A COMPILATION OF KENTUCKY PUBLIC UTILITY LAWS

(PUBLIC SERVICE COMMISSION LAWS VERSION)

UNOFFICIAL TEXT OF KRS CHAPTER 278 AND TITLE 807 OF THE KENTUCKY ADMINISTRATIVE REGULATIONS

FOR INFORMATION PURPOSES ONLY

STATUTES AND REGULATIONS IN EFFECT AS OF JULY 15, 2026

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As used in KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and 278.990, unless the context otherwise requires:

(1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts;

(2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;

(3) "Utility" means any person except a regional wastewater commission established pursuant to KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city or a municipal interlocal gas utility, who owns, controls, operates, or manages any facility used or to be used for or in connection with:

(a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;

(b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;

(c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;

(d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;

(e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or

(f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;

(4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;

(5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;

(6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;

(7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an

electric supplier to another electric supplier for resale;

(8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;

(9) "Generation and transmission cooperative" or "G&T" means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;

(10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;

(11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;

(12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;

(13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility, but does not include Voice over Internet Protocol (VoIP) service;

(14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;

(15) "Commission" means the Public Service Commission of Kentucky;

(16) "Commissioner" means one (1) of the members of the commission;

(17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand, including home energy assistance programs;

(18) "Affiliate" means a person that controls or that is controlled by, or is under common control with, a utility;

(19) "Control" means the power to direct the management or policies of a person through ownership, by contract, or otherwise;

(20) "CAM" means a cost allocation manual which is an indexed compilation and documentation of a company's cost allocation policies and related procedures;

(21) "Nonregulated activity" means the provision of competitive retail gas or electric services or other products or services over which the commission exerts no regulatory authority;

(22) "Nonregulated" means that which is not subject to regulation by the commission;

(23) "Regulated activity" means a service provided by a utility or other person, the rates

and charges of which are regulated by the commission;

(24) "USoA" means uniform system of accounts which is a system of accounts for public utilities established by the FERC and adopted by the commission;

(25) "Arm's length" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction;

(26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class of customer, activity, or business unit that is attributable to another;

(27) "Solicit" means to engage in or offer for sale a good or service, either directly or indirectly and irrespective of place or audience;

(28) "USDA" means the United States Department of Agriculture;

(29) "FERC" means the Federal Energy Regulatory Commission;

(30) "SEC" means the Securities and Exchange Commission;

(31) "Commercial mobile radio services" has the same meaning as in 47 C.F.R. sec. 20.3 and includes the term "wireless" and service provided by any wireless real time two (2) way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line;

(32) "Voice over Internet Protocol" or "VoIP" has the same meaning as in federal law; and

(33) "Municipal interlocal gas utility" has the same meaning as in KRS 65.230.

Effective: July 15, 2026

History: Amended 2026 Ky. Acts ch. 161, sec. 120, effective July 15, 2026. -- Amended 2011 Ky. Acts ch. 98, sec. 20, effective June 8, 2011. -- Amended 2006 Ky. Acts ch. 239, sec. 5, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 109, sec. 2, effective June 20, 2005. -- Amended 2002 Ky. Acts ch. 365, sec. 15, effective April 24 2002. -- Amended 2001 Ky. Acts ch. 11, sec. 1, effective June 21, 2001. -- Amended 2000 Ky. Acts ch. 101, sec. 5, effective July 14, 2000; ch. 118, sec. 1, effective July 14, 2000; and ch. 511, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 188, sec. 1, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 238, sec. 1, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 1, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 118, sec. 1. -- Amended 1972 Ky. Acts ch. 83, sec. 1. -- Amended 1964 Ky. Acts ch. 195, sec. 1. -- Amended 1960 Ky. Acts ch. 209, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-1.

278.012 Water association subject to Public Service Commission -- Exceptions.

Notwithstanding any other provisions of the Kentucky Revised Statutes, any water association formed for the purpose of furnishing water or sewer services to the general public pursuant to KRS Chapter 273 is deemed to be and shall be a public utility and shall be subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility as defined in KRS 278.010, except:

(1) As provided in KRS 278.023; or

(2) When a wholesale supplier selling water or providing sewage treatment to a water association increases its rates, the water association shall have the authority to increase its rates commensurate with the wholesale supplier without prior approval by the commission.

Within twenty (20) days after any such increase in rates, the association shall file its revised tariffs with the commission, together with a copy of the notice from its wholesale supplier showing the increase in the rate charged to the utility, and a statement of the volume of purchased water used or sewage treated to calculate the increase in rates. The commission shall approve the filing or establish revised rates by order no later than thirty (30) days after the above documents are filed with it. Prior to or at the time of the first billing of the new rates, the district shall give notice to its customers of the increase.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 276, sec. 2, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 12, sec. 2, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 495, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 2, effective April 1, 1979. -- Created 1972 Ky. Acts ch. 310, sec. 1.

278.015 Water district; combined water, gas, or sewer district; or water commission a public utility subject to Public Service Commission -- Exceptions.

Notwithstanding any of the provisions of KRS Chapter 74, any water district; combined water, gas, or sewer district; or water commission, except a joint commission created under the provisions of KRS 74.420 to 74.520, shall be a public utility and shall be subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility as defined in KRS 278.010, except:

(1) As provided in KRS 278.023; or

(2) When a wholesale supplier selling water or providing sewage treatment to a water district; combined water, gas, or sewer district; or water commission increases its rates, the water district or combined water, gas, or sewer district shall have the authority to increase its rates commensurate with the wholesale supplier without prior approval by the commission.

Within twenty (20) days after any such increase in rates, the district shall file its revised tariffs with the commission, together with a copy of the notice from its wholesale supplier showing the increase in the rate charged to the utility, and a statement of the volume of purchased water used or sewage treated to calculate the increase in rates. The commission shall approve the filing or establish revised rates by order no later than thirty (30) days after the above documents are filed with it. Prior to or at the time of the first billing of the new rates, the district shall give notice to its customers of the increase.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 122, sec. 10, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 276, sec. 1, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 12, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 495, sec. 2, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 3, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 3, effective April 1, 1979. -- Created 1964 Ky. Acts ch. 195, sec. 2.

278.0152 Water utility permitted to charge a tapping fee for installing service to customer.

(1) Any utility subject to this chapter which is engaged in the distributing or furnishing of water to or for the public, for compensation, may, subject to the approval of the commission, make a charge or "tapping fee" for installing service to its customers.

(2) The "tapping fee" shall include charges for a service tap, meter, meter vault, and installation thereof.

Effective: July 15, 1988

History: Created 1988 Ky. Acts ch. 8, sec. 1, effective July 15, 1988.

278.0154 Water district or water association may assess customer a late payment charge of 10% of amount billed -- How charge assessed and applied -- Commission without power to affect late payment charge -- Waiver of late payment charge.

(1) Any water district or water association formed for the purpose of furnishing water or sewer services to the general public for compensation pursuant to KRS Chapter 74 or 273 may assess a customer who fails to pay a bill for rendered services by the due date shown on the bill a late payment charge of ten percent (10%) of the amount billed.

(2) A late payment charge or fee shall not be assessed more than once per billing cycle or on any part of the late payment charge.

(3) Any payment received by a water district or water association shall first be applied to the portion of the bill for service rendered.

(4) The commission shall not modify, reject, discontinue, abolish, or suspend the operation of a late payment charge that is provided for currently, or has been provided for in the past, in a water district or water association tariff.

(5) A water district or water association shall not be required to demonstrate to the commission that the late payment charge is required to recover customer-specific costs incurred that would otherwise result in a monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or actions taken.

(6) Any late payment charge imposed by a water district or water association shall be waived for any bill or portion of a bill for which a customer has received third-party billing assistance through the Low-Income Household Drinking Water and Wastewater Emergency Assistance Program or from another public or charitable source.

Effective: June 29, 2021

History: Created 2021 Ky. Acts ch. 158, sec. 1, effective June 29, 2021.

278.016 Commonwealth to be divided into geographical service areas.

It is hereby declared to be in the public interest that, in order to encourage the orderly development of retail electric service, to avoid wasteful duplication of distribution facilities, to avoid unnecessary encumbering of the landscape of the Commonwealth of Kentucky, to prevent the waste of materials and natural resources, for the public convenience and necessity and to minimize disputes between retail electric suppliers which may result in inconvenience, diminished efficiency and higher costs in serving the consumer, the state be divided into geographical areas, establishing the areas within which each retail electric supplier is to provide the retail electric service as provided in KRS 278.016 to 278.020 and, except as otherwise provided, no retail electric supplier shall furnish retail electric service in the certified territory of another retail electric supplier.

History: Created 1972 Ky. Acts ch. 83, sec. 2.

278.017 Establishing boundaries of certified areas.

(1) Except as otherwise provided in this section, the boundaries of the certified territory of each retail electric supplier are hereby set as a line or lines substantially equidistant between its existing distribution lines and the nearest existing distribution lines of any other retail electric supplier in every direction, with the result that there is hereby certified to each retail electric supplier such area which in its entirety is located substantially in closer proximity to one of its existing distribution lines than to the nearest existing distribution line of any other retail electric supplier.

(2) On or before one hundred twenty (120) days after June 16, 1972, or, when requested in writing by a retail electric supplier and for good cause shown, such further time as the commission may fix by order, each retail electric supplier shall file with the commission a map or maps showing all of its existing distribution lines. The commission shall prepare or cause to be prepared within one hundred twenty (120) days thereafter a map or maps of uniform scale to show, accurately and clearly, the boundaries of the certified territory of each retail electric supplier as established under subsection (1) of this section, and shall issue such map or maps of certified territory to each retail electric supplier. Any retail electric supplier who feels itself aggrieved by reason of a certification of territory pursuant to this section may protest the certification of territory within a one hundred twenty day period after issuance of the map of certified territory by the commission; and the commission shall have the power, after hearing, to revise or vacate such certified territories or portions thereof.

(3) In such hearing, the commission shall be guided by the following conditions as they existed on June 16, 1972:

(a) The proximity of existing distribution lines to such certified territory.

(b) Which supplier was first furnishing retail electric service, and the age of existing facilities in the area.

(c) The adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service at reasonable costs.

(d) The elimination and prevention of duplication of electric lines and facilities supplying such territory. In its determination of such protest, the commission hearing shall be de novo; and neither supplier shall bear the burden of proof.

(4) In each area, where the commission shall determine that the existing distribution lines of two or more retail electric suppliers are so intertwined or located that subsection (1) of this section cannot reasonably be applied, the commission shall, after hearing, certify the service territory or territories for the retail electric suppliers under the provisions of subsection (3) of this section.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 4, effective July 15,1982. -- Amended 1978 Ky. Acts ch. 379, sec. 4, effective April 1, 1979. -- Created 1972 Ky. Acts ch. 83, sec. 3.

278.018 Right to serve certified territory.

(1) Except as otherwise provided herein, each retail electric supplier shall have the exclusive right to furnish retail electric service to all electric-consuming facilities located within its certified territory, and shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric-consuming facilities located within the certified territory of another retail electric supplier; provided that any retail electric supplier may extend its facilities through the certified territory of another retail electric supplier, if such extension is necessary for such supplier to connect any of its facilities or to serve its consumers within its own certified territory. In the event that a new electric-consuming facility should locate in two (2) or more adjacent certified territories, the commission shall determine which retail electric supplier shall serve said facility based on criteria in KRS 278.017(3).

(2) Except as provided in subsections (3) and (5) of this section, any new electric-consuming facility located in an area which has not as yet been included in a map issued by the commission, pursuant to KRS 278.017(2), or certified, pursuant to KRS 278.017(4), shall be furnished retail electric service by the retail electric supplier which has an existing distribution line in closer proximity to such electric-consuming facility than is the nearest existing distribution line of any other retail electric supplier. Any disputes under this subsection shall be resolved by the commission.

(3) The commission may, after a hearing had upon due notice, make such findings as may be supported by proof as to whether any retail electric supplier operating in a certified territory is rendering or proposes to render adequate service to an electric-consuming facility and in the event the commission finds that such retail electric supplier is not rendering or does not propose to render adequate service, the commission may enter an order specifying in what particulars such retail electric supplier has failed to render or propose to render adequate service and order that such failure be corrected within a reasonable time, such time to be fixed in such order. If the retail electric supplier so ordered to correct such failure fails to comply with such order, the commission may authorize another retail electric supplier to furnish retail electric service to such facility.

(4) Except as provided in subsection (3) of this section, no retail electric supplier shall furnish, make available, render or extend retail electric service to any electric-consuming facility to which such service is being lawfully furnished by another retail electric supplier on June 16, 1972, or to which retail electric service is lawfully commenced thereafter in accordance with this section by another retail electric supplier.

(5) The provisions of KRS 278.016 to 278.020 shall not preclude any retail electric supplier from extending its service after June 16, 1972, to property and facilities owned and operated by said retail electric supplier.

(6) Notwithstanding the effectuation of certified territories established by or pursuant to KRS 278.016 to 278.020, and the exclusive right to service within such territory, a retail electric supplier may contract with another retail electric supplier for the

purpose of allocating territories and consumers between such retail electric suppliers and designating which territories and consumers are to be served by which of said retail electric suppliers. Notwithstanding any other provisions of law, a contract between retail electric suppliers as herein provided when approved by the commission shall be valid and enforceable. The commission shall approve such a contract if it finds that the contract will promote the purposes of KRS 278.016 and will provide adequate and reasonable service to all areas and consumers affected thereby.

Effective: April 1, 1979

History: Amended 1978 Ky. Acts ch. 379, sec. 5, effective April 1, 1979. -- Created 1972 Ky. Acts ch. 83, sec. 4.

278.019 Deadlines for commission to issue final orders -- Failure to meet deadline deemed approval.

(1) Except as otherwise provided in KRS 278.010 to KRS 278.450, if the commission fails to issue a final order on any application submitted to it by a utility pursuant to KRS 278.018, 278.020, 278.216, 278.218, 278.271, and 278.300 within eight (8) months of the acceptance of the filing of the application, then the application shall be deemed approved by the commission and the relief requested shall be deemed to be granted.

(2) The commission shall complete and issue a final order on all eight (8) month and two (2) year reviews of the operation of a utility's environmental surcharge and fuel adjustment clause within eight (8) months of commencing the review.

Effective: April 12, 2024

History: Created 2024 Ky. Acts ch. 172, sec. 2, effective April 12, 2024.

278.020 Certificate of convenience and necessity required for construction provision of utility service or of utility -- Exceptions -- Approval required for acquisition or transfer of ownership -- Public hearing on proposed transmission line -- Limitations upon approval of application to transfer control of utility or to abandon or cease provision of services -- Hearing -- Severability of provisions.

(1) (a) No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except:

1. Retail electric suppliers for service connections to electric-consuming facilities located within its certified territory;
2. Ordinary extensions of existing systems in the usual course of business; or
3. A water district created under KRS Chapter 74 or a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project if the water district or water association is a Class A or B utility as defined in the uniform system of accounts established by the commission according to KRS 278.220 and:
   a. The water line extension or improvement project will not cost more than five hundred thousand dollars ($500,000); or
   b. The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring commission approval as required by KRS 278.300.

   In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers;

until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

(b) Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement.

(c) The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth.

(d) The commission, when considering an application for a certificate to construct an electric transmission line, may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric

transmission facilities in the Commonwealth.

(e) Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.

(2) For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity. However, ordinary extensions of existing systems in the usual course of business not requiring such a certificate shall include:

(a) The replacement or upgrading of any existing electric transmission line; or

(b) The relocation of any existing electric transmission line to accommodate construction or expansion of a roadway or other transportation infrastructure; or

(c) An electric transmission line that is constructed solely to serve a single customer and that will pass over no property other than that owned by the customer to be served.

(3) Prior to granting a certificate of public convenience and necessity to construct facilities to provide the services set forth in KRS 278.010(3)(f), the commission shall require the applicant to provide a surety bond, or a reasonable guaranty that the applicant shall operate the facilities in a reasonable and reliable manner for a period of at least five (5) years. The surety bond or guaranty shall be in an amount sufficient to ensure the full and faithful performance by the applicant or its successors of the obligations and requirements of this chapter and of all applicable federal and state environmental requirements. However, no surety bond or guaranty shall be required for an applicant that is a water district or water association or for an applicant that the commission finds has sufficient assets to ensure the continuity of sewage service.

(4) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.

(5) No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.

(6) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of

stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

(7) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.

(8) Subsection (7) of this section shall not apply to any acquisition of control of any:

(a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection (7) of this section;

(b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or

(c) Utility pursuant to the terms of any indebtedness of the utility, provided the

issuance of indebtedness was approved by the commission.

(9) In a proceeding on an application filed pursuant to this section, any interested person, including a person over whose property the proposed transmission line will cross, may request intervention, and the commission shall, if requested, conduct a public hearing in the county in which the transmission line is proposed to be constructed, or, if the transmission line is proposed to be constructed in more than one county, in one of those counties. The commission shall issue its decision no later than ninety (90) days after the application is filed, unless the commission extends this period, for good cause, to one hundred twenty (120) days. The commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its discretion, it deems it necessary to hire a competent, qualified and independent firm to assist it in reaching its decision. The issuance by the commission of a certificate that public convenience and necessity require the construction of an electric transmission line shall be deemed to be a determination by the commission that, as of the date of issuance, the construction of the line is a prudent investment.

(10) The commission shall not approve any application under subsection (6) or (7) of this section for the transfer of control of a utility described in KRS 278.010(3)(f) unless the commission finds, in addition to findings required by those subsections, that the person acquiring the utility has provided evidence of financial integrity to ensure the continuity of sewage service in the event that the acquirer cannot continue to provide service.

(11) The commission shall not accept for filing an application requesting authority to abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease providing services unless the applicant has provided written notice of the filing to the following:

(a) Kentucky Division of Water;

(b) Office of the Attorney General; and

(c) The county judge/executive, mayor, health department, planning and zoning commission, and public sewage service provider of each county and each city in which the utility provides utility service.

(12) The commission may grant any application requesting authority to abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease providing services upon terms and conditions as the commission deems necessary or appropriate, but not before holding a hearing on the application and no earlier than ninety (90) days from the date of the commission's acceptance of the application for filing, unless the commission finds it necessary for good cause to act upon the application earlier.

(13) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 66, sec. 1, effective June 27, 2019. -- Amended 2018 Ky. Acts ch. 171, sec. 9, effective April 14, 2018; and ch. 207, sec. 9, effective

April 27, 2018. -- Amended 2016 Ky. Acts ch. 50, sec. 1, effective April 8, 2016. -- Amended 2006 Ky. Acts ch. 137, sec. 1, effective July 12, 2006. -- Amended 2004 Ky. Acts ch. 75, sec. 1, effective July 13, 2004. -- Amended 2001 Ky. Acts ch. 35, sec. 1, effective June 21, 2001. -- Amended 1998 Ky. Acts ch. 388, sec. 1, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 144, sec. 1, effective July 15, 1994. â€“ Amended 1992 Ky. Acts ch. 102, sec. 2, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 12, sec. 3, effective July 15, 1988; ch. 22, sec. 5, effective July 15, 1988; ch. 335, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 368, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 5, effective July 15, 1982; ch. 130, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 6, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 388, sec. 3. -- Amended 1972 Ky. Acts ch. 83, sec. 5. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-25.

278.021 Receivership for abandoned utility -- Criteria for finding of abandonment -- Consolidation of actions -- Powers and duties of receiver -- Temporary receivership -- Commission's discretion to approve or decline to approve applications.

(1) If the commission, after notice and hearing, enters an order in which it finds that a utility is abandoned, the commission may bring an action in the Franklin Circuit Court for an order attaching the assets of the utility and placing those assets under the sole control and responsibility of a receiver.

(2) For purposes of this section, a utility shall be considered abandoned if it:

(a) Disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service;

(b) Notifies the commission of its intent to abandon the operation of the facilities used to provide service;

(c) Fails to comply with an order of the commission in which the commission determined that the utility is not rendering adequate service, specified the actions necessary for the utility to render adequate service, and fixed a reasonable time for the utility to perform such actions, and the failure of the utility to comply with the order presents a serious and imminent threat to the health or safety of a significant portion of its customers; or

(d) Fails to meet its financial obligations to its suppliers and is unable or unwilling to take necessary actions to correct the failure after receiving reasonable notice from the commission, and the failure poses an imminent threat to the continued availability of gas, water, electric, or sewer utility service to its customers.

(3) Within twenty (20) days after commencing an action in Franklin Circuit Court, the commission shall file a certified copy of the record of the administrative proceeding in which the commission entered its finding of abandonment.

(4) Any action brought pursuant to KRS 278.410 for review of an order of the commission containing a finding that a utility is abandoned shall be consolidated with any action brought pursuant to subsection (1) of this section and based upon the same order.

(5) Any receiver appointed by the court shall file a bond in an amount fixed by the court. The receiver shall operate the utility to preserve its assets, to restore or maintain a reasonable level of service, and to serve the best interests of its customers.

(6) During the pendency of any receivership, the receiver may bring or defend any cause of action on behalf of the utility and generally perform acts on behalf of the utility as the court may authorize.

(7) The receiver shall control and manage the assets and operations of the utility until the Franklin Circuit Court, after reasonable notice and hearing, orders the receiver to return control of those assets to the utility or to liquidate those assets as provided by law.

(8) (a) Notwithstanding subsection (1) of this section, the commission may petition the Franklin Circuit Court to appoint temporarily a receiver to operate and manage the assets of an abandoned utility. After notice to the utility and a hearing, the court may grant a petition, upon terms and

conditions as it deems appropriate, upon a showing by a preponderance of the evidence:

1. That a utility has been abandoned;
2. That the abandonment is an immediate threat to the public health, safety, or the continued availability of service to the utility's customers; and
3. That the delay required for the commission to conduct a hearing would place the public health, safety, or continued utility service at unnecessary risk.

(b) Sixty (60) days after its entry, the order of temporary receivership shall terminate and control and responsibility for the assets and operations of the utility shall revert to the utility without further action of the court unless the commission brings an action under subsection (1) of this section.

(9) Nothing contained in this section shall be construed as requiring the commission to approve an application made pursuant to KRS 278.020(6) for authority to abandon a utility or other assets of a utility or to cease the provision of utility service.

Effective: April 8, 2016

History: Amended 2016 Ky. Acts ch. 50, sec. 2, effective April 8, 2016. -- Amended 2011 Ky. Acts ch. 7, sec. 1, effective June 8, 2011. -- Created 1994 Ky. Acts ch. 145, sec. 1, effective July 15, 1994.

278.022 Utility to notify commission upon receipt of notice of discontinuance or termination from supplier.

(1) If a gas, water, electric, or sewer utility receives notice of discontinuance or termination of service from one (1) or more of its suppliers for breach or default under the terms of the service contract or tariff, and the discontinuance or termination will prevent the provision of gas, water, electric, or sewer utility service to its customers, the utility shall, within one (1) business day of receipt of the notice:

(a) Notify the commission in writing of the supplier's notice of discontinuance or termination; and

(b) Furnish a copy of the supplier's notice of discontinuance or termination to the commission.

(2) Any gas, water, electric, or sewer utility that intends to terminate service to another utility that is subject to the jurisdiction of the commission shall not terminate service without notifying the commission in writing of its intent to terminate service at least thirty (30) days prior to the date of termination.

Effective: June 8, 2011

History: Created 2011 Ky. Acts ch. 7, sec. 2, effective June 8, 2011.

278.023 Approval of federally-funded construction projects -- Commission review of agreement and supporting documents -- Surcharge.

(1) The provisions of this section shall apply to any construction project undertaken by a water association, commission, district, or combined water, gas or sewer district formed under KRS Chapter 74 or 273, which is financed in whole or in part under the terms of an agreement between the water utility and the United States Department of Agriculture or the United States Department of Housing and Urban Development. Because federal financing of such projects entails prior review and oversight by the federal agency and obligates the utility to certain actions, and because conflicting requirements by the federal agency and the Public Service Commission may place the water utility in an untenable position and delay or jeopardize such projects, it is declared to be the policy of the Commonwealth that such agreements shall be accepted by the Public Service Commission, and that the commission shall not prohibit a water utility from fulfilling its obligations under such an agreement.

(2) No agreement between a water utility and federal agency under this section shall take effect until thirty (30) days after such agreement, together with necessary applications and documentation, is filed with the commission, unless the commission acts within a lesser time. The commission in its administrative regulations shall list the specific documents required to be filed under this subsection.

(3) The commission shall review the project and the agreement, may recommend changes to the utility and the federal agency, but shall not modify or reject any portion of the agreement on its own authority. The commission shall issue a certificate of necessity and convenience and such other orders as may be required to implement the terms of the agreement no later than thirty (30) days after filing.

(4) The commission shall not prohibit the inclusion of any cost or the use of any accounting procedure in reviewing or setting the rates of the utility if such cost or procedure is required as a condition for federal financing of a construction project under an approved agreement between the water utility and federal agency.

(5) If the federal agency approves a surcharge to the water bills of customers who receive service through an extension of water facilities under this section, which is in lieu of an assessment against the customer for the cost of the extension, then the Public Service Commission shall allow collection of the surcharge to continue for the period of years for which the surcharge was established.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 158, sec. 1, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 388, sec. 2, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 12, sec. 4, effective July 15, 1988.

278.025 Repealed, 2002

Catchline at repeal: Certificate of environmental compatibility -- Requirements.

History: Repealed 2002 Ky. Acts ch. 365, sec. 16, effective April 24, 2002. -- Amended 1982 Ky. Acts ch. 82, sec. 6, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 265, sec. 1, effective June 17, 1978; and ch. 379, sec. 7, effective April 1, 1979. -- Created 1974 Ky. Acts ch. 388, sec. 1.

278.027 Application for certificate -- Publishing notice of hearing.

When application required by KRS 278.020 is made to the commission for a certificate that public convenience and necessity require the construction of a new electric transmission line of four hundred (400) kilovolts or more, during the thirty (30) days immediately preceding the public hearing on such application provided for in KRS 278.020(1), the commission shall, on at least four (4) days, publish notice of such hearing in a newspaper or newspapers of general circulation in the counties and municipalities within which such transmission facility is proposed to be located in whole or in part. The commission shall not issue such a certificate for a new electric transmission line of four hundred (400) kilovolts or more unless the commission shall first determine that the proposed route of the line will reasonably minimize adverse impact on the scenic and environmental assets of the general area concerned, consistent with engineering and other technical and economic factors appropriate for consideration in determining the route of the line. At the said public hearing provided for in KRS 278.020(1), all persons residing on or owning property affected by the proposed transmission facility may be heard.

History: Created 1974, Ky. Acts ch. 388, sec. 2.

278.030 Rates, classifications and service of utilities to be just and reasonable -- Service to be adequate -- Utilities prohibited from energizing power to electrical service where seal is not present.

(1) Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.

(2) Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.

(3) Every utility may employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates. The classifications may, in any proper case, take into account the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and any other reasonable consideration.

(4) Notwithstanding the provisions of subsection (2) of this section, no utility shall energize power to an electrical service in a manufactured home or mobile home where the certified installer's seal is not present pursuant to KRS 227.570.

(5) Notwithstanding the provisions of subsection (2) of this section, no utility shall energize power to an electrical service in a previously owned manufactured home or previously owned mobile home where the Class B1 seal is not present pursuant to KRS 227.600.

Effective: January 1, 2009

History: Amended 2008 Ky. Acts ch. 118, sec. 3, effective January 1, 2009. -- Amended 1976 Ky. Acts ch. 88, sec. 1, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-28, 3952-29.

278.035 Prohibition against preferential retail rates for utility services for certain publicly-funded entities -- Exception.

Any entity receiving public funds from the Commonwealth of Kentucky, or any political subdivision thereof, for the purpose of offsetting at least fifty percent (50%) of its operational expenses shall not be entitled to preferential retail rates for services provided by utilities subject to the provisions of KRS Chapter 278. This section shall not prohibit the provision of free or reduced rate service under KRS 278.170(3).

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 141, sec. 1, effective July 15, 1996. -- Created 1990 Ky. Acts ch. 357, sec. 3, effective July 13, 1990.

278.038 Public Service Commission -- Appointments -- Membership -- Vacancies -- Limitations.

(1) The Public Service Commission shall consist of five (5) members appointed by the Governor as follows:

(a) Two (2) shall be licensed attorneys who have actively practiced law in the Commonwealth for at least seven (7) years; and

(b) Three (3) shall have education or training, and five (5) years of actual experience, in one (1) or more of the following fields:

1. Economics;
2. Engineering;
3. Accounting;
4. Finance;
5. Utility regulation, operation, or management;
6. Pipeline or utility infrastructure safety;
7. Business management; or
8. Environmental management.

(2) Appointments and reappointments to the commission shall be subject to confirmation by the Senate as provided in KRS 11.160.

(3) (a) Every four (4) years, the commissioners shall elect a chair from among the commissioners, who shall serve a four (4) year term or until his or her term expires without reappointment, whichever comes first.

(b) Members of the commission may serve multiple terms as chair subject to the term limitations set forth in subsection (5) of this section.

(c) The chair shall be the chief executive officer of the commission and shall designate one (1) of the commissioners to serve as vice chair to act for the chair in his or her absence.

(d) The chair may designate in writing one (1) or more commissioners or the executive director to act for him or her in the event of his or her absence or inability for any reason to discharge the duties of the position. The designee of the chair shall have all of the duties and powers of the chair for the duration of the designation, except that the executive director shall not serve as a member of the commission on any cases before the commission.

(4) Vacancies for unexpired terms shall be filled in the same manner as the original appointments, but the appointee shall hold office only until the end of the unexpired term and shall be subject to confirmation by the Senate as provided in KRS 11.160.

(5) Members of the commission shall serve no more than three (3) terms, but any terms or partial terms served prior to April 15, 2026, shall not be counted toward the term limits established by this subsection.

(6) After the initial appointments, a member of the commission shall serve for a term of four (4) years and until a successor is appointed and qualified.

(7) No more than three (3) members of the commission shall be of the same political party, and members of the commission shall not serve on any other regulatory

bodies during their terms on the commission.

Effective: April 15, 2026

History: Created 2026 Ky. Acts ch. 185, sec. 1, effective April 15, 2026.

278.040 Public Service Commission operations -- Hearings -- Compensation -- Contracts -- Jurisdiction -- Regulations.

(1) (a) The Public Service Commission shall constitute an independent department of state government within the meaning of KRS Chapter 12 and shall be administratively attached to the Energy and Environment Cabinet only for those limited functions and purposes expressly requested by the commission to be performed by the Energy and Environment Cabinet.

(b) The commission shall have sole discretion as to which functions shall be deemed necessary for its efficient operation.

(c) The commission shall consist of the five (5) commissioners appointed under KRS 378.038, an executive director appointed under KRS 278.100, and other agents and employees as necessary to carry out the commission's obligations under this chapter.

(2) Notwithstanding any provision of law to the contrary:

(a) The commission shall conduct all procurements necessary for the performance of its duties in accordance with the procurement procedures outlined in KRS Chapter 45A, this chapter, and the administrative regulations promulgated under this chapter, but the commission shall not be subject to any provision of KRS Chapter 45A that requires the approval of any Finance and Administration Cabinet official for the commission to proceed with any aspect of the procurement process;

(b) Upon approval of the commission, the executive director shall be deemed the chief purchasing officer for the purposes of conducting procurements for the commission and shall have all of the authority and responsibility with regard to the commission's procurements as the secretary of the Finance and Administration Cabinet has for procurements under KRS Chapter 45A; and

(c) In the bidding and negotiation processes, the executive director, upon approval of the commission, shall perform his or her own bidding and procurement in accordance with the procedures established by KRS Chapter 45A.

(3) (a) Except as provided in paragraph (b) of this subsection, in any matter to be decided by the commission, the chair of the commission shall assign three (3) commissioners to hear and decide the matter. No more than two (2) of the assigned commissioners shall be of the same political party.

(b) In his or her sole discretion, the chair may assign all five (5) commissioners to hear and decide a matter before the commission.

(4) (a) Notwithstanding KRS 64.640 or any provision of KRS Chapter 18A to the contrary, the commission may, in its sole discretion, identify and determine the compensation for categories of its professional employees at the amounts it deems necessary to recruit and retain employees who have the experience, expertise, and education required to perform their job responsibilities with the commission.

(b) Noncontractual employees of the commission shall otherwise be subject to the requirements and benefits of KRS Chapter 18A.

(5) The commission may engage hearing officers, consultants, and other persons and entities on a contractual basis as needed to assist with the performance of the commission's duties under this chapter and the administrative regulations promulgated thereunder. The scope of responsibilities and duties held by a hearing officer shall be established by the commission by rule.

(6) All personal service contracts entered into by the commission shall be subject to review by the Government Contract Review Committee established by KRS 45A.705.

(7) The commission shall regulate utilities, enforce the provisions of this chapter and the rules and administrative regulations promulgated hereunder, and exercise all powers necessary and incidental thereto. The commission shall be a body corporate, with power to sue and be sued in its corporate name. The commission may adopt a seal bearing the name "Public Service Commission of Kentucky," which seal shall be affixed to all writs and official documents, and to such other instruments as the commission directs, and all courts shall take judicial note of the seal.

(8) The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

(9) The commission may promulgate in accordance with KRS Chapter 13A reasonable administrative regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commission not contrary to law.

(10) The commission shall not be subject to reorganization under KRS Chapter 12.

Effective: April 15, 2026

History: Amended 2026 Ky. Acts ch. 185, sec. 2, effective April 15, 2026. -- Amended 1982 Ky. Acts ch. 82, sec. 7, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 8, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 2, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-2, 3952-12, 3952-13, 3952-27.

278.042 Service adequacy and safety standards for electric utilities--National Electrical Safety Code.

(1) For the purposes of this section, "NESC" means the National Electrical Safety Code as published by the Institute of Electrical and Electronics Engineers, Inc.

(2) Except as otherwise provided by law, the commission shall, in enforcing service adequacy and safety standards for electric utilities, ensure that each electric utility constructs and maintains its plant and facilities in accordance with accepted engineering practices as set forth in the commission's administrative regulations and orders and in the most recent edition of the NESC.

Effective: June 24, 2003

History: Created 2003 Ky. Acts ch. 84, sec. 1, effective June 24, 2003.

278.045 Repealed, 1980.

Catchline at repeal: Transfer of functions of electrical inspection.

History: Repealed 1980 Ky. Acts ch. 188, sec. 310, effective July 15, 1980. -- Created 1974 Ky. Acts ch. 74, Art. V, sec. 21.

278.046 Repealed, effective July 15, 1986.

Catchline at repeal: Annual reports by municipally owned electric utilities.

History: Repealed 1986 Ky. Acts ch. 300, sec. 5, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 8, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 9, effective April 1, 1979. -- Created 1976 Ky. Acts ch. 88, sec. 14, effective March 29, 1976.

278.047 Renumbered as KRS 96.534.

278.050 Repealed, 2026.

Catchline at repeal: Membership of Public Service Commission -- Appointment -- Terms -- Chairman -- Vacancies.

History: Repealed 2026 Ky. Acts ch. 185, sec. 10, effective April 15, 2026. -- Amended 2004 Ky. Acts ch. 127, sec. 4, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 58, sec. 1, effective July 15, 2002. -- Amended 1982 Ky. Acts ch. 82, sec. 9, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 11, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 3, effective March 29, 1976. -- Amended 1972 Ky. Acts ch. 47, sec. 1. -- Amended 1956 Ky. Acts ch. 91, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-3, 3952-3a.

278.060 Qualifications of commissioners -- Oath -- Restrictions on conduct.

(1) Each commissioner shall be a resident and qualified voter of this state, not less than twenty-five (25) years of age at the time of his or her appointment and qualification, and shall have resided in this state for at least three (3) years prior to his or her appointment and qualification. Each commissioner shall take and subscribe to the constitutional oath of office, which shall be recorded in the office of the Secretary of State.

(2) No person shall be appointed to or hold the office of commissioner who holds, or whose immediate family member holds, any official relationship to any utility, or who owns any stocks or bonds thereof, or who has any pecuniary interest therein, except for a pension or retirement savings account if no contributions have been made to it for at least one (1) year prior to the appointment.

(3) No commissioner shall receive any rebate, pass, percentage of contract or other thing of value from any utility.

(4) In addition to the restrictions on members of the commission set forth in KRS 278.038, no commissioner shall engage in any occupation or business inconsistent with his or her duties as such commissioner.

(5) If any commissioner becomes a member of any political party committee, his or her office as commissioner shall be thereby vacated.

Effective: April 15, 2026

History: Amended 2026 Ky. Acts ch. 185, sec. 3, effective April 15, 2026. -- Amended 1982 Ky. Acts ch. 82, sec. 10, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 12, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 4, effective March 29, 1976. -- Amended 1960 Ky. Acts ch. 68, Art. XII, sec. 1, effective March 17, 1960. -- Amended 1956 Ky. Acts ch. 91, sec. 2. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-3, 3952-4.

278.070 Removal of commissioners.

(1) The Governor may remove any commissioner for cause, after giving him or her a copy of the charges against him or her and an opportunity of being publicly heard in person or by counsel in his or her own defense upon not less than ten (10) days' notice.

(2) If a commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges against the commissioner and his or her findings thereon, and a complete record of the proceedings.

(3) Any commissioner so removed may bring action in the proper court to determine whether or not he or she was legally removed in accordance with this section.

Effective: April 15, 2026

History: Amended 2026 Ky. Acts ch. 185, sec. 4, effective April 15, 2026. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-5.

278.080 Quorum -- Performance of functions by less than a majority of commissioners or by hearing examiners.

A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all of the powers of the commission. Any investigation, inquiry, or hearing that the commission has power to undertake or hold may be undertaken or held, and the evidence therein taken, by any one (1) or more commissioners or a hearing examiner designated for that purpose by the commission, and every finding, opinion or order made by the commissioner or commissioners or hearing examiner so designated shall, when approved or confirmed by the commission, become the finding, opinion or order thereof.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 11, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 13, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 5, effective March 29, 1976. -- Amended 1972 Ky. Acts ch. 47, sec. 2. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-6.

278.090 Office and hours -- Meetings.

(1) The principal office of the commission shall be located at the state capital, and it shall be kept open during the usual business hours.

(2) The commission shall hold meetings at its principal office and at such other convenient places in the state as are expedient or necessary for the proper performance of its duties.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 12, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 14, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-7.

278.100 Executive director.

(1) The commission shall have the sole authority to appoint an executive director, by a majority vote of the members of the commission and subject to confirmation by the Senate pursuant to KRS 11.160, who shall hold office at the pleasure of the commission and shall devote his or her entire time to the duties of the office.

(2) The executive director shall be selected on the basis of experience and training demonstrating capacity to deal with the problems of management and governmental regulation and knowledge relatable to utility regulation.

(3) The executive director shall be the chief administrative officer for the commission and shall be responsible for implementing the programs, directing the staff, and maintaining the official records of commission proceedings, including all approved orders.

Effective: April 15, 2026

History: Amended 2026 Ky. Acts ch. 185, sec. 5, effective April 15, 2026. -- Amended 1986 Ky. Acts ch. 221, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 13, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 15, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 6, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-8.

278.110 Additional employees -- Documents prepared by certain contracted persons filed in the record -- Testimony.

(1) The commission acting through the executive director may employ such clerks, stenographers, rate experts, agents, special agents, engineers, accountants, auditors, inspectors, lawyers, hearing examiners, experts and other classified service employees and the commission may contract for services of persons in a professional or scientific capacity to make or conduct a hearing or a temporary or special inquiry, investigation or examination as it deems necessary to carry out the provisions of this chapter, or to perform the duties and exercise the powers conferred by law upon the commission.

(2) (a) When the commission contracts for the services of a person in a professional or scientific capacity to conduct a hearing, temporary special inquiry, investigation, or examination, any nonprivileged final report or recommendation prepared in fulfillment of the contract shall be filed within the record for the case for which the final report or recommendation was prepared at the same time it is provided to the commission.

(b) A contracted person who has prepared and submitted a final report or recommendation pursuant to this subsection shall be required to respond to any written information requests regarding the final report or recommendation. Additionally, the contracted person shall be available for cross-examination as a witness in the case for which the final report or recommendation was prepared and filed at any public hearing held by the commission pursuant to the rules it has adopted.

Effective: April 12, 2024

History: Amended 2024 Ky. Acts ch. 172, sec. 3, effective April 12, 2024. -- Amended 1982 Ky. Acts ch. 82, sec. 14, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 16, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 7, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-10.

278.115 Commission to establish internal organization of its offices.

The commission shall establish the internal organization of its offices and shall divide the commission into such offices or divisions as the commission may deem necessary to perform the functions, powers and duties of the commission, subject to the provisions of KRS Chapter 12.

Effective: July 15, 1986

History: Amended 1986 Ky. Acts ch. 245, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 52, sec. 3, effective July 15, 1982; ch. 82, sec. 15, effective July 15, 1982; and ch. 448, sec. 71, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 17, effective April 1, 1979. -- Created 1976 Ky. Acts ch. 88, sec. 9, effective March 29, 1976.

