

# FREQUENTLY ASKED QUESTIONS REGARDING THE KENTUCKY PUBLIC SERVICE COMMISSION'S REGULATION OF MUNICIPAL UTILITIES

## Scope of KPSC Authority

### **Does the Public Service Commission regulate all municipal utilities?**

No. Municipal utilities are generally exempt from Kentucky Public Service Commission (“KPSC”) regulation. The KPSC regulates only the rates and service aspects of a municipal utility’s provision of wholesale utility service to a public utility. A municipal utility that provides retail utility service only is not subject to KPSC regulation.

### **What is a “public utility”?**

[KRS 278.010\(3\)](#) defines “utility.” Generally, water districts, water associations, and private corporations that provide water service or sewer collection or treatment service to the public for compensation are public utilities. Joint water source commissions, sanitation districts, and joint sewer agencies are not. Cities, except when providing telecommunication services, are expressly exempted from the definition of “utility.”

### **If a municipal utility provides water or sewer service to a public utility, what part of the municipal utility’s operations is subject to Public Service Commission regulation?**

The KPSC regulates only the municipal utility’s provision of utility service to the public utility.

### **Does the Public Service Commission regulate a municipal utility’s provision of water or sewer service to other municipal utilities?**

No. Municipal utilities are not public utilities. Therefore, a municipal utility’s provision of water or sewer service to another municipal utility is not subject to KPSC regulation. [City of Mount Sterling, Kentucky](#), Case No. 95-193 (Ky. PSC May 31, 1995).

### **Does the Public Service Commission regulate a municipal utility’s provision of retail water or sewer service to persons who are located outside a city’s boundaries?**

No. Prior to 1961, Kentucky’s highest court ruled on several occasions that the KPSC had jurisdiction over a municipal utility’s service to persons outside the city’s boundaries. In [McClellan v. Louisville Water Co.](#), 351 S.W.2d 197 (Ky. 1961), however, the Court overruled these decisions. Since then, Kentucky courts have consistently held that such service is exempt from KPSC regulation.

**When did the Public Service Commission begin regulating a municipal utility’s provision of utility service to public utilities?**

On January 31, 1994 the Kentucky Supreme Court held in [\*Simpson County Water District v. City of Franklin\*](#), 872 S.W.2d 460 (Ky. 1994), that when a city contracts to provide water service to a water district or other public utility, it waives its exemption from KPSC regulation and its provision of water service to such entity is subject to KPSC regulation. To implement this decision, the KPSC ordered all municipal utilities that provide wholesale utility service to a public utility to file with the KPSC a schedule of their wholesale rates and a copy of their wholesale contracts. [\*Submission of Contracts and Rates of Municipal Utilities\*](#), Administrative Case No. 351 (Ky. PSC Aug. 10, 1994).

**Must a municipal utility that provides utility service to a public utility obtain a certificate of public convenience and necessity before constructing utility facilities?**

No. [\*KRS 278.020\(1\)\*](#) requires a public utility to obtain a certificate of public convenience and necessity from the KPSC before constructing utility facilities. It is not applicable to a municipal utility. [\*City of Flemingsburg v. Pub. Serv. Com’n\*](#), 411 S.W.2d 920 (Ky. 1966); [\*City of Georgetown v. Public Service Commission\*](#), 516 S.W.2d 842 (Ky. 1974).

**Does the Public Service Commission have the authority to resolve service territory disputes between public utilities and municipal utilities?**

No. In [\*City of Georgetown v. Public Service Commission\*](#), 516 S.W.2d 842 (Ky. 1974), Kentucky’s highest court held that the KPSC has no authority to resolve boundary disputes between a city and a public utility. See also [\*City of Lawrenceburg, Ky. v. South Anderson Water District\*](#), Case No. 98-256 (Ky. PSC June 11, 1998). KPSC, however, has the authority to prevent a public utility from constructing facilities to serve areas in which a municipal utility serves if the construction of such facilities would be a wasteful duplication of facilities. [\*City of Hawesville v. East Daviess County Water Association\*](#), Case No. 2004-00027 (Ky. PSC Mar. 25, 2004).

