff. (1930).
33 This bill (House Bill 5), introduced by Representative Henry Ward, of Paducah, which had the active support of the Kentucky Municipal League, an organization of more than one hundred and seventy Kentucky cities and towns, passed the House with a vote of 60 to 5, and the Senate by 23 to 10. [Kentucky Municipal League Legislative Bulletin No. 1 (mimeographed), January 21, 1936; The Kentucky City, Vol. VI, No. VIII, p. 5, and Vol. VI, No. IX, p. 5.]
2. **Powers and Duties of the Commission**

In General. Such powers as were given to the Commission indicate that Kentucky has yet some way to go before the Commission can hope to be classified among the so-called more progressive commissions. Whether it is desirable for regulation to encroach upon the field of utility management is another question. Perhaps, it was judicious legislation for the legislature to put the enabling powers upon a conservative basis at the beginning. As experience is gained, it may well be time then for regulatory powers to be extended.

The Commission was given the general power to investigate all methods and practices of the utilities and to require utilities to conform to reasonable regulations, to require copies of all reports, rates, classifications and schedules and other information desired by the Commission relating to any investigation or requirement, provided that any rate litigation now before the Railroad Commission, or in any court, between any utility and municipality should not go to the Commission until after a period of two years. For this reason, the Commission's activities have been circumscribed somewhat although subsequent rate reduction proceedings have not been infrequent. The Commission is authorized to apply to the courts to compel obedience to its lawful orders by mandamus or by injunction with its cases taking priority over all other pending cases in the courts.

Specific authority. Specifically, jurisdiction to the Commission was given respecting rates, service, valuations, investigations, accounts, reports, issuance of securities, assumption of liabilities and certificates of public convenience and necessity. There is nothing in the act specifically giving the Commission authority over temporary rate orders, excess earnings, budgets, dividends, depreciation, joint regulation, consolidations, merchandising or holding company or affiliate affairs. While some of these powers may be implied under the general regulatory jurisdiction there seems little doubt that further legislation will

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*This latter proviso was not in the original bill. *Journal of the House of Representatives*, Vol. 11, section 4(b) (Reg. Sess. 1934).

*Infra, at 467 ff.*
be needed to amplify the Commission’s jurisdiction in some of these matters.

Rates. The act provides that after a hearing upon reasonable notice upon its own motion or upon complaint, the Commission shall by order require just and reasonable rates, joint rates, fares, tolls or schedules to be followed in the future in lieu of those in force now. No change shall be made except upon twenty days’ notice to the Commission which notice shall plainly state the proposed changes and the time the changed rates will go into effect, provided that the Commission may prescribe, presumably in any case, a less time within which a reduction may be made.

Respecting the procedure when a new schedule is filed, the act stipulates that whenever one is filed stating new rates, the Commission may upon reasonable notice enter upon a hearing concerning the reasonableness of such rates. Pending a decision at any time before the proposed rates are to become effective, the Commission may suspend the operation of the rates upon filing with such schedule and delivering to the utility a written statement of its reason for a suspension for a period of 120 days beyond the time when the rates would otherwise have gone into effect, unless the Commission shall find that a longer time shall be necessary, in which case the period is not to be more than an additional 120 days, provided the rates may go into effect despite the suspension order, if a bond in reasonable amount approved by the Commission and conditional upon a refund to the persons entitled to the excess, if the final rates be found excessive, is filed with the Commission.

This power of suspension of proposed rates and consequent refund of overcharges which is quite similar to the new Pennsylvania law is to be compared with the new Illinois provisions which do not give the Illinois Commerce Commission the option of suspension but make the suspension mandatory until the Commission has approved the rates.

Formerly, rates were not determined by the Railroad Commission, but were fixed by franchise contracts between the municipal corporations and the public service companies. Cox, The Regulation of Public Utilities, Other Than Railroads, By State Administrative Commissions, supra, note 8, 145 ff.

Marlett and Traylor, Public Utility Legislation in the Depression: 1. State Laws Extending and Strengthening Commission Jurisdiction, supra, note 7, at 176. Here the distinction between authority
Unit rate base. In any rate investigation where two or more municipalities are served by a utility, in computing the rate of return on the property used and useful, the Commission may take as a base the valuation of the system as a whole, but differentials in proportion to the increased cost of service are allowed if the utility can show that they should be allowed.