278.120 Compensation and expenses of commissioners, executive director, and employees.

(1) Notwithstanding KRS 64.640 or any provision of KRS Chapter 18A to the contrary, the executive director of the commission shall be paid a salary to be fixed solely by the commission.

(2) The commissioners, the executive director, and employees of the commission are entitled to all expenses, including hotel bills, incurred in traveling on business of the commission.

(3) The salaries and expenses provided for by this section, and all other expenses of the commission incurred in the administration of this chapter, shall be paid out of appropriations as provided by law out of the general expenditure fund.

Effective: April 15, 2026

History: Amended 2026 Ky. Acts ch. 185, sec. 6, effective April 15, 2026. -- Amended 1994 Ky. Acts ch. 166, sec. 1, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 16, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 18, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 8, effective March 29, 1976. -- Amended 1972 Ky. Acts ch. 47, sec. 3. -- Amended 1968 Ky. Acts ch. 152, sec. 134. -- Amended 1956 Ky. Acts ch. 91, sec. 3. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-3, 3952-8, 3952-11, 3952-58.

278.130 Assessments against utilities -- Applications for adjustment. (Effective July 15, 2026)

(1) For the purpose of maintaining the commission, including the payment of salaries and all other expenses, and the cost of regulation of the utilities subject to its jurisdiction, the Department of Revenue shall each year assess the utilities in proportion to their earnings or receipts derived from intrastate business in Kentucky for the preceding calendar year as modified by KRS 278.150, and shall notify each utility on or before July 1 of the amount assessed against it. The total amount assessed shall be twenty-three hundredths of one percent (0.23%) of intrastate receipts as so modified, which shall be deposited into the State Treasury to the credit of the general fund. The sum by each utility shall not be less than fifty dollars ($50) in any one (1) year.

(2) The assessments provided for in this section shall be in lieu of all other fees or assessments levied by any city or other political subdivision for the control or regulation of utilities.

(3) The commission, upon application by a utility, shall authorize the utility to adjust its rates to recover, within not more than one (1) year, any change in the annual assessment and any costs imposed by commission order for the fees and expenses of consultants. The application, and any hearing or other proceedings thereon, shall be limited to the amount of such adjustment.

Effective: July 15, 2026

History: Amended 2026 Ky. Acts ch. 161, sec. 104, effective July 15, 2026. -- Amended 2005 Ky. Acts ch. 85, sec. 671, effective June 20, 2005. -- Amended 1988 Ky. Acts ch. 229, sec. 1, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 82, sec. 17, effective July 15, 1982; and ch. 197, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 19, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 10, effective March 29, 1976. -- Amended 1972 Ky. Acts ch. 47, sec. 4. -- Amended 1964 Ky. Acts ch. 195, sec. 3. -- Amended 1960 Ky. Acts ch. 206, sec. 1. -- Amended 1952 Ky. Acts ch. 46, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-53, 3952-54, 3952-55, 3952-60.

278.140 Report of gross earnings from intrastate business.

To ascertain the amount of the assessment provided for in KRS 278.130, each utility shall, on or before March 31 of each year, file with the commission a report of its gross earnings or receipts derived from intrastate business for the preceding calendar year.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 18, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 20, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-55.

278.150 Payment of assessments -- Certification of deduction by commission -- Administration of funds collected. (Effective July 15, 2026)

(1) The commission shall, on or before June 1, certify to the Department of Revenue and the Finance and Administration Cabinet the amount of intrastate business of each utility in the state subject to its jurisdiction during the previous calendar year. The commission shall, when certifying the intrastate sales of retail electric suppliers, deduct from such sales one-half (1/2) of the applicable wholesale power costs, provided the utility from which such wholesale power purchases were made pays assessment on the full wholesale value of its gross intrastate sales in Kentucky. When certifying the intrastate sales of retail electric suppliers not subject to the jurisdiction of the commission for rates, the commission shall deduct one-half (1/2) of their actual intrastate sales. All utilities classified as retail electric suppliers shall pay assessments based on the amount of intrastate sales less deductions as certified by the commission.

(2) The Department of Revenue shall collect and pay the assessment into the State Treasury to the credit of the general expenditure fund. All such assessments shall be paid into the State Treasury through the Department of Revenue on or before July 31 of the year in which the assessments are made.

(3) If any amount in the special fund for the maintenance of the commission remains unexpended at the end of any fiscal year, that amount shall not lapse, but shall remain credited to the account of the commission and may be used during any succeeding year.

Effective: July 15, 2026

History: Amended 2026 Ky. Acts ch. 161, sec. 105, effective July 15, 2026. -- Amended 2005 Ky. Acts ch. 85, sec. 672, effective June 20, 2005. -- Amended 1982 Ky. Acts ch. 82, sec. 19, effective July 15, 1982; and ch. 197, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 233, sec. 25, effective June 17, 1978; and ch. 379, sec. 21, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 74, Art. II, sec. 9(1). -- Amended 1972 Ky. Acts ch. 47, sec. 5. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-53, 3952-56, 3952-57.

278.160 Utilities to file and display general schedules of rates and conditions for service -- Adherence to schedules -- Exclusion from disclosure of confidential or proprietary provisions in special contracts.

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

(2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

(3) The provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS 61.878(1)(c)1.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 138, sec. 1, effective July 14, 2000. -- Amended 1986 Ky. Acts ch. 300, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 20, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 22, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-30, 3952-31.

278.170 Discrimination as to rates or service -- Free or reduced rate services.

(1) No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

(2) Any utility may grant free or reduced rate service to its officers, agents, or employees, and may exchange free or reduced rate service with other utilities for the benefit of the officers, agents, and employees of both utilities. Any utility may grant free or reduced rate service to the United States, to charitable and eleemosynary institutions, and to persons engaged in charitable and eleemosynary work, and may grant free or reduced rate service for the purpose of providing relief in case of flood, epidemic, pestilence, or other calamity. The terms "officers" and "employees," as used in this subsection, include furloughed, pensioned, and superannuated officers and employees, and persons who have become disabled or infirm in the service of the utility. Notice must be given to the commission and its agreement obtained for such reduced rate service except in case of an emergency, in which case the commission shall be notified at least five (5) days after the service is rendered.

(3) Upon obtaining commission approval of a tariff setting forth terms and conditions of service the commission deems necessary, a utility as defined in KRS 278.010(3)(d) may grant free or reduced rate service for the purpose of fighting fires or training firefighters to any city, county, urban-county, charter county, fire protection district, or volunteer fire protection district. Any tariff under this section shall require the water user to maintain estimates of the amount of water used for fire protection and training, and to report this water usage to the utility on a regular basis.

(4) The commission may determine any question of fact arising under this section.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 141, sec. 2, effective July 15, 1996. -- Amended 1982 Ky. Acts ch. 82, sec. 21, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 23, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 11, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-32.

278.172 Rate classification for certain entities.

Every utility which serves a volunteer fire department or other entity eligible for aid under KRS 95A.262, shall supply such service at the lowest rate available under its tariffs to customers with comparable consumption amounts, including residential or farm rates.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 381, sec. 11, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 149, sec. 3, effective July 13, 1990.

278.180 Changes in rates, how made.

(1) Except as provided in subsection (2) of this section, no change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. The commission may order a rate change only after giving an identical notice to the utility. The commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations.

(2) The commission, upon application of any utility, may prescribe a less time within which a reduction of rates may be made.

Effective: July 15, 1986

History: Amended 1986 Ky. Acts ch. 300, sec. 2, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 22, effective July 15, 1982; and ch. 242, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 24, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 12, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-15.

278.183 Surcharge to recover costs of compliance with environmental requirements for coal combustion wastes and by-products -- Environmental compliance plan, review and adjustment.

(1) Notwithstanding any other provision of this chapter, effective January 1, 1993, a utility shall be entitled to the current recovery of its costs of complying with the Federal Clean Air Act as amended and those federal, state, or local environmental requirements which apply to coal combustion wastes and by-products from facilities utilized for production of energy from coal in accordance with the utility's compliance plan as designated in subsection (2) of this section. These costs shall include a reasonable return on construction and other capital expenditures and reasonable operating expenses for any plant, equipment, property, facility, or other action to be used to comply with applicable environmental requirements set forth in this section. Operating expenses include all costs of operating and maintaining environmental facilities, income taxes, property taxes, other applicable taxes, and depreciation expenses as these expenses relate to compliance with the environmental requirements set forth in this section.

(2) Recovery of costs pursuant to subsection (1) of this section that are not already included in existing rates shall be by environmental surcharge to existing rates imposed as a positive or negative adjustment to customer bills in the second month following the month in which costs are incurred. Each utility, before initially imposing an environmental surcharge pursuant to this subsection, shall thirty (30) days in advance file a notice of intent to file said plan and subsequently submit to the commission a plan, including any application required by KRS 278.020(1), for complying with the applicable environmental requirements set forth in subsection (1) of this section. The plan shall include the utility's testimony concerning a reasonable return on compliance-related capital expenditures and a tariff addition containing the terms and conditions of a proposed surcharge as applied to individual rate classes. Within six (6) months of submittal, the commission shall conduct a hearing upon the request of a party, and shall, regardless of whether or not a hearing is requested:

   (a) Consider and approve the plan and rate surcharge if the commission finds the plan and rate surcharge reasonable and cost-effective for compliance with the applicable environmental requirements set forth in subsection (1) of this section;

   (b) Establish a reasonable return on compliance-related capital expenditures; and

   (c) Approve the application of the surcharge.

(3) The amount of the monthly environmental surcharge shall be filed with the commission ten (10) days before it is scheduled to go into effect, along with supporting data to justify the amount of the surcharge which shall include data and information as may be required by the commission. At six (6) month intervals, the commission shall review past operations of the environmental surcharge of each utility, and after hearing, as ordered, shall, by temporary adjustment in the surcharge, disallow any surcharge amounts found not just and reasonable and reconcile past surcharges with actual costs recoverable pursuant to subsection (1) of

this section. Every two (2) years the commission shall review and evaluate past operation of the surcharge, and after hearing, as ordered, shall disallow improper expenses, and to the extent appropriate, incorporate surcharge amounts found just and reasonable into the existing base rates of each utility.

(4) The commission may employ competent, qualified independent consultants to assist the commission in its review of the utility's plan of compliance as specified in subsection (2) of this section. The cost of any consultant shall be included in the surcharge approved by the commission.

(5) The commission shall retain all jurisdiction granted by this section and KRS 278.020 to review the environmental surcharge authorized by this section and any complaints as to the amount of any environmental surcharge or the incorporation of any environmental surcharge into the existing base rate of any utility.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 66, sec. 2, effective June 27, 2019. -- Created 1992 Ky. Acts ch. 102, sec. 1, effective July 14, 1992.

278.185 Repealed, 2014.

Catchline at repeal: Notification to customers of proposed rate change by sewerage corporations.

History: Repealed 2014 Ky. Acts ch. 49, sec. 1, effective July 15, 2014. -- Amended 1982 Ky. Acts ch. 82, sec. 23, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 25, effective April 1, 1979. -- Created 1976 Ky. Acts ch. 82, sec. 1, effective March 29, 1976.

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.

278.192 Test period for proposed rate increase.

(1) For the purpose of justifying the reasonableness of a proposed general increase in rates, the commission shall allow a utility to utilize either an historical test period of twelve (12) consecutive calendar months, or a forward-looking test period corresponding to the first twelve (12) consecutive calendar months the proposed increase would be in effect after the maximum suspension provided in KRS 278.190(2).

(2) (a) Any application utilizing a forward-looking test period shall include a base period to be filed with the application, which begins not more than nine (9) months prior to the date of filing, consisting of not less than six (6) months of actual historical data and not more than six (6) months of estimated data at the time of filing.

(b) Actual results for the estimated months of the base period shall be filed no later than forty-five (45) days after the last day of the base period.

(c) Upon the filing of an application for a proposed increase in rates based on either a historical or a forward-looking test period, any intervening party in opposition to such application shall have the right to examine all data, including individual invoices, which comprise the actual expenditures of the utility incurred for ratemaking purposes for the preceding twelve (12) month period immediately prior to the filing date.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 308, sec. 1, effective July 14, 1992.

278.200 Power to regulate rates and service standards fixed by agreement with city.

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 25, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 27, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-27.

278.210 Examination and testing of meters and meter-testing devices.

(1) The commission may provide instruments for, and carry on, the examination and testing of any meter or appliance used to measure the product or service of any utility, and the examination and testing of any instrument used by a utility to test the accuracy of any meter or appliance used to measure its products or services.

(2) Any patron of a utility may, upon request and payment of the fees fixed by the commission, have a test made of the meter or appliance by which his use of the products or services of the utility is measured.

(3) The commission may establish reasonable fees for testing such meters and appliances at the request of a patron of a utility. If the appliance is found to be commercially defective or inaccurate to the extent of more than two percent (2%) to the disadvantage of the patron, the fees shall be repaid to the patron and paid by the utility.

(4) If a utility demonstrates through sample testing that no statistically significant number of its meters over-register above the limits set out in subsection (3) of this section, the meter testing frequency shall be that which is determined by the utility to be cost effective. This determination by the utility shall be based on established scientific, engineering, and economic methods and shall be documented in an application properly filed with the commission.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 218, sec. 1, effective July 15, 1998. -- Amended 1982 Ky. Acts ch. 82, sec. 26, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 28, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-26.

278.212 Filing of plans for electrical interconnection with merchant electric generating facility -- Costs of upgrading existing grid.

(1) No utility shall begin the construction or installation of any property, equipment, or facility to establish an electrical interconnection with a merchant electric generating facility in excess of ten megawatts (10MW) until the plans and specifications for the electrical interconnection have been filed with the commission.

(2) Notwithstanding any other provision of law, any costs or expenses associated with upgrading the existing electricity transmission grid, as a result of the additional load caused by a merchant electric generating facility, shall be borne solely by the person constructing the merchant electric generating facility and shall in no way be borne by the retail electric customers of the Commonwealth.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 11, effective April 24, 2002.

278.214 Curtailment of service by utility or generation and transmission cooperative.

When a utility or generation and transmission cooperative engaged in the transmission of electricity experiences on its transmission facilities an emergency or other event that necessitates a curtailment or interruption of service, the utility or generation and transmission cooperative shall not curtail or interrupt retail electric service within its certified territory, or curtail or interrupt wholesale electric energy furnished to a member distribution cooperative for retail electric service within the cooperative's certified territory, except for customers who have agreed to receive interruptable service, until after service has been interrupted to all other customers whose interruption may relieve the emergency or other event.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 12, effective April 24, 2002.

278.216 Site compatibility certificate -- Site assessment report -- Commission action on application.

(1) Except for a utility as defined under KRS 278.010(9) that has been granted a certificate of public convenience and necessity prior to April 15, 2002, no utility shall begin the construction of a facility for the generation of electricity capable of generating in aggregate more than ten megawatts (10MW) without having first obtained a site compatibility certificate from the commission.

(2) An application for a site compatibility certificate shall include the submission of a site assessment report as prescribed in KRS 278.708(3) and (4), except that a utility which proposes to construct a facility on a site that already contains facilities capable of generating ten megawatts (10MW) or more of electricity shall not be required to comply with setback requirements established pursuant to KRS 278.704(3). A utility may submit and the commission may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report.

(3) The commission may deny an application filed pursuant to, and in compliance with, this section. The commission may require reasonable mitigation of impacts disclosed in the site assessment report including planting trees, changing outside lighting, erecting noise barriers, and suppressing fugitive dust, but the commission shall, in no event, order relocation of the facility.

(4) The commission may also grant a deviation from any applicable setback requirements on a finding that the proposed facility is designed and located to meet the goals of this section and KRS 224.10-280, 278.010, 278.212, 278.214, 278.218, and 278.700 to 278.716 at a distance closer than those provided by the applicable setback requirements.

(5) Nothing contained in this section shall be construed to limit a utility's exemption provided under KRS 100.324.

(6) Unless specifically stated otherwise, for the purposes of this section, "utility" has the same meaning as in KRS 278.010(3)(a) or (9).

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 150, sec. 3, effective June 24, 2003. -- Created 2002 Ky. Acts ch. 365, sec. 13, effective April 24, 2002.

278.218 Approval of commission for change in ownership or control of assets owned by utility.

(1) No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior approval of the commission, if the assets have an original book value of one million dollars ($1,000,000) or more and:

(a) The assets are to be transferred by the utility for reasons other than obsolescence; or

(b) The assets will continue to be used to provide the same or similar service to the utility or its customers.

(2) The commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 14, effective April 24, 2002.

278.220 Uniform system of accounts for utilities.

The commission may establish a system of accounts to be kept by utilities subject to its jurisdiction, or may classify utilities and establish a system of accounts for each class, and may prescribe the manner in which such accounts shall be kept. The system established shall conform as nearly as practicable to the uniform system of accounts prescribed by the National Association of Regulatory Utility Commissioners, except that the system established for telephone and telegraph companies shall conform as nearly as practicable to the system adopted or approved by the Federal Communications Commission and the system established for gas and electric companies shall conform as nearly as practicable to the system adopted or approved by the Federal Energy Regulatory Commission.

Effective: July 15, 1986

History: Amended 1986 Ky. Acts ch. 300, sec. 3, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 27, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 29, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-22.

278.2201 Prohibition against subsidy of nonregulated activity -- Separate accounting.

A utility shall not subsidize a nonregulated activity provided by an affiliate or by the utility itself. The commission shall require all utilities providing nonregulated activities, either directly or through an affiliate, to keep separate accounts and allocate costs in accordance with procedures established by the commission. The commission may promulgate administrative regulations that will assist the commission in enforcing this section.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 511, sec. 2, effective July 14, 2000.

278.2203 Cost allocation of regulated and nonregulated activity.

(1) A utility that engages in a nonregulated activity shall identify all costs of the nonregulated activity and report the costs in accordance with the guidelines in the USoA and the cost allocation methods described in subsection (2) of this section.

(2) In allocating costs between regulated and nonregulated activities, a utility shall utilize one (1) of the following cost allocation methods:

(a) The fully distributed cost method; or

(b) A cost allocation method recognized or mandated by the rules of the SEC promulgated pursuant to 15 U.S.C. sec. 79, et seq., or promulgated by the FERC or by the USDA.

(3) A utility's compliance with federal cost allocation methods shall constitute compliance with the provisions of KRS 278.010 to 278.450.

(4) Notwithstanding subsections (1) to (3) of this section, a utility may report an incidental nonregulated activity as a regulated activity if:

(a) The revenue from the aggregate total of the utility's nonregulated incidental activities does not exceed the lesser of two percent (2%) of the utility's total revenue or one million dollars ($1,000,000) annually; and

(b) The nonregulated activity is reasonably related to the utility's regulated activity.

(5) Nothing contained in this section shall be construed as requiring a utility to violate any cost allocation methods required to be employed under any service agreement validly existing as of July 14, 2000, for the term of the existing agreement, except where the commission makes the determination that a service agreement was executed for the purpose of avoiding provisions of KRS 278.010 to 278.450.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 511, sec. 3, effective July 14, 2000.

278.2205 Cost allocation manual for nonregulated activity -- Contents -- Maintenance.

(1) Any utility that engages in a nonregulated activity whose revenue exceeds the amount provided for incidental nonregulated activities under KRS 278.2203(4)(a), shall develop and maintain a CAM as described in subsections (2) to (5) of this section.

(2) A CAM shall contain the following information for a utility's jurisdictional operations in the Commonwealth:

(a) A list of regulated and nonregulated divisions within the utility;

(b) A list of all regulated and nonregulated affiliates of the utility to which the utility provides services or products and where the affiliates provide nonregulated activities as defined in KRS 278.010(21);

(c) A list of services and products provided by the utility, an identification of each as regulated or nonregulated, and the cost allocation method generally applicable to each category;

(d) A list of incidental, nonregulated activities that are subject to the provisions of KRS 278.2203(4);

(e) A description of the nature of transactions between the utility and the affiliate; and

(f) For each USoA account and subaccount, a report that identifies whether the account contains costs attributable to regulated operations and nonregulated operations. The report shall also identify whether the costs are joint costs that cannot be directly identified. A description of the methodology used to apportion each of these cost shall be included and the allocation methodology shall be consistent with the provisions of KRS 278.2203.

(3) Within two hundred seventy (270) days of July 14, 2000, the utility shall file:

(a) A statement with the commission that certifies the CAM has been developed and will be adopted by the management, effective with the beginning of the next calendar year. The statement shall be signed by an officer of the utility; and

(b) One (1) copy of the CAM.

(4) Within sixty (60) days of any material change in matters required to be listed in the CAM, the utility shall amend the CAM to reflect the change.

(5) The CAM shall be available for public inspection at the utility and at the commission.

(6) The CAM shall be filed as part of the initial filing requirement in a proceeding involving an application for an adjustment in rates pursuant to KRS 278.190.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 511, sec. 4, effective July 14, 2000.

278.2207 Transactions between utility and affiliate -- Pricing requirements -- Request for deviation.

(1) The terms for transactions between a utility and its affiliates shall be in accordance with the following:

(a) Services and products provided to an affiliate by the utility pursuant to a tariff shall be at the tariffed rate, with nontariffed items priced at the utility's fully distributed cost but in no event less than market, or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology.

(b) Services and products provided to the utility by an affiliate shall be priced at the affiliate's fully distributed cost but in no event greater than market or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology.

(2) A utility may file an application with the commission requesting a deviation from the requirements of this section for a particular transaction or class of transactions. The utility shall have the burden of demonstrating that the requested pricing is reasonable. The commission may grant the deviation if it determines the deviation is in the public interest.

(3) Nothing in this section shall be construed to interfere with the commission's requirement to ensure fair, just, and reasonable rates for utility services.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 511, sec. 5, effective July 14, 2000.

278.2209 Documentation regarding cost allocation.

In any formal commission proceeding in which cost allocation is at issue, a utility shall provide sufficient information to document that its cost allocation procedures and affiliate transaction pricing are consistent with the provisions of this chapter.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 511, sec. 6, effective July 14, 2000.

278.2211 Remedies for noncompliance utility and affiliate -- Access to records -- Disallowance of costs -- Audit.

(1) If the commission finds that a utility has not complied with any provision of this chapter for any transaction between a utility and its affiliate, or if a utility has failed to provide sufficient evidence of its compliance, then the commission may:

(a) Access the books and records of a utility's nonregulated affiliate; and

(b) Order that the costs attached to any transactions be disallowed from rates.

(2) If, after inspecting an affiliate's books and records, the commission finds that a utility has not complied with any provision of KRS 278.010 to 278.450, the commission may perform a financial audit of the utility's affiliate to the extent necessary to ensure compliance with KRS 278.010 to 278.450.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 511, sec. 7, effective July 14, 2000.

278.2213 Separate recordkeeping for utility and affiliate -- Prohibited business practices -- Confidentiality of information -- Notice of service available from competitor.

The provisions of this section shall govern a public utility company's activities related to the sharing of information, databases, and resources between its employees or an affiliate involved in the marketing or the provision of nonregulated activities and its employees or an affiliate involved in the provision of regulated activities.

(1) A utility and its affiliate shall be separate corporate entities and maintain separate books and records. If a utility and nonregulated affiliate have common officers, directors, or employees, the fees, compensation, and expenses of the individuals involved shall be subject to the cost allocation requirements set forth in KRS 278.2203 and 278.2207. Any utility that provides nonregulated activities shall separately account for all investments, revenues, and expenses in accordance with its filed cost allocation manual.

(2) A utility shall not provide advertising space in its billing envelope to its affiliates or for its nonregulated activities unless it offers the same to competing service providers on the same terms it provides to its affiliates. This subsection applies to nonregulated activities only.

(3) A utility shall not attempt to persuade customers to do business with its affiliates by offering rebates or discounts on tariffed services.

(4) All utility company employees engaged in the merchant function shall abide by all standards promulgated by applicable FERC orders and regulations.

(5) No utility employee shall share any confidential customer information with the utility's affiliates unless the customer has consented in writing, or the information is publicly available or is simultaneously made publicly available.

(6) All dealings between a utility and a nonregulated affiliate shall be at arm's length.

(7) Employees transferring from the utility to an affiliate shall not disclose to the affiliate confidential information or take with them any competitively sensitive materials.

(8) Neither a utility nor its employees or agents shall solicit business on behalf of an affiliate or for its nonutility services.

(9) A utility that carries out any research and development or joint marketing and promotion with its affiliate for its nonregulated activities shall be subject to the cost allocation requirements set forth in KRS 278.2203.

(10) Except as provided in subsection (5) of this section, if a utility is engaged in a nonregulated activity, marketing employees for the nonregulated activity shall not have access to the customer information provided to the utility when the customer places an order for regulated service.

(11) A utility shall not provide any type of undue preferential treatment to a nonregulated affiliate to the detriment of a competitor.

(12) A utility shall notify the customer that competing suppliers of a nonregulated service exist if:

(a) The utility receives a request for a recommendation from a customer seeking a specific service which is offered by the utility's affiliate or by the utility itself; and

(b) The utility mentions itself or its affiliate when making the recommendation to the customer.

(13) The utility's name, trademark, brand, or logo shall not be used by a nonregulated affiliate in any type of visual or audio media without a disclaimer. The commission shall develop specifications for the disclaimer. The disclaimer shall be approved by the commission prior to use in any advertisement by the utility's affiliate.

(14) A utility shall not enter into any arrangements for financing nonregulated activities through an affiliate that would permit a creditor upon default to have recourse to the assets of the utility.

(15) A utility shall inform the commission of all new nonregulated activities begun by itself or by the utility's affiliate within a time to be set by the commission.

(16) Start-up costs associated with the formation of a nonregulated affiliate shall not be included in the utility's rate base.

(17) The commission may require the utility to file annual reports of information related to affiliate transactions when necessary to monitor compliance with these guidelines.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 511, sec. 8, effective July 14, 2000.

278.2215 Exemptions.

The provisions of KRS 278.2201 to 278.2213 and KRS 278.2215 and 278.2219 shall not apply to telecommunications utilities, telecommunications services, nonprofit water or sewer utilities, or water districts.

Effective: July 12, 2006

History: Amended 2006 Ky. Acts ch. 114, sec. 3, effective July 12, 2006. -- Created 2000 Ky. Acts ch. 511, sec. 9, effective July 14, 2000.

278.2219 Waiver or deviation from requirements of KRS 278.2201 to 278.2213.

(1) Notwithstanding any provisions in KRS 278.2201 to the contrary, a utility may apply to the commission for a waiver or deviation from any or all provisions of KRS 278.2201 to 278.2213.

(2) The utility's application to the commission shall:

(a) Demonstrate the basis of the utility's need to be granted a waiver or deviation; and

(b) Contain, if appropriate, documentation regarding the costs and benefits of compliance with the provisions of KRS 278.2201 to 278.2213.

(3) The commission shall grant a waiver or deviation if the commission finds that compliance with the provisions of KRS 278.2201 to 278.2213 is impracticable or unreasonable. The findings of the commission shall be a final appealable order.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 511, sec. 10, effective July 14, 2000.

278.225 Time limitation on billing -- Liability for unbilled service.

All service supplied by a utility shall be billed within two (2) years of the service. No customer shall be liable for unbilled service after two (2) years from the date of the service, unless the customer obtained the service through fraud, theft, or deception.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 143, sec. 1, effective July 15, 1994.

278.230 Access to property, books and records of utilities -- Reports and information may be required.

(1) The commissioners and the officers and employees of the commission may, during all reasonable hours, enter upon the premises of any utility subject to its jurisdiction for the purpose of examining any books or records, or for making any examination or test, or for exercising any power provided for in this chapter, and may set up and use on such premises apparatus and appliances necessary for any such examination or test. The utility shall have the right to be represented at the making of any such examination, test or inspection.

(2) The books, accounts, papers and records of the utility shall be available to the commission for inspection and examination. If the books, accounts, papers and records are not within the state, the commission may, by notice and order, require their production or the production of verified copies at such time and place as it designates, any expense incurred to be borne by the utility so ordered.

(3) Every utility, when required by the commission, shall file with it any reports, schedules, classifications or other information that the commission reasonably requires. The commission shall prepare and distribute to the utilities blank forms for any information required under this chapter. All such reports shall be under oath when required by the commission.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 28, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 30, effective April 11, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-13, 3952-20, 3952-23.

278.240 Certified copies of commission's records -- Use as evidence.

Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner, or by the executive director under the seal of the commission, to be true copies of the originals, shall be evidence in like manner as the originals in all matters before the commission and in courts of competent jurisdiction.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 166, sec. 2, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 29, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 31, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-41.

278.250 Investigation of condition of utility.

Whenever it is necessary in the performance of its duties, the commission may investigate and examine the condition of any utility subject to its jurisdiction. In conducting such investigation, the commission may proceed with or without a hearing as it deems best, but shall make no order without giving a hearing to the parties affected thereby.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 30, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 32, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-21.

278.255 Periodic management and operation audits.

(1) The commission shall provide for periodic management and operation audits of each utility with annual intra-Kentucky assessable revenue as of December 31, 1983, under KRS 278.150(1) not less than one hundred million dollars ($100,000,000) to investigate management effectiveness and operating efficiency. The commission shall complete or provide for a full and comprehensive audit of each such utility prior to January 1, 1990. After the initial audit of any utility, the commission may order a subsequent audit of that utility focusing on issues disclosed by the initial audit. A full and comprehensive audit of any utility initiated prior to July 13, 1984, may be deemed to satisfy the requirements of this subsection if the audit was required and directed by the commission and completed after July 1, 1983.

(2) The commission may provide for management or operations audits, or both, of any utility under its jurisdiction on a regular or irregular schedule to investigate all or any portion of the management and operating procedures or any other internal workings of the utility.

(3) Audits provided under this section may, at the discretion of the commission, be performed by the commission staff or by a competent, qualified and independent firm. When the commission orders an audit to be performed by an independent firm, the commission shall select the audit firm, which shall work for and under the direction of the commission, with the cost to be borne by the utility. The commission shall include the cost of conducting any audits required in this section in the cost of service of the utility for ratemaking purposes.

(4) The commission shall adopt rules and regulations setting forth the scope and application of audits, and procedures for the conduct of management and operations audits. The audit procedures shall provide the utility being audited the opportunity to comment at various stages of the audit, including an opportunity to comment on the initial work plan and the opportunity to review and comment on preliminary audit drafts prior to issuance of a final document. The results of all audits shall be filed with the commission and shall be open to public inspection.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 46, sec. 1, effective July 13, 1984.

278.260 Jurisdiction over complaints as to rates or service -- Investigations -- Hearing.

(1) The commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion. No order affecting the rates or service complained of shall be entered by the commission without a formal public hearing.

(2) The commission shall fix the time and place for each hearing held by it, and shall serve notice thereof upon the utility and the complainant not less than twenty (20) days before the time set for the hearing. The commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest or for the protection of substantial rights.

(3) The complainant and the person complained of shall be entitled to be heard in person or by an attorney and to introduce evidence.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 242, sec. 3, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 33, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-33.

278.262 Definitions for KRS 278.262 and 278.264.

As used in this section and KRS 278.264:

(1) "Electric generating unit" means one (1) or more fossil fuel-fired combustion or steam generating sources used for generating electricity that deliver all or part of their power to the electric power grid for sale;

(2) "Reliability" means having adequate electric generation capacity to safely deliver electric energy in the quantity, with the quality, and at a time that the utility customers demand;

(3) "Resilience" means having the ability to quickly and effectively respond to and recover from events that compromise grid reliability;

(4) "Retirement" or "retired" means the closure or the complete and permanent cessation of operations at an electric generating unit; and

(5) "Utility" has the same meaning as in KRS 278.010(3)(a).

Effective: March 29, 2023

History: Created 2023 Ky. Acts ch. 118, sec. 1, effective March 29, 2023.

278.264 Commission approval or denial of retirement of electric generating unit -- Rebuttable presumption against retiring fossil fuel-fired generating unit -- Evidence of costs -- Report -- Definitions for section -- Recovery of costs to utility related to decommissioning, removal and salvage, and depreciation allowed. (Effective July 15, 2026)

(1) Notwithstanding any provision of law to the contrary, the commission shall have the authority to approve or deny the retirement of an electric generating unit owned by a utility. Prior to retiring an electric generating unit, a utility shall apply to the commission for an order approving the retirement, and shall give the commission thirty (30) days' notice of the application. The application shall include a statement certifying the applicant's compliance with the requirements of KRS 164.2807. The commission shall enter an order approving, approving with conditions, or denying the application within one hundred eighty (180) days of receiving an administratively complete application.

(2) There shall be a rebuttable presumption against the retirement of a fossil fuel-fired electric generating unit. Subject to the provisions of subsection (6) of this section, the commission shall not approve the retirement of an electric generating unit, authorize a surcharge for the decommissioning of the unit, or take any other action which authorizes or allows for the recovery of costs for the retirement of an electric generating unit, including any stranded asset recovery, unless the presumption created by this section is rebutted by evidence sufficient for the commission to find that:

(a) The utility will replace the retired electric generating unit with new electric generating capacity that:

1. Is dispatchable by either the utility or the regional transmission organization or independent system operator responsible for balancing load within the utility's service area;

2. Maintains or improves the reliability and resilience of the electric transmission grid;

3. Maintains the minimum reserve capacity requirement established by the utility's reliability coordinator; and

4. Has the same or higher capacity value and net capability, unless the utility can demonstrate that such capacity value and net capability is not necessary to provide reliable service;

(b) The retirement will not harm the utility's ratepayers by causing the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law;

(c) The decision to retire the fossil fuel-fired electric generating unit is not the result of any financial incentives or benefits offered by any federal agency; and

(d) The utility shall not commence retirement or decommissioning of the electric generating unit until the replacement generating capacity meeting the requirements of paragraph (a) of this subsection is fully constructed,

permitted, and in operation, unless the utility can demonstrate that it is necessary under the circumstances to commence retirement or decommissioning of the existing unit earlier.

(3) The utility shall at a minimum provide the commission with evidence of all known direct and indirect costs of retiring the electric generating unit, as well as all costs and depreciation expenses recovered pursuant to subsection (6) of this section, and demonstrate that cost savings will result to customers as a result of the retirement of the electric generating unit.

(4) The commission shall prepare and submit an annual report to the Legislative Research Commission by December 1 of each year detailing:

(a) The number of requests by utilities to retire electric generating units in the Commonwealth, the nameplate capacity of each of those units, and whether the request was approved or denied by the commission;

(b) The impact of any commission-approved retirement of an electric generating unit on the:

1. Commonwealth's generation fuel mix;
2. Required capacity reserve margins for the utility;
3. Need for capacity additions or expansions at new or existing facilities as a result of the retirement; and
4. Need for additional purchase power or capacity reserve arrangements; and

(c) Whether the retirement resulted in stranded costs for the ratepayer that will be recovered by the utility through a surcharge or some other separate charge on the customer bill.

(5) As used in this section:

(a) "Dispatchable" means a source of electric power generation that is available on demand, that is not intermittent, and that can be adjusted to increase or decrease its power output upon request of a power grid operator or otherwise upon demand or request, or that can have its power output adjusted in response to market or system needs; and

(b) "Intermittent" means:

1. A source of electric power generation from a solar photovoltaic, solar thermal heating, concentrating solar thermal collector, or other solar energy collection or generation system;
2. A source of electric power that generates energy by harnessing wind power or energy, whether through a turbine or other device;
3. Geothermal energy, biomass energy, anaerobic digestion, or combined heat and power from solar, wind, geothermal, or anaerobic digestion sources;
4. Any short duration energy storage, which includes any method of storing generated electricity for later dispatch to the grid, whether alone or in conjunction with any other intermittent sources described in this paragraph, that is equivalent to less than forty-eight (48) hours of the

average peak generation of the unit it is used to offset; or

5. Conventional hydropower and pumped storage hydropower, unless they are capable of providing energy on demand, in which case they shall be deemed to be dispatchable.

(6) (a) Notwithstanding any provision of law to the contrary, this section shall not be construed as limiting the commission's authority to approve a utility's right to record and seek, prior to retirement authorization, the recovery of any electric generating unit's decommissioning, removal and salvage costs, and depreciation expenses through rates over the electric generating unit's estimated depreciable life.

(b) Approval to recover any costs or expenses under this subsection shall not be considered approval of, or support for, retirement or approval of timing of retirement of an electric generating unit in any proceeding considering a retirement application filed pursuant to subsection (1) of this section.

Effective: July 15, 2026

History: Amended 2026 Ky. Acts ch. 95, sec. 1, effective July 15, 2026. -- Amended 2024 Ky. Acts ch. 172, sec. 4, effective April 12, 2024. -- Created 2023 Ky. Acts ch. 118, sec. 2, effective March 29, 2023.

278.270 Orders by commission as to rates.

Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that any rate is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by order prescribe a just and reasonable rate to be followed in the future.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 31, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 34, effective April 1, 1979 -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-14.

278.271 Allowable recovery of costs not recovered in existing utility rates -- Conditions -- Duration of cost recovery.

Notwithstanding any provision of law to the contrary, upon application by a regulated utility, the commission may allow recovery of costs which are not recovered in the existing rates of the utility for the purchase of electric power from a biomass energy facility that has received a certificate from the Kentucky State Board on Electric Generation and Transmission Siting pursuant to KRS 278.700 to 278.716. No recovery shall be allowed unless the full costs of the purchase power agreement over the full term of the agreement, which shall be included as part of the application, have been found by the commission to be fair, just, and reasonable. In determining whether the agreement is fair, just, and reasonable, the commission may consider the policy set forth by the General Assembly in KRS 154.27-020(2). The commission's approval of cost recovery under this section shall be valid for the entire initial term of the agreement.

Effective: March 5, 2013

History: Created 2013 Ky. Acts ch. 3, sec. 1, effective March 5, 2013.

278.272 Consideration of natural gas purchasing transactions in determining just and reasonable rates -- Limitation of authorized rate of return for natural gas operations.

In determining just and reasonable rates, the commission shall investigate and review natural gas purchasing transactions of a utility, whose rates for retail sales of natural gas are regulated by the commission, from an affiliate. The commission shall limit the authorized rate of return of the utility for its natural gas operations to a level which, when considered with the level of profit or return the affiliate earns on natural gas transactions to such utility, is just and reasonable.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 38, sec. 1, effective July 13, 1984.

278.274 Review of natural gas utility's purchasing practices in determining reasonableness of proposed rates -- Reduction of rates by commission.

(1) In determining whether proposed natural gas utility rates are just and reasonable, the commission shall review the utility's gas purchasing practices. The commission may disallow any costs or rates which are deemed to result from imprudent purchasing practices on the part of the utility.

(2) When proposing new rates, the utility shall be required to prove that the proposal is just and reasonable in accordance with the requirements of this section.

(3) It shall be presumed that natural gas purchases from affiliated companies are not conducted at arm's length.

(a) For purposes of this subsection, affiliated companies shall be defined as those in which one (1) or more of the owners control or have the right to control the business affairs of all affected companies.

(b) In instances in which a utility purchases natural gas from an intrastate affiliate, the commission shall assume jurisdiction of the affiliated company as though it were a utility as defined in KRS 278.010. The commission's jurisdiction shall extend to that extent necessary to ensure that the rates charged the utility and ultimately to the consumer are just and reasonable.

(c) If the commission determines that the rates charged by the utility are not just and reasonable in that the cost of natural gas purchased from the affiliated company is unjust or unreasonable, the commission may reduce the purchased gas component of the utility's rates by the amount deemed to be unjust or unreasonable.

(d) The commission may also reduce the rate charged by the affiliated company by the same amount.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 40, sec. 1, effective July 13, 1984.

278.277 Fuel adjustment cost recovery extension -- Any coal severance taxes imposed a factor in any fuel adjustment clause review.

(1) In the administration of an electric utility's fuel adjustment clause and any associated tariffs, the commission may, upon the request of an electric utility, extend the period for recovery of fuel adjustment costs that are typically recoverable in order to reduce volatility for consumers and encourage stability in rates.

(2) In any review by the commission of any fuel adjustment clause, for any contracts entered into on or after July 1, 2021, the commission shall, in determining the reasonableness of fuel costs in procurement contracts and fuel procurement practices, evaluate the reasonableness of fuel costs in contracts and competing bids based on the cost of the fuel less any coal severance tax imposed by any jurisdiction.

(3) As used in this section, "fuel adjustment clause" means any clause or provision in any tariff or contract by which an electric utility may immediately recover increases in fuel costs subject to later scrutiny or review by the commission.

Effective: February 19, 2026

History: Amended 2026 Ky. Acts ch. 1, sec. 1, effective February 19, 2026. -- Created 2021 Ky. Acts ch. 142, sec. 1, effective June 29, 2021.

Legislative Research Commission Note (2/19/2026). 2026 Ky. Acts ch. 1, sec. 3, provides that the Act, which amended this statute, may be cited as the Fuel Surcharge Stability Act.