**Is a municipal utility required to pay an assessment to the Public Service Commission?**

A municipal utility is not required to pay an assessment **unless** it provides telecommunications service. [\*KRS 278.150\*](#) requires only public utilities to pay an annual assessment to the KPSC, based upon its annual revenues, to pay for the KPSC’s operations. Except when it provides telecommunications services, a municipal utility is excluded from the definition of “utility.”

**Mandatory Filings with KPSC**

**What documents should a municipal utility have on file with the Public Service Commission if it provides wholesale water or sewer service to a public utility?**

A municipal utility should file a copy of its most recent wholesale water contract with the public utility and a tariff sheet that reflects its current rates for that service.

**What action should a municipal utility take if it does not currently have these documents on file with the Public Service Commission?**

It should file the documents immediately with the KPSC with a written explanation for its failure to make the filing earlier. Failure to timely file these documents may be deemed a violation of the KPSC's Order of August 10, 1994 in Administrative Case No. 351 and may subject the municipal utility and its officers to administrative penalty. [\*City of North Middletown, Kentucky, Case No. 2006-00072\*](#) (Ky. PSC Jan. 12, 2007).

[KRS 278.160\(1\)](#) requires a utility to file with the KPSC schedules showing all rates and conditions of service. The KPSC has found that a municipal utility violates KRS 278.160(1) when it fails to file a revised contract or a rate schedule reflecting the rates established by a contract. The KPSC has assessed administrative penalties for such failures. *See, e.g., City of Danville, Kentucky*, Case No. 2008-00176 (Ky. PSC Aug. 17, 2010).

The KPSC has held that municipal utility wholesale rates that were in effect prior to April 21, 1994 do not require Commission approval and are presumed to be proper and valid. [\*City of Franklin v. Simpson County Water Dist.\*](#), Case No. 92-084 (Ky. PSC Jan. 18, 1996). Revisions or amendments to municipal rates for wholesale water or sewer service to a public utility that occurred after April 21, 1994 and that were not filed with the KPSC, however, may be considered unlawful or invalid and may be subject to refund. [KRS 278.200](#) prohibits any change in such rate "until a hearing has been had before the commission." The KPSC has asserted that failure to file revised rates with the KPSC prevents a municipal utility from lawfully charging the rate and requires refunds. [\*City of Danville, Kentucky\*](#), Case No. 2008-00176 (Ky. PSC Aug. 17, 2010).

**Who is responsible for filing a copy of the written contract for water or sewer service with the Public Service Commission?**

The responsibility for filing with the KPSC a contract to provide utility service to a public utility lies with the municipal utility. [\*Kentucky-American Water Company\*](#), Case No. 2001-230 (Ky. PSC Oct. 19, 2001).

**Does a municipal utility's provision of water or sewer service to a public utility fall within the Public Service Commission's jurisdiction if the service is not provided under a written contract or agreement with the public utility?**

No. The KPSC has jurisdiction only if a written agreement between the municipal utility and public utility for the provision of utility service exists. *See City of Greenup v. Pub. Serv. Com'n*, 182 S.W.3d 535 (Ky.App. 2005). If no written agreement exists, the KPSC has no jurisdiction over the municipal utility's provision of service to the public utility and the municipal utility may change its rate for wholesale water or sewer service to the public utility without any hearing before the KPSC. [\*South Shores Water Works v. City of Greenup, Kentucky\*](#), Case No. 2009-00247 (Ky. PSC Oct. 5, 2010).

If a written agreement exists and allows the municipal utility to revise the rate, a municipal utility will generally revise the rate through the adoption of an ordinance. Because the

ordinance changes a rate or service standard, [KRS 278.200](#) requires the municipal utility to obtain KPSC approval.