Service. Like the rate regulations which find part of their authority in the general powers granted to the Commission are also the service provisions. The Commission shall determine by order after a hearing upon reasonable notice the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods. On proper demand and tender of rates utilities shall furnish service within the time and upon the conditions provided for in the rules prescribed. The directory nature of this authority of the Commission is to be noted.

Under the general authority conferred by the act and pursuant to recommendations of the Engineering Department and certain hearings that were had, the Commission has adopted service standards for water, gas and electric utilities, under what is known as Administrative Order No. 5. Until an inspectional staff (either of the Commission or of the cities) is developed, this work of the Commission may be handicapped. The act by providing that the Commission may make complaints upon its own motion avoids the unsatisfactory enforcement of proper service standards by means of complaints by consumers.

Valuations. The Commission may on hearing after reasonable notice fix the value of utility property insofar as the same is material to the exercise of the jurisdiction of the Commission, make revaluations and ascertain the value of all new constructions, extensions, and additions. The Commission shall give due consideration to the history and development of the utility and its property, original cost, cost of reproduction which is enabling and that which is directory becomes of vital importance to the complaining customer. See Freund, Administrative Powers Over Persons and Property (1928), pp. 12-18, and Legislative Regulation (1932), pp. 74-78.

* Supra, at 455.


* Particularly has this been true of small consumers in the small localities of southern Illinois in complaining of the Insull companies.
as a going concern, and other elements of value recognized by
the law of the land for rate making purposes provided that the
right of the Commission shall not be exercised unless necessary
or advisable to determine the reasonableness of any rate, service
or issuance of any securities and then only after an investigation
has been instituted.

The permissive nature of the authority is probably wise in
the light of the tremendous expense incident to thoroughgoing
general valuations such as those originally required of the Inter-
state Commerce Commission. The enumeration of the factors
to be considered conforms to the Smythe v. Ames rule which the
recent cases have reenforced as the constitutional standard.43
It is to be noted that the proceedings are limited to valuations
for the purpose of determining the reasonableness of rates, serv-
ice, or of security issues.44 From the point of view of commis-

sion regulation, the Illinois law is more effective in placing
the burden of establishing valuations upon the utilities.45

Investigations. Such provisions are rather summary; the
act stipulates that the Commission may whenever it be neces-
sary, investigate and examine the condition of any utility either
with or without a hearing as it may deem best, but no order is
to be made without a hearing. The sections relating to the
maintenance of the Commission also have to do with investiga-
tions.46 Again the wide discretion seemingly present in the ini-
tiation of investigations which makes the effectiveness of the
investigation provisions dependent upon the personnel of the
Commission should be noted.

Accounts, records, and reports. The Commission may es-
stablish a system of accounts or classify utilities and prescribe
the system and manner of keeping the accounts for each class
provided the system shall conform as nearly consistently as pos-
sible to the Uniform System of Accounts prescribed by the Na-

43 St. Louis and O'Fallon Railway Co. v. U. S., 279 U. S. 461, 49
Sup. Ct. 584, 73 L. Ed. 790 (1929); McCardle v. Indianapolis Water
Co., 272 U. S. 400, 47 Sup. Ct. 144, 71 L. Ed. 316 (1926). See Elder,
The St. Louis and O'Fallon Decision—What Does It Mean?, 24 Ill.
L. Rev. 296 (1929); Los Angeles Gas and Electric Corporation v. Rail-

44 Marlett and Traylor, Public Utility Legislation in the Depres-
sion: 1. State Laws Extending and Strengthening Commission Jur-
isdiction, supra, note 7, at 185.

45 Ill. Laws, sec. 30 (1933).

46 Infra, at 463 ff.
tional Association of Railway and Utilities Commissioners except that the system for telephone and telegraph companies shall conform as nearly as is practicable to the system approved by the Interstate Commerce Commission or any other Federal regulatory body for telephone and telegraph companies.

The lack of any definite field audit provisions will preclude readily knowing that the accounting regulations are being lived up to. There is nothing in the act respecting reports that the Commission is to make. Presumably if any annual or special reports are made they would be made to the Governor of the State.