Editor's Note: Section 2 of this statute has been found to violate the dormant Commerce Clause. The Kentucky Public Service Commission has been permanently enjoined from enforcing that section. *Foresight Coal Sales LLC v. Chandler*, 750 F.Supp.3d 795 (E.D. Ky. 2024).

278.280 Orders by commission as to service -- Extension of service.

(1) Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that the rules, regulations, practices, equipment, appliances, facilities or service of any utility subject to its jurisdiction, or the method of manufacture, distribution, transmission, storage or supply employed by such utility, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation.

(2) The commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility, and, on proper demand and tender of rates, the utility shall furnish the commodity or render the service within the time and upon the conditions provided in the rules.

(3) Any person or group of persons may come before the commission and by petition ask that any utility subject to its jurisdiction be compelled to make any reasonable extension. The commission shall hear and determine the reasonableness of the extension, and sustain or deny the petition in whole or in part.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 32, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 35, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-18, 3952-25.

278.285 Demand-side management plans -- Review and approval of proposed plans and mechanisms -- Assignment of costs -- Home energy assistance programs.

(1) The commission may determine the reasonableness of demand-side management plans proposed by any utility under its jurisdiction. Factors to be considered in this determination include, but are not limited to, the following:

(a) The specific changes in customers' consumption patterns which a utility is attempting to influence;

(b) The cost and benefit analysis and other justification for specific demand-side management programs and measures included in a utility's proposed plan;

(c) A utility's proposal to recover in rates the full costs of demand-side management programs, any net revenues lost due to reduced sales resulting from demand-side management programs, and incentives designed to provide positive financial rewards to a utility to encourage implementation of cost-effective demand-side management programs;

(d) Whether a utility's proposed demand-side management programs are consistent with its most recent long-range integrated resource plan;

(e) Whether the plan results in any unreasonable prejudice or disadvantage to any class of customers;

(f) The extent to which customer representatives and the Office of the Attorney General have been involved in developing the plan, including program design, cost recovery mechanisms, and financial incentives, and if involved, the amount of support for the plan by each participant, provided however, that unanimity among the participants developing the plan shall not be required for the commission to approve the plan;

(g) The extent to which the plan provides programs which are available, affordable, and useful to all customers; and

(h) Next-generation residential utility meters that can provide residents with amount of current utility usage, its cost, and can be capable of being read by the utility either remotely or from the exterior of the home.

(2) A proposed demand-side management mechanism including:

(a) Recover the full costs of commission-approved demand-side management programs and revenues lost by implementing these programs;

(b) Obtain incentives designed to provide financial rewards to the utility for implementing cost-effective demand-side management programs; or

(c) Both of the actions specified

may be reviewed and approved by the commission as part of a proceeding for approval of new rate schedules initiated pursuant to KRS 278.190 or in a separate proceeding initiated pursuant to this section which shall be limited to a review of demand-side management issues and related rate-recovery issues as set forth in subsection (1) of this section and in this subsection.

(3) The commission shall assign the cost of demand-side management programs only to the class or classes of customers which benefit from the programs. The commission

shall allow individual industrial customers with energy intensive processes to implement cost-effective energy efficiency measures in lieu of measures approved as part of the utility's demand-side management programs if the alternative measures by these customers are not subsidized by other customer classes. Such individual industrial customers shall not be assigned the cost of demand-side management programs.

(4) Home energy assistance programs may be part of a demand-side management program. In considering a home energy assistance program, the commission shall only utilize the criteria set forth in subsections (1)(f) and (3) of this section.

Effective: February 25, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 5, sec. 18, effective February 25, 2010. -- Amended 2008 Ky. Acts ch. 139, sec. 19, effective July 15, 2008. -- Amended 2001 Ky. Acts ch. 11, sec. 2, effective June 21, 2001. -- Created 1994 Ky. Acts ch. 238, sec. 2, effective July 15, 1994.

Legislative Research Commission Note (2/25/2010). 2010 Ky. Acts ch. 5, sec. 28, provides that the repeal and reenactment of this section in that Act "shall apply retroactively to July 15, 2008."

278.287 Voluntary energy cost assistance fund -- Customer contributions -- Time of and eligibility for disbursements -- Biennial reports -- Administration costs.

(1) As used in this section:

(a) "Voluntary energy cost assistance fund" means a fund that shall:

1. Be administered by a utility or provider for the purpose of receiving voluntary contributions from customers and disbursing subsidies to customers;

2. Be administered in coordination with one (1) or more community action agencies that assist the Cabinet for Health and Family Services in administering federal Low-Income Home Energy Assistance Program (LIHEAP) funding; and

3. Be maintained in trust and separate from any customer assistance program otherwise implemented by the utility or provider;

(b) "Provider" means any person or persons, excluding an electric power system owned and operated by a municipality, that provide service to retail customers and that own, control, operate, or manage any facility used or to be used for or in connection with any activity described in KRS 278.010(3)(a) or (b) but are not regulated by KRS Chapter 278; and

(c) "Fund" means a voluntary energy cost assistance fund.

(2) Any utility as defined in KRS 278.010(3)(a) or (b) that provides service to retail customers and that does not already administer an energy assistance program prior to July 12, 2006, may establish a fund.

(3) Any provider that does not already administer an energy assistance program prior to July 12, 2006, may establish a fund.

(4) A customer's voluntary monthly contribution amount to the fund shall be:

(a) An amount equal to the difference of the customer's monthly bill and the amount of the next highest whole dollar; or

(b) A standard amount not to exceed one dollar ($1).

(5) A customer may make a special contribution to the fund at any time in any amount.

(6) Annual disbursements from the fund may be made in November and December of each year by the utility or provider upon the recommendation of a community action agency for the purpose of providing a utility or provider bill subsidy for residential customers who:

(a) Use electricity or natural or manufactured gas as a principal source of home energy;

(b) Are responsible for their home heating costs either directly or indirectly as an undesignated portion of the rent;

(c) Have a total household income that is at or below the percentage of the federal poverty guidelines required for eligibility in the subsidy component of LIHEAP, as specified in the latest federally approved version of the Kentucky LIHEAP State Plan submitted by the Department for Community Based

Services;

(d) Have liquid monetary resources that do not exceed one thousand five hundred dollars ($1,500) if those liquid monetary resources are not used for the medical and living expenses of a household member with a catastrophic illness;

(e) Have liquid monetary resources that do not exceed four thousand dollars ($4,000) if those liquid monetary resources are used for the medical and living expenses of a household member with a catastrophic illness; and

(f) Are customers of the utility or provider.

(7) If available, additional disbursements from the fund may be made from January 1 through March 15 of each year by the utility or provider upon the recommendation of a community action agency for the purpose of providing a utility or provider bill subsidy for residential customers who:

(a) Use electricity or natural or manufactured gas as a principal source of home energy;

(b) Are responsible for their home heating costs either directly or indirectly as an undesignated portion of the rent;

(c) Have a total household income that is at or below the percentage of the federal poverty guidelines required for eligibility in the subsidy component of LIHEAP, as specified in the latest federally approved version of the Kentucky LIHEAP State Plan submitted by the Department for Community Based Services;

(d) Have liquid monetary resources that do not exceed one thousand five hundred dollars ($1,500) if those liquid monetary resources are not used for the medical and living expenses of a household member with a catastrophic illness;

(e) Have liquid monetary resources that do not exceed four thousand dollars ($4,000) if those liquid monetary resources are used for the medical and living expenses of a household member with a catastrophic illness; and

(f) Are utility or provider customers who:

1. Have received a disconnect notice from the utility or provider;

2. Are within four (4) days of running out of fuel oil, propane, kerosene, wood, or coal; or

3. Have received an eviction notice for nonpayment of rent, when heat is included as an undesignated portion of the rent.

(8) If available, additional summer cooling disbursements from the fund may be made on a one (1) time basis from May through August of each year by the utility or provider upon the recommendation of a community action agency for the purpose of providing an air-conditioning unit to residential customers who:

(a) Are responsible for their home heating costs either directly or indirectly as an undesignated portion of the rent;

(b) Have a total household income that is at or below the percentage of the federal

poverty guidelines required for eligibility in the subsidy component of LIHEAP, as specified in the latest federally approved version of the Kentucky LIHEAP State Plan submitted by the Department for Community Based Services;

(c) Have liquid monetary resources that do not exceed one thousand five hundred dollars ($1,500) if those liquid monetary resources are not used for the medical and living expenses of a household member with a catastrophic illness;

(d) Have liquid monetary resources that do not exceed four thousand dollars ($4,000) if those liquid monetary resources are used for the medical and living expenses of a household member with a catastrophic illness;

(e) Are customers of the utility or provider;

(f) Do not have access to an air conditioner; and

(g) Have a household member who:

1. Has a health condition or disability that requires cooling to prevent further deterioration as verified by a physician's statement;

2. Is sixty-five (65) years of age or older; or

3. Is under the age of six (6).

(9) For the six (6) month period from January 1 to June 30 of each year, each utility or provider that administers a fund shall provide a detailed report of costs in administering the fund and a detailed report of receipts to and disbursements from the fund to the commission no later than July 31, and for the six (6) month period from July 1 to December 31, no later than January 31 of the following year. Any balances remaining in the fund at the end of a year shall remain in the fund for use in succeeding years.

(10) The commission shall require all utilities as defined in KRS 278.010(3)(a) and (b) that administer a fund and provide service to retail customers in Kentucky to develop and implement a mechanism for soliciting and receiving contributions to the fund. The mechanism and format shall be approved by the commission and may include but shall not be limited to a check-the-box format. Contributions shall be made as described in subsections (4) and (5) of this section.

(11) Any provider that administers a fund shall comply with the requirements to implement a mechanism for soliciting and receiving contributions to the fund as provided in subsection (10) of this section.

(12) Those utilities and providers that are already administering an energy assistance program prior to July 12, 2006, shall not be subject to subsections (9), (10), and (11) of this section.

(13) All contributions to the fund shall be voluntary and shall be uniformly assessed monthly, except in the case of a special contribution, which can be made in any amount at any time, for all customers of the utility or provider. A customer shall not be subject to making contributions until such time as his or her intent is submitted to the applicable utility in a manner prescribed by the commission. A customer who no longer wishes to contribute to the fund shall be exempted from making further

contributions to the fund once his or her intent is submitted to the applicable utility in a manner prescribed by the commission.

(14) Contributions received by utilities or providers, together with any interest accruing thereon, shall be transferred to the fund immediately upon receipt.

(15) A utility or provider that administers a fund may recover up to three percent (3%) of each contribution received for its costs in administering the fund. The commission shall allow any additional, reasonable cost a utility incurs in administering the receipt and disbursement of contributions to the fund in the cost of service of the utility for ratemaking purposes.

Effective: June 29, 2021

History: Amended 2021 Ky. Acts ch. 91, sec. 1, effective June 29, 2021. -- Created 2006 Ky. Acts ch. 231, sec. 1, effective July 12, 2006.

278.290 Valuation of utility property in connection with rates, service or issuance of securities -- Unit rate base.

(1) Subject to the provisions of subsection (2) of this section, the commission may ascertain and fix the value of the whole or any part of the property of any utility in so far as the value is material to the exercise of the jurisdiction of the commission, and may make revaluations from time to time and ascertain the value of all new construction, extensions and additions to the property of the utility. In fixing the value of any property under this subsection, the commission shall give due consideration to the history and development of the utility and its property, original cost, cost of reproduction as a going concern, capital structure, and other elements of value recognized by the law of the land for rate-making purposes.

(2) The commission shall not value or revalue the property of any utility unless the valuation or revaluation is necessary or advisable in order to determine the legality or reasonableness of any rate or service or of the issuance of securities, and then only after an investigation affecting the rate, service or securities has been instituted by the commission upon complaint or application or upon its own motion, and a hearing has been held on reasonable notice.

(3) In any rate investigation where the utility serves two (2) or more municipalities, the commission may, in computing the rate of return on the property used and useful, take as the base for the computation the valuation of the system as a whole, but may make a differential in the case of an individual municipality in proportion to the increased cost of service, if the utility can show that such a differential should be allowed.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 33, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 36, effective April 1, 1979. -- Amended 1952 Ky. Acts ch. 46, sec. 3, effective March 5, 1952. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-17, 3952-19.

278.295 Determination of value of acquired water and sewer system assets for ratemaking purposes.

(1) As used in this section:

(a) "Accumulated depreciation" means the total amount of depreciation of an asset as calculated by the use of generally accepted accounting principles;

(b) "Asset acquisition price" means full and actual costs of a water or sewer utility or its assets;

(c) "Net original cost" means the original cost of a utility asset less its accumulated depreciation; and

(d) "Water or sewer system" means any or all assets of a person, including but not limited to a utility, city, sanitation district, metropolitan sewer district, water commission, or regional wastewater commission, that are used to provide services listed in KRS 278.010(3)(d) or (f).

(2) In furtherance of and consistent with the General Assembly's findings and goals stated in KRS 224A.300(1), in any matter in which the commission determines for ratemaking purposes the value of an asset used to provide water or sewer service acquired by a utility from a water or sewer system, the commission shall fix the value of that asset at an amount between its net original cost and its asset acquisition price without regard for the original source of funds used to procure the asset, but only if the acquiring utility demonstrates and the commission finds that:

(a) The asset acquisition price was established by arms-length negotiations;

(b) The asset acquisition price plus the cost of restoring the acquired facilities to required standards will not materially adversely impact the overall costs or rates of the acquiring utility's existing and new customers;

(c) Acquisition of the asset will result in operational economies;

(d) The purchase prices of the utility and non-utility assets are clearly identified, and where practical, separated; and

(e) The acquisition will result in overall financial and service benefits of the acquiring utility's operations.

(3) (a) A utility that has entered into an agreement to acquire the assets of a water or sewer system used to provide water or sewer service may apply to the commission for an order declaring the value of the acquired assets for ratemaking purposes. The application shall include:

1. The agreement for the acquisition of the assets or facilities at issue;

2. The proposed valuation for ratemaking purposes of the acquired assets;

3. The net original cost of the acquired assets and the accounting records supporting such cost to the extent such information is available;

4. The original source of funds used to procure each asset to the extent such information is available; and

5. Any other documents or evidence that the commission may require.

(b) An application made under this subsection shall be made under oath and shall

be signed and filed on behalf of the acquiring utility by its president or other executive officer duly designated by the utility as having knowledge of the matters set forth therein. The commission shall issue a decision on the merits of an application filed under this subsection no later than sixty (60) days after the application is accepted for filing, unless the commission extends this period, for good cause, to one hundred fifty (150) days from the date of acceptance. The commission may take any action necessary to ensure a complete record, including conducting a hearing on the application.

(4) In lieu of applying for a declaratory order under subsection (3) of this section on the valuation of assets acquired from a water or sewer system used to provide water or sewer service, an acquiring utility may, as part of its first application for a change in base rates following the acquisition of such assets, seek an order declaring the value of the acquired assets for ratemaking purposes. The commission shall declare the value of the acquired assets using the same factors required to be considered under subsection (2) of this section.

(5) No later than the date of the filing of the application described in subsection (3) of this section, the acquiring utility shall provide notice of the application to the following:

(a) By certified mail, the local governing body of each city or county wherein any part of the water or sewer system to be acquired is located or provides retail water or sewer service;

(b) By certified mail, the local governing body of each city or county in whose jurisdiction the acquiring utility provides retail water or sewer service;

(c) The customers of the water or sewer system being acquired, as provided in the bylaws or other governing corporate documents of the system being acquired, and using the method of notice so required; and

(d) The wholesale customers or suppliers of the water or sewer system to be acquired by causing the notice to be placed in priority mail.

(6) No later than the date of the filing of the application described in subsection (3) of this section, additional notification designed to educate and inform the public and all affected customers shall be posted on the Web sites or social media of the acquiring entity and of the water or sewer system to be acquired, if such Web sites or social media exist.

(7) The commission shall consider intervention requests made by any person in any matter under this section in accordance with the commission's administrative regulations addressing intervention generally.

(8) The acquiring utility may, as part of any application for a change in base rates following the acquisition of water or sewer utility service assets, propose to unify the rate structure of the acquired system with its remaining customer base. In reviewing an acquiring utility's proposed change in base rates, the commission shall consider whether it is reasonable to require the acquiring utility to maintain separate rate schedules for the customers of the acquired system and for the other customers.

History: Created 2021 Ky. Acts ch. 191, sec. 1, effective June 29, 2021.

278.300 Issuance or assumption of securities by utilities.

(1) No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.

(2) Application for authority to issue or assume securities or evidences of indebtedness shall be made in such form as the commission prescribes. Every such application shall be made under oath, and shall be signed and filed on behalf of the utility by its president, or by a vice president, auditor, comptroller, or other executive officer having knowledge of the matters set forth and duly designated by the utility. Every such application shall be placed at the head of the docket of the commission and disposed of promptly within sixty (60) days after it is filed with the commission, unless it is necessary for good cause to continue the application for longer time than sixty (60) days, in which case the order making the continuance shall state fully the facts that make it necessary.

(3) The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

(4) The commission may grant or deny the application in whole or in part, or may grant it with such modifications and upon such terms and conditions as the commission deems necessary or appropriate. The order of the commission shall specify that the securities or evidences of indebtedness, or the proceeds thereof, shall be used only for the lawful purposes specified in the application, and both the application of the utility and the order of the commission shall state in general terms the purpose of the issuance or assumption.

(5) A copy of any order made and entered by the commission under this section, duly certified by the executive director of the commission, shall be sufficient evidence for all purposes of full and complete compliance by the utility with all procedural and other matters required precedent to the entry of the order.

(6) Securities and evidences of indebtedness issued and obligations and liabilities assumed by a utility, for which, under the provisions of this section, the authorization of the commission is required, shall comply with the terms and conditions of the order of authorization entered prior to the issue or assumption, and where the order has been fully complied with the validity of the issue or assumption shall not be affected by a failure to comply with any provision of this section or rule of the commission relating to procedure or other matters preceding the entry of the order of authorization or order supplemental thereto.

(7) The commission may require periodical or special reports from the utility issuing any security or evidence of indebtedness. The report shall show, in such detail as the commission requires, the disposition made of such securities or evidences of

indebtedness, and the application of the proceeds thereof.

(8) This section does not apply to notes issued by a utility, for proper purposes and not in violation of law, that are payable at periods of not more than two (2) years from the date thereof, or to like notes, payable at a period of not more than two (2) years from date thereof, that are issued to pay or refund in whole or in part any such notes, or to renewals of such notes from time to time, not exceeding in the aggregate six (6) years from the date of the issue of the original notes so renewed or refunded.

(9) Nothing in this section implies any guarantee of securities or evidences of indebtedness by the state, or any obligation on the part of the state with respect thereto, and nothing in this section limits the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity.

(10) This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof, but the commission may appear as a party to any proceeding filed or pending before any federal agency if the issuance of the securities or evidences of indebtedness will materially affect any utility over which the commission has jurisdiction.

(11) This section also does not apply to the issuance of securities or evidence of indebtedness by a utility principally engaged in transportation of gas by pipeline in interstate commerce and subject to the supervision, control or jurisdiction of the federal government or any agency, board or commission thereof.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 166, sec. 3, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 34, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 37, effective April 1, 1979. -- Amended 1972 Ky. Acts ch. 9, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-24.

278.310 Rules for hearings and investigations.

All hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission, and in the conduct thereof neither the commission nor the commissioner shall be bound by the technical rules of legal evidence.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 35, effective July 15, 1982; and ch. 242, sec. 4, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 38, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-34.

Legislative Research Commission Note. This section was amended by two 1982 Acts which do not appear to be in conflict and have been compiled together.

278.320 Process.

The commission and each of the commissioners may issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the commission, and such process shall extend to all parts of the state. Service of process in all proceedings brought before or initiated by the commission may be made by certified mail, return receipt requested or by registered mail, or in the same manner as other process in civil cases, as the commission directs.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 36, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 114, sec. 65, effective July 15, 1980. --- Amended 1978 Ky. Acts ch. 379, sec. 39, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 315, sec. 43. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-37.

278.330 Witnesses.

The commission and each of the commissioners, for the purposes mentioned in the preceding sections of this chapter, may administer oaths, examine witnesses, and certify official acts. If any person fails to comply with any lawful order of the commission or of any commissioner, or with process, or if any witness refuses to testify concerning any matter on which he may lawfully be interrogated, any Circuit Judge, on application of the commission or of a commissioner, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the circuit court or a refusal to testify therein. Witnesses summoned before the commission, and witnesses whose depositions are taken pursuant to the provisions of the preceding sections of this chapter, and the officer taking the depositions, shall be entitled to the same fees as are paid for like services in circuit courts, the fees to be paid by the party in whose behalf the witness is subpoenaed.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 37, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 40, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-38.

278.340 Depositions.

The commission itself may take depositions, or grant deposition rights at its discretion to any party in a proceeding before the commission. Depositions in commission proceedings shall be taken in accordance with the Rules of Civil Procedure.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 215, sec. 1, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 82, sec. 38, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 41, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-39.

278.350 Incriminating evidence -- Immunity of witnesses.

No person shall be excused from testifying or from producing any book, paper or account at any inquiry by, or hearing before, the commission or any commissioner, upon the ground that the testimony or the book, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture. No person shall be prosecuted or subjected to any forfeiture or penalty for, or on account of, anything concerning which he was compelled to testify under oath or to produce documentary evidence, except that no person so testifying shall be exempt from prosecution or punishment for perjury committed by him in his testimony.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 39, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 42, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-40.

278.360 Record of contested proceedings on formal hearing.

A full and complete record shall be kept of all contested proceedings had before the commission or any commissioner on any formal hearing and may, at the commission's discretion, be made in videotape or other format in accordance with the Kentucky Rules of Civil Procedure. A stenographic transcript shall not be required. However, a party to a proceeding may, by motion to the commission made prior to the hearing, request that a stenographic transcript be made by a reporter approved by the commission. The commission shall not deny the motion except for a finding of good cause.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 83, sec. 1, effective June 24, 2003. -- Amended 1982 Ky. Acts ch. 82, sec. 40, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 43, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-43.

278.370 Recording of order, finding, authorization or certificate -- How proved to be in effect.

Every order, finding, authorization or certificate issued or approved by the commission under any of the preceding provisions of this chapter shall be in writing and shall be entered on the records of the commission. A certificate under the seal of the commission that any such order, finding, authorization or certificate has not been modified, stayed, suspended or revoked shall be received as evidence in any proceeding as to the facts stated therein.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 41, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 44, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-42.

278.380 Delivery of orders by electronic transmission or mail.

The commission shall deliver a certified copy of any order issued by it to each party to the proceeding in which the order was made, and to an officer or agent of the utility affected thereby. Notwithstanding any statute to the contrary, the commission may deliver its orders by means of electronic transmission rather than by mail. The commission, however, shall deliver its orders by mail to any party that requests and demonstrates good cause for that means of delivery. When service of a commission order is by electronic transmission, mailing shall be deemed to have occurred on the date the transmission of the order is completed. For purposes of this section, electronic transmission of a commission order includes the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site.

Effective: July 15, 2014

History: Amended 2014 Ky. Acts ch. 45, sec. 1, effective July 15, 2014. -- Amended 1998 Ky. Acts ch. 120, sec. 32, effective July 15, 1998. -- Amended 1982 Ky. Acts ch. 82, sec. 42, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 45, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-35.

278.390 Enforcement of orders.

The commission may compel obedience to its lawful orders by mandamus, injunction or other proper proceedings in the Franklin Circuit Court or any other court of competent jurisdiction, and such proceedings shall have priority over all pending cases. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 43, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 46, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-13.

278.400 Rehearing.

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three (3) days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 142, sec. 1, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 44, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 47, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-36.

278.410 Action to review order of commission -- Institution -- Answer -- Injunction.

(1) Any party to a commission proceeding or any utility affected by an order of the commission may, within thirty (30) days after service of the order, or within twenty (20) days after its application for rehearing has been denied by failure of the commission to act, or within twenty (20) days after service of the final order on rehearing, when a rehearing has been granted, bring an action against the commission in the Franklin Circuit Court to vacate or set aside the order or determination on the ground that it is unlawful or unreasonable. Service of a commission order is complete three (3) days after the date the order is mailed. Notice of the institution of such action shall be given to all parties of record before the commission.

(2) The answer of the commission shall be served and filed within twenty (20) days after service of the complaint. The action shall then be at issue and stand ready for trial upon ten (10) days' notice to either party, on the equity side of the docket of the court. The answer need not deny verbatim the allegations of the petition, but a general denial thereof on behalf of the commission shall be sufficient.

(3) Injunctive relief may be granted by the Circuit Court in the manner and upon the terms provided by law.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 142, sec. 2, effective July 15, 1994. -- Amended 1978 Ky. Acts ch. 379, sec. 48, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 13, effective March 29, 1976. -- Amended 1952 Ky. Acts ch. 46, sec. 4, effective March 5, 1952. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-44, 3952-45, 3952-46.

278.420 Designation and filing of record -- Cost.

(1) In any action filed against the commission because of its order in a proceeding before it, the commission shall file a certified copy of the designated record and evidence with the court in which the action is pending.

(2) Unless an agreed statement of the record is filed with the court, the filing party shall designate, within ten (10) days after an action is filed, the portions of the record necessary to determine the issues raised in the action. Within ten (10) days after the service of the designation or within ten (10) days after the court enters an order permitting any other party to intervene in the action, whichever occurs last, any other party to the action may designate additional portions for filing. The court may enlarge the ten (10) day period where cause is shown. Additionally, the court may require or permit subsequent corrections or additions to the record.

(3) The cost of preparing and certifying the record shall be taxed and paid to the commission as directed by the court upon final determination of the action. As a part of this determination, the court may tax a party for the cost of preparing portions of the record not deemed reasonably necessary to the disposition of the action. Copies of the designated record shall be furnished at cost to any party to the action.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 149, sec. 1, effective July 13, 1990; and ch. 354, sec. 2, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 82, sec. 45, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 49, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-48.

Legislative Research Commission Note (7/13/90). This section was amended by identical amendments in two 1990 Acts, which have been compiled together.

278.430 Burden of proof.

In all trials, actions or proceedings arising under the preceding provisions of this chapter or growing out of the commission's exercise of the authority or powers granted to it, the party seeking to set aside any determination, requirement, direction or order of the commission shall have the burden of proof to show by clear and satisfactory evidence that the determination, requirement, direction or order is unreasonable or unlawful.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 46, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 50, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-49.

278.440 Evidence to be heard by court -- Remand.

Any action brought under KRS 278.410 shall be heard and decided by the court upon the evidence submitted to the commission as shown by the record, and no other evidence shall be received. If any party satisfies the court that evidence has been discovered since the hearing before the commission that could not have been obtained for use at that hearing by the exercise of reasonable diligence and will materially affect the merits of the case, the court may remand the record and proceedings to the commission, with directions to take the newly-discovered evidence, and after consideration thereof, enter and file a proper order, which may be reviewed in the same manner as any other final order of the commission.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 149, sec. 2, effective July 13, 1990; and ch. 354, sec. 3, effective July 13, 1990. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-47, 3952-50.

Legislative Research Commission Note. (7/13/90). This section was amended by identical amendments in two 1990 Acts, which have been compiled together.

278.450 Judgment of Circuit Court -- Appeal to Court of Appeals.

Upon final submission of any action brought under KRS 278.410, the Circuit Court shall enter a judgment either sustaining the order of the commission or setting it aside or vacating it in whole or in part, or modifying it, or remanding it to the commission with instructions. Any final order of the commission, on remand of the proceedings, shall be subject to court review in the same manner as any other final order of the commission. Either party to the action may appeal from the judgment of the Circuit Court to the Court of Appeals in accordance with the Rules of Civil Procedure.

Effective: October 1, 1942

History: Amended 1976 Ky. Acts ch. 62, sec. 111. -- Amended 1960 Ky. Acts ch. 104, sec. 18, effective June 16, 1960. -- Amended 1952 Ky. Acts ch. 46, sec. 5. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-50, 3952-51.

278.455 Reduction of operating expenses by G&T or distribution cooperative -- Effect on rates -- Authority for administrative regulations.

(1) Notwithstanding any other statute to the contrary, a G&T or distribution cooperative may at any time decrease regulated operating revenues by an amount to be determined solely by the cooperative utility. If the revenue reduction is allocated among and within the consumer classes on a proportional basis that will result in no change in the rate design currently in effect, the revised rates and tariffs shall be authorized and made permanent on the proposed effective date.

(2) Notwithstanding any other statute, any revenue increase authorized by the Public Service Commission or any revenue decrease authorized in subsection (1) of this section that is to flow through the effects of an increase or decrease in wholesale rates may, at the distribution cooperative's discretion, be allocated to each class and within each tariff on a proportional basis that will result in no change in the rate design currently in effect. In the event of an increase in the wholesale rates and tariffs of the wholesale supplier by the Public Service Commission, the rates and tariffs of the distribution cooperative that have been revised on a proportional basis to result in no change in the rate design shall be authorized and shall become effective on the same date as those of the wholesale supplier. In those cases where an interim increase in the power supplier's wholesale rates is authorized, the distribution cooperative's flow through rates shall be interim. The distribution cooperative's permanent rates and tariffs shall become effective on the date that the wholesale supplier's permanent rates become effective as ordered by the commission.

(3) Any rate increase or decrease as provided for in subsections (1) and (2) of this section shall not apply to special contracts under which the rates are subject to change or adjustment only as stipulated in the contract.

(4) The Public Service Commission shall promulgate administrative regulations pursuant to KRS Chapter 13A to establish filing requirements and notice requirements to the commission, the Attorney General, and the public under this section.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 188, sec. 2, effective July 15, 1998.

278.457 Commission's duty to transmit information concerning abandonment of railroad corridor to Department of Parks and Railtrail Development Office.

The Public Service Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 117, sec. 88, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 47, sec. 93, effective June 26, 2007. -- Created 2000 Ky. Acts ch. 338, sec. 11, effective July 14, 2000.

278.460 Utilities to pay interest on deposits required of patrons -- Commission to calculate interest rate annually -- Interest rates for water districts and water associations -- Administrative regulations.

(1) Except as provided in subsection (2) of this section, a utility, including an electric cooperative organized under KRS Chapter 279, shall pay interest on amounts required to be deposited by patrons to secure utility service. The commission shall calculate the interest rate on an annual basis by averaging the one (1) year constant maturity treasury rate from September, October, and November, and shall notify utilities in December of each year of the interest rate to be paid by utilities for the following calendar year.

(2) No water district organized under KRS Chapter 74 nor water association organized under KRS Chapter 273 shall pay interest that exceeds the rate it receives in interest, nor shall the interest payable to the customer at any time exceed six percent (6%) annually on amounts required to be deposited by patrons to secure water accounts.

(3) The commission may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to implement this section.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 22, sec. 1, effective July 12, 2012. -- Amended 1994 Ky. Acts ch. 221, sec. 1, effective July 15, 1994. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 2223-1.

278.465 Definitions for KRS 278.465 to 278.468.

As used in KRS 278.465 to 278.468:

(1) "Eligible customer-generator" means a customer of a retail electric supplier who owns and operates an electric generating facility that is located on the customer's premises, for the primary purpose of supplying all or part of the customer's own electricity requirements;

(2) "Eligible electric generating facility" means an electric generating facility that:

(a) Is connected in parallel with the electric distribution system;

(b) Generates electricity using:

1. Solar energy;

2. Wind energy;

3. Biomass or biogas energy; or

4. Hydro energy; and

(c) Has a rated capacity of not greater than forty-five (45) kilowatts;

(3) "Kilowatt hour" means a measure of electricity defined as a unit of work of energy, measured as one (1) kilowatt of power expended for one (1) hour; and

(4) "Net metering" means the difference between the:

(a) Dollar value of all electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period and priced as prescribed in KRS 278.466; and

(b) Dollar value of all electricity consumed by the eligible customer-generator over the same billing period and priced using the applicable tariff of the retail electric supplier.

Effective: January 1, 2020

History: Amended 2019 Ky. Acts ch. 101, sec. 1, effective January 1, 2020. -- Amended 2008 Ky. Acts ch. 138, sec. 1, effective July 15, 2008. -- Created 2004 Ky. Acts ch. 193, sec. 1, effective July 13, 2004.

278.466 Availability of net metering -- Type, expense, and installation of meter -- Compensation to eligible customer-generators for electricity fed back into grid -- Commission to set compensation rate -- Excess generation credits nonrefundable -- Twenty-five year cap on preexisting net metering tariff provisions -- Safety and power quality standards -- Transferability of installation at same premises.

(1) Each retail electric supplier shall make net metering available to any eligible customer-generator that the supplier currently serves or solicits for service. If the cumulative generating capacity of net metering systems reaches one percent (1%) of a supplier's single hour peak load during a calendar year, the supplier shall have no further obligation to offer net metering to any new customer-generator at any subsequent time.

(2) Each retail electric supplier serving a customer with eligible electric generating facilities shall use a standard kilowatt-hour meter capable of registering the flow of electricity in two (2) directions. Any additional meter, meters, or distribution upgrades needed to monitor the flow in each direction shall be installed at the customer-generator's expense. If additional meters are installed, the net metering calculation shall yield the same result as when a single meter is used.

(3) A retail electric supplier serving an eligible customer-generator shall compensate that customer for all electricity produced by the customer's eligible electric generating facility that flows to the retail electric supplier, as measured by the standard kilowatt-hour metering prescribed in subsection (2) of this section. The rate to be used for such compensation shall be set by the commission using the ratemaking processes under this chapter during a proceeding initiated by a retail electric supplier or generation and transmission cooperative on behalf of one (1) or more retail electric suppliers.

(4) Each billing period, compensation provided to an eligible customer-generator shall be in the form of a dollar-denominated bill credit. If an eligible customer-generator's bill credit exceeds the amount to be billed to the customer in a billing period, the amount of the credit in excess of the customer's bill shall carry forward to the customer's next bill. Excess bill credits shall not be transferable between customers or premises. If an eligible customer-generator closes his or her account, no cash refund for accumulated credits shall be paid.

(5) Using the ratemaking process provided by this chapter, each retail electric supplier shall be entitled to implement rates to recover from its eligible customer-generators all costs necessary to serve its eligible customer-generators, including but not limited to fixed and demand-based costs, without regard for the rate structure for customers who are not eligible customer-generators.

(6) For an eligible electric generating facility in service prior to the effective date of the initial net metering order by the commission in accordance with subsection (3) of this section, the net metering tariff provisions in place when the eligible customer-generator began taking net metering service, including the one-to-one (1:1) kilowatt-hour denominated energy credit provided for electricity fed into the grid, shall remain in effect at those premises for a twenty-five (25) year period, regardless

of whether the premises are sold or conveyed during that twenty-five (25) year period. For any eligible customer-generator to whom this subsection applies, each net metering contract or tariff under which the customer takes service shall be identical, with respect to energy rates, rate structure, and monthly charges, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator.

(7) Electric generating systems and interconnecting equipment used by eligible customer-generators shall meet all applicable safety and power quality standards established by the National Electrical Code (NEC), Institute of Electrical and Electronics Engineers (IEEE), and accredited testing laboratories such as Underwriters Laboratories.

(8) An eligible customer-generator installation is transferable to other persons at the same premises upon notification to the retail electric supplier and verification that the installation is in compliance with the applicable safety and power quality standards in KRS 278.467 and in subsection (7) of this section.

(9) Any upgrade of the interconnection between the retail electric supplier and the customer-generator that is required by commission-approved tariffs for the purpose of allowing net metering shall be made at the expense of the customer-generator.

Effective: January 1, 2020

History: Amended 2019 Ky. Acts ch. 101, sec. 2, effective January 1, 2020. -- Amended 2008 Ky. Acts ch. 138, sec. 2, effective July 15, 2008. -- Created 2004 Ky. Acts ch. 193, sec. 2, effective July 13, 2004.

278.467 Jurisdiction over disputes -- Guidelines -- Forms -- Posting on Web site.

(1) The commission shall have original jurisdiction over any dispute between a retail electric supplier and an eligible customer-generator, regarding net metering rates, service, standards, performance of contracts, and testing of net meters.

(2) No later than one hundred eighty (180) days from July 15, 2008, the Public Service Commission shall develop interconnection and net metering guidelines for all retail electric suppliers operating in the Commonwealth. The guidelines shall meet the requirements of KRS 278.466(7).

(3) No later than ninety (90) days from the issuance by the Public Service Commission of the guidelines required under subsection (2) of this section, each retail electric supplier shall file with the commission a net metering tariff and application forms to comply with those guidelines. All retail electric suppliers shall make their net metering tariff and interconnection practices easily available to the public by posting the tariff and practices on their Web sites.

Effective: January 1, 2020

History: Amended 2019 Ky. Acts ch. 101, sec. 3, effective January 1, 2020. -- Amended 2008 Ky. Acts ch. 138, sec. 3, effective July 15, 2008. -- Created 2004 Ky. Acts ch. 193, sec. 3, effective July 13, 2004.

278.468 KRS 278.465 to 278.468 not applicable to certain United States agencies or instrumentalities.

Nothing in KRS 278.465 to 278.468 shall apply to a United States corporate agency or instrumentality of the United States government, or a distributor of electric power primarily supplied by such a corporate agency or instrumentality of the United States government.

Effective: July 13, 2004

History: Created 2004 Ky. Acts ch. 193, sec. 4, effective July 13, 2004.

278.470 Companies transporting oil or gas by pipeline are common carriers.

Every company receiving, transporting or delivering a supply of oil or natural gas for public consumption is declared to be a common carrier, and the receipt, transportation and delivery of natural gas into, through and from a pipeline operated by any such company is declared to be a public use.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3766b-1b.

278.480 Pipeline companies may deliver oil or gas on order of person in possession.

Any common carrier of crude petroleum or gas by pipeline may accept for transportation any oil or gas offered to it for that purpose by a person in possession, and shall redeliver it upon the order of the consignor unless prevented by order of a court of competent jurisdiction, and shall not be liable therefor to a true owner out of possession, except from the time that the order of court is served upon it in the same manner as a summons in a civil action.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3766b-1a.

278.485 Gas pipeline company to furnish gas -- When -- Rates -- Duty of person applying for gas service and gas pipeline company -- Abandonment of gas wells -- Discontinuance of service -- Right to tap a gathering line.

Every gas pipeline company obtaining gas from producing wells located within this state, upon the request of the owner of the property on or over which any producing well or gas gathering pipeline is located or the owner of real estate whose property and point of desired service is located within one-half (1/2) air-mile of said company's producing gas well or gas gathering pipeline, shall furnish gas service to such owner and applicant, subject to and upon the following terms, conditions, and provisions, to-wit:

(1) The gas service shall be furnished at rates and minimum monthly charges determined by the Public Service Commission.

(2) The applicant for such gas service shall construct or cause to be constructed, and shall maintain and keep in good repair, the service lines, and shall provide and install or cause to be installed, and keep in good repair, the necessary automatic gas regulators, and shall pay the entire cost thereof. The company, at its own expense, shall provide, install, and maintain the necessary gas meters.

(3) The construction of each service line; the installation, type, and number of automatic gas regulators and gas meter or meters, and the connection thereof with the gas producing well or pipeline shall be under the supervision of the Public Service Commission or an agent thereof; and shall conform to such standards of safety, location, and convenience as may be prescribed by said commission.

(4) Neither the gas producer nor the gas pipeline company shall be responsible for maintaining any fixed or specified gas pressure. Neither the gas producer nor the gas pipeline company shall be liable for any accident or accidental injuries or damages which may result from any defect or failure of any automatic gas regulator or for any leakage or other defect or failure of any service line installed or constructed by the applicant.

(5) Nothing in this section shall be construed as requiring any gas pipeline company to serve any such owner of property or applicant from any line or lines that have been held to be subject to federal jurisdiction by order of the Federal Energy Regulatory Commission or a court of competent jurisdiction. The provisions of this section shall apply only to producing gas wells and to gas pipelines commonly known as gathering lines.

(6) Nothing in this section shall be construed to restrict the right of any gas pipeline company to abandon any gas well or any gathering pipeline, or any part thereof, and to remove any such abandoned pipeline or lines. If service to any customer is terminated because of lack of gas for a period of six (6) months in a pipeline or line which served him, the company shall remove a portion of the main line so as to render it inoperable.

(7) Subject to the rules and regulations of the Public Service Commission, any service may be disconnected and discontinued by the company for failure of the customer to pay any bill as and when due and payable.

(8) Every gas pipeline company obtaining gas from producing wells within the state

shall offer each surface owner the right of a tap or hookup for natural gas from any gathering line which crosses the surface owner's property. The cost of the tap or hookup shall be borne by the consumer.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 399, sec. 2, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 212, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 82, sec. 47, effective July 15, 1982; ch. 242, sec. 5, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 51, effective April 1, 1979. -- Amended 1956 Ky. Acts ch. 49, sec. 1, effective May 18, 1956. -- Created 1952 Ky. Acts ch. 160, sec. 1.