**Besides filing its wholesale contract with the Public Service Commission, are there any other actions that a municipal utility should take?**

A municipal utility should ensure that the KPSC has the municipal utility's current mailing and e-mail addresses and the name and title of the city official who is responsible for dealing with the KPSC. It should promptly notify the KPSC of any changes in that information. This information can be mailed to: Executive Director, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615, or e-mailed to [psc.tariffs@ky.gov](mailto:psc.tariffs@ky.gov).

**Municipal Utility Rate Revisions**

**What actions must a municipal utility take if it renegotiates a contract to provide wholesale water or sewer service to a public utility?**

A municipal utility may renegotiate its wholesale water or sewer service contracts at any time. However, the KPSC requires that, if a new contract or an amendment to an existing contract is executed, the municipal utility file with the KPSC a copy of that new contract or amendment. The KPSC has taken the position that the new contract or amendment will not become legally effective until filed with and accepted by the KPSC. See [City of North Middletown, Kentucky](#), Case No. 2006-00072 (Ky. PSC Jan. 12, 2007).

**What actions must be taken by a municipal utility that unilaterally revises a rate or service provision in a contract for wholesale water or sewer service to a public utility?**

The KPSC requires a municipal utility that unilaterally revises any rate or service provision in a contract for wholesale water or sewer service to a public utility to notify the public utility and the KPSC of the proposed revision. [KRS 278.180](#) and [807 KAR 5:011](#), Section 6, provide that notice to the KPSC is given by filing with the KPSC a tariff sheet containing the revised rate or service provision. The municipal utility must also mail or personally deliver a written notice of the proposed revision to the public utility. The Kentucky Court of Appeals has found that a municipal utility's failure to comply with [KRS 278.180](#) and [807 KAR 5:011](#) will render its proposed revision void. [City of Russellville, Kentucky v. Public Service Commission](#), No. 2003-CA-002132 (Ky. Ct. App. Feb. 18, 2005).

**Are there any exceptions to this requirement?**

No. In cases where a wholesale contract establishes a formula instead of a specific price for service and requires a periodic recalculation of the formula, however, the KPSC has held that a municipal utility is not required to file a new tariff sheet reflecting the results of the recalculation. The KPSC has reasoned that the contract formula is the rate and remains unchanged. Notwithstanding this holding, the KPSC has encouraged municipal utilities to file a revised tariff sheet that reflects the results of the recalculation as soon as possible. [Bath County Water District](#), Case No. 2007-00299 (Ky. PSC Sep. 26, 2007).

**When must a municipal utility provide notice to the Public Service Commission of a revision to a rate or service provision in a contract for wholesale water or sewer service to a public utility?**

The KPSC interprets [KRS 278.180](#) as requiring a municipal utility to notify the KPSC at least 30 days prior to the scheduled effective date of the revised rate or service provision. [City of Hodgenville, Kentucky](#), Case No. 96-326 (Ky. PSC July 12, 1996).

**When should a municipal utility provide written notice of a proposed rate change to a public utility wholesale customer?**

The municipal utility should mail or personally deliver the written notice to the public utility at least 30 days before the proposed effective date of the proposed rate change and no later than the day on which the tariff sheet containing the proposed rate revision is filed with the KPSC.

**What are the consequences of failing to provide adequate notice to the Public Service Commission or the public utility of the proposed revision?**

The KPSC has held that the proposed revision may not be placed into effect if the municipal utility fails to provide adequate notice. [City of Hodgenville, Kentucky](#), Case No. 96-326 (Ky. PSC July 12, 1996). The Kentucky Court of Appeals has found that a municipal utility's failure to comply with [KRS 278.180](#) will render its proposed revision void. [City of Russellville, Kentucky v. Public Service Commission](#), No. 2003-CA-002132 (Ky. Ct. App. Feb. 18, 2005).