ISSUANCE OF SECURITIES AND ASSUMPTION OF LIABILITIES

It seems peculiar in view of the unprecedented increase in interrelations among public utilities and the development of "affiliated interests" that the provisions here are so restricted in scope. Certainly other jurisdictions during the depression have not been so reliant upon the probability of an effective federal bill being passed. Connecticut has taken action in attempting to regulate intrastate holding companies which may conflict with the Wheeler-Rayburn bill recently enacted by Congress, and the Kentucky law may well attempt more in this respect in the future once the jurisdiction and power of the Securities Exchange Commission is settled definitely.

The act provides that no utility shall issue any securities, notes, bonds, stocks, or other evidence of indebtedness, or assume any obligations as lessor, lessee, guarantor, indorser, surety, or otherwise of any other person or corporation unless and until upon application by the utility and after an investigation the Commission by order authorizes such issue or assumption. Such

47 The stipulation that the system prescribed by the Interstate Commerce Commission should be followed for telephone and telegraph companies was not in the original house bill. Journal of the House of Representatives, Vol. 11 (Reg. Sess. 1934).


49 The aim of the new reorganization act is to centralize the state government. Manning, supra, note 4.

50 See Traylor, The Insull Trial, 25 Journal of Criminal Law and Criminology 782 (February, 1935), for a description of the government's allegations respecting some of the major holding companies of the Insull empire.

order is to be made only if the Commission finds that the issue or assumption (a) is for some lawful object within the corporate purposes of the utility, (b) is necessary for the proper performance of the utility's service and will not impair performance of such service, and (c) is reasonably necessary and appropriate for such purpose provided there is no application to notes for two years issued for proper purposes, notes for two years to pay, retire, discharge, or refund any such notes, and to renewals thereof not exceeding in the aggregate six years from the date of the original notes renewed or refunded. Receivership proceeding are exempt.

Thus, it is seen that the act is aimed primarily at the issuance of securities and the assumption of other company liabilities. Whatever control over holding companies exists will be indirect, obtained largely through the control over the lending and borrowing subsidiaries. There are no provisions respecting general contracts with affiliated interests. Nor is there any attempt at a definition of what constitutes an affiliated interest. If such control over affiliates be attempted under these provisions, the attempt will be subject to all the uncertainty of court decisions. Any such attempt would also be handicapped by the lack of any provision requiring disclosure of substantial interests.

Respecting the adequacy of what the legislation did attempt to do, i.e. establish control over securities and assumptions of liabilities regardless of affiliated influences, the broader scope of the laws of some of the other state jurisdictions is to be noticed. The North Carolina law applies specifically to preferred and common stockholders as well as to bondholders and is more explicit on further regulations such as requiring reports on the disposition of proceeds not only from regulated but from exempt issues and providing for joint regulation of securities with other states. The Wisconsin law specifically requires commission approval for loans to officers and directors of a public utility. The exemption of securities in the Kentucky act not to run more than two years is counter to a strict enforce-

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53 Loc. cit.  
54 Loc. cit.
ment of the necessity for commission approval for issuance authority.55

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

No construction is to begin of any plant, equipment, property, or facility except ordinary extensions of existing systems in the usual course of business until a certificate that public convenience and necessity require such construction shall have been obtained from the Commission after a public hearing of all parties interested. Unless exercised within one year from the grant thereof, exclusive of any delay due to the order of any court or due to the failure to obtain any grant or consent, the certificate shall be null and void but the beginning of any new construction or facility in good faith within the time prescribed by the Commission and the prosecution of same with reasonable diligence shall constitute a compliance with such certificate. The utility may be compelled to make reasonable extensions in whole or in part after a hearing and upon petition by any person or groups.

The act here is lacking in any authority express or implied over abandonments. Although there is some debate respecting the power over abandonments, many states do have the statutory authority to prohibit abandonments.56

3. Duties and Privileges of Utilities

This section of the act adds little to what the utilities would not have been subjected to already under the preceding section dealing with the authority of the Commission. The provisions are rather summary and apply to rates, service, schedules, and discrimination. The exceptions from the prohibition against discrimination were not in the original act as proposed by Representative Webb in the House.57

55 See Cox, Regulation of Public Utilities, Other Than Railroads, By State Administrative Commissions, supra, note 8, at 136, for a discussion of the policy behind these sections of the Act.