278.490 Transportation of oil or gas received from connecting lines.

Each company engaged in the receipt, transportation or delivery of oil or natural gas for public consumption shall at all reasonable times receive, for transportation and delivery, from such pipes as may be connected up with any main or tributary line, all oil or gas that may be held and stored or ready for delivery, if the main or tributary line has the means or capacity to receive, transport or deliver the oil or gas that is offered. If the main or tributary line is operating to such capacity that it is impossible or impracticable to receive or transport all the oil or gas offered from the connecting lines, the company operating the main or tributary line shall receive and transport the oil or gas that is offered on a proportionate basis, based on the daily production of each producer whose oil or gas is offered for transportation.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3766b-1c, 3766b-1d.

278.495 Authority to regulate safety aspects of natural gas facilities.

(1) As used in this section:

(a) "Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a point of sale, storage, or other carbon management applications; and

(b) "Master meter system" means a pipeline system for distributing gas within a definable area, such as, but not limited to, a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer, who either purchases the gas directly through a meter or by other means, such as through rents.

(2) Notwithstanding any other provision of law, the commission shall have the authority to regulate the safety of natural gas facilities which are:

(a) Owned or operated by any public utility, county, or city, and used to distribute natural gas at retail; or

(b) Comprising a master meter system.

The commission may exercise this authority in conjunction with, and pursuant to, its authority to enforce any minimum safety standard adopted by the United States Department of Transportation pursuant to 49 U.S.C. sec. 60101 et seq., or any amendments thereto, and may promulgate administrative regulations consistent with federal pipeline safety laws in accordance with provisions of KRS Chapter 13A as are necessary to promote pipeline safety in the Commonwealth. In exercising this authority, however, the commission shall consider the impact of any action it takes on small businesses engaged in the installation and servicing of gas lines, master meter systems, or related equipment and shall act so as to ensure that no unfair competitive advantage is given to utilities over such small businesses.

Effective: June 8, 2011

History: Amended 2011 Ky. Acts ch. 82, sec. 4, effective June 8, 2011. -- Amended 2000 Ky. Acts ch. 249, sec. 1, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 152, sec. 1, effective July 15, 1994.

278.500 Repealed, 1948.

Catchline at repeal: Condemnation of property for pipe line.

History: Repealed 1948 Ky. Acts ch. 184, sec. 1; and ch. 186, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3766b-1.

278.501 Repealed, 1966.

Catchline at repeal: Condemnation for oil or gas pipeline storage facilities used in connection therewith.

History: Repealed 1966 Ky. Acts ch. 255, sec. 283. -- Amended 1954 Ky. Acts ch. 230, sec. 1. -- Created 1948 Ky. Acts ch. 184, sec. 1.

278.502 Condemnation for pipelines and related facilities, including rights of ingress and egress.

Any corporation or partnership organized for the purpose of, and any individual engaged in or proposing to engage in, constructing, maintaining, or operating oil or gas wells or pipelines for transporting or delivering oil or gas, including oil and gas products, in public service may, if it is unable to contract or agree with the owner after a good faith effort to do so, condemn the lands and material or the use and occupation of the lands that are necessary for constructing, maintaining, drilling, utilizing, and operating pipelines, underground oil or gas storage fields, and wells giving access thereto and all necessary machinery, equipment, pumping stations, appliances, and fixtures, including tanks and telephone lines, and other communication facilities, for use in connection therewith, and the necessary rights of ingress and egress to construct, examine, alter, repair, maintain, operate, or remove such pipelines or underground gas storage fields, to drill new wells and utilize existing wells in connection therewith, and remove pipe, casing, equipment, and other facilities relating to such underground storage fields and access wells. The proceedings for condemnation shall be as provided in the Eminent Domain Act of Kentucky.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 399, sec. 1, effective July 14, 1992. -- Amended 1976 Ky. Acts ch. 140, sec. 112, effective June 19, 1976. -- Amended 1966 Ky. Acts ch. 255, sec. 226. -- Created 1948 Ky. Acts ch. 186, sec. 1.

278.504 Definitions for KRS 278.505 to 278.507.

As used in KRS 278.505 to 278.507, unless the context requires otherwise:

(1) "Intrastate pipeline" means any utility or any other person engaged in natural gas transportation in intrastate commerce, for compensation, to or for another person or to or for the public, but shall not include any part of any pipeline dedicated to storage or gathering or low pressure distribution of natural gas;

(2) "Interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act or the Natural Gas Policy Act of 1978;

(3) "Local distribution company" means any utility or any other person, other than an interstate pipeline or an intrastate pipeline, engaged in transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption, but shall not include any part of any pipeline primarily used for storage or gathering or low pressure distribution of natural gas;

(4) "Intrastate commerce" includes the production, gathering, treatment, processing, transportation and delivery of natural gas entirely within the Commonwealth which is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act or the Natural Gas Policy Act of 1978;

(5) "Transportation" includes exchange, backhaul, displacement or other means of transportation; and

(6) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 39, sec. 1, effective July 13, 1984.

278.505 Transportation of natural gas in intrastate commerce by pipelines or local distribution companies with unused excess capacity.

(1) The Public Service Commission may, by rule or order, authorize and require the transportation of natural gas in intrastate commerce by intrastate pipelines, or by local distribution companies with unused or excess capacity not needed to meet existing obligations of the pipeline or distribution company, for any person for one (1) or more uses, as defined by the commission by rule, in the case of:

(a) Natural gas sold by a producer, pipeline or other seller to such person; or

(b) Natural gas produced by such person.

(2) The rates and charges of any intrastate pipeline or local distribution company with respect to any transportation authorized and required under this section shall be fair and reasonable.

(3) Nothing in this section is intended to relieve any intrastate pipeline of further obligations as a common carrier under KRS 278.470, 278.480, and 278.490.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 39, sec. 2, effective July 13, 1984.

278.506 Gas to meet pipeline quality standards -- Delivery and curtailment provisions.

All natural gas, authorized and required to be transported pursuant to KRS 278.505 shall:

(1) Be of the same quality and meet the same specifications as that natural gas being purchased by the intrastate pipeline or local distribution company as contained in the Federal Energy Regulatory Commission tariff applicable to the intrastate pipeline or local distribution company's natural gas supplier;

(2) Be delivered to the intrastate pipeline or local distribution company by the person for whom the natural gas is to be transported at a point in the system technically capable of receiving gas at the proposed delivery rate and proper pressure;

(3) Be transported pursuant to a written contract between the parties setting forth specific arrangements as to volumes to be transported, points of delivery, method of metering, timing of receipts and deliveries of gas and other matters relating to individual customer circumstances;

(4) Not be transported if the performance of this service would detrimentally affect the ability of the intrastate pipeline or local distribution company to supply regular gas service to its customers;

(5) Be subject to curtailment and interruption when in the judgment of the intrastate pipeline or local distribution company, said curtailment or interruption is necessary to enable the maintenance of deliveries to residential and other high priority customers or to respond to an emergency.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 39, sec. 3, effective July 13, 1984.

278.507 Public Service Commission's policy to facilitate greater use of natural gas produced in Kentucky -- Commission's duties and prohibited activities.

(1) It shall be the policy of the Public Service Commission to facilitate greater utilization of the natural gas produced or available for production within the state, where this can be done without detriment to the customers of utilities under jurisdiction of the commission.

(2) This policy may be implemented by requiring the transportation of natural gas in intrastate commerce for persons who own or have purchased gas, as provided in KRS 278.505.

(3) The commission shall maintain at its offices for public inspection all rates and charges for natural gas transportation which are filed with the commission, and copies of federal or state rules which govern transportation of natural gas.

(4) The commission may implement this policy by gathering and maintaining, for public inspection, various information concerning natural gas markets. Such information may include, but not by way of limitation:

(a) Lists of producers of undedicated natural gas, together with such descriptions of available quantity, location or price as may be available to the commission;

(b) Lists of persons seeking a supply of natural gas, together with such descriptions as may be available to the commission;

(c) Sources of legal or technical expertise in natural gas procurement or marketing, which may be available to the commission;

(d) Transportation contracts filed with the commission, except to the extent that the parties to such contracts have requested that portions of these contracts be treated as confidential.

(5) The commission may adopt or develop model contracts or forms if it determines that such models would simplify negotiations between parties in the direct sale of natural gas.

(6) The commission shall not implement this policy by engaging directly in the procurement or marketing of natural gas as an agent of any person.

(7) The commission shall not regulate contracts between producers and purchasers of natural gas except to the extent that any party or parties to the contract are otherwise subject to commission regulation and commission review of contracts under this chapter.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 39, sec. 4, effective July 13, 1984.

278.508 Exemption of sale of natural gas used as a motor vehicle fuel from regulation -- Regulation of transportation, distribution, or delivery of natural gas used as a motor vehicle fuel.

(1) Notwithstanding any other provisions of this chapter, the rates, terms, and conditions of service for the sale of natural gas to a compressed natural gas fuel station, retailer, or to any end-user for use as a motor vehicle fuel, shall not be subject to regulation by the Kentucky Public Service Commission. Any utility provider of such a nonregulated service shall keep separate records and books of account adequate to allow the commission to allocate costs and revenues and to perform other acts that will assist the commission in enforcing this section.

(2) The transportation, distribution, or delivery of natural gas to any compressed natural gas fuel station, retailer, or any end-user for use as a motor vehicle fuel, shall continue to be subject to regulation by the Kentucky Public Service Commission. Upon request by the utility, the commission shall set flexible rates which provide a fair opportunity to compete with other motor fuels. Price adjustment pursuant to these flexible rates are not rate changes for purposes of this chapter.

(3) The sales or transportation transactions described in this section shall not adversely affect the regulated utility's cost or costs, or the availability of natural gas to its utility sales customers.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 273, sec. 1, effective July 14, 1992.

278.5085 Presumption of reasonableness of supply contract for natural gas produced from coal through gassification process.

If a gas distribution utility as defined in KRS 278.010(3)(b) enters into a twenty (20) year supply contract with any person for pipeline quality synthetic natural gas produced from coal through a gasification process, the commission shall find the transaction reasonable and shall allow the utility to recover the cost of the synthetic natural gas if:

(1) The only coal used in the gasification process is coal subject to the tax imposed under KRS 143.020;

(2) The price per million British thermal units (BTU) is no greater than the long-term market price derived from the simple average of the Henry Hub monthly futures prices for natural gas as reported by the New York Mercantile Exchange (NYMEX) for the sixty (60) months immediately following the effective date of the contract, adjusted annually based upon the change in the Annual Consumer Price Index for All Urban Consumers for the Midwest Region as published in April by the United States Department of Labor, Bureau of Labor Statistics, or a suitable Consumer Price Index calculation if this Consumer Price Index is not available. The total price adjustment over the life of the contract shall not exceed one dollar and fifty cents ($1.50) per million BTU; and

(3) The utility's aggregate long-term supply contracts for the purchase of synthetic natural gas produced from coal through the gasification process do not exceed twenty five-percent (25%) of the annual system supply requirements of the utility, by volume, as measured in thousand cubic foot units (Mcf) at the time the utility enters into the contract.

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 55, sec. 1, effective July 12, 2006.

Legislative Research Commission Note (7/12/2006). A reference to "million cubic foot units (Mcf)" in subsection (3) of 2006 Ky. Acts ch. 55 has been changed in codification by the reviser of statutes to correct a drafting error to read "thousand cubic foot units (Mcf)" to conform with the U. S. Census Bureau's Harmonized Commodity Description and Coding System which collects information based on the metric standard.

278.509 Recovery of costs for investment in natural gas pipeline replacement programs.

Notwithstanding any other provision of law to the contrary, upon application by a regulated utility, the commission may allow recovery of costs for investment in natural gas pipeline replacement programs which are not recovered in the existing rates of a regulated utility. No recovery shall be allowed unless the costs shall have been deemed by the commission to be fair, just, and reasonable.

Effective: June 20, 2005

History: Created 2005 Ky. Acts ch. 148, sec. 2, effective June 20, 2005.

278.510 Repealed, 2019.

Catchline at repeal: Consolidation of telephone lines.

History: Repealed 2019 Ky. Acts ch. 66, sec. 3, effective June 27, 2019. -- Amended 1982 Ky. Acts ch. 82, sec. 48, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 52, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4679e-1, 4679e-2, 4679e-4.

278.512 Legislative findings -- Exemption of telecommunications product or service from regulation.

(1) The legislature finds and determines that:

(a) Competition and innovation have become commonplace in the provision of certain telecommunications services in Kentucky and the United States;

(b) Flexibility in the regulation of the rates of providers of telecommunications service is essential to the well-being of this state, its economy, and its citizens; and

(c) The public interest requires that the Public Service Commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in a changing environment, giving due regard to the interests of consumers, the public, the providers of the telecommunications services, and the continued availability of good telecommunications service.

(2) Notwithstanding any other statute to the contrary, the commission may, on its own motion or upon motion of a telecommunications utility, after notice and opportunity for comment, and hearing if requested, exempt to the extent it deems reasonable, services or products related to telecommunications utilities or persons who provide telecommunications services or products from any or all of the provisions of this chapter, or may adopt alternative requirements for establishing rates and charges for any service by a method other than that which is specified in this chapter, if the commission finds by clear and satisfactory evidence that it is in the public interest. No exemption shall be granted under this statute which preempts, without notice and without hearing, if requested, the existing rights and obligations of a local exchange company to serve a territory under a tariff approved by the Public Service Commission. Any party which seeks an exemption shall certify to the commission at the time of the filing that he has notified the affected local exchange company by registered mail of the filing of a petition for exemption, and of the right of the local exchange company to request a hearing within thirty (30) days of the notification.

(3) In determining public interest, the commission shall consider the following:

(a) The extent to which competing telecommunications services are available from competitive providers in the relevant market;

(b) The existing ability and willingness of competitive providers to make functionally equivalent or substitute services readily available;

(c) The number and size of competitive providers of service;

(d) The overall impact of the proposed regulatory change on the continued availability of existing services at just and reasonable rates;

(e) The existence of adequate safeguards to assure that rates for services regulated pursuant to this chapter do not subsidize exempted services;

(f) The impact of the proposed regulatory change upon efforts to promote universal availability of basic telecommunications services at affordable rates and upon the need of telecommunications companies subject to the

jurisdiction of the commission to respond to competition;

(g) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or products;

(h) The overall impact on customers of a proposed change to streamline regulatory treatment of small or nonprofit carriers; and

(i) Any other factors the commission may determine are in the public interest.

(4) When the commission exempts a telecommunications product or service from all of the provisions of this chapter, the investment, revenues, and expenses associated with the service or product shall not be considered by the commission in setting rates for the telecommunications company's regulated services. This provision shall only apply to telecommunication products or services which the commission exempts after July 14, 1992. Nothing herein shall prohibit the commission from having access to and from examining the books and records of the exempted product or service in order to determine compliance with the commission's rules respecting allocation of cost when setting rates for the telecommunications company's regulated services.

(5) The Public Service Commission shall retain jurisdiction over persons and services which are exempted from regulation under this section, or for which alternative regulatory requirements have been established pursuant to this section. The commission, on its own motion, or upon the motion of any person, after notice and hearing, if requested, may vacate or modify any orders granting an exemption or establishing alternative requirements if it determines by clear and satisfactory evidence that the findings upon which the order was based are no longer valid, or that the exemption or modifications are no longer in the public interest.

(6) In granting or vacating exemptions, the Public Service Commission shall not be discriminatory or preferential but may treat services and utilities differently if reasonable and not detrimental to the public interest.

(7) The provisions of KRS 367.150(8) and 367.160, concerning the role of the Attorney General, shall apply to all proceedings under this section.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 306, sec. 1, effective July 14, 1992.

278.514 Exempted service not to be subsidized by nonexempted, regulated telecommunications services.

(1) Revenues derived from nonexempted, regulated telecommunications services, whether essential or nonessential, shall not be used to subsidize or otherwise give advantage to any person providing an exempted service. The commission shall require a provider of any exempted service to keep separate accounts, to allocate cost in accordance with procedures established by the commission, and may require other acts that will assist the commission in enforcing this section. Any person requesting an exemption or providing a service exempted pursuant to KRS 278.512 shall have the burden of proof to show compliance with this requirement.

(2) (a) Except as provided in subsection (2)(b) of this section, any telecommunications utility that willfully violates subsection (1) of this section shall be subject to a penalty no greater than the revenue requirement effect of moneys determined to have been misallocated in the violation. For the purpose of calculating the penalty under this section, the commission shall not use a period longer than five (5) years.

(b) A local exchange carrier with fewer than thirty-five thousand (35,000) access lines who willfully violates subsection (1) of this section shall be subject to the penalties prescribed in KRS 278.990(1).

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 306, sec. 2, effective July 14, 1992.

278.516 Alternative regulation process for small telephone utilities -- Findings -- Definitions -- Procedures -- Withdrawal.

(1) The legislature finds and determines that:

(a) Small telephone utilities lack the resources to fully participate in the existing regulatory processes, particularly under traditional rate of return and certificate of public convenience and necessity regulation;

(b) Regulation, if not tailored specifically to the needs of small telephone utilities, can retard the growth and development of small telephone utilities by requiring the expenditure of excessive time and money responding to and addressing regulatory processes instead of devoting those resources to customer service and more productive business concerns and issues; and

(c) It is in the public interest to provide regulatory flexibility to small telephone utilities to better enable them to adjust to the competition and innovation that has come and is coming to the telecommunications industry as found and determined by the legislature at KRS 278.512(1).

(2) In addition to the definitions set forth at KRS 278.010, the following definitions shall apply to this section:

(a) "Telephone utility" means a telephone utility as defined at KRS 278.010(3)(e) except that it includes local exchange carriers only;

(b) "Local exchange carrier" means a traditional wireline telephone utility which provides its subscribers with access to the national public switched telephone network;

(c) "Traditional wireline telephone utility" means one whose delivery of its telephone utility services is characterized by the predominant use of wire or wireline connections carrying communications transmissions between the subscriber of the utility and the national public switched telephone network;

(d) "Small telephone utility" means a local exchange carrier providing telephone utility service and having not more than fifty thousand (50,000) access lines in Kentucky;

(e) "Largest telephone utility" means the local exchange carrier providing telephone utility service in Kentucky and having the greatest number of access lines in Kentucky;

(f) "Access lines" mean the telephone lines provided by a local exchange carrier. In calculating the number of access lines provided by a local exchange carrier, the number of access lines provided by all telephone utilities under common ownership or control, as defined in KRS 278.020(7), with that telephone utility shall be counted;

(g) "GDP" means the real Gross Domestic Product Price Index, as it may be amended from time to time, as it is published by the Bureau of Economic Analysis of the United States Department of Commerce;

(h) "Annual percent change in the GDP" means, for any given calendar year, the annul percentage change in the GDP as it is calculated by the Bureau of Economic Analysis of the United States Department of Commerce;

(i) "Basic business rate" and "basic residential rate" mean the total rates or charges which must be paid by a business or residential subscriber, respectively, to a local exchange carrier in order to receive, outside of a standard metropolitan statistical area, telephone utility service within a specified geographic area for local calling and for which tariffed rates or charges are assessed, regardless of the amount of use of local calling;

(j) "Standard metropolitan statistical area" means any area in Kentucky designated as such, or as a part thereof, pursuant to 44 U.S.C. sec. 3504(d)(3) and 31 U.S.C. sec. 1104(d), as they may be amended, by the Office of Management and Budget of the Executive Office of the President of the United States; provided, however, that for purposes of this section, "standard metropolitan statistical area" shall include only the two (2) largest, as measured by population, standard metropolitan statistical areas, regardless of whether that area is located wholly or partially in Kentucky;

(k) "Basic business service" or "basic residential service" means the service for which basic business rates or basic residential rates are charged;

(l) "Average basic business or residential rate, including zone charges," means the total revenues which should be produced by the imposition of those rates or charges divided by the number of access lines to which those rates or charges are applicable;

(m) "Zone charges" mean mileage or zone charges and are the charges assessed by a telephone utility on the basis of a subscriber's distance from a central office in order that the subscriber may receive basic business or residential services;

(n) "Subscriber" means the person or entity legally and financially responsible for the bill rendered by a telephone utility for its services;

(o) "Intrastate access charges" mean the charges assessed for use of the telecommunications facilities of one telephone utility by another person or entity in order to deliver to the public for compensation telephone messages originating and terminating within Kentucky;

(p) "Interstate access charges" mean the charges assessed for use of the telecommunications facilities of one (1) telephone utility by another person or entity in order to deliver to the public for compensation telephone messages originating or terminating, but not both, in Kentucky; and

(q) "Pic charges" are charges assessed by a local exchange carrier in order to implement a change in a subscriber's long distance carrier.

(3) (a) If a small telephone utility elects to be regulated as provided in subsection (7) of this section, a small telephone utility once during any twenty-four (24) month period may adjust or implement each of the following rates or charges: basic business rate; basic residential rate; zone charges; or installation charges for basic business or basic residential services by an amount not to exceed the sum of the annual percentage changes in the GDP for the immediately preceding two (2) calendar years multiplied by the existing rate or charge to be adjusted. However, in no event shall a small telephone utility so adjust:

1. Its basic business rate, including zone charges, if the resulting average basic business rate, including zone charges, would thereby exceed the average basic business rate, including zone charges, of the largest telephone utility;
2. Its basic residential rate, including zone charges, if the resulting average basic residential rate would thereby exceed the average basic residential rate including zone charges, of the largest telephone utility; or
3. If its average basic business rate, including zone charges, its average basic residential rate, including zone charges, or its installation charges for basic business or basic residential services would be increased by more than twenty percent (20%).

(b) At least sixty (60) calendar days before the effective date of such an adjustment of its rates or charges, a small telephone utility shall file a copy of its revised rates and tariffs with the commission and shall mail notice of the proposed rate adjustment to each affected subscriber and the commission. The notice shall state:
1. The GDP for the preceding two (2) calendar years;
2. The amount by which any of the small telephone utility's rates or charges identified in subsection (3)(a) of this section will be adjusted; and
3. The right of subscribers to object to the adjustment and request commission review by filing a letter or petition with the commission.

(c) If by the forty-fifth calendar day following the date of the notice to subscribers of such a proposed adjustment to its rates or charges, the commission has received letters or petitions requesting commission review of the adjustment signed by at least five hundred (500) subscribers or five percent (5%) of subscribers, whichever is greater, the commission shall immediately notify the small telephone utility of this fact, and the proposed rate adjustment shall not become effective as scheduled. The small telephone utility may withdraw the proposed rate or charge adjustment, or if it decides to proceed, the commission shall review the proposed rate adjustment as though no election had been made pursuant to subsection (7) of this section.

(4) Any other provision of this chapter notwithstanding, a small telephone utility which has elected to be regulated pursuant to this section may adjust any of its rates, charges, or tariffs, except for:
(a) Its basic business rate;
(b) Its basic residential rate;
(c) Its zone charges;
(d) Its installation charges for basic business or basic residential services;
(e) Its access charges; or
(f) Its pic charges,

without regard to the effect on its revenues, by filing its proposed rates, charges, or tariffs with the commission and by notifying its subscribers, both at

least thirty (30) calendar days prior to the effective date of its proposed rates, charges, or tariffs.

(5) A small telephone utility which has elected to be regulated pursuant to this section shall not:

(a) Adjust its intrastate access charges if the adjustment requires the small telephone utility's access charge customers, including interexchange carriers, to pay intrastate access charges at levels exceeding the small telephone utility's interstate access charge levels; or

(b) Adjust its intrastate pic charges if the adjustment requires the small telephone utility's customers to pay intrastate pic charges at levels exceeding the small telephone utility's interstate pic charge levels.

The small telephone utility may decrease its intrastate access charges or intrastate pic charges to any level without restriction. Adjustments to intrastate access charge rates or intrastate pic charges shall be effective thirty (30) calendar days following the filing of access charge tariffs or pic charge tariffs with the commission.

(6) The rates, charges, earnings, or revenues of a small telephone utility which has elected to be regulated pursuant to this section and is in compliance with the provisions of this section shall be deemed by the commission to be in compliance with KRS 278.030(1).

(7) A small telephone utility may elect, at any time, to be regulated by the provisions, in their entirety only, of this section by filing a verified resolution of the utility's board of directors, or other governing body, so electing with the commission. An election shall be effective immediately upon filing with the commission and shall remain effective until withdrawn by the filing with the commission of a verified resolution of the small telephone utility's board of directors or other governing body; provided, however, that all resolutions of election or withdrawal shall remain in effect for at least one (1) year from the date of their filing with the commission. A resolution electing to be regulated by the provisions of this section shall mean that the small telephone utility so electing shall be regulated by this section and shall not be regulated by KRS 278.020(1) and 278.300. Nothing in this section, however, shall be construed to alter the applicability of KRS 278.020(5) or 278.030(2) to small telephone utilities electing to be regulated by the provisions of this section.

(8) A small telephone utility which has elected to be regulated pursuant to this section may file an application with the commission pursuant to KRS 278.020(1), and, if a utility does so, that application shall be deemed to have been granted unless within thirty (30) calendar days following the filing of the application, the commission denies the application. If the application is denied or none is filed, the small telephone utility electing to be regulated pursuant to this section may engage in the construction of the plant or facilities, or the purchase of equipment or properties, to provide the services described in KRS 278.010(3)(e). However, if the small telephone utility subsequently files a resolution of withdrawal under subsection (7) of this section, the increased value of property that resulted from any construction project denied approval by the commission or not submitted to the commission for approval may be excluded from the small utility's rate base for rate making purposes if the cost

of construction exceeded one million dollars ($1,000,000) or five percent (5%) of the value of the small telephone utility's property as reflected in the utility's most recent annual report filed with the commission.

Effective: April 8, 2016

History: Amended 2016 Ky. Acts ch. 50, sec. 3, effective April 8, 2016. -- Amended 2004 Ky. Acts ch. 75, sec. 2, effective July 13, 2004. -- Created 1996 Ky. Acts ch. 71, sec. 1, effective July 15, 1996.

278.520 Transmission of long distance messages from other telephone lines.

Telephone companies operating exchanges in different cities shall receive and transmit each other's messages without unreasonable delay or discrimination. The telephone exchange receiving any message from the exchange in which the message originated, and each other connecting exchange through which the message must be routed in order to reach its destination, shall switch the message through its exchange without unreasonable delay or discrimination and with the same promptness with which messages originating and ending on its own lines are handled, by causing the talking circuit to be connected over the toll line leading through or from the receiving exchange through any other connecting exchanges to the point of destination. It is the intention of this section to compel the connecting up and usage of toll wires through the various intervening exchanges between the exchange in which the messages originate and the point of destination, so that the party requesting service may be able to hold a conversation with the party called for at the point of destination.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4679f-1.

278.530 Procedure to compel connection with telephone exchange or line.

(1) Whenever any telephone company desires to connect its exchange or lines with the exchange or lines of another telephone company and the latter refuses to permit this to be done upon reasonable terms, rates and conditions, the company desiring the connection may proceed as provided in subsection (2) or as provided in subsection (3) of this section.

(2) The company desiring the connection may file a written statement with the Public Service Commission setting out the reasons why the connection is desired and the points at which the connection should be made, and giving the name and address of the owner or chief officer residing in this state of each company with which the connection is desired. The executive director of the commission shall thereupon cause a copy of the written statement to be served upon the companies owning or operating such lines or exchanges, by mailing a copy to the owner or chief officer residing in this state, and shall fix a date, not earlier than ten (10) days from the date of mailing the notice, for the hearing of the application. Upon the day so fixed for the hearing, the companies may respond in writing to the application, and either side may introduce such testimony as it desires and be heard by attorneys. After the hearing is completed the commission shall make its finding and enter it in a book to be kept for that purpose, and shall mail a copy thereof to each side; and if the commission directs the connection to be made it shall indicate the points where the connection is to be made, the number of wires to be connected, the terms and conditions and the rates to be charged, and the division of the rates charged between the companies handling the messages. The cost of making the connection shall be borne equally by the parties. If any company refuses to make a connection for a period of thirty (30) days after the finding of the commission directing the connection to be made, the company desiring the connection may make the connection and may recover one-half (1/2) of the cost thereof from the company so refusing.

(3) In lieu of the procedure provided in subsection (2) of this section, the company desiring the connection may compel the connection upon reasonable terms by suit in equity in the Franklin Circuit Court or in the Circuit Court of the county in which the company making the demand resides or has its chief office in this state, and the court shall, by mandatory injunction, compel the physical connection of the wires and interchange of messages, and enforce the same by contempt proceedings and in the same manner that other mandatory injunctions are enforced.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 166, sec. 4, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 49, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 53, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4679f-2, 4679f-3.

278.535 Switching of telecommunications provider -- Penalty -- Administrative regulations.

(1) As used in this section:

(a) "Telecommunications provider" or "provider" means a person that provides one (1) or more telecommunications services for compensation, and its successors in interest by way of acquisition or merger, and includes a provider of regulated and unregulated intrastate services offered to customers for the transmission of two-way, interactive communications. "Telecommunications provider" or "provider" does not include a provider of commercial mobile radio services as defined in 47 U.S.C. sec. 332(d)(1).

(b) "Letter of agency" means a written statement that authorizes a change of the customer's telecommunications provider and bears the customer's signature.

(2) A customer of a telecommunications provider shall not be switched to another provider without the customer's letter of agency or the electronically recorded authorization of the customer, indicating that the customer knowingly approved the specific details of the switch. The requirement of a written or electronically recorded authorization shall not apply if the customer initiates a call to the customer's local telephone service provider to request that his long-distance provider be changed. When a customer's service is changed, the new provider shall maintain for one (1) year a record of nonpublic customer-specific information that establishes that the customer authorized the change. In any dispute, the burden of proof to show that the customer knowingly authorized the change shall be on the provider that claims to have obtained customer authorization for the switch.

(3) If a letter of agency is combined with an inducement, or with information on a subject other than the change of a customer's telecommunications provider, whether or not the letter of agency can be easily severed from the rest of the document, then the language whereby a person authorizes service from the provider shall be printed in a type size as large or larger than the largest type used in the document that includes the letter of agency.

(4) If a telecommunications provider initiates a switch of provider that the customer has not authorized under this section, that provider, upon request by the customer, shall reverse the change within five (5) business days.

(5) The customer subjected to a change that is not verified consistent with this section or administrative regulations promulgated under this section is not responsible for any charges associated with the unauthorized change, including charges for usage subsequent to the change that are in excess of the amount the customer would have paid had the service not been changed, if the customer contacts the customer's local exchange carrier, the customer's previous provider of intrastate service, or the telecommunications provider that initiated an unauthorized change in service within one hundred eighty (180) days after receipt of the customer's first bill containing charges by the telecommunications provider that initiated the unauthorized change. A telecommunications provider that has initiated an unauthorized customer change shall:

(a) Pay all charges associated with returning the customer to the customer's original telecommunications provider;

(b) Return to the customer any amount paid to the provider by the customer or on the customer's behalf in excess of the amount the customer would have paid had the service not been changed; and

(c) Upon request, provide all billing records to the original provider from which the customer was changed to enable the original provider to comply with this section.

The telecommunications provider that initiated the unauthorized change is responsible for any payment to access providers or to an underlying carrier where applicable. Failure of the customer to provide timely notice will relieve the telecommunications provider that initiated the unauthorized change of any obligations under this subsection.

(6) If the commission finds that a provider has willfully or repeatedly violated this section or an administrative regulation promulgated under it, the commission shall order the provider to take corrective action as necessary. The commission may impose a penalty on the violator as specified in KRS 278.990(1), except that the maximum civil penalty to be assessed for each violation of this section shall be ten thousand dollars ($10,000). The commission also may, if consistent with the public interest, suspend, restrict, or revoke any certificate or registration of the telecommunications provider, thereby denying the provider the authorization to provide telecommunications service in the Commonwealth.

(7) The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the policies of this section.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 523, sec. 1, effective July 15, 1998.

278.540 Acquisition of right-of-way by telephone or telegraph company -- Condemnation.

(1) Any telephone company or telegraph company authorized to do business in this state shall, upon making just compensation, have the right to construct, maintain and operate its lines through any public lands of this state and on, across and along any public road, and across and under any navigable waters, but not in such a manner as to interfere with travel on the road or to obstruct the navigation of the waters.

(2) Any telephone company authorized to do business in this state may, by contract with any person, construct, maintain and operate telephone lines on and across the real property of that person, and if it cannot obtain the right-of-way by contract it may, except as provided in KRS 416.090, condemn the right-of-way in the manner provided in the Eminent Domain Act of Kentucky.

(3) Any telegraph company authorized to do business in this state that desires to construct, operate and maintain its lines on or along the right-of-way and structure of any railroad may, through an authorized agent, contract with the railroad company for that right.

(4) The parts of this section relating to the rights of telephone companies do not apply to any city.

Effective: June 19, 1976

History: Amended 1976 Ky. Acts ch. 140, sec. 113, effective June 19, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4679c-1, 4679c-2, 4679d-1, 4679d-2, 4679d-3.

278.541 Definitions for KRS 278.541 to 278.544.

In addition to the definitions set forth in KRS 278.010 and 278.516(2), the following definitions shall apply to KRS 278.541 to 278.544:

(1) "Basic local exchange service" means a retail telecommunications service consisting of a primary, single, voice-grade line provided to the premises of residential or business customers with the following features and functions only:

(a) Unlimited calls within the telephone utility's local exchange area;

(b) Dual-tone multifrequency dialing; and

(c) Access to the following:

1. 911 emergency service;
2. All locally available interexchange companies;
3. Directory assistance;
4. Operator services;
5. Relay services; and
6. A standard alphabetical directory listing that includes names, addresses, and telephone numbers at no additional charge.

With respect to local exchange carriers, basic local exchange service also shall include any mandatory extended area service routes accessible as a local call within that exchange area on or before July 12, 2006. Basic local exchange service does not include any features or functions other than those listed in this subsection, nor any other communications service, even if such service should include features and functions listed herein;

(2) "Electing utility" means a telephone utility that elects to operate under KRS 278.543;

(3) "Local exchange carrier" or "LEC" has the same meaning as defined in 47 U.S.C. sec. 153(26);

(4) "Incumbent local exchange carrier" or "ILEC" has the same meaning as defined in 47 U.S.C. sec. 251(h);

(5) "Nonbasic service" means all retail telecommunications services provided to a residential or business customer, all arrangements with respect to those services, and all packages of products or services; provided, however, nonbasic service includes basic local exchange service only if the customer chooses to purchase a package that includes basic local exchange service as a component of the package;

(6) "Optional telephone feature" means any of those central office-based features that were tariffed by a local exchange carrier on or before February 1, 2006, that, where available:

(a) Are available to a line-side connection in a telephone switch:

(b) Are available on a stand-alone basis separate from a bundled offering; and

(c) Enhance the utility of basic local exchange service.

The term includes but is not limited to call forwarding, call waiting, and caller ID;

(7) "Package" means combinations of retail products or services offered, whether at a single price or with the availability of the price for one (1) product or service contingent on the purchase of others; and

(8) "Telephone utility" includes local exchange carriers and telecommunications carriers as those terms are defined in 47 U.S.C. sec. 153 and any federal regulations implementing that section, except that the definition shall not include commercial mobile radio service providers as defined in 47 U.S.C. sec. 332 and the Federal Communications Commission's lawful regulations promulgated thereunder.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 111, sec. 26, effective July 15, 2016. -- Created 2006 Ky. Acts ch. 239, sec. 1, effective July 12, 2006.

278.542 Effect of KRS 278.541 to 278.544 on commission's jurisdiction -- Filing by telephone utilities required.

(1) Nothing in KRS 278.541 to 278.544 shall affect the commission's jurisdiction with respect to:

(a) Any agreement or arrangement between or among ILECs;

(b) Any agreement or arrangement between or among ILECs and other local exchange carriers;

(c) Consumer complaints as to compliance with basic local exchange service obligations, and the quality of basic voice-grade service transmission for basic and nonbasic services, consistent with accepted industry standards for telecommunications services;

(d) The 911 emergency service as set forth in KRS 65.750 to 65.760 or wireless enhanced emergency 911 systems as set forth in KRS 65.7621 to 65.7643;

(e) Accuracy of billing for telecommunications services, in accordance with the truth-in-billing regulations prescribed by the Federal Communications Commission;

(f) Assessments as set forth in KRS 278.130, 278.140, and 278.150;

(g) Unauthorized change of telecommunications providers or "slamming" under KRS 278.535;

(h) Billing of telecommunications services not ordered by or on behalf of the consumer or "cramming" to the extent that such services do not comply with the truth-in-billing regulations prescribed by the Federal Communications Commission;

(i) The federal Universal Service Fund and Lifeline Services Program and any Kentucky state counterpart;

(j) Any special telephone service programs as set forth in KRS 278.547 to 278.5499;

(k) Tariffs, except as expressly provided for in KRS 278.541 to 278.544;

(l) Setting objectives for performance as to basic local exchange service; except that the objectives shall not exceed existing commission standards or associated penalties as of July 12, 2006;

(m) Prohibiting price differences among retail telecommunications customers to the extent that such differences are attributable to race, creed, color, religion, sex, or national origin; or

(n) Ensuring that a telephone utility furnishes safe, adequate, and reasonable basic local exchange service to customers within that utility's service area.

(2) Telephone utilities operating pursuant to KRS 278.541 to 278.544 shall file with the commission a form containing:

(a) The complete name of the telephone utility;

(b) The physical address of its principal office; and

(c) The name, title, and telephone number of the person responsible for answering

consumer complaints on behalf of the telephone utility.

(3) No telephone utility shall engage in predatory pricing as defined by the United States Supreme Court in Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209 (1993).

(4) Nothing in KRS 278.541 to 278.544 shall affect the alternative regulation process for small telephone utilities as set forth in KRS 278.516.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 111, sec. 27, effective July 15, 2016. -- Created 2006 Ky. Acts ch. 239, sec. 2, effective July 12, 2006.

278.543 Adoption of price regulation plan -- Rate caps and adjustments -- Jurisdiction of commission -- Exemptions -- Withdrawal from regulation under KRS 278.541 to 278.544.

Any telephone utility, at its discretion and without commission approval, may elect to adopt the price regulation plan set forth below.

(1) An election under this section shall be effective immediately upon written notification from the electing utility to the commission. The election shall remain effective until withdrawn by the electing utility.

(2) The rate for basic local exchange service for an electing utility, other than an electing small telephone utility as defined in KRS 278.516, shall be capped for a period of sixty (60) months from the date of the election. Subject to the limitations in KRS 278.541 to 278.544, an electing utility may seek a rate adjustment for basic local exchange services according to the terms of regulation applicable to the basic local exchange services of any ILEC on June 30, 2006, or a previously approved or new price regulation proposal for basic service pursuant to KRS 278.512. These rate adjustments may become effective on or after the day following the end of the sixty (60) months.

(3) Electing utilities shall retain on file with the commission tariffs for basic local exchange services and intrastate switched-access services. Tariffs filed in accordance with subsection (2) of this section shall be deemed valid and binding upon the effective date stated in the tariff.

(4) An electing utility's rates for intrastate switched-access service shall not exceed its rates for this service that were in effect on the day prior to the date the utility filed its notice of election.

(5) The commission shall have original jurisdiction over complaints as to basic local exchange service of any electing telephone utility, except that the commission shall not have jurisdiction to set, investigate, or determine rates as to any electing telephone utility other than as set forth in this section. Upon a complaint in writing made against any electing telephone utility by any person stating that basic local exchange service in which that complainant is directly interested is unreasonable, unsafe, insufficient, or unjustly discriminatory, or that basic local exchange service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion. No order concerning a complaint shall be entered by the commission without a formal public hearing. A person may intervene in accordance with commission administrative regulations. The commission shall fix the time and place for the hearing and shall provide notice to the electing telephone utility and the complainant not less than twenty (20) days in advance. The commission may dismiss any complaint without a hearing if it decides that a hearing is not necessary, in the public interest, or for the protection of substantial rights. The complainant and the electing telephone utility shall be entitled to be heard in person or by an attorney and to introduce evidence.

(6) An electing utility's rates, charges, earnings, and revenues shall be deemed to be just and reasonable under KRS 278.030 and administrative regulations promulgated

thereunder upon election. Except as set forth in KRS 278.542(1)(a) and (b), an electing telephone utility shall be exempt from KRS 278.190, 278.192, 278.200, 278.230(3), 278.255, 278.260, 278.270, 278.280, 278.290, and 278.300 and administrative regulations promulgated thereunder. The utility shall also be exempt from any rules, orders, or regulations of the commission requiring the retention or filing of financial reports, classifications, depreciation or other schedules, or any other information not required by the Federal Communications Commission.

(7) An electing small telephone utility, as defined in KRS 278.516, may withdraw from being so regulated by providing written notice of withdrawal to the commission.