**What should the municipal utility's notice to the public utility contain?**

[807 KAR 5:011](#), Section 8(4), establishes the contents of a notice of a proposed rate revision. Generally, the municipal utility's notice must contain: (1) The proposed effective date and the date the proposed rates are to be filed with the KPSC; (2) The public utility's present and proposed rates and the effect upon the public utility's average bill if the proposed rates become effective; (3) The amount of the proposed change in both dollar amounts and percentage change; (4) A statement that the municipal utility's filing with the KPSC may be examined at the municipal utility's office located at (utility address), the KPSC's offices at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the KPSC's Web site at <http://psc.ky.gov>; (5) A statement that comments regarding the tariff filing may be submitted to the KPSC through the KPSC's Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; (6) A statement that the rates contained in the notice are the proposed rates, but that the KPSC may order rates to be charged that differ from the proposed rates; (7) A statement that a timely written request for intervention may be submitted to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request and the status and interest of the party; and (8) A statement that if the KPSC does not receive a written request for intervention within 30 days of the initial publication or mailing of the notice, the KPSC may take final action on the proposed rate.

**Must a municipal utility publish notice of the proposed rate change in newspapers of general circulation to provide notice to the public utility’s customers?**

No. The municipal utility is required to provide notice to the public utility only.

**What documents in addition to a tariff sheet should a municipal utility provide the Public Service Commission when it provides notice of a proposed change in its wholesale rate?**

A municipal utility must provide a tariff sheet that sets forth the proposed wholesale rate, a copy of the notice of the proposed rate change that was provided to the wholesale customer(s), and a written statement verifying the notice was mailed or personally delivered. The municipal utility’s chief executive officer or a utility officer authorized to sign on his behalf should sign the tariff sheet and statement regarding notice.

Although not required, the following documents may assist the KPSC in its review of the proposed rate revision: a copy of the municipal ordinance or resolution of the municipal utility’s governing body that approved the proposed rate change; any studies or reports that were performed to develop the proposed rate, and any other information that describes need for the rate change and supports the level of the proposed rate change. Any written communication from the public utility to the municipal utility that indicates the public utility does not object to the proposed rate change or waives its right to hearing on the proposed rate should also be submitted. Providing additional information on the reason for the proposed rate change may reduce the likelihood that the KPSC will initiate a formal proceeding to investigate the proposed rate.

**What is a tariff sheet?**

A tariff sheet is the form on which the KPSC requires all rates and conditions of service to be listed. The tariff sheet form can be viewed and downloaded at [http://psc.ky.gov/agencies/psc/forms/Tariff\\_Form-2.pdf](http://psc.ky.gov/agencies/psc/forms/Tariff_Form-2.pdf). Instructions for completing the form are found at [807 KAR 5:011](#).

**Does the Public Service Commission assess a municipal utility a fee to file a rate schedule or application for rate adjustment?**

No. The KPSC does not assess any fee to apply for a rate adjustment or to file a new rate schedule or contract.

**How does a municipal utility file a contract or a tariff sheet containing rate revisions with the Public Service commission?**

The KPSC no longer accepts paper filings. A tariff sheet or contract must be filed electronically through the KPSC’s Electronic Tariff Filing System (“TFS”). The log-in for the TFS is found at <https://psc.ky.gov/Security/account/login.aspx>. A person must have an account to use the TFS. Directions for registering for an account with the TFS are found at [http://psc.ky.gov/agencies/psc/tariffs/E-file\\_Register.pdf](http://psc.ky.gov/agencies/psc/tariffs/E-file_Register.pdf). Instructions for using the TFS are found at [http://psc.ky.gov/agencies/psc/tariffs/E-file\\_Filing.pdf](http://psc.ky.gov/agencies/psc/tariffs/E-file_Filing.pdf). A video presentation on the TFS, including instructions, can be found at [http://psc.ky.gov/agencies/psc/Videos/2\\_e-](http://psc.ky.gov/agencies/psc/Videos/2_e-)

[file\\_prepare1\\_2013\\_0315.mp4](#). Questions regarding TFS registration or use should be directed to KPSC Tariffs Branch at (502) 782-2626 or (502) 782-2627.

**What actions may the Public Service Commission take once a municipal utility provides notice of a proposed rate adjustment?**

The KPSC may request additional information regarding the proposed rate change, suspend the proposed rate and initiate a formal proceeding to investigate the proposed rate, or allow the proposed rate to become effective.