57 The exceptions are free or reduced rate service to the utility’s officers, agents or employees including physicians and attorneys, the United States, charitable and eleemosynary institutions and workers, or for the purpose of providing relief in cases of flood, general epidemic, pestilence or other calamitous visitation. Journal of the House of Representatives, Vol. 11 (Reg. Sess. 1934).
4. Procedure

Complaints. Respecting who may bring complaints and secure judicial review, the act provides that upon a written complaint by any mercantile, agricultural or manufacturing society, or by any body politic or municipal organization, or by any public utility, or by ten persons, firms, corporations or associations, all of which shall be customers of the utility complained of, or ten complainants of all or any of the aforementioned classes, that rates in which such petitioner is directly interested are in any respect unreasonable or unjustly discriminatory, or that any service is unreasonable, unsafe, unjustly discriminatory, inadequate or unobtainable, the Commission shall proceed upon such complaint or on its own motion with or without notice to make an investigation as it may deem necessary or convenient provided no order shall be entered without a formal public hearing.

Hearings. The Commission shall fix the time and place for hearings, if any are required, and serve notice on the utility and complainant not less than 20 days before time set for hearing. Any complaint may be dismissed without a hearing if in the Commission's opinion a hearing is not necessary in the public interest or for the protection of substantial rights.

The provision for rehearing is to the effect that any party to the proceedings may, within 20 days after the service of the order upon it, apply for a rehearing in respect of any matters determined in the said proceedings and specified in the application for rehearing, and the Commission may grant and hold such hearing on such matters, either granting or refusing the application for the rehearing within 20 days. Notice of such rehearing shall be given as required in the original hearing. Additional evidence may be offered on the former hearing.

Court review. Respecting administrative finality, the act provides that any party to a proceeding, within 20 days after service upon it of the Commission's order or from the time the Commission has failed to act on a rehearing application, may commence an action against the Commission as defendant to vacate or set aside such order or determination on the ground that it is unlawful or unreasonable. The answer of the Commission shall be filed within 20 days after service of the com-
plaint whereupon the action is to be at issue and stand ready for trial on the equity side of the court docket upon 10 days notice to either party.

The case is to be heard only on the record of the Commission, the act stating that new evidence is not to be used on review, but if any party shall satisfy the court that evidence has been discovered since the hearing that could not have been obtained by the exercise of reasonable diligence and will affect materially the merits of the case, the court in its discretion may remand the record and proceedings to the Commission with directions to take such discovered evidence.

The burden of proof is on the party adverse to the Commission to show by clear and satisfactory evidence that the order of the Commission is unreasonable or unlawful.

The case shall be heard and decided upon the evidence submitted to the court as shown by the transcript which the Commission is to have made and upon final submission the court shall enter a decree either sustaining the order or setting aside and vacating it in whole or in part.

Either party within 60 days after the entry of the judgment order of the Circuit Court may appeal to the Court of Appeals of Kentucky.

5. Assessment for Maintenance of Commission

The effects of underfinancing of commissions have been inadequate staffing, neglect of statutory duties, a lack of research activities, and an inability to cooperate with municipal and Federal agencies. The act attempts to meet the Commission's demands by providing that after July 1, 1936, costs of regulation shall be apportioned and assessed among the utilities in proportion to the gross intrastate earnings or receipts for the next preceding calendar year providing that the total amount assessed shall not in any year exceed $75,000.00. In no event shall a utility pay less than twenty-five dollars.

In providing that the total maintenance of the Commission

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58 Mosher and Crawford, supra, note 1, at pp. 29-30.
59 For the first 2½ years beginning in 1934, however, the Act provides for the $75,000.00 to be raised by a tax of 1/20 of 1% of the assessed value of the utilities' property; but inasmuch as municipal properties are not assessed for taxes this provision is not applicable to municipally owned plants, which were thus required during this initial period of 2 ½ years to pay only the minimum assessment of $25.00 per year; moreover, due to the fact that under the wording of
is to be met by one general assessment, Kentucky falls within the same group of Alabama, Arkansas, and South Carolina during the depression period. It is also to be noted that in the manner of assessing fees for investigation expenses the fees are assessed against all utilities according to their gross intrastate revenues instead of bills being rendered to the utilities for expenses actually incurred in investigations. The state treasurer is the collecting agency as well as the final recipient of the fees assessed. All expenses incurred by the Commission are to be paid out of the public utility account in the treasury on the auditor's warrant for bills itemized and certified as correct by the secretary of the Commission.