(8) Under the following circumstances, any electing utility may withdraw from being so regulated by providing written notice to the commission:

(a) Upon the approval pursuant to KRS 278.512 of a company-specific alternative regulation plan; or

(b) Upon filing notice with the commission of its adoption of the applicable provisions of any alternative regulation plan previously approved by the commission. The adoption shall become effective upon filing of the notice.

(9) The rates for basic local exchange service for an electing small telephone utility as defined in KRS 278.516 shall be capped for a period of twelve (12) months from the date of the election. Annually thereafter, an electing small telephone utility may not increase rates for an individual basic local exchange service by more than the increase in the annual average of the Consumer Price Index for all urban consumers for the most recent calendar year as published by the United States Department of Labor, Bureau of Labor Statistics.

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 239, sec. 3, effective July 12, 2006.

278.5435 Modification of price regulation plan -- Permitted and prohibited actions -- Jurisdiction of commission -- Exemptions.

(1) Notwithstanding any other provision of law, a telephone utility operating under a price regulation plan pursuant to KRS 278.543 may, at any time after the expiration of the applicable rate cap period set forth in that section, elect to operate under the modifications to that plan contained in this section. The election of this modification by the utility shall become effective upon the filing of a notice with the commission. The notice shall identify all exchanges served by the modifying utility which, as of January 1, 2015, contained fifteen thousand (15,000) or more housing units based on United States Census data current as of January 1, 2015.

(2) As used in this section:

(a) "Basic local exchange service" has the same meaning as in KRS 278.541;

(b) "Exchange" means a geographical area established by a telephone utility for the administration of telephone service. An exchange may embrace a city, town, or village and its environs or a portion thereof, and may consist of one (1) or more central offices together with the associated plant used in furnishing communication services in that area;

(c) "IP-enabled service," as used in the context of subsection (4)(c) of this section, means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol that enables an end user to send or receive voice communication, either separately or in conjunction with data communication, video communication, or both, in Internet protocol format, or any successor format;

(d) "Modifying utility" means a utility that makes an election to adopt the modified price regulation plan set out in this section; and

(e) "Voice service" means a retail service provided through any technology or service arrangement that includes the applicable functionalities described in 47 C.F.R. sec. 54.101(a).

(3) In exchanges with fifteen thousand (15,000) or more housing units as of January 1, 2015, based on United States Census data current as of January 1, 2015, and after September 1, 2017, in all exchanges:

(a) The commission shall not impose any requirements or otherwise regulate the terms, conditions, rates, or availability of any retail service of the modifying utility; and

(b) For exchanges with fifteen thousand (15,000) or more housing units, the tariffs of a modifying utility which are in effect on June 24, 2015, shall remain binding until such tariffs are withdrawn by the utility. For all exchanges, the tariffs of a modifying utility which are in effect on September 1, 2017, shall remain binding until they are withdrawn by the utility.

(4) (a) The provisions of this subsection shall apply until September 1, 2017, to all areas that are not described in subsection (3) of this section and in which the modifying utility is operating as an incumbent local exchange carrier, as defined in 47 U.S.C. sec. 251(h), as of June 24, 2015.

(b) In response to a request for service at a location to which the modifying utility or any predecessor in interest has not installed landline facilities necessary to provide basic local exchange service, the modifying utility shall offer voice service either directly or through an affiliate. The modifying utility is not obligated to offer basic local exchange service at the location. The commission shall not impose any requirements or otherwise regulate the terms, conditions, rates, or availability of the voice service.

(c) 1. In response to all other requests for service, the modifying utility may offer the requesting customer an IP-enabled service or a wireless service either directly or through an affiliate.

2. If the requesting customer does not order an IP-enabled service or a wireless service, the modifying utility, upon request by the customer, shall provide basic local exchange service at that location. The commission retains the jurisdiction to enforce this obligation.

3. If the requesting customer orders an IP-enabled service or a wireless service, the modifying utility shall notify the customer in writing that:

a. It is providing service using an IP-enabled service or a wireless service provided by the modifying utility or an affiliate; and

b. The customer has sixty (60) days from service initiation to notify the modifying utility in writing that the customer no longer wants the service.

4. If the customer gives written notice within sixty (60) days that the service is no longer wanted, the modifying utility, upon request by the customer, shall provide basic local exchange service at that location. The commission retains the jurisdiction to enforce this obligation.

5. If the customer does not give written notice that the service is no longer wanted within sixty (60) days, the modifying utility shall offer voice service, either directly or through an affiliate, at the requested location. The modifying utility shall not be obligated to offer basic local exchange service at that location. The commission shall not impose any requirements or otherwise regulate the terms, conditions, rates, or availability of the voice service.

(5) Nothing in this section:

(a) Shall affect the obligations of a modifying utility under federal law, including without limitation any obligation to maintain existing voice service in compliance with rules and orders of the Federal Communications Commission; or

(b) Diminishes or expands the commission's jurisdiction over wholesale rights, duties, and obligations of carriers or over complaints regarding anti-competitive practices under federal and state law, including subsequent rules and orders of the Federal Communications Commission that address carrier-to-carrier issues in and applicable to this state. Unless otherwise directed by federal law or regulation, carrier-to-carrier

complaints within the commission's jurisdiction shall be resolved by final commission order within one hundred eighty (180) days of the filing of the complaint.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 43, sec. 1, effective June 29, 2017. -- Created 2015 Ky. Acts ch. 2, sec. 1, effective June 24, 2015.

278.544 Provisions applicable to all telephone utilities.

The following provisions of this section shall apply and be enforced equally to all telephone utilities, unless otherwise specifically stated in this section.

(1) Telephone utilities may file with the commission schedules or tariffs reflecting the rates, terms, and conditions for nonbasic services that are generally available to all subscribers qualifying for the rates, terms, and conditions. The rates, terms, and conditions for basic and nonbasic services shall be valid upon the effective date stated in the schedule. Tariffs for nonbasic services in effect on July 12, 2006, shall continue to be effective as binding rates, terms, and conditions until withdrawn or modified by the telephone utility.

(2) A telephone utility offering a package that includes any optional telephone features tariffed as of February 1, 2006, shall maintain schedules or tariffs on file with the commission for each such optional telephone feature available on a stand-alone basis to residential customers who purchase basic local exchange service from that telephone utility.

(3) Notwithstanding the terms of any adopted regulation plan or any provision of law to the contrary, telephone utilities may provide nonbasic services pursuant to terms and conditions provided to the customer. Telephone utilities shall not be required to file nonbasic contracts with the commission. Telephone utilities shall permit a residential customer with nonbasic service to purchase basic local exchange service and any optional telephone feature on file in a schedule or tariff at the commission at the current rates, terms, and conditions without incurring termination charges, unless the customer has entered into an agreement containing termination charges and the customer is given thirty (30) days from receipt of the terms and conditions to cancel the agreement. If a customer cancels the agreement within thirty (30) days from receipt of the terms and conditions, termination charges are limited to the price of unreturned equipment or services, including installation, received at that point. Telephone utilities that provide services pursuant to this subsection shall provide customers with notice, as part of the terms and conditions of such services, that basic local exchange service and any optional telephone feature on file in a schedule or tariff with the commission may be purchased separately at the price posted on the company's Web site or on file with the commission.

(4) Notwithstanding any provision of law to the contrary, nonbasic services offered pursuant to the provisions of this section shall be set by the marketplace and are not governed by KRS 278.030 and administrative regulations promulgated thereunder. The nonbasic services are exempt from action or review by the commission under KRS 278.160, 278.170, 278.180, 278.190, 278.192, 278.200, 278.230(3), 278.250, 278.255, 278.260, 278.270, 278.280, 278.290, and 278.300 and administrative regulations promulgated thereunder, except as specifically stated in KRS 278.541 to 278.544.

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 239, sec. 4, effective July 12, 2006.

278.545 Repealed, 2019.

Catchline at repeal: Countywide service by major telephone company required, when.

History: Repealed 2019 Ky. Acts ch. 66, sec. 3, effective June 27, 2019. -- Created 1986 Ky. Acts ch. 495, sec. 3, effective July 15, 1986.

278.546 Legislative findings and determinations relating to telecommunications.

Whereas, the General Assembly finds and determines that:

(1) State-of-the-art telecommunications is an essential element to the Commonwealth's initiatives to improve the lives of Kentucky citizens, to create investment, jobs, economic growth, and to support the Kentucky Innovation Act of 2000;

(2) Streamlined regulation in competitive markets encourages investment in the Commonwealth's telecommunications infrastructure;

(3) Consumers in the Commonwealth have many choices in telecommunications services because competition between various telecommunications technologies such as traditional telephony, cable television, Internet and other wireless technologies has become commonplace;

(4) Consumers benefit from market-based competition that offers consumers of telecommunications services the most innovative and economical services; and

(5) Consumer protections against fraud and abuse, for the provision of affordable basic service, and for access to emergency services including enhanced 911 must continue.

Effective: July 13, 2004

History: Created 2004 Ky. Acts ch. 167, sec. 1, effective July 13, 2004.

278.5461 "Local exchange carrier" defined for KRS 278.546 to 278.5462.

In addition to the definitions in KRS 278.010 and 278.516(2), for KRS 278.546 to 278.5462, "local exchange carrier" means any company certified by the commission to provide local exchange telecommunications service in the Commonwealth on or before June 30, 1995.

Effective: April 14, 2022

History: Amended 2022 Ky. Acts ch. 202, sec. 6, effective April 14, 2022. -- Created 2004 Ky. Acts ch. 167, sec. 2, effective July 13, 2004.

278.54611 Commission's jurisdiction over commercial mobile radio service, interconnection agreements, telecommunications carriers, and cellular towers.

(1) The provision of commercial mobile radio services shall be market-based and not subject to Public Service Commission regulation. Notwithstanding any other provision of law to the contrary, except as provided in subsections (2) to (5) of this section, the commission shall not impose any requirement upon a commercial mobile radio services provider with respect to the following:

(a) The availability of facilities or equipment used to provide commercial mobile radio services; or

(b) The rates, terms, and conditions for, or entry into, the provision of commercial mobile radio service.

(2) The provisions of this section do not limit or modify the commission's authority to arbitrate and enforce interconnection agreements.

(3) The commission may assist in the resolution of consumer complaints.

(4) The commission may exercise its authority to ensure that companies that are designated and operate as eligible telecommunications carriers under 47 U.S.C. sec. 214(e), including commercial mobile radio service providers that receive eligible telecommunications carrier status, comply with the Federal Communication Commission's rules in 47 C.F.R. pt. 54, which govern eligible telecommunications carriers, to the extent consistent with federal and state law.

(5) The commission shall retain jurisdiction over cellular towers pursuant to KRS 278.665.

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 2, sec. 2, effective June 24, 2015. -- Created 2005 Ky. Acts ch. 109, sec. 1, effective June 20, 2005.

278.5462 Broadband services not subject to state regulation -- Application of requirements of federal statutes and regulations -- Consumer complaints -- Telephone utility provision of service to competing local exchange.

(1) The provision of broadband services shall be market-based and not subject to state administrative regulation. Notwithstanding any other provision of law to the contrary except as provided in subsections (3) and (4) of this section, no agency of the state shall impose or implement any requirement upon a broadband service provider with respect to the following:

(a) The availability of facilities or equipment used to provide broadband services; or

(b) The rates, terms or conditions for, or entry into, the provision of broadband service.

(2) Any requirement imposed upon broadband service in existence as of July 15, 2004, is hereby voided upon enactment of KRS 278.546 to 278.5462. The provisions of this section do not limit or modify the duties of a local exchange carrier or an affiliate of a local exchange carrier to provide unbundled access to network elements or the commission's authority to arbitrate and enforce interconnection agreements, including provisions related to remote terminals and central office facilities, to the extent required under 47 U.S.C. secs. 251 and 252, and any regulations issued by the Federal Communications Commission at rates determined in accordance with the standards established by the Federal Communications Commission pursuant to 47 C.F.R. secs. 51.503 to 51.513, inclusive of any successor regulations. Nothing contained in KRS 278.546 to 278.5462 shall be construed to preclude the application of access or other lawful rates and charges to broadband providers. Nothing contained in KRS 278.546 to 278.5462 shall preclude, with respect to broadband services, access for those service providers that use or make use of the publicly switched network.

(3) The commission may assist in the resolution of consumer service complaints.

(4) No telephone utility shall refuse to provide wholesale digital subscriber line service to competing local exchange carriers on the same terms and conditions, filed in tariff with the Federal Communications Commission, that it provides to Internet service providers.

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 2, sec. 3, effective June 24, 2015. -- Created 2004 Ky. Acts ch. 167, sec. 3, effective July 13, 2004.

278.5464 Provision of broadband service to unserved and underserved households and businesses -- Facilitation by distribution cooperative.

(1) The General Assembly recognizes and declares:

(a) The provision of broadband service to residential, commercial, and industrial customers is critical to securing a sound economy and promoting the general welfare of the Commonwealth; and

(b) Distribution cooperatives are able to access and leverage federal funding to extend and enhance the availability of broadband service to Kentucky residents who are currently unserved or underserved.

(2) As used in this section:

(a) "Underserved area" has the same meaning as in KRS 224A.011; and

(b) "Unserved area" has the same meaning as in KRS 224A.011.

(3) Notwithstanding any other statute to the contrary, a distribution cooperative may facilitate the operation of an affiliate engaged exclusively in the provision of broadband service to unserved or underserved households and businesses by:

(a) Constructing and leasing excess capacity on any fiber optic cable for broadband service which shall not require a certificate of public convenience and necessity under KRS 278.020; however, the construction of fiber optic cable used to support the distribution cooperative's electric distribution system shall require a certificate of public convenience and necessity under KRS 278.020;

(b) Issuing securities or evidences of indebtedness in an amount not to exceed twenty-five percent (25%) of the net book value of its assets, the proceeds of which shall be used for the exclusive purpose of capitalizing the affiliate; or

(c) Pledging up to twenty-five percent (25%) of the net book value of its assets as collateral for a loan entered into by the affiliate for the purpose of providing broadband services.

(4) A distribution cooperative shall comply with the cost allocation requirements of:

(a) KRS 278.2201, 278.2203, 278.2205, 278.2207, 278.2209, and 278.2211; and

(b) Only KRS 278.2213(1) and (3) with regard to any costs associated with its facilitation of an affiliate's provision of broadband services.

(5) The commission shall promulgate administrative regulations regarding pole attachments under the commission's jurisdiction, including those necessary for the provision of broadband service.

(6) Before broadband services may be offered under this section, a distribution cooperative shall, by resolution of the board of directors and spread upon its minutes, have an economic feasibility study conducted. The feasibility study shall be provided to the commission and made available to distribution cooperative members upon request.

(7) A distribution cooperative shall not allow the installation or operation of a broadband system on its electric delivery system by an affiliate or other broadband operator to diminish the reliability of the electric delivery system.

(8) A distribution cooperative shall not require any person to purchase broadband services from an affiliate or other broadband operator as a condition of receiving or continuing to receive electric energy from the distribution cooperative.

(9) A distribution cooperative shall not disconnect or threaten to disconnect its electric service to any customer due to the customer's failure to pay for broadband services provided to the customer by an affiliate or other broadband operator.

(10) Every distribution cooperative shall conduct an annual audit of compliance with this section, which shall be provided to the commission and made available to distribution cooperative members upon request.

(11) The commission shall have no jurisdiction over the creation or operation of an distribution cooperative's broadband affiliate, except as referred to in subsection (4) of this section.

Effective: April 14, 2022

History: Amended 2022 Ky. Acts ch. 202, sec. 7, effective April 14, 2022. -- Created 2021 Ky. Acts ch. 171, sec. 1, effective June 29, 2021; and amended ch. 196, sec. 4, effective April 7, 2021.

Legislative Research Commission Note (6/29/2021). This statute was created by 2021 Ky. Acts ch. 171, sec. 1, which was effective June 29, 2021, but its provisions were then amended during the same session by 2021 Ky. Acts ch. 196, sec. 4, which was effective April 7, 2021. Since the statute technically could not be amended April 7, 2021, when Chapter 196 took effect, since its creation was not effective until June 29, 2021, pursuant to Chapter 171, the amendment will be given effect on June 29, 2021, when the created statute is effective.

278.547 Definitions for KRS 278.547 to 278.5499.

As used in KRS 278.547 to 278.5499, unless the context requires otherwise:

(1) "Specialized telecommunications equipment" means devices such as, but not limited to telecommunications devices for the deaf, amplified phones, loud ringers, visual alert signalers, tactile signalers, captioned telephones, and appropriate wireless devices.

(2) "Telecommunications relay service" means a procedure by which a deaf, hard-of-hearing, or speech-impaired user of specialized telecommunications equipment can communicate with an intermediary party, who then verbally relays the first party's message or request to a third party, or vice versa. The service includes, but is not limited to the switching, transmitting, and the voice and typed translation of calls.

(3) "Telecommunications Access Program" means the program to furnish specialized telecommunications equipment to deaf, hard-of-hearing, and speech-impaired persons in order that they may use the telecommunications relay service. The program shall include maintenance and repair of the equipment.

Effective: July 12, 2006

History: Amended 2006 Ky. Acts ch. 23, sec. 3, effective July 1, 2006. -- Amended 1994 Ky. Acts ch. 237, sec. 1, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 144, sec. 15, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 5, sec. 1, effective July 13, 1990.

278.548 Telecommunications relay service program.

The commission shall establish a program to make telecommunications relay services available not later than October 1, 1991, and shall make interstate telecommunications relay services available no later than July 1, 1992. The telecommunications relay service, whether intrastate or interstate, shall be operated seven (7) days a week for twenty-four (24) hours per day for all deaf, hard-of-hearing, or speech-impaired telephone subscribers within the Commonwealth. In order to determine the most cost effective method of providing telecommunications relay services that will meet the requirements of the deaf, hard of hearing, and speech-impaired, the commission shall initiate an investigation, conduct public hearings, and solicit the advice and counsel of the deaf, hard-of-hearing persons, and speech-impaired persons and the organizations serving them. The commission may assist the Commission on the Deaf and Hard of Hearing in the TDD distribution program established pursuant to KRS 163.525.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 237, sec. 2, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 93, sec. 1, effective March 24, 1992; and ch. 144, sec. 16, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 5, sec. 2, effective July 13, 1990.

278.549 Rates -- Funding mechanism.

Users of a telecommunications relay service shall pay rates no greater than the rates paid for functionally equivalent voice communication services provided without a telecommunications relay. The commission shall determine the appropriate funding mechanism for the telecommunications relay system. The telecommunications industry shall not be required to absorb the cost of funding the telecommunications relay service. The commission may use assistance from public agencies of the state or federal government or from private organizations to accomplish the purposes of KRS 278.547 to 278.549.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 237, sec. 3, effective July 15, 1994. -- Created 1990 Ky. Acts ch. 5, sec. 3, effective July 13, 1990.

278.5499 Funding mechanism for Telecommunications Access Program.

(1) The Public Service Commission shall determine the appropriate funding mechanism for the Telecommunications Access Program established pursuant to KRS 163.525. The funding mechanism shall be designed to collect reasonably necessary funds, not to exceed two cents ($0.02) per access line per month, from subscribers of telecommunication utilities. The telecommunications industry shall not be required to absorb the cost of funding the Telecommunications Access Program.

(2) The Public Service Commission shall distribute the funds collected from this funding mechanism to the Commission on the Deaf and Hard of Hearing for the purpose of implementing and operating the Telecommunications Access Program. The secretary of the cabinet to which the Commission on the Deaf and Hard of Hearing is attached by statute or executive order shall establish oversight conditions with the Commission on the Deaf and Hard of Hearing to ensure the funds are being used solely for the purposes consistent with this section and KRS 163.525.

(3) The Public Service Commission, with the advice of the Commission on the Deaf and Hard of Hearing, shall initiate an investigation, conduct public hearings, and determine the appropriate funding mechanism for the Telecommunications Access Program no later than January 1, 1995. As part of this determination, the commission may review the funding mechanism for the telecommunications relay service pursuant to KRS 278.549. The commission shall consider whether a telecommunications utility experiences a competitive disadvantage resulting from the funding mechanism when compared to other telecommunication utilities.

Effective: June 4, 2010

History: Amended 2010 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 10, effective June 4, 2010. -- Amended 2006 Ky. Acts ch. 23, sec. 4, effective July 1, 2006. -- Amended 2002 Ky. Acts ch. 36, sec. 1, effective July 15, 2002. -- Created 1994 Ky. Acts ch. 237, sec. 4, effective July 15, 1994.

278.550 Repealed, 1986.

Catchline at repeal: General powers and duties of interurban electric railway companies.

History: Repealed 1986 Ky. Acts ch. 300, sec. 5, effective July 15, 1986. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 842a-1, 842a-4.

278.560 Repealed, 1974.

Catchline at repeal: City passengers, when interurbans not to take.

History: Repealed 1974 Ky. Acts ch. 308, sec. 64. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 842a-2.

278.570 Repealed, 1974.

Catchline at repeal: Bundle racks.

History: Repealed 1974 Ky. Acts ch. 308, sec. 64. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 842b-1.

278.580 Repealed, 1974.

Catchline at repeal: Bell to be rung or whistle sounded at crossings.

History: Repealed 1974 Ky. Acts ch. 308, sec. 64. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 786.

278.600 Definitions for KRS 278.600 and 278.610.

As used in this section and KRS 278.610, unless the context requires otherwise:

(1) "Certify" means to issue a certificate of public convenience and necessity under KRS 278.020;

(2) "High-level nuclear wastes" means the aqueous wastes resulting from the operation of the first cycle of the solvent extraction system or equivalent and the concentrated wastes of the subsequent extraction cycles or equivalent in a facility for reprocessing irradiated reactor fuel. High-level nuclear wastes shall include spent fuel assemblies prior to fuel reprocessing;

(3) "Low-level nuclear waste" means items that have become contaminated with radioactive material or have become radioactive through exposure to neutron radiation;

(4) "Mixed nuclear waste" means waste that is both radioactive and chemically hazardous;

(5) "Nuclear power facility" or "nuclear facility" means a nuclear fission thermal power plant;

(6) "Plan for storage of high-level nuclear waste" means a method for the storage of high-level nuclear waste in accordance with federal laws and regulation; and

(7) "Storage" means the retention of high-level nuclear waste, spent nuclear fuel, or transuranic waste with the intent to recover the waste or fuel for subsequent use, processing, or disposal.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 118, sec. 1, effective June 29, 2017. -- Created 1984 Ky. Acts ch. 15, sec. 1, effective July 13, 1984.

Legislative Research Commission Note (6/29/2017). 2017 Ky. Acts ch. 118, sec. 5 provided that amendments made to this statute and KRS 278.610 in Sections 1 and 2 of that Act shall be cited as the Robert J. Leeper Act.

Legislative Research Commission Note (6/29/2017). Under the authority of KRS 7.136(1), the Reviser of Statutes has changed the internal numbering of this statute to place the definitions in alphabetical order. No words were changed in this process.

278.605 Repealed, 2017.

Catchline at repeal: Construction prohibited until means for disposal of high-level nuclear waste approved by United States government -- Exceptions for nuclear-based technologies.

History: Repealed 2017 Ky. Acts ch. 118, sec. 4, effective June 29, 2017. -- Amended 2012 Ky. Acts ch. 120, sec. 1, effective July 12, 2012. -- Created 1984 Ky. Acts ch. 15, sec. 2, effective July 13, 1984.

278.610 Requirements for certification of nuclear power facility.

(1) The Public Service Commission may certify a nuclear power facility if it finds that the facility and plan for storage of the facility's high-level nuclear waste have been approved by the Nuclear Regulatory Commission.

(2) The commission shall have the authority to hire a consultant to perform duties relating to this section. Any expenses or fees incurred by the commission in hiring a consultant shall be borne by the applicant.

(3) The construction of low-level nuclear waste disposal sites in the Commonwealth shall be prohibited, except as provided in KRS 211.852.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 118, sec. 2, effective June 29, 2017. -- Created 1984 Ky. Acts ch. 15, sec. 3, effective July 13, 1984.

Legislative Research Commission Note (6/29/2017). 2017 Ky. Acts ch. 118, sec. 5 provided that amendments made to this statute and KRS 278.600 in Sections 1 and 2 of that Act shall be cited as the Robert J. Leeper Act.

278.615 Cost recovery for certain nuclear energy generating facility permits and licenses -- Definitions for section. (Effective July 15, 2026)

(1) As used in this section:

(a) "Combined operating license" means a license issued by the United States Nuclear Regulatory Commission pursuant to 10 C.F.R. sec. 52.71 et seq., that enables its holder to construct and operate a nuclear power plant at a specific site;

(b) "Construction permit" means a permit issued by the United States Nuclear Regulatory Commission pursuant to 10 C.F.R. pt. 50 that enables its holder to construct a nuclear power plant at a specific site;

(c) "Early site permit" means a permit issued by the United States Nuclear Regulatory Commission pursuant to 10 C.F.R. sec. 52.12 et seq., that enables its holder to secure federal site approval for a nuclear power plant site prior to seeking an operating reactor license from the United States Nuclear Regulatory Commission;

(d) "Generation III Plus" means the generation of nuclear reactor design following Generation III that incorporates passive and other safety measures and design improvements not included in previous nuclear reactor designs;

(e) "Generation IV" means the nuclear reactor designs identified and selected by the Generation IV International Forum as follows:

1. Sodium-cooled fast reactors;
2. Gas-cooled fast reactors;
3. Lead-cooled fast reactors;
4. Molten salt reactors;
5. Supercritical water-cooled reactors; and
6. Very high temperature reactors; and

(f) "Nuclear energy generating facility" means a facility containing a nuclear reactor of Generation III Plus, Generation IV, or later design that produces electricity, at least some of which is sold to the public.

(2) (a) Notwithstanding any provision of law to the contrary, upon application by a regulated utility, the commission may allow for the recovery of costs which are not covered in the existing rates of the utility that have been incurred in applying for and procuring an early site permit, construction permit, or combined operating license for a new nuclear energy generating facility to be located within the Commonwealth.

(b) The commission shall not allow cost recovery under this section for any amounts that have been offset by grant funding awarded pursuant to KRS 164.2805.

Effective: July 15, 2026

History: Created 2026 Ky. Acts ch. 56, sec. 2, effective July 15, 2026.

278.650 Procedures for proposals to construct antenna towers in an area outside the jurisdiction of a planning commission -- Hearing -- Building permit fee.

If an applicant proposes construction of an antenna tower for cellular telecommunications services or personal communications services which is to be located in an area outside the jurisdiction of a planning commission, or outside the jurisdiction of the secretary of the Finance and Administration Cabinet pursuant to KRS 56.463(4)(a), the applicant shall apply to the Public Service Commission for a certificate of public convenience and necessity pursuant to KRS 278.020(1), 278.665, and this section. The commission shall convene a local public hearing on the application upon the receipt of a request from the local governing body or from not less than three (3) interested persons that reside in a county or municipal corporation in which the tower is proposed to be constructed. In reviewing the application, the commission may take into account the character of the general area concerned and the likely effects of the installation on nearby land uses and values. A local government may charge a fee for a building permit, in connection with the construction or alteration of any structure for cellular telecommunications services or personal communication services, if the fee does not exceed that charged for any other commercial structure of comparable cost of construction.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 74, sec. 2, effective July 15, 2016. -- Amended 2002 Ky. Acts ch. 343, sec. 6, effective April 23, 2002; and ch. 346, sec. 222, effective July 15, 2002. -- Created 1996 Ky. Acts ch. 383, sec. 2, effective July 15, 1996.

Legislative Research Commission Note (4/23/2002). This section was amended by 2002 Ky. Acts ch. 343, sec. 6, and ch. 346, sec. 222, which appear to be in conflict. The changes made by ch. 346 are revisory in nature, while the changes made by ch. 343 are substantive. The changes of ch. 343 have been allowed to prevail. Cf. KRS 7.123.

278.660 Repealed, 2002.

Catchline at repeal: Confidentiality of uniform application and updates -- Penalty for violation.

History: Repealed 2002 Ky. Acts ch. 343, sec. 8, effective April 23, 2002. -- Created 1998 Ky. Acts ch. 231, sec. 5, effective July 15, 1998.

278.665 Administrative regulations governing cellular antenna towers to be constructed outside the jurisdiction of a planning commission.

(1) The commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the minimum content of an application for a certificate of convenience and necessity to construct cellular antenna towers for areas outside the jurisdiction of a planning commission.

(2) The commission, in establishing the public notice requirements of an application as provided for in subsection (1) of this section, shall distinguish between areas of low and high population densities. At a minimum, when the site of the proposed cellular antenna tower is outside of an incorporated city, the commission shall require that every person who owns property contiguous to the property where the proposed cellular antenna tower will be located receives notice by certified mail, return receipt requested, of the proposed construction, given the commission docket number under which the application will be processed, and informed of the opportunity to intervene in the commission proceedings on the application.

Effective: April 23, 2002

History: Amended 2002 Ky. Acts ch. 343, sec. 7, effective April 23, 2002; and ch. 346, sec. 223, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 103, sec. 1, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 231, sec. 4, effective July 15, 1998.

Legislative Research Commission Note (4/23/2002). This section was amended by 2002 Ky. Acts ch. 343, sec. 7, and ch. 346, sec. 223, which appear to be in conflict. The changes made by ch. 346 are revisory in nature, while the changes made by ch. 343 are substantive. The changes of ch. 343 have been allowed to prevail. Cf. KRS 7.123.

278.670 Definitions for KRS 278.670 to 278.696 and 65.114.

In addition to the definitions in KRS 278.010, except KRS 278.010(3)(a), which shall apply unless they conflict with or the context otherwise requires, as used in KRS 278.670 to 278.696 and 65.114:

(1) "Ancillary agreement" means a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with securitized bonds;

(2) "Assignee" means a legally recognized entity to which an electric utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to securitized property. The term "assignee" includes a corporation, limited liability company, general or limited partnership, public authority, trust, and financing entity to which an assignee assigns, sells or transfers, other than as security, its interest in or right to securitized property;

(3) "Bondholder" means a person who holds a securitized bond;

(4) "Code" means the Uniform Commercial Code, KRS Chapter 355;

(5) "Deferred costs" means costs that have occurred but will be accounted for as part of a regulatory asset;

(6) "Financing costs" include the following:

(a) Interest and acquisition, defeasance, or redemption premiums payable on securitized bonds;

(b) Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing document pertaining to securitized bonds;

(c) Any other cost related to issuing, supporting, repaying, refunding, or servicing securitized bonds, including the following fees and costs without limitation:

1. Servicing fees, accounting and auditing fees, trustee fees, consulting fees, structuring adviser fees, financial advisor fees, administrative fees, placement and underwriting fees, independent director and manager fees, rating agency fees, stock exchange listing and compliance fees, security registration fees, and filing fees;

2. Capitalized interest and information technology programming costs; and

3. Any other costs necessary to otherwise ensure the timely payment of securitized bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;

(d) Any taxes and license fees or other fees imposed on the revenues generated from the collection of the securitized surcharge or otherwise resulting from the collection of securitized surcharges, in any such case whether paid, payable, or accrued;

(e) Any state or local taxes, franchise taxes, gross receipts, and other taxes or similar charges, including commission assessment fees, whether paid, payable, or accrued; and

(f) Any costs associated with performance of the commission's responsibilities under KRS 278.670 to 278.696 and 65.114 in connection with:

1. Approving, approving subject to conditions, or rejecting an application for a financing order; and

2. Retaining counsel, one (1) or more financial advisors, or other consultants as deemed appropriate by the commission and paid pursuant to KRS 278.670 to 278.696 and 65.114, for the issuance advice letter process;

(7) "Financing order" means an order issued by the commission that authorizes the:

(a) Issuance of securitization bonds;

(b) Imposition, collection, and periodic adjustment of a securitized surcharge;

(c) Creation of securitized property; and

(d) Sale, assignment, or transfer of securitized property to an assignee;

(8) "Financing party" means bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders;

(9) "Financing statement" has the same meaning as in KRS 355.9-102;

(10) "Formula-based true-up mechanism" means a reconciliation or true-up process that is used to identify over collection or under collection of the securitized surcharge;

(11) "Issuance advice letter" means a letter from the utility to the commission that describes the final terms and conditions for the bond issuance, including but not limited to the actual structure of the bond issue, pricing, and other bond features such as coupon rates, redemption, and call provisions, and current market conditions affecting the bond issuance;

(12) "Nonbypassable" means the payment of a securitized utility charge may not be avoided by any existing or future retail customer including special contract customers;

(13) "Pledgee" means a financing party to which an electric utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to securitized property;

(14) "Regulatory asset" means, under the standardized financial accounting standards adopted by the commission, expenses that have been authorized by the commission to be capitalized for consideration of recovery in future rates that would otherwise be treated as an expense in a current accounting period;

(15) "Retired generation costs" means:

(a) Pretax costs with respect to retired or abandoned facilities that are included as deferred costs subject to an application for a financing order and include but are not limited to:

1. The undepreciated investment in the retired or abandoned electric generating facility and in any facilities ancillary thereto or used in conjunction therewith;

2. Costs of decommissioning and restoring the site of the electric generating facility;

3. Other applicable capital and operating costs; and
4. Accrued carrying charges and deferred costs;

(b) Reduced by:
1. Insurance, scrap, and salvage proceeds;
2. Applicable unamortized regulatory liabilities for excess deferred income taxes; and
3. The present value of return on all accumulated deferred income taxes related to pretax costs with respect to a retired or abandoned facility and related facilities, including those due to bonus and accelerated tax depreciation and abandonment losses; and

(c) Added to pretax costs the electric utility has previously incurred related to the retirement or abandonment of an electric generating facility and related facilities offering before June 29, 2023, including costs associated with:
1. The decommissioning and restoration of the site; and
2. Environmental compliance related to the operation and retirement of the electric generating facility;

(16) "Securitization" means a structured process where interests in debt instruments or other receivable income are packaged, underwritten, and sold as asset-backed marketable securities such as bonds;

(17) "Securitized bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that have a maturity date as determined reasonable by the commission, but not later than thirty (30) years from the issue date, that are issued by an electric utility or assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance capitalized cost assets and financing costs that are secured by or payable from securitized utility property;

(18) "Securitized costs" include retired generation costs, as well as the unamortized book value of extraordinary storm costs or other deferred costs associated with prior incurrences, but does not include ongoing utility investments or operating costs;

(19) "Securitized property" means:

(a) All rights and interests of a utility, its successor, or assignee under a financing order, including the right to impose, bill, charge, collect, and receive securitized surcharges authorized under the financing order and to obtain periodic adjustments to those charges authorized under KRS 278.670 to 278.696 and 65.114 and as provided in the financing order; and

(b) All revenues, collections, claims, rights to payments, payments, moneys, or proceeds arising from the rights and interests specified in the financing order, regardless of whether those revenues, collections, claims, rights to payment, payments, moneys, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, moneys, or proceeds;

(20) "Securitized surcharge" means the amounts authorized by the commission to repay,

finance, or refinance securitized costs and financing costs that are, except as otherwise provided for in KRS 278.670 to 278.696 and 65.114:

(a) Nonbypassable and imposed on, and are a part of, all retail customer bills;

(b) Collected, in full and separate from the utility's tariffed rates, special contract rates, or other mechanisms by an electric utility or by its successors, assignees, or collection agents; and

(c) Paid by all existing or future retail customers receiving electrical service from the electric utility or its successors or assignees under commission-approved rate schedules even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in the Commonwealth; and

(21) "Utility" has the same meaning as in KRS 278.010(3)(a) but shall not include any utility organized under KRS Chapter 279.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 1, effective June 29, 2023.

278.672 Application for financing order for deferred costs -- Requirements -- Deadline.

(1) An electric utility may apply to the commission for a financing order to finance extraordinary or other deferred costs from previous events for regulatory assets existing and with a value calculated on June 30, 2023, as:

(a) Greater than two hundred million dollars ($200,000,000) for a single regulatory asset; or

(b) Having a cumulative total value of greater than two hundred and seventy-five million ($275,000,000) for multiple regulatory assets.

(2) An application for a financing order shall include:

(a) A description of the deferred costs the utility is seeking to securitize. If more than fifty percent (50%) of the deferred costs are retired generation costs, the application also shall describe:

1. The electric generating facility or facilities that have been retired; and

2. A copy of all previous commission orders related to the deferral of costs applicable to the retirement or abandonment of the facility or facilities;

(b) The dollar amount of the deferred costs;

(c) A statement of whether the electric utility proposes to finance all or a portion of deferred costs using securitized bonds. If the electric utility proposes to finance a portion of the costs, the electric utility shall identify the specific portion of the deferred costs in the application. By electing not to finance all or any portion of deferred costs using securitized bonds, an electric utility shall not be deemed to waive its right to reflect those costs in its retail rates pursuant to a separate proceeding with the commission. However, at no point shall the electric utility apply to securitize less than the amounts prescribed in subsection (1) of this section;

(d) An estimate of the financing costs related to the securitized bonds;

(e) An estimate of the securitized surcharges necessary to recover the securitized costs and financing costs and the period for recovery of the costs;

(f) A comparison between the net present value of the costs to ratepayers that are estimated to result from the issuance of securitized bonds and the cost that would result from an alternative means of providing for the full recovery of and return on those securitized costs from customers, using the utility's current or expected weighted average cost of capital. The comparison should demonstrate that the issuance of securitized bonds and the imposition of securitized surcharges are expected to provide quantifiable net present value benefits to customers;

(g) A proposed future ratemaking process to reconcile any differences between securitized costs financed by securitized bonds and the final securitized costs incurred by the electric utility, successor, or assignee, provided that any reconciliation shall not affect the amount of securitized bonds or the associated securitized surcharges paid by customers; and

(h) Testimony supporting the application.

(3) The commission shall not accept for filing an application tendered pursuant to this section after December 31, 2024.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 2, effective June 29, 2023.

278.674 Application proceedings -- Commission findings -- Retention of consultants -- Issuance advice letter.

(1) Proceedings on an application submitted pursuant to KRS 278.672 shall begin with the filing of an application by an electric utility and shall be disposed of in accordance with the requirements of this section and the rules and administrative regulations promulgated by the commission, except as follows:

(a) The commission shall establish a procedural schedule that requires that not later than one hundred eighty (180) days after the application is filed:

1. A decision approving the application, approving the application subject to conditions, or denying the application is issued; and

2. A financing order is issued if the application is approved and the conditions are met, if conditions are imposed; and

(b) The commission shall approve the application for a financing order with or without conditions if the commission finds:

1. The application is in the public interest; and

2. The resulting estimated securitized surcharge and other rates are fair, just, and reasonable.

(2) Judicial review of a financing order shall only be done in accordance with KRS 278.410.

(3) In performing the responsibilities under KRS 278.670 to 278.696 and 65.114, the commission may retain counsel, one (1) or more financial advisors, or other consultants as the commission deems appropriate. Outside counsel, advisors, or other consultants engaged by the commission shall have no interest in the proposed securitized bonds and shall not direct the placement of securitized bonds. The costs associated with retaining counsel or advisors shall:

(a) Be paid by the applicant and be included as financing costs in the securitized surcharge;

(b) Be assigned solely to the subject transaction; and

(c) Not be an obligation of the Commonwealth.

(4) The commission may designate one (1) or more representatives from commission staff who may be advised by one (1) or more financial advisors contracted with the commission to provide:

(a) Input to and collaboration with the electric utility during the process undertaken to place the securitized bonds to market; and

(b) An opinion to the commission on the reasonableness of the pricing, terms, and conditions of the securitized bonds on an expedited basis.

(5) The designated commission staff and any financial advisor providing advice to commission staff shall:

(a) Have no authority to direct how the electric utility places the bonds to market; and

(b) Be permitted to attend meetings convened by the electric utility to address placement of the bonds to market.

(6) If an electric utility's application for a financing order is denied or withdrawn, or for any reason securitized bonds are not issued, any costs of retaining financial advisors, consultants, and counsel on behalf of the commission shall be:

(a) Paid by the applicant;

(b) Recorded on the books of the utility using appropriate deferral accounting as a regulatory asset; and

(c) Be eligible for full recovery, including carrying costs, subject to commission approval.

(7) Prior to the issuance of each series of securitized bonds, the electric utility shall provide an issuance advice letter to the commission following the determination of the final terms of the series of securitized bonds no later than three (3) business days after the pricing of the securitized bonds.

(8) The issuance advice letter shall:

(a) Report the initial securitized surcharges and other information specific to the securitized bonds as required by the commission;

(b) Be included in the financing order which may contain additional provisions relating to the issuance advice letter process as the commission deems appropriate and not inconsistent with KRS 278.670 to 278.696 and 65.114;

(c) Indicate the final structure of the securitized bonds; and

(d) Provide the best available estimate of total ongoing financing costs.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 3, effective June 29, 2023.