**Does the Public Service Commission generally suspend or investigate if the public utility does not object to a municipal utility's proposed rate revision?**

Historically, the KPSC has allowed a municipal utility's proposed rate revision to become effective if the public utility customer does not object or otherwise request an investigation of the proposed rate. On rare occasions, the KPSC has suspended a rate and investigated a municipal utility rate change despite the lack of any objection or request for investigation when the KPSC found that proposed rate or service condition was counter to KPSC precedent. For example, the KPSC suspended a contract between a city and a water district that contained a provision for automatic annual rate adjustments based upon the Consumer Price Index and later struck that provision from the contract. [City of Lawrenceburg, Kentucky](#), Case No. 2006-00067 (Ky. PSC Nov. 21, 2006).

**May a customer of the public utility object to a municipal utility's proposed wholesale rate change? What is the significance of such objection?**

Yes, customers of a public utility may file objections to the municipal utility's proposed wholesale rate. Since a change in the wholesale rate may affect the rate that the public utility charges to its customers, customers have an interest in the proposed rate change. In theory, the KPSC would have to consider any objection or request for investigation from the public utility's customers in the same manner as an objection from the public utility.

**How much time does the Public Service Commission have to determine whether the proposed rate should be suspended for further investigation?**

Assuming that a municipal utility provides the shortest notice permitted by law, the review period is generally 30 days. The KPSC interprets [KRS 278.180](#) as requiring municipal utilities to provide the KPSC with at least 30 days' notice of the proposed rate change and [KRS 278.190\(1\)](#) as permitting the KPSC to suspend a proposed rate revision at any time before the stated effective date of that proposed rate revision.

**How does the Public Service Commission inform a municipal utility of the action taken on a proposed change in a wholesale rate?**

If the KPSC accepts the proposed rate and permits it to take effect, it will send the municipal utility by e-mail a letter of notification and a copy of the proposed rate schedule stamped "EFFECTIVE". If the KPSC initiates a formal investigation, it will serve by e-mail a

copy of the KPSC Order establishing a formal proceeding to investigate the proposed rate and ordering the suspension of the proposed rate.

A municipal utility may monitor the progress of any action on the proposed rate through the TFS Website at <http://psc.ky.gov/trf/trfmain.aspx>. Any correspondence or documents submitted to the KPSC regarding the proposed rate is posted to this website shortly after it is received. If the KPSC initiates a formal investigation of the proposed rate, the KPSC will post all documents filed in the record of that investigation to its website at <http://psc.ky.gov/Home/Library?type=Cases>.

**How much time does the Public Service Commission have to review and act upon a municipal utility's proposed rate adjustment once it suspends the proposed rate?**

The KPSC interprets [KRS 278.190\(2\)](#) as permitting it to suspend a municipal utility's proposed rate for a period of up to five months. At the end of the five months, if the KPSC has not issued a final decision on the proposed rate, the municipal utility may place the rate into effect **subject to refund**. If the municipal utility places a rate into effect subject to refund and the KPSC eventually determines that the proposed rate is unreasonable and orders a different rate to be assessed for wholesale service, the municipal utility must refund to the wholesale customer the difference between amounts billed and collected under the proposed rate and those that are owed under the approved rate.

The KPSC has interpreted [KRS 278.190\(3\)](#) as requiring the issuance of a final decision within 10 months of the date on which the municipal utility filed its proposed rate schedule. If a final decision is not issued within that time period, the KPSC has held that that the proposed rate becomes effective by operation of law. *City of Falmouth, Kentucky*, Case No. 2006-00403 (Ky. PSC June 27, 2007).

This time limitation, however, has not been applied to proceedings involving proposed revisions to a municipal utility's conditions for service. In *City of Versailles, Kentucky*, Case No. 2011-00419 (Ky. PSC Aug. 12, 2014), 35 months elapsed between the filing of a municipal utility's proposed rule to restrict a wholesale customer's water purchases to the municipal utility and the KPSC's issuance of a final decision. When 10 months had elapsed from the proposed rule's filing, the KPSC did not deem the proposed rule as effective. It ultimately denied the proposed rule.