**The Act in Operation**

At this time, the Commission has handled some 216 formal cases and 125 informal cases. Also, in addition to work of a more or less routine nature, it received reports for all utility companies under the jurisdiction of the Commission for the year ending December 31, 1934; it brought to completion four classifications of accounts, covering water companies, both public and private, gas companies and electric companies, all of which became effective January 1, 1936; and it formulated rules and regulations for the government of electric, gas and water utilities.

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the act a city or town is classed as a single "utility" (see Section 1) regardless of the number of types of utility plants owned and operated by it, a city owning two or more types of plants was required to pay only $25.00 per year. Marlett and Traylor, *Public Utility Legislation in the Depression: 11. Reorganization and Financing of Commissions*, supra, note 7, at 297.

cf. Ibid., at 301, for other collecting agencies decided upon by other state legislatures.

december 31, 1935.


loc. cit.

These were incorporated in what is known as Administrative Order No. 5, which became effective April 1, 1935.
INFORMAL CASES

As stated above, the Commission has handled 125 informal complaints. Many of these involved rates and service, while others requested "the authority of the Commission to place a reduction of rates into effect on less than statutory notice in accordance with the Commission’s rules and regulations." Of the complaints so filed 97 were decided to the satisfaction of the parties; 4 were transferred to the formal docket, 7 were dismissed and 17 are still pending.

FORMAL CASES

The accompanying table provides a breakdown of the 216 formal cases handled by the Commission to December 31, 1935. As is shown by the table, 161 of these cases were applications for certificates of convenience and necessity, covering various types of utilities and various types of activity; 4 cases were requests for authority to discontinue service; 15 involved financing, organization and reorganization of companies; 5 were complaints with reference to rates.

Of the total 216 formal cases filed with the Commission, at the present time 183 have been decided, 3 have been dismissed, and 30 are pending.

"An informal complaint is one that does not meet the requirements of a formal complaint as prescribed by the Public Service Commission Act and is authorized by Rule IX, Public Service Commission Act and Rules of Procedure (July 15, 1934). "When such a complaint is filed, a copy of same is sent to the utility company complained against, together with a letter from the Commission requesting the company to state within a designated period whether or not it will be able to satisfy the complaint. In the event of failure to bring about satisfaction of such informal complaint, because of inability of the parties to agree as to the facts involved or other cause, the complainant is given an opportunity to file a formal complaint; if this is not done, the complaint is dismissed" (Supra, note 64, at 11).


"Loc. cit.

"Of the thirty pending cases, twelve are rate cases. In one of these an inventory and appraisal has been made, hearings have been held and all briefs filed. In six of these cases the Commission has directed that inventories and appraisals of the utilities companies’ properties be prepared and submitted on or before a certain date, together with detailed statements of operating revenues and expenditures. In one case the company has submitted and the Commission has checked the inventory and appraisal filed as well as certain book entries, and the case is now (December 31, 1935) in the process of being heard. In two cases the matter has been set down for pre-
### SUMMARY OF FORMAL CASES HANDLED BY THE KENTUCKY PUBLIC SERVICE COMMISSION FROM JULY, 19, 1934, TO DECEMBER 31, 1935