278.676 Financing order -- Prior issuance of bonds -- Conditions on securitized property.

(1) A financing order issued by the commission, after a hearing, to an electric utility shall include:

(a) The amount of securitized costs to be financed using securitized bonds and a finding that recovery of those costs is fair, just, and reasonable and in the public interest;

(b) A description and estimate of the amount of financing costs that may be recovered through securitized surcharges and the period over which securitized costs and financing costs may be recovered;

(c) A finding that the proposed issuance of securitized bonds and the imposition and collection of a securitized surcharge are fair, just, and reasonable, in the public interest, and expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds;

(d) A finding that the proposed structuring and pricing of the securitized bonds are reasonably expected to result in the lowest securitized surcharges consistent with market conditions at the time the securitized bonds are priced under the terms of the financing order;

(e) A requirement that, for so long as the securitized bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of securitized surcharges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving electric service from the electric utility, its successors, or assignees under commission-approved rate schedules even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the Commonwealth;

(f) A formula-based true-up mechanism for making:

1. At least annually, expeditious periodic adjustments in the securitized surcharges that customers are required to pay pursuant to the financing order; and

2. Any adjustments that are necessary to correct for any over collection or under collection of the surcharges and to ensure the timely payment of securitized bonds and financing costs and other required amounts and surcharges payable under the securitized bonds;

(g) A requirement that the securitized property:

1. Is created or shall be created in favor of an electric utility, its successors, or assignees; and

2. Shall be used to pay or secure securitized bonds and approved financing costs;

(h) A statement regarding the degree of flexibility to be afforded to the electric utility in establishing:

1. The terms and conditions of the securitized bonds, including but not

limited to repayment schedules, expected interest rates, and other financing costs;

2. Subject to the issuance advice letter process, the terms and conditions for the securitized bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service, and other reserves; and

3. At its option, the issuance or a series of issuances of securitized bonds and correlated assignments, sales, pledges, or other transfers of securitized property;

(i) A requirement as to how securitized surcharges will be allocated among retail customer classes;

(j) A requirement that, after the final terms of a proposed issuance of securitized bonds has been established but before the issuance of the securitized bonds, the electric utility shall determine the initial securitized surcharge in the manner required by and consistent with the financing order. The initial securitized surcharge shall be final and effective upon the issuance of the securitized bonds, with the surcharge to be reflected on a compliance tariff and filing bearing the surcharge and the calculation thereof;

(k) A method of:

1. Tracing funds collected as securitized surcharges or other proceeds of securitized property and authorization to change the method of tracing funds from time to time in accordance with the financing documents; and

2. Determining that the method, as amended from time to time, shall be used for tracing the funds and the identifiable cash proceeds of any securitized property subject to a financing order under applicable law;

(l) A statement specifying the details of a future ratemaking process used to reconcile any differences between the actual securitized costs financed by the electric utility, its successor, or assignee provided that any reconciliation shall not affect the amount of securitized bonds or the associated securitized surcharges paid by customers;

(m) A procedure that shall allow the electric utility to earn a return at its weighted average cost of capital authorized by the commission in the electric utility's rate proceedings, and subject to changes in interest rates, any moneys advanced by the electric utility to fund reserves, if any, or capital accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to the securitized bonds;

(n) An outside date, which shall not be earlier than one (1) year after the date the financing order is no longer subject to appeal, when the authority to issue securitized bonds granted in the financing order expires; and

(o) A statement that accumulated deferred income taxes and regulatory liabilities for excess deferred income taxes used in calculating retired generation costs shall be excluded from the rate base in future general rate cases and that no amortization of those excess deferred income taxes shall be reflected in future

general rate cases.

(2) Notwithstanding any provision of KRS 278.670 to 278.696 and 65.114 to the contrary, in considering whether to find the proposed issuance of securitized bonds and the imposition and collection of a securitized charge to be fair, just, and reasonable and in the public interest, the commission may consider previous instances where the commission has issued a financing order to the applicant and the applicant has previously issued securitized bonds.

(3) A financing order issued to an electric utility may provide that the creation of the electric utility's securitized property is conditioned upon, and simultaneous with, the:

(a) Sale or other transfer of the securitized property to an assignee; and

(b) Pledge of the securitized property to secure securitized bonds.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 4, effective June 29, 2023.

278.678 Utility to file documents with commission -- Parameters for securitized bonds -- Semiannual monthly surcharge update -- Adjustments -- Commission review -- Irrevocability of finance order.

(1) Upon the commission issuing a financing order and after the securitized bonds have been issued, the electric utility shall file with the commission a:

(a) Tariff containing the mechanism for the assessment of a monthly surcharge to existing rates for the collection of the securitized costs; and

(b) Formula-based true-up mechanism.

(2) The commission, in a financing order and subject to the issuance advice letter process, shall specify the degree of flexibility to be afforded the electric utility in establishing:

(a) The terms and conditions for the securitized bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service, and other reserves; and

(b) At its option, a series of issuances of securitized bonds and correlated assignments, sales, pledges, or other transfers of securitized property.

(3) The electric utility shall file a semiannual update to its monthly surcharge, based on estimates of consumption for each rate class and other mathematical factors, to collect the appropriate amount of securitized costs. The review by the commission of the semiannual update pursuant to this section shall be limited to:

(a) Determining whether there are any mathematical or clerical errors in the application of the formula-based true-up mechanism relating to the appropriate amount of any over collection or under collection of a securitized surcharge; and

(b) The amount of an adjustment.

(4) The adjustments shall ensure solely for the recovery of:

(a) Revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium; and

(b) Other fees, costs, and charges with respect to securitized bonds approved under the financing order.

(5) Within ten (10) days after receiving an electric utility's filing of the billing adjustment pursuant to this section, the commission shall either:

(a) Affix an official stamp on the filing indicating the commission's review is complete; or

(b) Inform the electric utility of any mathematical or clerical errors in the electric utility's calculation.

(6) If the commission informs the electric utility of mathematical or clerical errors in its calculation, the electric utility shall correct its error and refile its semiannual surcharge update.

(7) The time frames in subsection (5) of this section shall also apply to a refiled request.

(8) At the time of any transfer of securitized property to an assignee or the issuance of

securitized bonds authorized thereby, whichever is earlier, a financing order shall be irrevocable and, except for changes made pursuant to the formula-based true-up mechanism authorized in this section, the commission shall not:

(a) Amend, modify, or terminate the financing order by any subsequent action; or

(b) Reduce, impair, postpone, terminate, or otherwise adjust securitized surcharges approved in the financing order.

(9) After issuance of a financing order, the electric utility retains sole discretion regarding whether to:

(a) Assign, sell, or otherwise transfer securitized property; or

(b) Cause securitized bonds to be issued, including the right to defer or postpone the assignment, sale, transfer, or issuance of securitized bonds.

(10) Any changes made under this section to terms and conditions for the securitized bonds shall be in conformance with the financing order.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 5, effective June 29, 2023.

278.680 Issuance of securitized bonds by electric utility -- Subsequent financing order -- Limits on commission -- Discretion of electric utility.

(1) Subsequent to the issuance advice letter, and unless an earlier date is specified in the financing order, the electric utility may proceed with the issuance of the securitized bonds unless, prior to noon on the fourth business day after the pricing of the securitized bonds, the commission issues a disapproval order:

(a) Directing that the securitized bonds, as proposed, not be issued; and

(b) Stating the basis for the disapproval.

(2) At the request of an electric utility, the commission may open a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding securitized bonds issued pursuant to the original financing order if the commission finds that the subsequent financing order satisfies all the criteria specified in KRS 278.670 to 278.696 and 65.114. Effective upon retirement of the refunded securitized bonds and the issuance of new securitized bonds, the electric utility shall adjust and the commission shall approve the related securitized surcharges accordingly.

(3) A financing order remains in effect and securitized property under the financing order continues to exist until:

(a) Securitized bonds issued pursuant to the financing order have been paid in full or defeased; and

(b) In each case, all commission-approved financing costs of the securitized bonds have been recovered in full.

(4) A financing order issued to an electric utility remains in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, merger, or sale of the electric utility or its successors or assignees.

(5) The commission shall not, in exercising its powers and carrying out its duties regarding any matter within its authority:

(a) Consider the securitized bonds issued pursuant to a financing order to be the debt of the electric utility other than for federal and state income tax purposes;

(b) Consider the securitized surcharges paid under the financing order to be the revenue of the electric utility for any purpose;

(c) Consider the securitized costs or financing costs specified in the financing order to be the costs of the electric utility;

(d) Consider the presence of securitized assets as impacting the relative risk of the utility as it relates to determining an appropriate return on equity for ratemaking purposes; or

(e) Determine any action taken by an electric utility which is consistent with the financing order to be unjust or unreasonable.

(6) No electric utility shall be:

(a) Required to apply for a financing order; or

(b) If not under or applying for a financing order, otherwise be required to utilize any of the provisions under KRS 278.670 to 278.696 and 65.114.

(7) An electric utility's decision not to apply for a financing order shall not be admissible, utilized, or relied on by the commission in any commission proceeding respecting the electric utility's rates or its accounting. The commission shall not directly or indirectly:

(a) Order or require an electric utility to use securitized bonds to recover deferred costs for a regulatory asset;

(b) Consider the debt reflected by the securitized bonds in establishing the electric utility's capital structure used to determine any regulatory matter, including the electric utility's revenue requirement used to set its rates; and

(c) Consider the existence of securitized bonds or the potential use of securitized bond financing proceeds in determining the electric utility's authorized rate of return used to determine the electric utility's revenue requirement used to establish its rates.

(8) After the issuance of a financing order, the electric utility retains sole discretion regarding the issuance of the securitized bonds, including the right to defer or postpone the sale, assignment, transfer, or issuance. Nothing shall prevent the electric utility from abandoning the issuance of securitized bonds under the financing order by filing with the commission a statement of abandonment and the reasons therefor.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 6, effective June 29, 2023.

278.682 Securitized surcharges to be line-itemed on customer billing.

(1) If the commission has approved an electric utility's financing order and securitization bonds are issued on the electric utility's behalf, the electric utility shall:

(a) Explicitly state on the customer's bill the portion of securitized surcharges applicable to the rate class as approved in the financing order issued to the electric utility; and

(b) Include the securitized surcharge on each customer's bill as a separate line item and include both the base rate for the customer's electricity and the amount of the surcharge.

(2) If the securitized property has been transferred to an assignee, the customer bill shall include a statement that the assignee is the owner of the rights to securitized surcharges, and the electric utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee.

(3) Each tariff of the electric utility with a commission-approved financing order shall indicate the applicable securitized surcharge and the ownership of the surcharge.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 7, effective June 29, 2023.

278.684 Property right to securitized property -- Right to transfer or assign -- Default and sequestration -- Rights of successor to electric utility.

(1) All securitized property that is specified in a financing order constitutes an existing, present, intangible property right or interest therein, notwithstanding the fact that the imposition and collection of securitized surcharges depends on the electric utility performing its servicing functions relating to the collection of securitized surcharges and on future electricity consumption. The property right or interest therein exists regardless:

(a) Of whether the revenues or proceeds arising from the property have been billed, accrued, or collected; and

(b) That the value or amount of the property is dependent on the future provision of service to customers by the electric utility, its successors, or assignees and on the future consumption of electricity by its customers.

(2) Securitized property specified in a financing order exists until the securitized bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of the securitized bonds have been recovered in full.

(3) Any portion of securitized property specified in a financing order issued to an electric utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly-owned, directly or indirectly, by the electric utility and created for the limited purpose of acquiring, owning, or administering securitized property or issuing securitized bonds under the financing order. Any portion of securitized property may be pledged to secure:

(a) Securitized bonds issued pursuant to the financing order;

(b) Amounts payable to financing parties and to counterparties under any ancillary agreements; and

(c) Other financing costs.

(4) Any transfer, sale, conveyance, assignment, grant of a security interest in, or pledge of securitized property by an electric utility or an affiliate of the electric utility to an assignee, to the extent previously authorized in a financing order, does not require the prior consent and approval of the commission.

(5) If an electric utility defaults on any required remittance of securitized surcharges arising from securitized property specified in a financing order, a court, upon application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the securitized property to the financing parties, their successors, or assignees. The financing order shall remain in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric utility, its successors, or assignees.

(6) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in securitized property specified in a financing order issued to an electric utility, and in the revenue and collections arising from that property, shall not be subject to setoff, counterclaim, surcharge, or defense by:

(a) The electric utility; or

(b) Any other person in connection with the reorganization, bankruptcy, or other insolvency of the electric utility or of any other entity.

(7) Any successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding, any merger or acquisition, sale or other business combination, transfer by operation of law as a result of the electric utility restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as, the electric utility under the financing order in the same manner and to the same extent as the electric utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the securitized property. Nothing in KRS 278.670 to 278.696 and 65.114 shall limit or impair any authority of the commission concerning the transfer or succession of interests of electric utilities.

(8) Securitized bonds shall be nonrecourse to the credit or any assets of the electric utility other than the securitized property as specified in the financing order and any rights under any ancillary agreement.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 8, effective June 29, 2023.

278.686 Exemption from Uniform Commercial Code -- Security interest binding -- Filing of financing statement with Secretary of State -- Priority of securitized interest -- Exercise of rights and remedies upon default.

(1) The creation, perfection, priority, and enforcement of any security interest or lien in securitized property to secure the repayment of the principal and interest and other amounts payable in respect of securitized bonds, amounts payable under any ancillary agreement, and other financing costs are governed by KRS 278.670 to 278.696 and 65.114 and not by the provisions of the code or other law, except as otherwise provided in KRS 278.670 to 278.696 and 65.114.

(2) A security interest in securitized property is created, valid, and binding when the last of all the following actions has occurred:

(a) The financing order is issued;

(b) A security agreement is executed and delivered by the debtor granting the security interest;

(c) The debtor has rights to the securitized property or the power to transfer rights in the securitized property; or

(d) The value is received for the grant of the security interest in the securitized property.

(3) A description of securitized property in a security agreement shall be sufficient if the description refers to KRS 278.670 to 278.696 and 65.114 and the financing order creating the securitized property. A security interest shall attach as provided in this section without any physical delivery of collateral or other act.

(4) Upon the filing of a financing statement with the Office of the Secretary of State as provided in this section, a security interest in securitized property shall be perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, and regardless of whether the parties have notice of the security interest. Without limiting the foregoing, upon the time of filing a security interest in securitized property shall be perfected against all claims of lien creditors, and shall have priority over all competing security interests and other claims other than any security interest previously perfected in accordance with this section.

(5) The priority of a security interest in securitized property shall not be affected by the commingling of securitized surcharges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all securitized surcharges that are deposited in any cash or deposit account of the qualifying electric utility where securitized surcharges have been commingled with other funds, and any other security interest that may apply to those funds shall be terminated when the funds are transferred to a segregated account for the assignee or a financing party.

(6) No application of the formula-based true-up mechanism as provided in KRS 278.670 to 278.696 and 65.114 shall affect the validity, perfection, or priority of a security interest in or a transfer of securitized property.

(7) If a default occurs of the securitized bonds that are secured by a security interest in the securitized property, the financing parties or their representatives may exercise

the rights and remedies available to a secured party under the code, including the rights and remedies available under Article 9, Part 6 of the code. The commission also may order amounts arising from securitized charges be transferred to a separate account for the benefit of the financing party, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, the Circuit Court for the county or city in which the electric utility's headquarters is located shall order the sequestration and payment of revenues arising from the securitized charges to the financing parties.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 9, effective June 29, 2023.

278.688 Sale, assignment, or transfer of securitized property -- Application of income tax law to transaction -- Conditions for enforceability.

(1) Any sale, assignment, or other transfer of securitized property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to the seller's right, title, and interest in, to, and under the securitized property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and state income tax purposes.

(2) For all purposes other than federal and state income tax purposes, the parties' characterization of a transaction as a sale of an interest in securitized property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A sale or similar outright transfer of an interest in securitized property may occur only when all the following actions have occurred:

(a) The financing order creating the securitized property has become effective;

(b) The documents evidencing the transfer of securitized property have been executed by the assignor and delivered to the assignee; and

(c) Value is received for the securitized property.

The securitized property shall not be subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the securitized property perfected in accordance with this section.

(3) The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser shall not be affected or impaired by the occurrence of any of the following factors:

(a) Commingling of securitized charges with other amounts;

(b) The retention by the seller of:

1. A partial or residual interest, including an equity interest in the securitized property, whether direct or indirect, or whether subordinate or otherwise; or

2. The right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of securitized charges;

(c) Any recourse that the purchaser may have against the seller;

(d) Any indemnification rights, obligations, or repurchase rights made or provided by the seller;

(e) The obligation of the seller to collect securitized surcharges on behalf of an assignee;

(f) The transferor acting as the servicer of the securitized surcharges or the existence of any contract that authorizes or requires the electric utility, to the extent that any interest in securitized property is sold or assigned, to contract with the assignee or any financing party that it will:

1. Continue to operate its system to provide service to its customers;

2. Collect amounts in respect of the securitized surcharges for the benefit

and account of the assignee or financing party; and

3. Account for and remit required amounts to or for the account of the assignee or financing party;

(g) The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes;

(h) The granting or providing to bondholders a preferred right to the securitized property or credit enhancement by the electric utility or its affiliates with respect to the securitized bonds; or

(i) Any application of the formula-based true-up mechanism as provided in KRS 278.670 to 278.696 and 65.114.

(4) Any right that an electric utility has in the securitized property before its pledge, sale, or transfer, or any other right created under KRS 278.670 to 278.696 and 65.114, created in the financing order and assignable under KRS 278.670 to 278.696 and 65.114, or assignable pursuant to a financing order is property in the form of a contract right or a right to sue. Transfer of an interest of securitized property to an assignee shall be enforceable only upon the later of:

(a) The issuance of a financing order;

(b) The assignor having rights in the securitized property or the power to transfer rights in the securitized property to an assignee;

(c) The execution and delivery by the assignor of transfer documents in connection with the issuance of securitized bonds; and

(d) The receipt of value for the securitized property.

An enforceable transfer of an interest in securitized property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with KRS 278.692. After the transaction and filing, the transfer of the securitized property shall be absolute and shall be made free and clear of, and not subject to, competing claims of the creditors of the transferor, regardless of whether or not the competing claims are supported by any prior security interest or lien, other than prior claims or security interests in the securitized property perfected in accordance with this section.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 10, effective June 29, 2023.

278.690 Priority of transfer not impaired by modification -- Priority of conflicting interests.

(1) The priority of transfer perfected under KRS 278.686, 278.688, 278.690, and 278.692 shall not be impaired by any later modification of the financing order or securitized property or by the commingling of funds arising from securitized property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under KRS 278.686 and 278.688 and this section is terminated when those funds are transferred to a segregated account for the assignee or a financing party. If securitized property has been transferred to an assignee or financing party, any proceeds of that property shall be held in trust for the assignee or financing party.

(2) The priority of the conflicting interest of assignees in the same interest or rights in any securitized property shall be determined as follows:

(a) Conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time of filing covering the transfer shall be made in accordance with KRS 278.692;

(b) A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee; and

(c) A perfected interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of the assignee's interest or right.

(3) The description of securitized property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other security document, or indicated in any financing statement shall be sufficient only if the description or indication:

(a) Refers to the financing order that created the securitized property; and

(b) States that the agreement or financing statement covers all or part of the property described in the financing order.

(4) KRS 278.670 to 278.696 and 65.114 shall apply to all purported transfers of, and all purported grants, liens, or security interests in, securitized property, regardless of whether the related sale agreement, purchase agreement, or transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 11, effective June 29, 2023.

278.692 Financing statement maintained by Secretary of State -- Perfection of a security interest by filing of financing statement.

(1) The Secretary of State shall maintain any financing statement filed to perfect a sale or other transfer of securitized property and any security interest in securitized property under KRS 278.670 to 278.696 and 65.114 in the same manner that the Secretary of State maintains financing statements filed under the code to perfect a security interest in collateral owned by a transmitting utility.

(2) Except as otherwise provided in this section, all financing statements filed pursuant to this section shall be governed by the provisions regarding financing statements and the filing thereof under the code, including Article 9, Part 5 of the code. A security interest in securitized property may be perfected only by the filing of a financing statement in accordance with this section, and no other method of perfection shall be effective. Notwithstanding any provision of the code to the contrary, a financing statement filed pursuant to this section shall be effective until a termination statement is filed under the code, and no continuation statement shall need to be filed to maintain its effectiveness.

(3) A financing statement filed pursuant to this section may indicate that the debtor is a transmitting utility, and without regard to whether the debtor is an electric utility, an assignee, or otherwise qualifies as a transmitting utility under the code, but the failure to make a transmitting utility's indication shall not impair the duration and effectiveness of the financing statement.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 12, effective June 29, 2023.

278.694 Application -- Liability restriction -- No obligation of taxation.

(1) The laws of the Commonwealth shall govern the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any securitized property.

(2) Neither the Commonwealth nor its political subdivisions shall be liable on any securitized bonds. The bonds shall not be a:

(a) Debt or a general obligation of the Commonwealth or any of its political subdivisions, agencies, or instrumentalities; or

(b) Special obligations or indebtedness of the Commonwealth or any of its political subdivisions, agencies, or instrumentalities.

(3) An issue of securitized bonds shall not directly, indirectly, or contingently, obligate the Commonwealth or any agency, political subdivision, or instrumentality of the Commonwealth to levy any tax or make any appropriation for payment of the securitized bonds, other than in their capacity as consumers of electricity. All securitized bonds shall contain on their face a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Commonwealth of Kentucky is pledged to the payment of the principal of, or interest on, this bond."

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 13, effective June 29, 2023.

278.696 Assignee or financing party not an electric utility or provider of electric service -- Application of KRS 278.670 to 278.696 and 65.114 -- Severance.

(1) An assignee or financing party shall not be deemed an electric utility or person providing electric service by virtue of engaging in the transactions described in KRS 278.670 to 278.696 and 65.114.

(2) If there is a conflict between any of the provisions of KRS 278.670 to 278.696 and 65.114 and any other law regarding the attachment, assignment, perfection or the effect of perfection, priority of, assignment, or transfer of, or security interest in securitized property, the provisions of KRS 278.670 to 278.696 and 65.114 shall govern.

(3) If any provision of KRS 278.670 to 278.696 and 65.114 is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason:

(a) The occurrence does not affect the validity of any action allowed under KRS 278.670 to 278.696 and 65.114 which is taken by an electric utility, assignee, financing party, collection agent, or party to an ancillary agreement; and

(b) All actions remain in full force and effect with respect to all securitized bonds issued or authorized in a financing order issued under KRS 278.670 to 278.696 and 65.114 before the date the provision is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason.

Effective: June 29, 2023

History: Created 2023 Ky. Acts ch. 72, sec. 15, effective June 29, 2023.

278.700 Definitions for KRS 278.700 to 278.716.

As used in KRS 278.700 to 278.716, unless the context requires otherwise:

(1) "Board" means the Kentucky State Board on Electric Generation and Transmission Siting created in KRS 278.702;

(2) "Merchant electric generating facility" means, except for a qualifying facility as defined in subsection (7) of this section, an electricity generating facility or facilities that, together with all associated structures and facilities:

(a) Are capable of operating at an aggregate capacity of ten megawatts (10MW) or more; and

(b) Sell the electricity they produce in the wholesale market, at rates and charges not regulated by the Public Service Commission;

(3) "Person" means any individual, corporation, public corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust, estate, two (2) or more persons having a joint or common interest, or any other entity, and no portion of KRS 224.10-280, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 shall apply to a utility owned by a municipality unless the utility is a merchant plant as defined in this section;

(4) "Commence to construct" means physical on-site placement, assembly, or installation of materials or equipment which will make up part of the ultimate structure of the facility. In order to qualify, these activities must take place at the site of the proposed facility or must be site-specific. Activities such as site clearing and excavation work will not satisfy the commence to construct requirements;

(5) "Nonregulated electric transmission line" means an electric transmission line and related appurtenances for which no certificate of public convenience and necessity is required; which is not operated as an activity regulated by the Public Service Commission; and which is capable of operating at or above sixty-nine thousand (69,000) volts;

(6) "Residential neighborhood" means a populated area of five (5) or more acres containing at least one (1) residential structure per acre;

(7) "Qualifying facility" means a cogeneration facility as defined in 16 U.S.C. sec. 796(18)(b) which does not exceed a capacity of one hundred fifty megawatts (150MW) that is located on site at a manufacturer's plant and that uses steam from the cogeneration facility in its manufacturing process, or an industrial energy facility as defined in KRS 224.1-010 that does not generate more than one hundred fifty megawatts (150MW) for sale and has received all local planning and zoning approvals; and

(8) "Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a point of sale, storage, or other carbon management applications.

Effective: April 10, 2014

History: Amended 2014 Ky. Acts ch. 88, sec. 1, effective April 10, 2014. -- Amended 2011 Ky. Acts ch.

82, sec. 5, effective June 8, 2011. -- Amended 2007 Ky. Acts ch. 73, sec. 4, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 138, sec. 1, effective July 12, 2006. -- Created 2002 Ky. Acts ch. 365, sec. 1, effective April 24, 2002.

278.702 Kentucky State Board on Electric Generation and Transmission Siting.

(1) There is hereby established the Kentucky State Board on Electric Generation and Transmission Siting. The board shall be composed of nine (9) members as follows:

(a) The five (5) members of the Kentucky Public Service Commission;

(b) The secretary of the Energy and Environment Cabinet or the secretary's designee;

(c) The secretary of the Cabinet for Economic Development or the secretary's designee;

(d) 1. If the facility subject to board approval is proposed to be located in one (1) county, two (2) ad hoc public members to be appointed by the Governor from a county where a facility subject to board approval is proposed to be located:

a. One (1) of the ad hoc public members shall be the chairman of the planning commission with jurisdiction over an area in which a facility subject to board approval is proposed to be located. If the proposed location is not within a jurisdiction with a planning commission, then the Governor shall appoint either the county judge/executive of a county that contains the proposed location of the facility or the mayor of a city, if the facility is proposed to be within a city; and

b. One (1) of the ad hoc public members shall be appointed by the Governor and shall be a resident of the county in which the facility is proposed to be located.

2. If the facility subject to board approval is proposed to be located in more than one (1) county, two (2) ad hoc public members to be chosen as follows:

a. One (1) ad hoc public member shall be the county judge/executive of a county in which the facility is proposed to be located, to be chosen by majority vote of the county judge/executives of the counties in which the facility is proposed to be located; and

b. One (1) ad hoc public member shall be a resident of a county in which the facility is proposed to be located, and shall be appointed by the Governor.

If a member has not been chosen by majority vote, as provided in subdivision a. of this subparagraph, by thirty (30) days after the filing of the application, the Governor shall directly appoint the member.

3. Ad hoc public members appointed to the board and their immediate family members shall have no direct financial interest in the facility proposed to be constructed and shall be subject to the executive branch code of ethics established in KRS Chapter 11A.

(2) The term of service for the ad hoc members of the board shall continue until the merchant electric generating facility for which they were appointed has been constructed and begins generating electricity for sale or the construction certificate

expires. The remaining members of the board shall be permanent members.

(3) The board shall be attached to the Public Service Commission for administrative purposes. The commission staff shall serve as permanent administrative staff for the board. The members of the board identified in subsection (1)(a) to (d) of this section shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement KRS 278.700 to 278.716.

(4) No member of the board shall receive any salary or fee for service on the board or shall have any financial interest in any facility the application for which comes before the board, but each member shall be reimbursed for actual travel and expenses directly related to service on the board.

(5) The chair of the Public Service Commission shall be the chair of the board. The chair shall designate one (1) member of the board as vice chair. A majority of the members of the board shall constitute a quorum for the transaction of business. No vacancy on the board shall impair the right of the remaining members to exercise all of the powers of the board. The board shall convene upon the call of the chair.

Effective: April 15, 2026

History: Amended 2026 Ky. Acts ch. 185, sec. 7, effective April 15, 2026. -- Amended 2023 Ky. Acts ch. 140, sec. 1, effective June 29, 2023. -- Amended 2010 Ky. Acts ch. 24, sec. 605, effective July 15, 2010. -- Created 2002 Ky. Acts ch. 365, sec. 2, effective April 24, 2002.

278.704 Merchant electric generating facility -- Construction certificate -- Location of exhaust stack -- Decommissioning and setback requirements -- Public meeting concerning property acquisition -- Exception. (Effective July 15, 2026)

(1) No person shall commence to construct a merchant electric generating facility until that person has applied for and obtained a construction certificate for the facility from the board. The construction certificate shall be valid for a period of three (3) years after the issuance date of the last permit required to be obtained from the Energy and Environment Cabinet after which the certificate shall be void. The certificate shall be conditioned upon the applicant obtaining necessary air, water, and waste permits. If an applicant has not obtained all necessary permits and has not commenced to construct prior to the expiration date of the certificate, the applicant shall be required to obtain a new valid certificate from the board.

(2) (a) Except as provided in subsections (3), (4), and (5) of this section, no construction certificate shall be issued to construct a merchant electric generating facility unless:

1. The exhaust stack of the proposed facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner;
2. All proposed structures or facilities used in connection with the generation of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility; and
3. With regard to a wind power facility, the maximum height of the wind turbine, as measured from the natural grade to the top of the hub where the rotor attaches, does not exceed three hundred fifty (350) feet.

(b) For purposes of applications for site compatibility certificates pursuant to KRS 278.216:

1. Only the exhaust stack of the proposed facility to be actually used for coal or gas-fired generation shall be required to be at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility;
2. Any proposed structure to be actually used for the generation of electricity from solar or wind power shall be at least one thousand (1,000) feet from the property boundary of any adjoining property owner; and
3. Any proposed structures or facilities used in connection with the generation of electricity from solar or wind power shall be at least two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility.

(3) If the merchant electric generating facility is proposed to be located in a county or a municipality with planning and zoning, then maximum height, decommissioning, and setback requirements from a property boundary, residential neighborhood, school, hospital, or nursing home facility may be established by the planning and

zoning commission. Any decommissioning requirement, maximum height limitation, or setback established by a planning and zoning commission for a facility in an area over which it has jurisdiction shall:

(a) Except with regard to the minimum decommission bonding amount required in KRS 278.706(2)(m)5.a., have primacy over the decommissioning requirements in KRS 278.706(2)(m), the maximum height limitation in subsection (2)(a)3. of this section, and the setback requirement in subsections (2) and (5) of this section; and

(b) Not be subject to modification or waiver by the board through a request for deviation by the applicant, as provided in subsection (4) of this section or otherwise.

(4) The board may grant a deviation from the requirements of subsection (2) of this section on a finding that the proposed facility is designed to and, as located, would meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of this section.

(5) If the merchant electric generating facility is proposed to be located on a site of a former coal processing plant in the Commonwealth where the electric generating facility will utilize on-site waste coal as a fuel source, then the one thousand (1,000) foot property boundary requirement in subsection (2)(a)1. of this section shall not be applicable; however, the applicant shall be required to meet any other setback requirements contained in subsection (2)(a)2. of this section.

(6) If requested, a merchant electric generating entity considering construction of a facility for the generation of electricity or a person acting on behalf of such an entity shall hold a public meeting in any county where acquisition of real estate or any interest in real estate is being considered for the facility. A request for such a meeting may be made by the commission, or by any city or county governmental entity, including a board of commissioners, planning and zoning, fiscal court, mayor, or county judge/executive. The meeting shall be held not more than thirty (30) days from the date of the request.

(7) The purpose of the meeting under subsection (6) of this section is to fully inform landowners and other interested parties of the full extent of the project being considered, including the project time line. One (1) or more representatives of the entity with full knowledge of all aspects of the project shall be present and shall answer questions from the public.

(8) Notice of the time, subject, and location of the meeting under subsection (6) of this section shall be posted in both a local newspaper, if any, and a newspaper of general circulation in the county. Notice shall also be placed on the websites of the unregulated entity, and any local governmental unit. Owners of real estate known to be included in the project and any person whose property adjoins at any point any property to be included in the project shall be notified personally by mail. All notices must be mailed or posted at least two (2) weeks prior to the meeting.

(9) The merchant electric generating entity or a person acting on behalf of a merchant electric generating entity shall, on or before the date of the public meeting held under subsection (6) of this section, provide notice of all research, testing, or any

other activities being planned or considered to:

(a) The Energy and Environment Cabinet;

(b) The Public Service Commission;

(c) The Transportation Cabinet;

(d) The Attorney General; and

(e) The Office of the Governor.

(10) Subsections (6) to (9) of this section shall not apply to any facility or project that has already received a certificate of construction from the board.

Effective: July 15, 2026

History: Amended 2026 Ky. Acts ch. 152, sec. 25, effective July 15, 2026; and ch. 198, sec. 56, effective July 15, 2026. -- Amended 2023 Ky. Acts ch. 140, sec. 2, effective June 29, 2023. -- Amended 2014 Ky. Acts ch. 88, sec. 2, effective April 10, 2014. -- Amended 2010 Ky. Acts ch. 24, sec. 606, effective July 15, 2010. -- Created 2002 Ky. Acts ch. 365, sec. 3, effective April 24, 2002.

Legislative Research Commission Note (7/15/2026). This statute was amended by 2026 RS HB 677 (2026 Ky. Acts ch. 152, sec. 25), which was subsequently amended by 2026 RS HB 869 (2026 Ky. Acts ch. 198, sec. 56), and the amendments have been codified together.

278.706 Application for certificate to construct merchant electric generating facility -- Requirements -- Fees -- Replacement or repair does not constitute construction -- Proceeds from sale of salvaged materials -- Administrative regulations. (Effective July 15, 2026)

(1) Any person seeking to obtain a construction certificate from the board to construct a merchant electric generating facility shall file an application at the office of the Public Service Commission.

(2) A completed application shall include the following:

(a) The name, address, and telephone number of the person proposing to construct and own the merchant electric generating facility;

(b) A full description of the proposed site, including a map showing the distance of the proposed site from residential neighborhoods, the nearest residential structures, schools, and public and private parks that are located within a two (2) mile radius of the proposed facility;

(c) Evidence of public notice that shall include the location of the proposed site and a general description of the project, state that the proposed construction is subject to approval by the board, and provide the telephone number and address of the Public Service Commission. Public notice shall be given within thirty (30) days immediately preceding the application filing to:

1. Landowners whose property borders the proposed site; and

2. The general public in a newspaper of general circulation in the county or municipality in which the facility is proposed to be located;

(d) A statement certifying that the proposed plant will be in compliance with all local ordinances and regulations concerning noise control and with any local planning and zoning ordinances. The statement shall also disclose setback requirements established by the planning and zoning commission as provided under KRS 278.704(3);

(e) If the facility is not proposed to be located on a site of a former coal processing plant and the facility will use on-site waste coal as a fuel source or in an area where a planning and zoning commission has established a setback requirement pursuant to KRS 278.704(3), a statement that the exhaust stack of the proposed facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and all proposed structures or facilities used in connection with the generation or storage of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility, unless coal or gas-fired generating facilities capable of generating ten megawatts (10MW) or more currently exist on the site. If the facility is proposed to be located on a site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, a statement that the proposed site is compatible with the setback requirements provided under KRS 278.704(5). If the facility is proposed to be located in a jurisdiction that has established setback requirements pursuant to KRS 278.704(3), a statement that the proposed site is in compliance with those established setback requirements;

(f) A complete report of the applicant's public involvement program activities undertaken prior to the filing of the application, including:

1. The scheduling and conducting of a public meeting in the county or counties in which the proposed facility will be constructed at least ninety (90) days prior to the filing of an application, for the purpose of informing the public of the project being considered and receiving comment on it;
2. Evidence that notice of the time, subject, and location of the meeting was published in the newspaper of general circulation in the county, and that individual notice was mailed to all owners of property adjoining the proposed project at least two (2) weeks prior to the meeting; and
3. Any use of media coverage, direct mailing, fliers, newsletters, additional public meetings, establishment of a community advisory group, and any other efforts to obtain local involvement in the siting process;

(g) A summary of the efforts made by the applicant to locate the proposed facility on a site where existing electric generating facilities are located;

(h) Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed facility is to be located, and upon the chief officer of each public agency charged with the duty of planning land use in the jurisdiction in which the facility is proposed to be located;

(i) An analysis of the proposed facility's projected effect on the electricity transmission system in Kentucky;

(j) An analysis of the proposed facility's economic impact on the affected region and the state;

(k) A detailed listing of all violations by it, or any person with an ownership interest, of federal or state environmental laws, rules, or administrative regulations, whether judicial or administrative, where violations have resulted in criminal convictions or civil or administrative fines exceeding five thousand dollars ($5,000). The status of any pending action, whether judicial or administrative, shall also be submitted;

(l) A site assessment report as specified in KRS 278.708. The applicant may submit and the board may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report;

(m) A decommissioning plan that shall describe how the merchant electric generating facility will be decommissioned and dismantled following the end of its useful life. The decommissioning plan shall, at a minimum, include plans to:

1. Unless otherwise requested by the current landowner at the time of decommissioning, remove all above-ground facilities;
2. Unless otherwise requested by the current landowner at the time of decommissioning, remove any underground components and foundations of above-ground facilities. Facilities removed under this

subparagraph shall be removed in their entirety, unless the current landowner and the applicant otherwise agree at the time of decommissioning to a different depth;

3. Return the land to a substantially similar state as it was prior to the commencement of construction;

4. Unless otherwise requested by the current landowner at the time of decommissioning, leave any interconnection or other facilities in place for future use at the completion of the decommissioning process;

5. Secure a bond or other similar security for the project to assure financial performance of the decommissioning obligation, provided that:

    a. The amount of the proposed bond or similar security shall be determined by an independent, licensed engineer who is experienced in the decommissioning of solar electric generating facilities to be decommissioned and has no financial interest in either the merchant electric generating facility or any parcel of land upon which the merchant electric generating facility is located. The proposed amount of the bond or similar security shall be either:

        i. The net present value of the total estimated cost of completing the decommissioning plan; or

        ii. The bond amount required by a county or municipal government that has established a decommissioning bond requirement or similar security obligation in the county or municipality where the merchant electric generating facility will be located. If the facility will be located in more than one (1) county or municipality that has established a decommissioning bond or similar security obligation, then the higher amount shall be required for the facility;

    b. The bond or other similar security names:

        i. For property that is leased by the applicant, each landowner from whom the applicant leases land and the Energy and Environment Cabinet as the primary co-beneficiaries; or

        ii. For property that is owned by the applicant, the Energy and Environment Cabinet as the primary beneficiary;

    c. If the merchant electric generating facility is to be located in a county or municipality that has not established a decommissioning bond or other similar security obligation, the bond or other similar security shall name the county or municipality as a secondary beneficiary with the county's or municipality's consent;

    d. The bond or other similar security shall be provided by an insurance company or surety that shall at all times maintain at least an "Excellent" rating as measured by the AM Best rating agency or an investment grade credit rating by any national credit rating agency and, if available, shall be noncancelable by the provider or

the customer until completion of the decommissioning plan or until a replacement bond is secured; and

e. The bond or other similar security shall provide that at least thirty (30) days prior to its cancellation or lapse, the surety shall notify the applicant, its successor or assign, each landowner, the Energy and Environment Cabinet, and each county or city in which the facility is located of the impending cancellation or lapse. The notice shall specify the reason for the cancellation or lapse and provide any of the parties, either jointly or separately, the opportunity to cure the cancellation or lapse prior to it becoming effective. The applicant, its successor, or its assign, shall be responsible for all costs incurred by all parties to cure the cancellation or lapse of the bond. Each landowner, or the Energy and Environment Cabinet with the prior approval of each landowner, may make a demand on the bond and initiate and complete the decommissioning plan;

6. Communicate with each affected landowner at the end of the merchant electric generating facility's useful life so that any requests of the landowner that are in addition to the minimum requirements set forth in this paragraph and in addition to any other requirements specified in the lease with the landowner may, in the sole discretion of the applicant or its successor or assign, be accommodated; and

7. Incorporate the requirements of subparagraphs 1. to 6. of this paragraph into the applicant's leases with landowners; and

(n) For applications for the construction of wind power facilities, a statement certifying that:

1. Any wind turbine will not be artificially lighted except as required by law;

2. Wind power facilities will be sited in a manner that minimizes shadowing or flicker impacts; and

3. Any shadowing or flicker impacts will not have a significant adverse impact on neighboring or adjacent property uses through siting or mitigation.

(3) (a) The entity causing the decommissioning plan required under subsection (2)(m) of this section to be carried out shall be entitled to the proceeds from the sale of any salvaged materials or components of the merchant electric generating facility recovered during the decommissioning process.

(b) Any proceeds that the Energy and Environment Cabinet recovers from the sale of salvaged materials or components in the course of carrying out a decommissioning plan under subsection (2)(m) of this section that, taken with the decommissioning bond amounts that have been drawn upon, exceed the cost of completing the decommissioning plan shall be deposited in the merchant electric generating facility monitoring and enforcement fund established in KRS 224.10-285.

(4) Application fees for a construction certificate shall be set by the board and deposited into a trust and agency account to the credit of the commission.