**What happens if the Public Service Commission suspends a proposed rate and establishes a formal investigation?**

Historically, when the KPSC establishes a formal proceeding to investigate a municipal utility's proposed wholesale rate, it establishes a [procedural schedule for the proceeding](#). In a typical proceeding, it will require a municipal utility to file written testimony within 60 days of the initiation of the proceeding and to provide basic documents and information about the municipal utility's operations and finances. Based upon the municipal utility's response to the KPSC's Order, KPSC Staff will typically submit additional questions and requests for information to the municipal utility. Intervening parties have the right to request information from the municipal utility. (In typical cases, the only intervenor to the proceeding is the municipal utility's wholesale customer.). An intervenor also has the right to file written

testimony to support its position on the proposed wholesale rate. If an intervenor submits written testimony, the municipal utility and KPSC Staff may request information from that party. Unless the parties waive a hearing or the KPSC determines that a hearing is unnecessary, the KPSC will conduct a hearing on the proposed rate at its offices in Frankfort, Kentucky. As the parties have already filed written testimony, the hearing is generally limited to the cross-examination of witnesses. After the hearing, all parties may submit written briefs. The matter is then submitted for decision.

**May a municipal utility and a public utility agree on a rate revision while the Public Service Commission is conducting a formal proceeding on the proposed rate?**

Yes. The KPSC has taken the position that if the municipal utility and its wholesale customer(s) reach an agreement and the agreed wholesale rate is neither unreasonable nor unconscionable on its face, the Commission will not conduct additional proceedings but will accept the agreed rate. [\*City of Mount Sterling, Kentucky\*](#), Case No. 95-193 (Ky. PSC Sept. 1, 1995).

**Who has the burden of proof in a Public Service Commission proceeding?**

The municipal utility bears the burden to demonstrate that its proposed rate is reasonable. See [\*City of Owenton, Kentucky\*](#), Case No. 98-283 (Ky. PSC Sep. 22, 1998).

**How does the Public Service Commission determine that a proposed wholesale rate is reasonable?**

The KPSC first examines the municipal utility's costs to provide utility service for a historical test period (generally a calendar or fiscal year). It removes any unreasonable or unlawful expenses. It will make normalizing adjustments to reflect a full 12 months of operations for revenue and expense items that changed during the test period. The KPSC will also adjust revenues and expenses to reflect known and measurable changes that have occurred since the end of the historical test period. It will also examine and allocate any expenses that are jointly incurred to provide services other than the utility service. For example, expenses for telephone service, office equipment, or office personnel that support several city departments, including the city's water utility, will be allocated between those departments. Similarly, if a municipal utility provides service at no cost to other city departments, adjustments will be made to remove the expenses associated with that service. Using this adjusted level of expenses and considering the municipal utility's outstanding debt and debt service obligations, the KPSC establishes a total revenue requirement for the municipal utility.

After determining the municipal utility's total revenue requirement, the KPSC then examines the costs that the municipal utility incurs to provide water or sewer service to each customer group and allocates the revenue requirement based upon those costs. Based upon these cost allocations and revenue requirements, rates are then established for each public utility to generate its assigned revenue requirements.

**Does the Public Service Commission examine the reasonableness of a municipal utility's retail rates?**

No. The KPSC's assignment of costs and revenue requirements is used only to determine a reasonable wholesale rate for the public utility. The KPSC does not review the reasonableness of a municipal utility's retail rates. *See, e.g., [City of Owenton, Kentucky](#), Case No. 98-283 (Ky. PSC Feb. 22, 1999).*

**If a municipal utility disagrees with the Public Service Commission's decision, can it request reconsideration of the decision?**

Yes. [KRS 278.400](#) permits a municipal utility to apply for rehearing of any Order entered in a KPSC proceeding to which it is a party. An application for rehearing must be made within 20 days from date of service of the Order upon the municipal utility.