<table>
<thead>
<tr>
<th>Nature of Case</th>
<th>Decided</th>
<th>Dismissed</th>
<th>Pending</th>
<th>Total Cases Filed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Applications for certificates of necessity and convenience:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Authorizing utility to apply for franchise</td>
<td>4872</td>
<td>0</td>
<td>5</td>
<td>53</td>
</tr>
<tr>
<td>(b) Authorizing utility to operate under a franchise</td>
<td>2172</td>
<td>0</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td>(c) To construct or improve municipal water plants</td>
<td>3873</td>
<td>0</td>
<td>1</td>
<td>39</td>
</tr>
<tr>
<td>(d) To construct or improve municipal water plants and to finance same by issuing bonds therefor</td>
<td>1472</td>
<td>0</td>
<td>4</td>
<td>18</td>
</tr>
<tr>
<td>(e) To issue bonds for financing new or improvements to municipal water plants</td>
<td>1273</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>(f) To construct gas transmission lines</td>
<td>273</td>
<td>0</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>(g) To construct or improve electric transmission lines</td>
<td>1273</td>
<td>0</td>
<td>4</td>
<td>16</td>
</tr>
<tr>
<td>(h) To improve telephone lines</td>
<td>172</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>1480</td>
<td>0</td>
<td>16</td>
<td>164</td>
</tr>
<tr>
<td><strong>2. Cases requesting authority to discontinue service</strong></td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td><strong>3. Cases involving financing, organization and reorganization of utility companies</strong></td>
<td>14</td>
<td>0</td>
<td>1</td>
<td>15</td>
</tr>
<tr>
<td><strong>4. Complaints with reference to service</strong></td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td><strong>5. Complaints with reference to rates</strong></td>
<td>14</td>
<td>2</td>
<td>12</td>
<td>28</td>
</tr>
<tr>
<td><strong>Grand totals</strong></td>
<td>183</td>
<td>3</td>
<td>30</td>
<td>216</td>
</tr>
</tbody>
</table>

Upon preliminary hearing, the commission having not yet determined to what extent it will be necessary to investigate the property and affairs of the defendant companies. "Of the remaining two cases it is hoped that one may be settled through conference with the company and the other will be acted upon by the Commission within the next few days." (Report of Public Service Commission of Kentucky, July 9, 1934—December 31, 1935, p. 8.)

All data contained in the following table is taken from Report of Public Service Commission of Kentucky (July 9, 1934—December 31, 1935), pp. 7–10.

The certificate requested was granted in each case.

Total estimated cost for the proposed construction of electric transmission lines, including cases pending, is $349,875.00. Of the cases filed, two were for the construction or improvement of municipal electric lines and thirteen for private electric lines. There is
RATE REDUCTIONS

In a report prepared by the secretary of the Kentucky Public Service Commission covering the activities of the commission from July 9, 1934, to December 31, 1935, the following rate changes purportedly effected by the commission are presented:

<table>
<thead>
<tr>
<th>Kind of Service</th>
<th>Annual Increase</th>
<th>Annual Decrease</th>
<th>Towns Affected</th>
<th>Customers Affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electric</td>
<td>$1,874.25</td>
<td>$1,272,018.42</td>
<td>308</td>
<td>215,764</td>
</tr>
<tr>
<td>Gas</td>
<td>9,907.00</td>
<td>119,459.68</td>
<td>21</td>
<td>36,229</td>
</tr>
<tr>
<td>Water</td>
<td>144,735.35</td>
<td>1,288.06</td>
<td>4</td>
<td>15,080</td>
</tr>
<tr>
<td>Telephone</td>
<td>115.00</td>
<td>34,285.80</td>
<td>175</td>
<td>12,829</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>$156,631.60</strong></td>
<td><strong>$1,427,051.96</strong></td>
<td><strong>508</strong></td>
<td><strong>279,892</strong></td>
</tr>
<tr>
<td>Less Increases</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net Reductions</strong></td>
<td><strong>$1,270,420.36</strong></td>
<td></td>
<td><strong>503</strong></td>
<td><strong>263,583</strong></td>
</tr>
</tbody>
</table>

While a substantial part of the claimed net rate reduction of $1,270,000 was no doubt due directly to the efforts of the Commission, it is possibly an exaggeration to state that this total reduction was effected by the Commission. The secretary

(December 31, 1935) one municipal case and three private cases pending.

"Of these, three were requests for authority to discontinue street railway service and one was for authority to discontinue gas service. The authority was granted in all four cases. In the cases of street railways no material objections were offered. With respect to the case of discontinuance of gas service the Commission, after conferences and hearings, allowed the applicant company to discontinue; but it was arranged with another company to purchase the plant and continue the service, which was done.