**May a municipal utility seek judicial review of a Public Service Commission Order?**

Yes. [KRS 278.410](#) permits a party to a KPSC proceeding to bring an action for review of a KPSC Order in Franklin Circuit Court. The party must bring the action within 30 days after service of the Order, or within 20 days after the KPSC has denied an application for rehearing, or 20 days after service of the final order on rehearing.

**If the Public Service Commission conducts a formal investigation of the proposed rate, may the municipal utility recover its expenses to participate in the proceeding?**

Yes. A municipal utility's reasonable rate case expenses are recoverable. These expenses generally include attorney's fees, expert witness fees, and expenses associated with cost-of-service studies. Recovery of these expenses, however, is not automatic. The municipal utility must specifically request recovery of these expenses. The request should be reflected on the tariff sheet that the municipal utility submits. *See, e.g., [City of Danville, Kentucky](#), Case No. 2014-00392 (Ky. PSC Aug. 13, 2015).* Moreover, the KPSC reviews the expenses and has in some instances denied recovery of expenses that it deemed "excessive" or "unreasonable." *See, e.g., [Hopkinsville Water Environment Authority](#), Case No. 2009-00373 (Ky. PSC July 2, 2010).* The KPSC has previously allocated a portion of the costs associated with a rate study to non-wholesale customers when it determined that such study could be used to establish non-regulated rates. *See, e.g. [Frankfort Electric and Water Plant Board](#), Case No. 2008-00250 (Ky. PSC. April 6, 2009).* In cases in which a municipal utility has requested recovery of rate case expenses and the KPSC has found such expenses to be reasonable, it has permitted the municipal utility to assess a surcharge on its public utility customers for a defined period to recover reasonable rate case expenses. The surcharge is in addition to the wholesale water rate. *See, e.g., [City of Owenton, Kentucky](#), Case No. 98-282 (Ky. PSC Feb. 22, 1999).*

**Is there any alternative method for a municipal utility to revise its rate for wholesale service to a public utility?**

Yes. In lieu of filing a tariff sheet with the KPSC, a municipal utility may file an application for rate adjustment. *See, e.g., [Bowling Green Municipal Utilities](#), Case No. 95-044 (Ky. PSC Apr. 7, 1995).*

**What should an application for rate adjustment contain?**

While the KPSC's [Rules of Procedure](#) do not specify the contents of an application for a municipal utility wholesale rate adjustment, it does set forth some general requirements for any application. These include: applicant's name, mailing address, and electronic mail address; the facts upon which the application is based; a request for the order, authorization, or permission desired; and a reference to the particular law requiring the application. *See [807 KAR 5:001](#), Section 14.*

The application should also include a tariff sheet that sets forth the proposed wholesale rate, a copy of the notice of the proposed rate change that was provided to the wholesale customer(s), and a written statement verifying the notice was mailed or personally delivered. The municipal utility's chief executive officer or a utility officer authorized to sign on his behalf should sign the tariff sheet and statement regarding notice. The tariff sheet should state a proposed effective date for the rate revision. This effective date should not be earlier than 30 days after the filing of the application.

Although not required, the following documents may assist the KPSC in its review of the proposed rate revision: a copy of the municipal ordinance or resolution of the municipal utility's governing body that approved the proposed rate change; any studies or reports that were performed to develop the proposed rate, and any other information that describes need for the rate change and supports the level of the proposed rate change. Any written communication from the public utility to the municipal utility that indicates the public utility does not object to the proposed rate change or waives its right to hearing on the proposed rate should also be submitted. Providing this additional information will expedite KPSC review of the application.

**How does the KPSC's review of an application for rate adjustment differ from a tariff filing?**

The principal difference in the KPSC's review is procedural. Upon receipt of an application, the KPSC will assign a docket number to the application and establish a formal proceeding to review the application. The KPSC interprets KRS 278.180 and KRS 278.190 as requiring it to act on the proposed rate prior to the rate's proposed effective date. This action will involve requesting additional information, suspending the proposed rate, or approving or denying the proposed rate. The KPSC will announce its action by written order.

Applying the same standard that is used for municipal utility tariff filings, the KPSC has historically approved a municipal utility's proposed rate if the wholesale customer does not object or otherwise request an investigation of the proposed rate. If an objection or request for investigation is received before the effective date of the proposed rate, the KPSC has historically

suspended the proposed rate and issued a schedule for a more extensive review of the proposed rate. It then uses the same formal investigation procedures that [were previously discussed](#).

**What benefit, if any, is obtained by submitting an application for rate adjustment rather than using the tariff filing method?**

The use of application ensures compliance with [KRS 278.200](#) and eliminates any uncertainty regarding the lawfulness of the rate adjustment. In [Simpson County Water District v. City of Franklin](#), 872 S.W.2d 460 (Ky. 1994), the Kentucky Supreme Court interpreted KRS 278.200 as prohibiting any change in a rate or a service standard in a contract between a city and a public utility **until a hearing had been held** before the KPSC. Unless the KPSC suspends the proposed rate, the KPSC establishes no formal proceeding or holds any hearing when the tariff filing method is used. If the application method is used, the KPSC holds a hearing, even if only a “paper hearing,” in which the KPSC reviews the application and issues a written decision based upon the application’s contents.

**Rate Issues**

**Is a municipal utility permitted to use the Consumer Price Index (CPI) or other pricing index to automatically adjust its wholesale rate to reflect the effects of inflation?**

Not currently. No public or municipal utility has yet demonstrated to the KPSC that the CPI or other index accurately measures and reflects changes in the cost of providing utility service. See [City of Lawrenceburg, Kentucky](#), Case No. 2006-00067 (Ky. PSC Nov. 21, 2006); [Atmos Energy Corporation](#), Case No. 2013-00148 (Ky. PSC Apr. 22, 2014). The KPSC has stricken provisions in municipal utility wholesale contracts that provided for automatic adjustments based upon the CPI because of the proponent’s failure to demonstrate the index’s reasonableness.

**If a municipal utility desires to impose a system development charge on a public utility wholesale customer, does it follow the same procedures described above?**

No. [807 KAR 5:090](#) sets forth a different procedure that must be followed. Municipal utilities and public utilities must file an application with the KPSC. They cannot merely file a rate schedule setting forth the proposed system development charge.

**Does the Public Service Commission’s jurisdiction also extend to service related issues between a municipal utility and a public utility?**

Yes. [Service](#) includes any practice or requirement in any way relating to the municipal utility’s service, including the purity, pressure, and quantity of water. Service-related issues that the KPSC may have jurisdiction over include the frequency of meter testing, meter testing standards, the level of disinfectants in purchased water, water odor and water taste. See, e.g., [Kentucky-American Water Company](#), Case No. 2001-230 (Ky. PSC Oct. 19, 2001).

**If a municipal utility desires to change a term of the wholesale contract related to rates or service and the public utility refuses to agree, may the municipal utility amend the contract**

**terms by filing a rate schedule with the Public Service Commission that contains those terms?**

Yes. In *Board of Education v. William Dohrman, Inc.*, 620 S.W.2d 328 (Ky. 1981), the Kentucky Court of Appeals held that, no matter what a contract provided, the KPSC had the right and duty to regulate the rates and services of utilities and could amend terms in a contract for utility service that related to rates or service. See also *City of Versailles, Kentucky*, Case No. 2011-00419 (Ky. PSC Aug. 12, 2014); *Kenton County Water District No. 1*, Case No. 8572 (Ky. PSC Mar. 22, 1983). A municipal utility may impose a condition of service or a rate that differs from the wholesale contract's terms by filing a tariff sheet with the KPSC that implements the new rate or condition of service. As the proponent of the amended rate or condition of service, however, the municipal utility has the burden of demonstrating that the amendment is fair, just and reasonable.

**What are examples of conditions of service that could be amended?**

Some examples include maximum or minimum supply or purchase requirements, reporting requirements, required participation in planning activities, penalties when maximum supply requirements are exceeded, and advanced notice requirements for proposed rate changes.

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