"Seven of these 15 cases requested the authority of the commission to issue refunding bonds or notes amounting to $2,090,700.00. Two cases sought authority to reduce capitalization in the total sum of $6,877,090.00. One case involved application for extension of maturity date of a bond issue amounting to $2,000,000.00. Three cases involved reorganization under Section 77b of the Federal Bankruptcy Act. One case requested authority to organize and enter into the gas business. One case, which is now pending (December 31, 1935), involves the consolidation of several companies into one.

Report of Public Service Commission of Kentucky (July 9, 1934—December 31, 1935). (Mimeographed.)


"In arriving at the figure which represents the reduction in a particular community, the bills for one year previous to the date upon which the new rate was to become effective were figured at the new, or reduced, rate; and the difference as shown between the old rate and the new rate represents the reduction. Thus the decreases indicated are actual only in so far as the same persons continue customers of the company and use the same amount of the commodity purchased.
himself in the above mentioned report stated: "All of the reductions herein listed were not the direct result of the Commission's order". It should be kept in mind that even had no public service commission been in existence, the period from July, 1934, to January, 1936, in all probability would have brought substantial reductions in electric rates in Kentucky. The last two years have witnessed extensive developments in the TVA region so as to present more of a threat of possible extension of TVA power to certain sections of Kentucky, the successful operation of a new municipally owned electric plant at Paris, Kentucky, and movements for the establishment of municipally owned electric plants in other Kentucky cities. All of these facts might well be expected to have resulted in substantial revision and reduction of electric rates in Kentucky cities and communities. In fact, during the same period of

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Report cited, supra, note 76, at 12.


Under the original PWA program the city of Middlesboro received approval of a loan and grant application for a proposed $328,000 electric generation and distribution plant, but considerable litigation between the company now serving the municipality and the city, some of which litigation is still pending, has prevented city officials and the PWA from further proceedings with respect to the proposed municipal plant. The Shelbyville city council in the summer of 1933 voted to submit to the people at the November, 1933 election a proposed bond issue of $125,000 for the establishment of a municipally owned electric plant (see Kentucky City of October, 1933, at p. 17); which bond issue was approved by the voters; however, the city has since granted a new franchise to the private company there, and plans for a municipal plant have been temporarily abandoned. On April 9, 1935, the Danville city council's special committee for revision of electric rates recommended that certain rate schedules proposed by the serving company be rejected and that "failing the submission of satisfactory rate schedules by the Kentucky Utilities Company, that the City of Danville make application to the Public Works Administration for funds with which to construct a municipally owned electric plant, distribution system and street lighting system." (Danville Daily Messenger, April 10, 1935, p. 1.) However, a new schedule of rates, representing substantial reductions from former charges, was put into effect here by the company on July 10, 1935, and no further steps were taken by the city with respect to acquiring a municipally owned plant. In the November, 1935 election voters in the city of Russell failed to approve by the necessary two-thirds majority a $30,000 bond issue for the purpose of acquiring a municipally owned electric distribution plant; but Williamstown voters at the same time approved a proposed $10,000 bond issue for the purpose of acquiring a municipally owned electric distribution system.
time numerous cities and communities were granted voluntary and apparently unsolicited rate reductions by the serving company.\textsuperscript{83}

But while the benefits from the operation of the Commission in the first two years of its existence may have been somewhat overstated in the secretary's report, undoubtedly the Commission was instrumental in securing substantial rate reductions for various communities of this State. Moreover, it should be remembered that however large or small this total reduction, the cost of maintaining the Commission at the time the rate decreases were being effected was not borne by the general public, but by the companies themselves.\textsuperscript{84}

In conclusion, it is difficult at this time to commend or criticize any action taken by the Commission because of the short time that it has been in existence. For the first time in the history of the state it is to be realized, however, that there is a Public Service Commission to which utility companies must submit for definite types of regulation. Properly executed and administered, there is no reason that the legislation creating the commission should not result in benefit both for the public and the utility companies. If legislation in other states during the years 1931–34 is any indication for the future, it is to be expected that the powers of the Commission will be extended and strengthened by future sessions of the legislature. However, during 1935, there was a lull in such state legislative activity. Whether such marks the end of an almost unprecedented period of utility legislation or is only temporary remains to be determined.\textsuperscript{85}

\textsuperscript{83} See Kentucky City (May, 1935), p. 25.
\textsuperscript{84} Supra, at 463 ff.