(5) Replacement of a merchant electric generating facility with a like facility, or the repair, modification, retrofitting, enhancement, or reconfiguration of a merchant electric generating facility shall not, for the purposes of this section and KRS 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a merchant electric generating facility.

(6) The board shall promulgate administrative regulations prescribing fees to pay expenses associated with its review of applications filed with it pursuant to KRS 278.700 to 278.716. All application fees collected by the board shall be deposited in a trust and agency account to the credit of the Public Service Commission. If a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses associated with the application, including the board's expenses associated with legal review thereof, the board shall assess a supplemental application fee to cover the additional expenses. An applicant's failure to pay a fee assessed pursuant to this subsection shall be grounds for denial of the application.

Effective: July 15, 2026

History: Amended 2026 Ky. Acts ch. 152, sec. 26, effective July 15, 2026; and ch. 198, sec. 57, effective July 15, 2026. -- Amended 2023 Ky. Acts ch. 140, sec. 3, effective June 29, 2023. -- Amended 2014 Ky. Acts ch. 88, sec. 3, effective April 10, 2014. -- Created 2002 Ky. Acts ch. 365, sec. 4, effective April 24, 2002.

Legislative Research Commission Note (7/15/2026). This statute was amended by 2026 RS HB 677 (2026 Ky. Acts ch. 152, sec. 26), which was subsequently amended by 2026 RS HB 869 (2026 Ky. Acts ch. 198, sec. 57), and the amendments have been codified together.

278.708 Site assessment report -- Consultant -- Mitigation measures.

(1) Any person proposing to construct a merchant electric generating facility shall file a site assessment report with the board as required under KRS 278.706(2)(l).

(2) A site assessment report shall be prepared by the applicant or its designee.

(3) A completed site assessment report shall include:

(a) A description of the proposed facility that shall include a proposed site development plan that describes:

1. Surrounding land uses for residential, commercial, agricultural, and recreational purposes;
2. The legal boundaries of the proposed site;
3. Proposed access control to the site;
4. The location of facility buildings, transmission lines, and other structures;
5. Location and use of access ways, internal roads, and railways;
6. Existing or proposed utilities to service the facility;
7. Compliance with applicable setback requirements as provided under KRS 278.704(2), (3), (4), or (5); and
8. Evaluation of the noise levels expected to be produced by the facility;

(b) An evaluation of the compatibility of the facility with scenic surroundings;

(c) The potential changes in property values and land use resulting from the siting, construction, and operation of the proposed facility for property owners adjacent to the facility;

(d) Evaluation of anticipated peak and average noise levels associated with the facility's construction and operation at the property boundary; and

(e) The impact of the facility's operation on road and rail traffic to and within the facility, including anticipated levels of fugitive dust created by the traffic and any anticipated degradation of roads and lands in the vicinity of the facility.

(4) The site assessment report shall also suggest any mitigating measures to be implemented by the applicant to minimize or avoid adverse effects identified in the site assessment report.

(5) The board shall have the authority to hire a consultant to review the site assessment report and provide recommendations concerning the adequacy of the report and proposed mitigation measures. The board may direct the consultant to prepare a separate site assessment report. Any expenses or fees incurred by the board's hiring of a consultant shall be borne by the applicant.

(6) The applicant shall be given the opportunity to present evidence to the board regarding any mitigation measures. As a condition of approval for an application to obtain a construction certificate, the board may require the implementation of any mitigation measures that the board deems appropriate. Ongoing compliance with any mitigation measures that were conditions of construction certificate application approval shall be enforced by the Energy and Environment Cabinet pursuant to KRS 278.710(9).

Effective: June 29, 2023

History: Amended 2023 Ky. Acts ch. 140, sec. 4, effective June 29, 2023. -- Amended 2014 Ky. Acts ch. 88, sec. 4, effective April 10, 2014. -- Created 2002 Ky. Acts ch. 365, sec. 5, effective April 24, 2002.

278.710 Granting or denial of construction certificate -- Policy of General Assembly -- Duties upon receipt of construction certificate -- Compliance and monitoring. (Effective July 15, 2026)

(1) Within one hundred twenty (120) days of receipt of an administratively complete application, or within one hundred eighty (180) days of receipt of an administratively complete application if a hearing is requested, the board shall, by majority vote, grant or deny a construction certificate, either in whole or in part, based upon the following criteria:

(a) Impact of the facility on scenic surroundings, property values, the pattern and type of development of adjacent property, and surrounding roads;

(b) Anticipated noise levels expected as a result of construction and operation of the proposed facility;

(c) The economic impact of the facility upon the affected region and the state;

(d) Whether the facility is proposed for a site upon which existing generating facilities, capable of generating ten megawatts (10MW) or more of electricity, are currently located;

(e) Whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed;

(f) Whether the additional load imposed upon the electricity transmission system by use of the merchant electric generating facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Public Service Commission;

(g) Except where the facility is subject to a statewide setback established by a planning and zoning commission as provided in KRS 278.704(3) and except for a facility proposed to be located on a site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, whether the exhaust stack of the proposed merchant electric generating facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and all proposed structures or facilities used in connection with the generation or storage of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility, unless a different setback has been requested and approved under KRS 278.704(4). If a planning and zoning commission has established setback requirements that differ from those under KRS 278.704(2), the applicant shall provide evidence of compliance. If the facility is proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, the applicant shall provide evidence of compliance with the setback requirements provided in KRS 278.704(5);

(h) The efficacy of any proposed measures to mitigate adverse impacts that are identified pursuant to paragraph (a), (b), (e), or (f) of this subsection from the construction or operation of the proposed facility;

(i) Whether the applicant has a good environmental compliance history;

(j) Whether the decommissioning plan is complete and complies with the requirements of KRS 278.706(2)(m) and any other local requirements that

may apply; and

(k) Whether, for applications for the construction of wind power facilities, the applicant and facilities will comply with the certifications required in KRS 278.706(2)(n).

(2) When considering an application for a construction certificate for a merchant electric generating facility, the board may consider the policy of the General Assembly to encourage the use of coal as a principal fuel for electricity generation as set forth in KRS 152.210, provided that any facility, regardless of fuel choice, shall comply fully with KRS 224.10-280, 278.212, 278.216, and 278.700 to 278.716.

(3) A person that has received a construction certificate for a merchant electric generating facility shall:

(a) File with the Energy and Environment Cabinet the copy of the bond or other similar security that, pursuant to KRS 278.706(2)(m)5., is required by a county or a municipal government or as part of a decommissioning plan, no later than the date upon which the construction of the merchant generating facility commences, and refile an updated copy at least once every five (5) years thereafter;

(b) Not transfer rights and obligation under the certificate without having first applied for and received a board determination that:

1. The acquirer has a good environmental compliance history; and

2. The acquirer has the financial, technical, and managerial capacity to meet the obligations imposed by the terms of the approval or has the ability to contract to meet these obligations;

(c) File with the Energy and Environment Cabinet a notice of the date that construction is complete and the merchant electric generating facility begins producing electricity for sale; and

(d) Following the date the merchant electric generating facility begins producing electricity for sale, file a notice of any transaction involving the transfer or sale of ownership, control, or the right to control the merchant electric generating facility, with lessors of property where the merchant electric generating facility is located, the Energy and Environment Cabinet, the county judge/executive of a county and, if applicable, the mayor of a municipality in which the merchant electric generating facility is located, within ten (10) days of completing the transaction. The notice shall include the name, street address, telephone number, and e-mail address of the person acquiring ownership, control, or the right to control the merchant electric generating facility.

(4) A person that has acquired ownership, control, or the right to control a merchant electric generating facility from the applicant or its successor or assign shall file with the Energy and Environment Cabinet within ten (10) days of completing the acquisition:

(a) A written consent to assume the obligations set forth in the decommissioning plan as of the date the acquisition occurred; and

(b) A notice of adoption of an existing bond or other similar security previously filed pursuant to subsection (3)(a) of this section or a replacement bond or other similar security that complies with KRS 278.706(2)(m)5. An existing bond or other similar security shall be adopted, or a replacement bond or other similar security shall be in place, as of the date the acquisition occurs so that there is no lapse in coverage of the decommissioning bond or other similar security. A person making a filing pursuant to this subsection shall file an updated bond or other similar security that complies with KRS 278.706(2)(m)5. at least once every five (5) years.

(5) Any person who transfers or sells ownership, control, or the right to control a merchant electric generating facility shall remain liable for all existing decommissioning obligations and bond requirements until the person who acquires ownership, control, or the right to control the merchant electric generating facility files with the Energy and Environment Cabinet the documents required by subsection (4) of this section and they are accepted as complete by the secretary.

(6) Any application approval condition that requires the approval of the transfer of control of a merchant electric generating facility after construction is complete shall be void and unenforceable, but any transfer of control of a merchant electric generating facility shall be subject to compliance with the requirements of subsections (3)(d), (4), and (5) of this section.

(7) Notwithstanding any provision of law to the contrary, including any order issued by the board prior to June 29, 2023, after the board has approved an application for a construction certificate for a merchant electric generating facility under this section, the approved applicant has posted the bond or similar security required under KRS 278.706(2)(m)5., and the facility is constructed and begins generating electricity for sale, the board's authority to enforce any conditions of the construction certificate, including bonding and decommissioning requirements, shall end and the secretary of the Energy and Environment Cabinet shall monitor and enforce the construction certificate holder's compliance with the requirements of KRS 278.700 to 278.716 and the conditions of its construction certificate application approval.

(8) In addition to all compliance monitoring and enforcement performed by the secretary of the Energy and Environment Cabinet, and notwithstanding any provision of law to the contrary, the secretary shall also review the decommissioning plan required by KRS 278.706(2)(m) or by local ordinance, license, or permit and the bond or similar security amount required by KRS 278.706(2)(m)5. or by local ordinance, license, or permit as needed, including any time a transfer determination is made under subsection (5) of this section, but in any event at least once every five (5) years. Upon review, the secretary of the Energy and Environment Cabinet shall require the decommissioning plan to be updated and the bond amount to be changed to match any significant change in circumstances or change to the estimated cost of effectuating the decommissioning plan.

(9) After the facility for which an application for a construction certificate has been approved is constructed and begins generating electricity for sale, the secretary of the Energy and Environment Cabinet shall ensure ongoing compliance with the mitigation measures that were conditions of the application approval under KRS

278.708(6) and any enforcement by the board of the mitigation measures shall cease.

(10) During the period that the merchant electric generating facility is operational, if solar panels or wind turbine components are replaced and discarded, the facility owner-operator shall remove discarded solar panels or wind turbine components from the site within ninety (90) days of completion of the work. Upon request of the facility owner-operator, the secretary of the Energy and Environment Cabinet may extend the time period under this subsection for removing discarded solar panels or wind turbine components.

Effective: July 15, 2026

History: Amended 2026 Ky. Acts ch. 152, sec. 27, effective July 15, 2026. -- Amended 2023 Ky. Acts ch. 140, sec. 5, effective June 29, 2023. -- Amended 2014 Ky. Acts ch. 88, sec. 5, effective April 10, 2014. -- Created 2002 Ky. Acts ch. 365, sec. 6, effective April 24, 2002.

278.712 Local public hearing -- Procedure -- Parties -- Action to vacate or set aside ruling.

(1) The board may convene a local public hearing upon receipt of a request by not less than three (3) interested persons that reside in a county or municipal corporation in which the facility is proposed to be constructed to consider the application for a construction certificate. The board shall convene a local public hearing in response to a request from the planning and zoning commission, mayor of a city, or county fiscal court of a jurisdiction where the facility is proposed to be located. If the facility is proposed to be located in more than one (1) county, the board may convene a local public hearing and the hearing shall be held in the county with the largest population not more than sixty (60) days after receipt of a completed application. Absent the minimum number of requests for a local public hearing, the board may conduct all evidentiary proceedings in Franklin County.

(2) In any hearing on an application for a construction certificate, the board shall not be bound by the technical rules of legal evidence. Any hearing shall be conducted pursuant to and in conformance with rules and requirements set forth by the board in administrative regulations promulgated pursuant to KRS 278.702(2).

(3) The parties to a proceeding before the board shall include:

(a) The applicant; and

(b) Any person having been granted the right of intervention pursuant to subsection (4) of this section.

(4) Any interested person, including a person residing in a county or municipal corporation in which the facility is proposed to be constructed may, upon motion to the board, be granted leave to intervene as a party to a proceeding held pursuant to this section.

(5) Any party to a proceeding held pursuant to this section or any final determination pursuant to KRS 278.710 may, within thirty (30) days after service of the board's final ruling, bring an action against the board in the Circuit Court of the county in which the facility is proposed to be constructed to vacate or set aside the ruling on grounds that the ruling is arbitrary, capricious, or otherwise unlawful or unreasonable. Any party instituting an action for review of the board's ruling in the Circuit Court of the county in which the facility is proposed to be constructed shall give notice to all parties of record in the board's proceeding.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 7, effective April 24, 2002.

278.714 Application for certificate to construct nonregulated electric transmission line or carbon dioxide transmission pipeline -- Granting or denial -- Public hearing -- Local public information meeting -- Fee. (Effective July 15, 2026)

(1) No person shall commence to construct a nonregulated electric transmission line or a carbon dioxide transmission pipeline without a construction certificate issued by the board. An application for a construction certificate shall be filed at the offices of the Public Service Commission along with an application fee as set forth in subsection (6) of this section. The board may hire a consultant to review the transmission line or carbon dioxide pipeline and provide recommendations concerning the adequacy of the application and proposed mitigation measures. The board may direct the consultant to prepare a report recommending changes in the route of the carbon dioxide pipeline or the route of the electric transmission line. Any consultant expenses or fees shall be borne by the applicant.

(2) A completed application shall include the following:

(a) The name, address, and telephone number of the person proposing construction of the nonregulated electric transmission line or the carbon dioxide transmission pipeline;

(b) A full description of the proposed route of the electric transmission line or the carbon dioxide transmission pipeline and its appurtenances. The description shall include a map or maps showing:

1. The location of the proposed line or pipeline and all proposed structures that will support it;
2. The proposed right-of-way limits;
3. Existing property lines and the names of persons who own the property over which the line or pipeline will cross; and
4. a. The distance of the proposed electric transmission line from residential neighborhoods, schools, and public and private parks within one (1) mile of the proposed facilities; or

b. The distance of the proposed carbon dioxide transmission pipeline from residential neighborhoods, schools, and parks, either private or public, within one thousand (1,000) feet of the proposed facilities;

(c) With respect to electric transmission lines, a full description of the proposed line and appurtenances, including the following:

1. Initial and design voltages and capacities;
2. Length of line;
3. Terminal points; and
4. Substation connections;

(d) A statement that the proposed electric transmission line and appurtenances will be constructed and maintained in accordance with accepted engineering practices and the National Electric Safety Code;

(e) With respect to both electric transmission lines and carbon dioxide transmission pipelines, evidence that public notice has been given by

publication in a newspaper of general circulation in the general area concerned. Public notice shall include the location of the proposed electric transmission line or carbon dioxide pipeline, shall state that the proposed line or pipeline is subject to approval by the board, and shall provide the telephone number and address of the Public Service Commission; and

(f) Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed electric transmission line or carbon dioxide transmission pipeline is to be located, and upon the chief officer of each public agency charged with the duty of planning land use in the general area in which the line or pipeline is proposed to be located.

(3) With respect to electric transmission lines, within one hundred twenty (120) days of receipt of the application, or one hundred eighty (180) days if a local public hearing is held, the board shall, by majority vote, grant or deny the construction certificate either in whole or in part. Action to grant the certificate shall be based on the board's determination that the proposed route of the line will minimize significant adverse impact on the scenic assets of Kentucky and that the applicant will construct and maintain the line according to all applicable legal requirements. In addition, the board may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric transmission facilities in the Commonwealth. If the board determines that locating the transmission line will result in significant degradation of scenic factors or if the board determines that the construction and maintenance of the line will be in violation of applicable legal requirements, the board may deny the application or condition the application's approval upon relocation of the route of the line, or changes in design or configuration of the line.

(4) A public hearing on an application to construct a nonregulated electric transmission line may be held in accordance with the provisions of KRS 278.712.

(5) The board shall convene a local public information meeting upon receipt of a request by not less than three (3) interested persons that reside in the county or counties in which the carbon dioxide pipeline is proposed to be constructed. If the board convenes the local public information meeting, the meeting will be in the county seat of one (1) of the counties, as determined by the board, in which the proposed carbon dioxide pipeline will be located. The meeting shall provide an opportunity for members of the public to be briefed and ask the party proposing the carbon dioxide pipeline questions about the pipeline.

(6) Pursuant to KRS 278.706(4) and (6), the board shall promulgate administrative regulations to establish an application fee for a construction certificate for:

(a) A nonregulated transmission line; and

(b) A carbon dioxide transmission pipeline.

(7) With respect to carbon dioxide transmission lines, within one hundred twenty (120) days of receipt of the application or one hundred eighty (180) days if a local public information meeting is held, the board shall, by majority vote, grant or deny the construction certificate either in whole or in part. Action to grant the certificate shall be based on the board's determination that the proposed route of the pipeline

will minimize significant adverse impact on the scenic assets of Kentucky and that the applicant will construct and maintain the line according to all applicable legal requirements. In addition, the board may consider the interstate benefits expected to be achieved by the proposed carbon dioxide transmission pipeline in the Commonwealth. If the board determines that locating the transmission line will result in significant degradation of scenic factors or if the board determines that locating the carbon dioxide transmission line will be in violation of applicable legal requirements, the board may deny the application or condition the application's approval upon relocation of the route of the pipeline.

Effective: July 15, 2026

History: Amended 2026 Ky. Acts ch. 152, sec. 28, effective July 15, 2026. -- Amended 2014 Ky. Acts ch. 88, sec. 6, effective April 10, 2014. -- Amended 2011 Ky. Acts ch. 82, sec. 6, effective June 8, 2011. -- Amended 2006 Ky. Acts ch. 137, sec. 2, effective July 12, 2006. -- Created 2002 Ky. Acts ch. 365, sec. 8, effective April 24, 2002.

Legislative Research Commission Note (10/25/2011). A reference to "subsection (5)" in subsection (1) of this statute has been changed to "subsection (6)" under KRS 7.136(1)(e) and (h). In 2011 Ky. Acts ch. 82, sec. 6, the existing subsection (5) was renumbered as subsection (6), but an internal reference to that subsection in the existing language of this statute was overlooked.

278.716 Siting fund.

(1) There is hereby created a trust and agency account in the Public Service Commission called the "siting fund."

(2) All fees received by the board for the purpose of administering KRS 278.700 to 278.716 shall be deposited into the siting fund. The fund shall not lapse and all expenditures from the fund shall be used to implement KRS 278.700 to 278.716.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 9, effective April 24, 2002.

278.718 Construction of KRS 278.700, 278.704, 278.706, 278.708, and 278.710. (Effective July 15, 2026)

The provisions of KRS 278.700, 278.704, 278.706, 278.708, and 278.710 shall not supplant, any other state or federal law, including the powers available to local governments under the provisions of home rule under KRS 67.080, 67.083, 67.850, 67.922, 67A.060, 67C.101, and 82.082. Except with regard to the minimum decommissioning bond amount required in KRS 278.076(2)(m)5.a., an ordinance, permit, or license issued by a local government shall have primacy over the provisions and requirements of KRS 278.700, 278.704, 278.706, and 278.708, and any conflict between an order of the board and a local ordinance, permit, or license shall be resolved in favor of the local government's ordinance, permit, or license.

Effective: July 15, 2026

History: Amended 2026 Ky. Acts ch. 152, sec. 29, effective July 15, 2026. -- Amended 2023 Ky. Acts ch. 140, sec. 6, effective June 29, 2023. -- Created 2014 Ky. Acts ch. 88, sec. 7, effective April 10, 2014.

278.990 Penalties.

(1) Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars ($2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars ($25) nor more than two thousand five hundred dollars ($2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.

(2) Actions to recover the principal amount due and penalties under this chapter shall be brought in the name of the Commonwealth in the Franklin Circuit Court. Whenever any utility is subject to a penalty under this chapter, the commission shall certify the facts to its counsel, who shall bring an action for recovery of the principal amount due and the penalty. The commission may compromise and dismiss the action on terms approved by the court. The principal amount due shall be paid into the State Treasury and credited to the account of the commission, and all penalties recovered in such actions shall be paid into the State Treasury and credited to the general fund.

(3) Any utility that fails to pay an assessment as provided for by KRS 278.130 to 278.150 shall forfeit and pay to the state one thousand dollars ($1,000), and twenty-five dollars ($25) for each day it fails to pay the assessment, and shall not be released thereby from its liability for the assessment.

(4) Any utility that issues any securities or evidences of indebtedness, or assumes any obligation or liability in respect to the securities or evidences of indebtedness of any other person, or makes any sale or other disposition of securities or evidences of indebtedness, or the proceeds thereof, for purposes other than the purposes specified in the order of the commission made with respect thereto under KRS 278.300, shall be fined not more than ten thousand dollars ($10,000).

(5) Any utility that violates any of the provisions of KRS 278.460 shall be fined not less than one hundred dollars ($100) for each offense.

(6) Any company that willfully fails to receive, transport, and deliver oil or gas as required by KRS 278.490 shall, in addition to being liable in damages to the injured person, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), and each day of willful failure shall constitute a separate offense.

(7) Any telephone company that refuses to make a connection with the exchange or lines of another company for a period of thirty (30) days after being ordered to do so by the commission under subsection (2) of KRS 278.530 shall be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), to be recovered by indictment in the Franklin Circuit Court or in the Circuit Court of the county where the company requesting the connection resides or has its chief office in this state. If the company desiring the connection proceeds to make the connection, as permitted by subsection (2) of KRS 278.530, and the company so connected with refuses to receive and transmit the toll messages offered to it by the company making the connection, or refuses to deliver messages from its own lines or exchanges to the lines or exchanges of the company making the connection, the company so refusing shall be fined one hundred dollars ($100) for each day it refuses, to be recovered by indictment in the courts mentioned in the first sentence of this subsection; if it continues so to refuse for a period of six (6) months it shall forfeit its right to do business in this state, and any of its officers, agents, or employees who does or attempts to do any business in this state for it after the expiration of the six (6) months' period shall be fined fifty dollars ($50) for each day he does or attempts to do such business.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 354, sec. 1, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 300, sec. 4, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 50, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 54, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 308, sec. 47. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 786, 842b-2, 2223-2, 3766b-le, 3952-24, 3952-59, 3952-61, 4679f-2, 4679f-4.

278.992 Penalty for certain pipeline violations.

(1) Any person who violates any minimum safety standard adopted by the United States Department of Transportation pursuant to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq., as amended, or any regulation adopted and filed pursuant to KRS Chapter 13A by the Public Service Commission governing the safety of pipeline facilities or the transportation of gas as those terms are defined in the Natural Gas Pipeline Safety Act, shall be subject to a civil penalty to be assessed by the Public Service Commission not to exceed the maximum civil penalty as contained in 49 C.F.R. sec. 190.223, as amended, for a violation of any provision of 49 U.S.C. secs. 60101 et seq., or any regulation or order issued thereunder, for each violation for each day that the violation persists. Any civil penalty assessed for a violation may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the Commonwealth of Kentucky to the person charged or may be recovered in a civil action in the Franklin Circuit Court.

(2) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by the Natural Gas Pipeline Safety Act or any regulation or order issued pursuant to it shall, upon conviction, be subject for each offense to a fine of not more than five thousand dollars ($5,000), imprisonment for a term not to exceed one (1) year, or both.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 70, sec. 1, effective July 14, 2018. -- Amended 2012 Ky. Acts ch. 5, sec. 1, effective July 12, 2012. -- Amended 1998 Ky. Acts ch. 387, sec. 1, effective July 15, 1998. -- Amended 1990 Ky. Acts ch. 402, sec. 1, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 82, sec. 51, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 55, effective April 1, 1979. -- Created 1970 Ky. Acts ch. 289, sec. 1.

Kentucky Administrative Regulations

TITLE 807
ENERGY AND ENVIRONMENT CABINET PUBLIC SERVICE COMMISSION

Chapter 5 Utilities

- 001 Rules of procedure
- 006 General rules
- 007 Filing and notice requirements for a generation and transmission cooperative or a distribution cooperative to decrease rates or for a distribution cooperative to change rates to reflect a change in the rates of its wholesale supplier
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- 015 Access and attachments to utility poles and facilities
- 016 Advertising
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- 041 Electric
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- 056 Fuel adjustment clause
- 058 Integrated resource planning by electric utilities
- 061 Telephone
- 062 Changing primary interexchange carrier; verification procedures
- 063 Filing requirements and procedures for proposals to construct antenna towers or co-locate antennas on an existing structure for cellular telecommunications services or personal communications services
- 066 Water
- 067 Purchased water adjustment for privately-owned utilities
- 068 Purchased water adjustment for water districts and water associations
- 069 Filing requirements and procedures for federally-funded construction project of a water association, commission, or district or a combined water, gas or sewer district
- 070 Filing requirements and standards for commission approval of water district commissioner training programs
- 071 Sewage
- 075 Treated water adjustment for water districts and water associations
- 076 Alternative rate adjustment procedure for small utilities
- 078 Alternative rate adjustment for electric cooperatives
- 080 Procedural and filing requirements and safeguards concerning nonregulated activities of utilities or utility affiliates
- 090 System development charges for water utilities
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807 KAR 5:001. Rules of procedure.

RELATES TO: KRS 61.870-884, 61.931-934, 65.810, Chapter 74, 278.010, 278.020(3), 278.100, 278.180, 278.300, 278.410, 322.340, 365.015, 369.102, 424.300, 45 C.F.R. 160.103, 47 C.F.R. 36, 20 U.S.C. 1232g

STATUTORY AUTHORITY: KRS 278.040(3), 278.260(2), 278.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310 requires that all hearings and investigations before the commission shall be governed by rules promulgated by the commission. This administrative regulation establishes requirements with respect to formal and informal proceedings before the commission.

Section 1. Definitions. (1) "Affiliate" means an entity:

(a) That is wholly owned by a utility;

(b) In which a utility has a controlling interest;

(c) That wholly owns a utility;

(d) That has a controlling interest in a utility; or

(e) That is under common control with the utility.

(2) "Case" means a matter coming formally before the commission.

(3) "Commission" is defined by KRS 278.010(15).

(4) "Controlling interest in" and "under common control with" mean a utility or other entity if the utility or entity:

(a) Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of another entity; and

(b) Exercises that power:

1. Alone or through one (1) or more intermediary companies;

2. In conjunction with, or pursuant to an agreement;

3. Through ownership of ten (10) percent or more of the voting securities;

4. Through common directors, officers, stockholders, voting or holding trusts, or associated companies;

5. By contract; or

6. Through direct or indirect means.

(5) "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more telecommunication devices, computers, or electronic devices capable of receiving electronic messages.

(6) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a reference to an Internet domain.

(7) "Electronic signature" is defined by KRS 369.102(8).

(8) "Executive director" means the person appointed to the position established in KRS 278.100 or a person that he or she has designated to perform a duty or duties assigned to that position.

(9) "Paper" means, regardless of the medium on which it is recorded, an application, petition, or other initiating document, motion, complaint, answer, response, reply, notice, request for information, or other document that this administrative regulation or the commission directs or permits a party to file in a case.

(10) "Party" means a person who:

(a) Initiates action through the filing of a formal complaint, application, or petition;

(b) Files a tariff or tariff sheet with the commission pursuant to KRS 278.180 and 807 KAR 5:011 that the commission has suspended and established a case to investigate or review;

(c) Is named as a defendant in a formal complaint filed pursuant to Section 20 of this administrative regulation;

(d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation; or

(e) Is joined to a commission proceeding.

(11) "Person" is defined by KRS 278.010(2).

(12) "Signature" means a manual, facsimile, conformed, or electronic signatures.

(13) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(14) “Utility” is defined by KRS 278.010(3).

(15) “Water district” means a special district formed pursuant to KRS 65.810 and Chapter 74.

(16) “Web site” means an identifiable site on the internet, including social media, which is accessible to the public.

Section 2. Hearings. The commission shall provide notice of hearing in a case by order except if a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. A verbal announcement made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Duties of Executive Director. (1) Upon request, the executive director shall:

(a) Advise as to the form of a paper desired to be filed;

(b) Provide general information regarding the commission’s procedures and practices; and

(c) Make available from the commission's files, upon request, a document or record pertinent to a matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.

(2) The executive director shall reject for filing a document that on its face does not comply with 807 KAR Chapter 5.

Section 4. General Matters Pertaining to All Cases. (1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

(2) Case numbers and styles. Each case shall receive a number and a style descriptive of the subject matter. The number and style shall be placed on each subsequent paper filed in the case.

(3) Signing of papers.

(a) A paper shall be signed by the submitting party or attorney and shall include the name, address, telephone number, facsimile number, and electronic mail address, if any, of the attorney of record or submitting party.

(b) A paper shall be verified or under oath if required by statute, administrative regulation, or order of the commission.

(4) A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) if appearing before the commission.

(5) Amendments. Upon motion of a party and for good cause shown, the commission shall allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper.

(6) Witnesses and subpoenas.

(a) Upon the written request of a party to a proceeding or commission staff, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission or a commissioner, upon written request, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena form with its written request as necessary.

(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on a person whose information is being requested.

(e) Copies of all documents received in response to a subpoena shall be filed with the commission and furnished to all other parties to the case, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be made available for inspection by the commission and all other parties to the action.

(7) Computation of time.

(a) In computing a period of time prescribed or allowed by order of the commission or by 807 KAR Chapter 5 or KRS Chapter 74 or 278, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders service upon a party and the party's attorney, service shall be made upon the party's attorney if the party is represented by an attorney.

(b) Service upon an attorney or upon a party by the commission shall be made by sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation and shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site.

(c) If good cause exists, and upon the filing of a motion by a party to excuse a party from receiving service by electronic mail from the commission, the commission shall order service of papers on the party to be made in accordance with paragraph (d)1 or 2 of this subsection.

(d) Service upon an attorney or upon a party by the parties in a case shall be made by:

1. Delivering a copy to the attorney or party;

2. Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or

3. Sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation.

(e) Service shall be complete upon mailing or electronic transmission. If a serving party learns that the mailing or electronic transmission did not reach the person to be served, the serving party shall take reasonable steps to immediately re-serve the party to be served, unless service is refused, in which case the serving party shall not be required to take additional action.

(9) Filing.

(a) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a paper shall not be deemed filed with the commission until the paper:

1. Is physically received by the executive director at the commission's offices during the commission's official business hours; and

2. Meets all applicable requirements of KRS Chapter 278 and KAR Title 807.

(b) The executive director shall endorse upon each paper or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the paper or document.

(10) Privacy protection for filings.

(a) If a person files a paper containing personal information, the person shall encrypt or redact the paper so that personal information cannot be read. Personal information shall include a business name; an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

1. The digits of a Social Security number or taxpayer identification number;

2. The month and date of an individual's birth;

3. The digits of an account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;

4. A driver's license number, state identification card number, or other individual identification number issued by any agency;

5. A passport number or other identification number issued by the United States government;

6. "Individually identifiable health information" as defined by 45 C.F.R. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; or

7. The address, phone number, or email address of an individual who is not a party and has not requested to be a party.

(b) To redact the paper, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark that so obscures the identifiers that the identifiers cannot be read.

(c) The responsibility to review for compliance with this section and redact a paper shall rest with the party that files the paper.

(11) Intervention and parties.

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

1. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

2. The motion may include a request by movant for delivery of commission orders by United States mail and shall state how good cause exists for that means of delivery to movant.

(b) The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) Unless electronic filing procedures established in Section 8 of this administrative regulation are used in the case, a party shall serve a person granted leave to intervene with all papers that the party submits in the case after the order granting intervention, but the party is not required to provide any papers submitted prior to the issuance of that order unless the commission otherwise orders.

(d) Unless the commission finds good cause to order otherwise, a person granted leave to intervene in a case shall, as a condition of his or her intervention, be subject to the procedural schedule in existence in that case when the order granting the person's intervention is issued.

(e) A person who the commission has not granted leave to intervene in a case may file written comments regarding the subject matter of the case.

1. These comments shall be filed in the case record.

2. A person filing written comments shall not be deemed a party to the proceeding and need not be named as a party to an appeal.

(12) Requests for information.

(a) If permitted by administrative regulation or by order of the commission, a party may in accordance with this section request information from another party to the case. The requesting party shall serve its request upon the party from which it seeks the requested information and shall also file its request with the commission.

(b) Commission staff, through the commission's executive director, may request information from any party to a case on the commission's behalf.

(c) Unless otherwise established in administrative regulation, the commission shall establish by order in a case the time for parties to issue and to respond to requests for information.

(d) Responses to requests for information.

1. Responses to requests for information shall be appropriately bound, tabbed, and indexed.

2. Each response shall:

a. Include the name of the witness responsible for responding to the questions related to the information provided; and

b. Be answered under oath or, for representatives of a public or private corporation, a partnership, an association, or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the person that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

3. If the requested information has previously been provided in the case, a responding party may, in lieu of providing the requested information, provide a reference to the specific location of the requested information in the case record.

4. A responding party shall make timely amendment to its prior response if the party obtains information that indicates that the response was incorrect when made or, though correct when made, is subsequently incorrect in any material respect.

5. If a party served with a request for information fails or refuses to furnish all or part of the requested information, the party shall provide a written explanation of the specific grounds for the failure to completely and precisely respond.

6. The responding party shall file with the commission the party's response to a request for information and shall serve it upon all parties to a case.

(e) A party shall compel compliance with the party's request for information by motion to the commission, which shall include:

1. A description of the information requested;

2. The reasons why it is relevant to the issues in the case; and

3. The efforts taken to resolve any disagreement over the production of the requested information.

(13) Each report, specification, drawing, and plan that a professional engineer or professional land surveyor prepared and that is filed with the commission shall contain the seal or stamp and signature of that professional engineer or land surveyor in accordance with KRS 322.340.

(14) Consolidation of cases.

(a) The commission may order two (2) or more proceedings involving a similar question of law or fact to be consolidated if rights of the parties or the public interest will not be prejudiced.

(b) Upon ordering the consolidation of cases, the commission shall specify into which case the other case shall be consolidated.

(c) All papers received after the order of consolidation has been issued shall be filed in the record of the designated case.

(d) Papers filed prior to the order of consolidation shall remain in their respective case files.

Section 5. Motion Practice. (1) All requests for relief that are not required to be made in an application, petition, or written request shall be by motion. A motion shall state precisely the relief requested.

(2) Unless the commission orders otherwise, a party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion.

(3) Unless the commission orders otherwise, a party shall file a reply no later than five (5) days of the filing of the most recent response to the party's motion. The reply shall be confined to points raised in the responses to which they are addressed, and shall not reiterate an argument already presented.

Section 6. Proof of Service. (1) Except as provided in Section 8 of this administrative regulation, all papers filed in a case shall contain proof of the date and manner of service of the papers on all parties.

(2) Proof shall be made by certificate of the filer's attorney, by affidavit of the person who served the papers, or by a comparable proof.

(3) The certificate or affidavit shall identify by name the person served and the date and method of service.

(4) Proof of electronic service shall state the electronic notification address of the person served.

Section 7. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures established in Section 8 of this administrative regulation are used, if a paper is filed with the commission, an original unbound and ten (10) additional copies in paper medium shall be filed.

(2) Each paper filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Each filing shall be in type no smaller than twelve (12) point, except footnotes, which may be in type no smaller than ten (10) point.

(3) Except as provided for in Section 8 of this administrative regulation, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A paper submitted by facsimile transmission shall not be accepted.

Section 8. Electronic Filing Procedures. (1) Upon an applicant's timely election of the use of electronic filing procedures or upon order of the commission in a case that the commission has initiated on its own

motion, the procedures established in this section shall be used in lieu of other filing procedures established in this administrative regulation.

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of its election to use electronic filing procedures using the Notice of Election of Use of Electronic Filing Procedures form; and

(b) If the applicant does not have an account for electronic filing with the commission, register for an account at http://psc.ky.gov/Account/Register .

(3) All papers shall be filed with the commission by uploading an electronic version using the commission's E-Filing System at http://psc.ky.gov . In addition, the filing party shall file one (1) copy in paper medium with the commission as required by subsection (12)(a)2 of this section.

(4)(a) Audio or video files.

1. A file containing audio material shall be submitted in MP3 format.

2. A file containing video material shall be submitted in MPEG-4 format.

(b) Except as established in paragraph (a) of this subsection, each file in an electronic submission shall be:

1. In portable document format;

2. Search-capable;

3. Optimized for viewing over the Internet;

4. Bookmarked to distinguish sections of the paper, except that documents filed in response to requests for information need not be individually bookmarked; and

5. If scanned material, scanned at a resolution of 300 dots per inch.

(c) If, pursuant to Section 4(12) of this administrative regulation, a party is requested to provide information in the form of an electronic spreadsheet, the file containing the spreadsheet shall be submitted in an Excel spreadsheet format.

(5)(a) Each electronic submission shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;

2. A list of all material to be filed in paper or physical medium but not included in the electronic submission; and

3. A statement that the materials in the electronic submission are a true representation of the materials in paper medium.

(b) The "Read1st" file and any other material that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper medium filing may be substituted for a general description.

(6)(a) An uploading session shall not exceed twenty (20) files or 100 megabytes.

(b) An individual file shall not exceed thirty (30) megabytes.

(c) If a submission exceeds the limitations established in paragraph (a) of this subsection, the filer shall make electronic submission in two (2) or more consecutive uploading sessions.

(7) If filing a paper with the commission, the filing party shall certify that:

(a) The electronic version of the paper is a true and accurate copy of each paper filed in paper medium;

(b) The electronic version of the paper has been submitted to the commission; and

(c) A copy of the paper in paper medium has been mailed to all parties that the commission has excused from electronic filing procedures.

(8)(a) Upon completion of an uploading session, the commission shall notify all parties of record by electronic mail that an electronic submission has been made.

(b) Upon a party's receipt of this notification, each party shall be solely responsible for accessing the commission's Web site at http://psc.ky.gov to view or download the submission.

(9) Unless a party objects to the use of electronic filing procedures in the party's motion for intervention, the party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting the party's intervention a written statement that the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) In cases in which the commission has ordered the use of electronic filing procedures on its own motion, unless a party files with the commission an objection to the use of electronic filing procedures within seven (7) days of issuance of the order directing the use of electronic filing procedures, the party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and good cause exists to excuse the party from the use of electronic filing procedures, service of papers on and by it shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address.

(12)(a) A paper shall be considered timely filed with the commission if:

1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements established in this administrative regulation and any order of the commission; and

2. The paper, in paper medium, is filed at the commission's offices no later than the second business day following the successful electronic transmission.

(b) Each party shall attach to the top of the paper medium submission a copy in paper medium of the electronic notification from the commission confirming receipt of its electronic submission.

(13) Except as established in this section, a party making a filing in accordance with the procedures established in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) Unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest, the commission shall conduct a hearing if:

(a) An order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint; or

(b) A request for hearing has been made.

(2) Publication of notice.

(a) Upon the filing of an application, the commission may order an applicant to give notice on all persons who may be affected by serving a copy of the application upon those persons or by publishing notice of the filing.

1. The applicant shall bear the expense of providing the notice.

2. If the notice is provided by publication, the commission may designate the contents of the notice, the number of times and the time period in which the notice shall be published, and the newspaper in which the notice shall be published.

(b)1. The commission may order an applicant to give notice to the public of any hearing on the applicant's application, and shall order an applicant for a general adjustment of rates or reduction or discontinuance of service to give notice of any hearing on its application.

2. If notice of a hearing is published by the applicant in a newspaper, it shall be published at least one (1) time and not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.

3. Notice by mail shall be mailed not less than fourteen (14) days nor more than twenty-one (21) days prior to the hearing.

4. Notice of hearing shall state the purpose, time, place, and date of hearing.

5. The applicant shall bear the expense of providing the notice.

6. Proof of publication shall be filed at or before the hearing.

(3) Investigation on commission's own motion.

(a) The commission may, on its own motion, conduct investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission believes is in violation of an order of the commission or KRS Chapters 74 or 278 or 807 KAR Chapter 5.

(b) The commission may, through its own experts, employees, or otherwise, obtain evidence the commission finds necessary or desirable in a formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a motion of a party, may convene a conference in a case for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case. Unless the commission directs otherwise or the parties otherwise agree, participation in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

(5) Conduct of hearings. Hearings shall be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to a case may agree among themselves or with commission staff upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission shall be given under oath or affirmation.

(8) Objections and exceptions. A party objecting to the admission or exclusion of evidence before the commission shall state the grounds for objection. Formal exceptions shall not be necessary and shall not be taken to rulings on objection.

(9) Record of evidence.

(a) The commission shall cause to be made a record of all hearings. Unless the commission orders otherwise, this record shall be a digital video recording.

1. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a qualified reporter.

2. The commission shall grant the motion.

3. The requesting party shall bear the cost of the stenographic transcript and shall file a copy of the transcript with the commission within a reasonable time after completion of the hearing.

(b) The executive director shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(c) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 10. Briefs. Each brief shall be filed within the time fixed. A request for extension of time to file a brief shall be made to the commission by written motion.

Section 11. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified or otherwise authenticated copies of the documents or relevant portions, or may require evidence to be entered as a part of the record.

(2)(a) If relevant and material matter offered in evidence by any party is part of a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered.

(b) If immaterial matter unnecessarily encumbers the record, the book, paper, or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record.

(3)(a) The sheets of each exhibit shall be numbered.

(b) If practical, the lines of each sheet shall also be numbered.

(c) If the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit.

(d) Rate comparisons and other evidence shall be condensed into tables.

(4) Unless so ordered by the commission, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of a party to a proceeding, or upon the commission’s own motion, the record of a case in the commission's files or any document on file with the commission may be made a part of the record by “reference only.”

(a) The case or document made a part of the record by reference only shall not be physically incorporated into the record.

(b) Upon action in the Franklin Circuit Court, excerpts from the record of a case or part of a document may be made a part of the record before the court, at the request of a party.

Section 12. Financial Exhibit. (1) If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall:

(a) For a utility that had $5,000,000 or more in gross annual revenue in the immediate past calendar year, cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed; or

(b) For a utility that had less than $5,000,000 in gross annual revenue in the immediate past calendar year, comply with paragraph (a) of this subsection or cover operations for the twelve (12) month period contained in the utility's most recent annual report on file with the commission, and contain a statement that:

1. Material changes have not occurred since the end of that twelve (12) month period; or

2. Identifies all material changes that have occurred since the end of that twelve (12) month period.

(2) The exhibit shall disclose the following information in the order indicated:

(a) The amount and kinds of stock authorized;

(b) The amount and kinds of stock issued and outstanding;

(c) Terms of preference of preferred stock, cumulative or participating, or on dividends or assets or otherwise;

(d) A brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with sinking fund provisions, if applicable;

(e) The amount of bonds authorized and amount issued, giving the name of the public utility that issued the same, describing each class separately and giving the date of issue, face value, rate of interest, date of maturity, and how secured, together with amount of interest paid during the last fiscal year;

(f) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid during the last fiscal year;

(g) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of a portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year;

(h) The rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year; and

(i) A detailed income statement and balance sheet.

Section 13. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential.

(2) Procedure for determining confidentiality of material submitted in a case.

(a) A request for confidential treatment of material shall be made by motion that:

1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;

2. States the time period for the material to be treated as confidential and the reasons for this time period; and

3. Includes ten (10) copies of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought redacted, shall be served on all parties.

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the moving party.

(d) Unless the commission orders otherwise, a party may respond to a motion for confidential treatment within seven (7) days after the motion is filed with the commission.

(e) If the case is being conducted using electronic filing procedures established in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an unredacted copy of the material for which confidentiality is sought shall not be transmitted electronically.

(3) Procedure for determining confidentiality of material submitted outside of a case.

(a) A person who requests confidential treatment of material filed with the commission outside of a case shall submit a written request to the executive director that:

1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;

2. States the time period for the material to be treated as confidential and the reasons for this time period; and

3. Includes one (1) copy of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the person requesting confidential treatment.

(c) The executive director, as official custodian of the commission's records, shall determine if the material is within an exclusion established in KRS 61.878 and the time period for the material to be considered as confidential and shall advise the requestor of the determination by letter.

(d) A person whose request for confidential treatment is denied, in whole or in part, by the executive director may make application within twenty (20) days of the executive director's decision to the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section.

1. The commission shall establish a case and shall review the application without regard to the executive director's determination and in the same manner as it would review a motion for confidential treatment made pursuant to subsection (2) of this section.

2. The application shall comply with the requirements of subsection (2)(a) of this section.

(e) If the executive director denies a request for confidential treatment, the material for which confidential treatment was sought shall not be placed in the public record for twenty (20) days following the decision.

(4) Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment.

(5) If the motion for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted pursuant to KRS 278.410 to bring an action for review.

(6) Procedure for a party to request access to confidential material filed in a case.

(a) A party to a case before the commission shall not fail to respond to a request for information by the commission, commission staff, or another party on grounds of confidentiality.

1. A party seeking confidential treatment for its response to information requests shall follow the procedures for requesting confidentiality established in this administrative regulation.

2. A party's response to requests for information shall be served upon all parties, with only those portions for which confidential treatment is sought redacted.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then a party may, by motion, request access to the material on the grounds that it is essential to the party's meaningful participation in the proceeding.

1. The motion shall include a description of efforts to enter into a protective agreement and unwillingness, if applicable, to enter into a protective agreement shall be fully explained.

2. A party may respond to the motion within seven (7) days after it is filed with the commission.

3. The commission shall determine if the movant is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(7) Requests for access to records pursuant to KRS 61.870 to 61.884.

(a) A time period prescribed in subsection (10)(a) of this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884.

(b) Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure established in KRS 61.880.

(8) Procedure for request for access to confidential material. A person denied access to records requested pursuant to KRS 61.870 to 61.884 or to material deemed confidential by the commission in accordance with the procedures established in this section, may obtain this information only pursuant to KRS 61.870 to 61.884 and other applicable law.

(9) Use of confidential material. (a) A person who files any paper that contains material that has previously been deemed confidential or for which a request or motion for confidential treatment is pending shall submit one (1) copy of the paper with the adjudged or alleged confidential material underscored or highlighted, and ten (10) copies of the paper with those portions redacted; and

1. If the confidential status of the material has been determined previously, a written notice identifying the person who originally submitted the material, the date on which a determination on the materials confidentiality was made and, if applicable, the case number in which the determination was made; or

2. If a request for confidential treatment of the material is pending, a written notice identifying the person who made the request and the date on which the request was submitted.

(b) Material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the procedure established in this paragraph.

1. The party seeking to address the confidential material shall advise the commission prior to the use of the material.

2. A person other than commission employees not a party to a protective agreement related to the confidential material shall be excluded from the hearing room during testimony directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) Except as provided for in paragraphs (c) and (d) of this subsection, confidential treatment shall be afforded to material for the period specified in the commission's order or executive director's written decision.

1. At the end of this period, the material shall be placed in the public record without notice to the person who originally requested confidential treatment.

2. The person who sought confidential treatment for the material may request that the material continue to be treated as confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

(b) The person who sought confidential protection shall inform the commission in writing if material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the person who sought confidential protection, giving ten (10) days to respond. If that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed to be publicly available and shall not be placed in the public record.

(d) If a request to inspect material granted confidential treatment is made during the period specified in the commission's order or executive director's written decision, the commission shall notify in writing the person who originally sought confidential treatment for the material and direct that party to demonstrate within twenty (20) days of receipt of the notice that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

1. If the party is unable to make the demonstration, the commission shall make the requested materials available for public inspection; or

2. If the party is able to make the demonstration, the commission shall deny the request for inspection.

(e) The material shall not be placed in the public record for twenty (20) days following an order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek a remedy afforded by law.

Section 14. Applications. (1) Each application shall state the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for the information.

(2) If a corporation, the applicant shall identify in the application the state in which it is incorporated and the date of its incorporation, attest that it is currently in good standing in the state in which it is incorporated, and, if it is not a Kentucky corporation, state if it is authorized to transact business in Kentucky.

(3) If a limited liability company, the applicant shall identify in the application the state in which it is organized and the date on which it was organized, attest that it is in good standing in the state in which it is organized, and, if it is not a Kentucky limited liability company, state if it is authorized to transact business in Kentucky.

(4) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall be annexed to the application, or a written statement attesting that its partnership agreement and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

Section 15. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3).

(a) Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by a governmental agency, the applicant shall submit with its application:

1. The information required pursuant to Section 14 of this administrative regulation;
2. The name of the governmental agency offering the franchise;
3. The type of franchise offered; and
4. A statement showing the need and demand for service.

(b) If an applicant is successful in acquiring the franchise, license, or permit, the applicant shall file a copy with the commission using the commission's electronic tariff filing system.

(2) New construction or extension. Upon application for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit with its application:

(a) The facts relied upon to show that the proposed construction or extension is or will be required by public convenience or necessity;

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the proposed construction or extension, including a description of the manner of the construction and the names of all public utilities, corporations, or persons with whom the proposed construction or extension is likely to compete;

(d) One (1) copy in portable document format on electronic storage medium and two (2) copies in paper medium of:

1. Maps to suitable scale showing the location or route of the proposed construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities; and
2. Plans and specifications and drawings of the proposed plant, equipment, and facilities;

(e) The manner in detail in which the applicant proposes to finance the proposed construction or extension; and

(f) An estimated annual cost of operation after the proposed facilities are placed into service.

(3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property,

or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. An application for a renewal of a certificate of convenience and necessity shall be treated as an original application.

Section 16. Applications for General Adjustments of Existing Rates. (1) Each application requesting a general adjustment of existing rates shall:

(a) Be supported by:

1. A twelve (12) month historical test period that may include adjustments for known and measurable changes; or

2. A fully forecasted test period; and

(b) Include:

1. A statement of the reason the adjustment is required;

2. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;

3. New or revised tariff sheets, if applicable in a format that complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

4. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

a. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

5. A statement that notice has been given in compliance with Section 17 of this administrative regulation with a copy of the notice.

(2) Notice of intent. A utility with gross annual revenues greater than $5,000,000 shall notify the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application.

(a) The notice of intent shall state if the rate application will be supported by a historical test period or a fully forecasted test period.

(b) Upon filing the notice of intent, an application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon that may be used to obtain a copy from the applicant of the full schedule of increases or rate changes.

(c) Upon filing the notice of intent with the commission, the applicant shall mail to the Attorney General's Office of Rate Intervention a copy of the notice of intent or send by electronic mail in a portable document format, to rateintervention@ag.ky.gov.

(3) Notice given pursuant to Section 17 of this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

(4) Each application supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for proposed changes in price or activity levels, if applicable, and other factors that may affect the adjustment;

(b) If the utility has gross annual revenues greater than $5,000,000, the written testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than $5,000,000 the written testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit written testimony;

(d) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water, or sewer service, the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is an incumbent local exchange company, the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) A detailed analysis of customers' bills whereby revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

(j) A current chart of accounts if more detailed than the Uniform System of Accounts;

(k) The independent auditor's annual opinion report, with written communication from the independent auditor to the utility, if applicable, which indicates the existence of a material weakness in the utility's internal controls;

(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(m) The most recent FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No. 2, or Public Service Commission Form T (telephone);

(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;

(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:

1. Each software, program, or model;

2. What the software, program, or model was used for;

3. The supplier of each software, program, or model;

4. A brief description of the software, program, or model; and

5. The specifications for the computer hardware and the operating system required to run the program;

(p) Prospectuses of the most recent stock or bond offerings;

(q) The annual report to shareholders or members and statistical supplements covering the two (2) most recent years from the utility's application filing date;

(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

(s) A copy of the utility’s annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters updated as current information becomes available;

(t) If the utility had amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;

2. An explanation of how the allocator for the test period was determined; and

3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;

(u) If the utility provides gas, electric, water, or sewage utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(v) Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(5) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just, and reasonable rates based on the historical test period. The following information shall be filed with each application requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions, the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost and the cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of differences, if applicable, in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments; and

(e) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(6) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the requirements established in this subsection.

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless the revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(7) Each application requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The written testimony of each witness the utility proposes to use to support its application, which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in written testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period, and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations, which shall provide:

1. That the forecast is reasonable, reliable, made in good faith, and that all basic assumptions used in the forecast have been identified and justified;

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for differences that exist, if applicable; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project that constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast, the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction (“AFUDC”) or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects that constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. Sales volume forecasts in cubic feet (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of other information provided, if applicable;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No.2, or Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;

(p) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;

(q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility that indicates the existence of a material weakness in the utility's internal controls;

(r) The quarterly reports to the stockholders for the most recent five (5) quarters;

(s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;

(t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:

1. Each software, program, or model;

2. What the software, program, or model was used for;

3. The supplier of each software, program, or model;

4. A brief description of the software, program, or model; and

5. The specifications for the computer hardware and the operating system required to run the program;

(u) If the utility had amounts charged or allocated to it by an affiliate or a general or home office or paid monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the base period is reasonable;

(v) If the utility provides gas, electric, sewage, or water utility service and has annual gross revenues greater than $5,000,000 in the division for which a rate adjustment is sought, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(8) Each application seeking a general adjustment in rates supported by a forecasted test period shall include:

(a) A jurisdictional financial summary for both the base period and the forecasted period that details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules, which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules, which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(9) The commission shall notify the applicant of any deficiencies in the application within thirty (30) days of the application's submission. An application shall not be accepted for filing until the utility has cured all noted deficiencies.

(10) A request for a waiver from the requirements of this section shall include the specific reasons for the request. The commission shall grant the request upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:

(a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and

(c) The expense to the utility in providing the information that is the subject of the waiver request.

Section 17. Notice of General Rate Adjustment. Upon filing an application for a general rate adjustment, a utility shall provide notice as established in this section.

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission’s Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, the utility shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply, except for local exchange companies, which shall include the effect upon the average bill for each customer classification for the proposed rate change in basic local service;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

(5) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates, provided the notice includes a coupon that may be used to obtain all of the required information.

Section 18. Application for Authority to Issue Securities, Notes, Bonds, Stocks, or Other Evidences of Indebtedness. (1) An application for authority to issue securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof shall contain:

(a) The information required by Section 14 of this administrative regulation;

(b) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant. If it is impossible to state the original cost, the facts creating the impossibility shall be stated;

(c) The amount and kinds of stock, if any, which the applicant desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds, or other evidences of indebtedness, if any, which the applicant desires to issue, with terms, rate of interest, and if and how to be secured;

(d) The use to be made of the proceeds of the issue of securities, notes, bonds, stocks, or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of

property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;

(e) The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the application;

(f) If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the application shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(g) If the applicant is a water district, a copy of the applicant's written notification to the state local debt officer regarding the proposed issuance.

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if applicable, unless they have already been filed with the commission, in which case reference shall be made by case number to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the commission-prescribed uniform system of accounts for the various classes of utilities.

Section 19. Application for Declaratory Order. (1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

(a) Be in writing;

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(c) Fully disclose the applicant's interest;

(d) Identify all statutes, administrative regulations, and orders to which the application relates; and

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.

(4) Unless the commission orders otherwise, responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission and shall be served upon the applicant.

(5) A reply to a response shall be filed with the commission within fourteen (14) days after service.

(6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.

(7) The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials, and may extend the time for the filing of a reply or response under this section.

Section 20. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and

(d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) Number of copies required. Upon the filing of an original complaint, the complainant shall also file two (2) more copies than the number of persons to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a specified time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time specified in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

Section 21. Informal Complaints. (1) An informal complaint shall be made to the commission’s division of consumer services in a manner that specifically states the complainant’s concerns and identifies the utility.

(2) The commission’s division of consumer services shall address by correspondence or other means the complaint.

(a) If an informal complaint is referred to a utility, the utility shall acknowledge to the commission’s division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(b) If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission’s division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 22. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "FERC Financial Report FERC Form No. 1", March 2007;
(b) "FERC Financial Report FERC Form No. 2", December 2007;
(c) "Notice of Election of Use of Electronic Filing Procedures", June 2014;
(d) "PSC Form-T (telephone)", August 2005;
(e) "Form 8-K", January 2012;
(f) "Form 10-K", January 2012;
(g) "Form 10-Q", January 2012; and
(h) "Subpoena Form", August 2013.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov.

HISTORY:

8 Ky.R. 786; eff. 4-7-1982; Am. 10 Ky.R. 831; eff. 1-4-1984; 11 Ky.R. 1301; 12 Ky.R. 127; eff. 7-9-1985; 18 Ky.R. 191; 1025; eff. 9-24-1991; 19 Ky.R. 1142; 1604; 2044; eff. 3-12-1993; 39 Ky.R. 275; 995; 1117; eff. 1-4-2013; 40 Ky.R. 686; 1109; 1269; eff. 1-3-2014; 41 Ky.R. 131; 476; 763; 983; eff. 10-31-2014; Crt eff. 3-27-2019.

807 KAR 5:006. General rules.

RELATES TO: KRS 65.810, 74, 96.934, 220.510, 278, 49 C.F.R. Part 192, 49 U.S.C. 60105
STATUTORY AUTHORITY: KRS 278.230, 278.280(2), 49 C.F.R. 192
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.230(3) requires every utility to file with the commission reports, schedules, and other information that the commission requires. KRS 278.280(2) requires the commission to promulgate an administrative regulation for the performance of a service or the furnishing of a commodity by a utility. This administrative regulation establishes requirements that apply to electric, gas, water, sewage, and telephone utilities.

Section 1. Definitions. (1) "Built-up community" means urban areas and those areas immediately adjacent.
(2) "Commission" is defined by KRS 278.010(15).
(3) "Corporation" is defined by KRS 278.010(1).
(4) "Customer" means a person, firm, corporation, or body politic applying for or receiving service from a utility.
(5) "Gross Annual Operating Revenue Reports" means reports that KRS 278.140 requires each utility to file with the commission.
(6) "Nonrecurring charge" means a charge or fee assessed to a customer to recover the specific cost of an activity, which:
(a) Is due to a specific request for a certain type of service activity for which, once the activity is completed, additional charges are not incurred; and
(b) Is limited to only recover the specific cost of the specific service.
(7) "Person" is defined by KRS 278.010(2).
(8) "Tariff" means a utility's schedule of all its rates, charges, tolls, maps, terms, and conditions of service over which the commission has jurisdiction.
(9) "Utility" is defined by KRS 278.010(3).
(10) "Water association" means a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of a public water supply.
(11) "Water District" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

Section 2. General Provisions. Reference to standards or codes in 807 KAR Chapter 5 shall not prohibit a utility from continuing or initiating experimental work and installations to improve, decrease the cost of, or increase the safety of its service.

Section 3. Utility Contact Information. (1) A utility shall notify the commission in writing of:
(a) The address of its main corporate and Kentucky offices, including street address and post office box, city, state, and zip code;
(b) The name, telephone number, facsimile number, and mailing address of the person who serves as its primary liaison with the commission regarding its operations; and
(c) Its electronic mail address.
(2) The electronic mail address required in subsection (1) of this section shall be to an electronic mail account that the utility accesses at least once weekly and that is capable of receiving electronic mail from external sources and with attachments up to five (5) megabytes in size. Unless a utility otherwise advises the commission in writing, all electronic mail transmissions from the commission to the utility shall be sent to this address.
(3) A utility shall notify the commission in writing of a change in the information required in subsection (1) of this section within ten (10) days of the date of the change.

Section 4. Reports. (1) Gross annual operating revenue reports.
(a) Each utility shall file with the commission its gross operating revenue report on or before March 31 of each year.
(b) An extension request shall not be permitted for a gross annual operating revenue report.
(c) A utility may file an amendment to its report. An amendment shall be filed with the commission on or before May 24 of the same year.

(d) The commission shall:

1. Not certify to the Department of Revenue the amounts of intrastate business established in an amendment filed with the commission after May 24 of that year; and

2. Report those amounts to the Department of Revenue for informational purposes.

(2) Financial and statistical reports.

(a) Every utility shall file annually using the commission's electronic filing system a financial and statistical report on or before March 31 of each year.

(b) This report shall be based upon utility type and the accounts established in conformity with the uniform system of accounts prescribed for that utility type.

(c) If documents are required to supplement or complete the report and cannot be submitted through the commission's electronic filing system, the utility shall file these documents in paper form with the commission no later than March 31.

(d) The commission shall make the reporting forms available on the commission's Web site at http://psc.ky.gov/.

(e) For good cause shown, the executive director of the commission shall, upon application in writing, allow an appropriate extension of time for the filing.

(3) Financial statement audit reports. A utility required to file a report in accordance with subsection (2) of this section shall file with the commission on or before September 30 each year, a copy of the audit report of the Kentucky regulated entity, from the audit performed the previous year, or a statement that no audit was performed of the Kentucky regulated entity the previous year. For good cause shown, the executive director of the commission shall, upon application in writing, allow an appropriate extension of time for the filing.

(4) Report of meters, customers, and refunds. Each gas, electric, or water utility shall file quarterly either a Quarterly Meter Report-Electric, Quarterly Meter Report, or a Quarterly Meter Report-Electric-Gas-Water, of meter tests, number of customers, and amount of refunds.

(5) Report of terminations for nonpayment of bills. Each water, electric, or gas utility shall file either the Water Utility Non-Payment Disconnection/Reconnection Report, Electric Utility Non-Payment Disconnection/Reconnection Report, or Gas Utility Non-Payment Disconnection/Reconnection Report, annually to report the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.

(6) Record and report retention. All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified.

(7) Transmittal letter. Each report shall be accompanied by a transmittal letter describing the report being furnished.

(8) Amending reports. Upon discovering a material error in a report filed with the commission, a utility shall file an amended report to correct the error.

Section 5. Service Information. (1)(a) A utility shall, on request, give its customers or prospective customers information that enables the customers to secure safe, efficient, and continuous service.

(b) A utility shall inform its customers of a change made or proposed in the character of its service that might affect the efficiency, safety, or continuity of operation.

(2) Prior to making a substantial change in the character of the service furnished that would affect the efficiency, adjustment, speed, or operation of the equipment or appliances of a customer, a utility shall apply for the commission's approval. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of each type, class, and character of service available at each location.

Section 6. Special Rules or Requirements. (1) A utility shall not establish a special rule or requirement without first obtaining the approval of the commission.

(2) Unless specifically authorized by this administrative regulation, a utility shall not deny or refuse service to a customer who has complied with all conditions of service established in the utility's tariff on file with the commission

(3)(a) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility.

(b) A utility shall not:

1. Require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service; or

2. Refuse to provide service to a prospective or existing customer on the basis of that customer's refusal to grant an easement for facilities that do not serve the customer.

(c) The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with 807 KAR 5:041, 5:061, or 5:066.

Section 7. Billings, Meter Readings, and Information. (1) Information on bills.

(a) Each bill for utility service issued periodically by a utility shall clearly show:

1. The date the bill was issued;
2. Class of service;
3. Present and last preceding meter readings;
4. Date of the present reading;
5. Number of units consumed;
6. Meter constant, if applicable;
7. Net amount for service rendered;
8. All taxes;
9. Adjustments, if applicable;
10. The gross amount of the bill;
11. The date after which a penalty may apply to the gross amount; and
12. If the bill is estimated or calculated.

(b) The rate schedule under which the bill is computed shall be posted on the utility's Web site, if it maintains a Web site, and shall also be furnished under one (1) of the following methods, by:

1. Printing it on the bill;
2. Publishing it in a newspaper of general circulation once each year;
3. Mailing it to each customer once each year; or
4. Providing a place on each bill for a customer to indicate the customer's desire for a copy of the applicable rates. The utility shall mail the customer a copy by return first class mail.

(2) Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. The rate schedule shall clearly establish the basis upon which consumption is estimated.

(3) Bill format. Each utility shall include the billing form; including an e-bill form, if applicable; to be used by it, or its contents, in its tariffed rules.

(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.

(5) Frequency of meter reading.

(a) Except as provided in paragraph (b) of this subsection, each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly;

(b) Each customer-read meter shall be read manually, at least once during each calendar year.

(c) Records shall be kept by the utility to insure that the information required by this subsection is available to the commission and any customer requesting this information.

(d) If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.

Section 8. Deposits. (1) Determination of deposits.

(a) A utility may require from a customer a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection pursuant to Section 16 of this administrative regulation.

(b) A utility shall not require a deposit based solely on the customer being a tenant or renter.

(c) The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class.

(d) The amount of a cash deposit shall be determined by one (1) of the methods established in this paragraph.

1. Calculated deposits.

a. If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period.

b. If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system.

c. Deposit amounts shall not exceed two-twelfths (2/12) of the customer's actual or estimated annual bill if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

2. Equal deposits.

a. A utility may establish an equal deposit amount for each class based on the average bill of customers in that class.

b. Deposit amounts shall not exceed two-twelfths (2/12) of the average bill of customers in the class if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

3. Recalculation of deposits.

a. If a utility retains either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit shall be recalculated every eighteen (18) months based on actual usage of the customer.

b. The notice of deposit recalculation shall be included:

(i) On the customer's application for service;

(ii) On the receipt of deposit; or

(iii) Annually with or on customer bills.

c. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, the utility shall refund any over-collection and may collect any underpayment.

d. A refund shall be made either by check, electronic funds transfer, or by credit to the customer's account, except that a utility shall not be required to refund an excess deposit if the customer's account is delinquent upon recalculation of the deposit.

(2) Waiver of deposits. Deposits may be waived in accordance with criteria established in its tariff.

(3) Additional deposit requirement.

(a) If a deposit has been waived as established in subsection (2) of this section or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility's tariff, a utility may require a deposit.

(b) If substantial change in the customer's usage has occurred, the utility may require an additional deposit.

(c) An additional or subsequent deposit shall not be required of a residential customer whose payment record is satisfactory, unless the customer's classification of service changes, except as established in subsection (1)(d)3 of this section.

(4) Receipt of deposit.

(a) A utility shall issue to every customer from whom a deposit is collected a receipt of deposit.

(b) The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit.

(c) If the notice of recalculation established in subsection (1)(d)3 of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification.

(d) If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.

(5) Deposits as a condition of service. Except as established in Section 16 of this administrative regulation, a utility may refuse or discontinue service to a customer pursuant to Section 15 of this administrative regulation if payment of requested deposits is not made.

(6) Interest on deposits.

(a) Interest shall accrue on all deposits at the rate prescribed by KRS 278.460, beginning on the date of deposit.

(b) Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis.

(c) If interest is paid or credited to the customer's bill prior to twelve (12) months from the date of deposit, or the last interest payment date, the payment or credit shall be on a prorated basis.

(d) Upon termination of service, the deposit; any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.

(7) Interest on deposits for water districts and associations.

(a) A water district or association that maintains a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for the customer deposit account.

(b) A water district or association that does not maintain a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers on the deposits held at a rate that is the weighted average rate of all of its interest bearing accounts as of December 31 of the previous year.

(c) If the water district or association does not have funds in an interest-bearing account, the water district or association shall pay interest to its customers on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for a basic savings account at the financial institution at which the water district or association maintains its operation and maintenance account.

(8) Tariff requirements. A utility that chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:

(a) The method by which deposit amounts will be determined for each customer class;

(b) Standard criteria for determining if a deposit will be required or waived;

(c) The deposit amount for each customer class if the method in subsection (1)(d)(2) of this section is used;

(d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable; and

(e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.

Section 9. Nonrecurring Charges. (1) A utility may make special nonrecurring charges to recover customer-specific costs incurred that would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. A utility desiring to establish or change a special nonrecurring charge shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

(2) A nonrecurring charge shall be included in a utility's tariff and applied uniformly throughout the area served by the utility. A charge shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3) A nonrecurring charge shall include the charges listed in this subsection and may include other customer specific costs in accordance with this section and 807 KAR 5:011, Section 10.

(a) Turn-on charge.

1. A turn-on charge may be assessed for a new service turn on, seasonal turn on, or temporary service.

2. A turn-on charge shall not be made for initial installation of service if a tap fee is applicable.

(b) Reconnect charge.

1. A reconnect charge may be assessed to reconnect a service that has been terminated for nonpayment of bills or violation of the utility's tariffed rules or 807 KAR Chapter 5.

2. A customer who qualifies for service reconnection pursuant to Section 16 of this administrative regulation shall be exempt from reconnect charges.

(c) Termination or field collection charge.

1. A charge may be assessed if a utility representative makes a trip to the premises of a customer for the purpose of terminating service.

2. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the utility representative agrees to delay termination based on the customer's payment or agreement to pay the delinquent bill by a specific date.

3. The utility shall not make a field collection charge more than once in a billing period.

(d) Special meter reading charge. This charge may be assessed if:

1. A customer requests that a meter be reread, and the second reading shows the original reading was correct. A charge shall not be assessed if the original reading was incorrect; or

2. A customer who reads his or her own meter fails to read the meter for three (3) consecutive months and it is necessary for a utility representative to make a trip to read the meter.

(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.

(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 19 of this administrative regulation and the tests show the as-found meter accuracy is within the limits established by 807 KAR 5:022, Section 8(3)(a)1 and 8(3)(b)1; 5:041, Section 17(1); or 5:066, Section 15(2)(a). [See Editor's Note]

(g) Returned payment charge. A returned payment charge may be assessed if payment of a utility bill is not honored by the customer's financial institution.

(h) Late payment charge. A late payment charge may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill.

1. The late payment charge may be assessed only once on a bill for rendered services.

2. A payment received shall first be applied to the bill for service rendered.

3. Additional late payment charges shall not be assessed on unpaid late payment charges.

Section 10. Customer Complaints to the Utility. (1) Upon complaint to a utility by a customer at the utility's office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the customer of the utility's findings.

(2) The utility shall keep a record of all written complaints concerning the utility's service. This record shall include:

(a) The customer's name and address;

(b) The date and nature of the complaint; and

(c) The disposition of the complaint.

(3) Records shall be maintained for two (2) years from the date of resolution of the complaint.

(4) If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the customer of his or her right to file a complaint with the commission and shall provide the customer with the mailing address, Web site address, and telephone number of the commission.

(5) If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the customer of his or her right to file a complaint with the commission and the mailing address, Web site address, and telephone number of the commission.

Section 11. Bill Adjustment for Gas, Electric, or Water Utilities. (1) If, upon periodic test, request test, or complaint test, a meter in service is found to be in error in excess of the limits established by 807 KAR 5:022, Section 8(3)(a)2; 5:041, Section 17(1); or 5:066, Section 15(4), additional tests shall be made in accordance with those same administrative regulations applicable for the meter type involved to determine the average meter error. [See Editor's Note]

(2)(a) If test results on a customer's meter show an average meter error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for another reason, except if a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall:

1. Immediately determine the period during which the error has existed;

2. Recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer; and

3. Readjust the account based upon the period during which the error is known to have existed.

(b)1. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using the data as elapsed time since the last meter test, if applicable, and historical usage data for the customer.

2. If that data is not available, the average usage of a similar class of customers shall be used for comparison purposes in calculating the time period.

(c) If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue based on this section.

(d) In an instance of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after the investigation is complete.

(e) A utility shall not require customer repayment of an underbilling to be made over a period shorter than a period coextensive with the underbilling.

(3) Monitoring usage.

(a) A utility shall monitor a customer's usage at least quarterly according to procedures that shall be included in its tariff.

(b) The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can determine the reasons for the unusual deviation.

(c) If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine if the meter shows an average meter error greater than two (2) percent fast or slow.

(4) Usage investigation.

(a) If a utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer in writing:

1. Within ten (10) days of removing the meter from service, that a usage investigation is being conducted and the reasons for the investigation; and

2. Within ten (10) days upon completion of the investigation of the findings of the investigation.

(b) If knowledge of a serious situation requires more expeditious notice, the utility shall notify the customer by the most expedient means available.

(c) If the meter shows an average meter error greater than two (2) percent fast or slow, the utility shall maintain the meter in question at a secure location under the utility's control, for a period of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the utility or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

(5) Customer notification. If a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On _____, (date)___, the meter bearing identification No. ____ installed in your building located at _____ (Street and Number) in _____ (city) was tested at _____ (on premises or elsewhere) and found to register _____ (percent fast or slow). The meter was tested on _____ (Periodic, Request, Complaint) test. Based upon these test results the utility will _____ (charge or credit) your account in the sum of $_____, which has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you shall notify this office in writing within seven (7) days of the date of this notice.

(6) A customer account shall be considered to be current while a dispute is pending pursuant to this section, if the customer:

(a) Continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads; and

(b) Stays current on subsequent bills.

Section 12. Status of Customer Accounts During Billing Dispute. With respect to a billing dispute to which Section 11 of this administrative regulation does not apply, a customer account shall be considered to be current while the dispute is pending if the customer continues to make undisputed payments and stays current on subsequent bills.

Section 13. Customer's Request for Termination of Service. (1)(a) A customer who requests that service be terminated or changed from one (1) address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, if the notice does not violate contractual obligations or tariff provisions.

(b) The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides access to the meter during the notice period in accordance with section 20 of this administrative regulation.

(c) If the customer notifies the utility of his request for termination by telephone, the burden of proof shall be on the customer to prove that service termination was requested if a dispute arises.

(2) Upon request that service be reconnected at a premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee established in its filed tariff.

(3) A utility desiring to establish a termination or reconnection charge pursuant to subsection (2) of this section shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

Section 14. Utility Customer Relations. (1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers and to respond to inquiries from the commission regarding customer complaints.

(a) Available telephone numbers. Each utility shall:

1. Maintain a telephone;

2. Publish the telephone number in all service areas; and

3. Permit all customers to contact the utility's designated representative without charge.

(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes, and negotiate partial payment plans at the utility's office. The designated representative shall be knowledgeable of this administrative regulation; 807 KAR 5:001, Section 20; KRS 278.160(2); and KRS 278.225 regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.

1. Each water, sewer, electric, or gas utility having annual operating revenues of $250,000 or more shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding legal holidays.

2. Each water, sewer, electric, or gas utility having annual operating revenues of less than $250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each utility providing gas or electric service shall make available the designated representative during the utility's established working hours not fewer than five (5) days per week, excluding legal holidays.

(c) Display of customer rights.

1. Each utility shall prominently display in each office open to the public for customer service, and shall post on its Web site, if it maintains a Web site, a summary, prepared and provided by the commission, of the customer's rights pursuant to this section and Section 16 of this administrative regulation.

2. If a customer indicates to any utility personnel that he or she is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for an explanation of his or her rights.

(d) Utility personnel training.

1. The chief operating officer of a utility that provides electric or gas service to residential customers shall certify under oath annually the training of utility personnel assigned to counsel persons presenting themselves for utility service pursuant to this section.

2. If the electric or gas utility is not incorporated in Kentucky and if the utility’s corporate headquarters is not located in Kentucky, then the utility’s highest ranking officer located in Kentucky shall make the required certification.

3. Training shall include an annual review of this administrative regulation and policies regarding winter hardship and disconnect, Cabinet for Health and Family Services (or its designee) policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and weather or health disconnect policies.

4. Certification shall include written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.

(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 15 of this administrative regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 15 of this administrative regulation. Partial payment plans that extend for a period longer than thirty (30) days shall

be in writing or electronically recorded, state the date and the amount of payment due. Written partial payment plans shall be dated and signed by both parties, and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

(a) Budget payment plans for water, gas, and electric utilities. A water, gas, and electric utility shall develop and offer to the utility's residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage.

1. Pursuant to this plan, a utility shall issue bills that adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end of the twelve (12) month period or through a series of levelized adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount.

2. Budget payment plans shall be offered to residential customers and may be offered to other classes of customers.

3. The provisions of the budget plan shall be included in the utility's tariffed rules.

4. The utility shall provide information to its customers regarding the availability of budget payment plans.

(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates pursuant to the provisions of Sections 15(3) and 16 of this administrative regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. The plans include, for example, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.

(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water, and sewer utility shall inspect the condition of its meter and service connections before making service connections to a new customer so that prior or fraudulent use of the facilities shall not be attributed to the new customer.

(a) The new customer shall be afforded the opportunity to be present at the inspections.

(b) The utility shall not be required to render service to a customer until all defects in the customer-owned portion of the service facilities have been corrected.

(4) Prompt connection of service. Except as provided in Section 16 of this administrative regulation, the utility shall reconnect existing service within twenty-four (24) hours or close of the next business day, whichever is later, and shall install and connect new service within seventy-two (72) hours or close of the next business day, whichever is later, if the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and 807 KAR Chapter 5 have been met.

(5) Advance termination notice. If advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the customer's last known address. The termination notice shall be in writing, distinguishable and separate from a bill.

(a) The termination notice shall plainly state the reason for termination, that the termination date shall not be affected by receipt of a subsequent bill, and that the customer has the right to dispute the reasons for termination.

(b) The termination notice shall also comply with the applicable requirements of Section 15 of this administrative regulation.

Section 15. Refusal or Termination of Service. (1) A utility may refuse or terminate service to a customer only pursuant to the following conditions, except as provided in subsections (2) and (3) of this section:

(a) For noncompliance with the utility's tariffed rules or the commission's administrative regulations.

1. A utility may terminate service for a customer's failure to comply with applicable tariffed rules or 807 KAR Chapter 5 pertaining to that service.

2. A utility shall not terminate or refuse service to a customer for noncompliance with the utility's tariffed rules or 807 KAR Chapter 5 without first having made a reasonable effort to obtain customer compliance.

3. After the effort by the utility, service may be terminated or refused only after the customer has been given at least ten (10) days written termination notice pursuant to Section 14(5) of this administrative regulation.

(b) For dangerous conditions. If a dangerous condition relating to a utility's service that could subject a person to imminent harm or result in substantial damage to the property of the utility or others is found to exist on the customer's premises, the service shall be refused or terminated without advance notice.

1. The utility shall notify the customer immediately in writing and, if possible, orally of the reasons for the termination or refusal.

2. The notice shall be recorded by the utility and shall include the corrective action to be taken by the customer or utility before service can be restored or provided.

3. If the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.

(c) For refusal of access. If a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance, or removal of utility property, the utility may terminate or refuse service. The action shall be taken only if corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 14(5) of this administrative regulation.

(d) For outstanding indebtedness. Except as provided in Section 16 of this administrative regulation, a utility shall not be required to furnish new service to a person contracting for service who is indebted to the utility for service furnished or other tariffed charges until that person contracting for service has paid his indebtedness.

(e) For noncompliance with state, local, or other codes. A utility may refuse or terminate service to a customer if the customer does not comply with state, municipal, or other codes. A utility may terminate service pursuant to this subsection only after ten (10) days' written notice is provided pursuant to Section 14(5) of this administrative regulation, unless ordered to terminate immediately by a governmental official.

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery. A utility shall not terminate service to any person contracting for service for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 14(5) of this administrative regulation.

1. Termination notice requirements for electric or gas service.

a. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer ten (10) days' written notice of intent to terminate.

b. Service shall not, for any reason, be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill.

c. The termination notice to residential customers shall include written notification to the customer of the existence of local, state, and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Cabinet for Health and Family Services (or its designee) to contact for possible assistance.

2 Termination notice requirements for water, sewer, or telephone service.

a. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate.

b. Service shall not, for any reason, be terminated before twenty (20) days after the mailing date of the original unpaid bill.

3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise dictated by the terms of a special contract between the utility and customer, which has been approved by the commission.

4. This subsection shall not prevent or restrict a utility from discontinuing service if a sewer service provider requests discontinuance of a customer's water service pursuant to KRS 74.408, 96.934, or 220.510, nor shall it restrict a water district from discontinuing water service to a customer who has failed to pay his bill for sewer service that the water district has provided.

(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft.

1.a. Within twenty-four (24) hours after termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission.

b. This right of termination is separate from and in addition to any other legal remedies that the utility may pursue for illegal use or theft of service.

2. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility, KRS Chapter 278, and 807 KAR Chapter 5.

(2) A utility shall not terminate service to a customer if:

(a) Payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination of service payment of the amount in arrears is received by the utility, service shall not be terminated;

(b) A payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 14 of this administrative regulation and the customer is meeting the requirements of the plan; or

(c) A medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if a physician, registered nurse, or public health officer certifies in writing that termination of service will aggravate a debilitating illness or infirmity currently suffered by a resident living at the affected premises.

1. A utility may refuse to grant consecutive extensions for medical certificates past the original thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 14 of this administrative regulation.

2. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents to the utility a medical certificate certified in writing by a physician, registered nurse, or public health officer.

(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Health and Family Services (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents the certificate to the utility.

(a) A customer eligible for certification from the Cabinet for Health and Family Services shall have been issued a termination notice between November 1 and March 31.

(b) Each certificate shall be presented to the utility during the initial ten (10) day termination notice period.

(c)1. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so.

2. In addition, the customer shall agree to a repayment plan in accordance with Section 14 of this administrative regulation, which shall permit the customer to become current in the payment of his bill as soon as possible but not later than October 15.

(d) A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents a certificate to the utility certified by the Cabinet for Health and Family Services (or its designee) that the customer is eligible for the cabinet's Energy Assistance Program or whose household income is at or below 130 percent of the poverty level.

Section 16. Winter Hardship Reconnection. (1) Notwithstanding the provisions of Section 14(4) of this administrative regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 15(1)(f) of this administrative regulation prior to application for reconnection, and who applies for reconnection during the months from November 1 through March 31 if the customer or his agent:

(a) Presents a certificate of need from the Cabinet for Health and Family Services (or its designee), including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;

(b) Pays one-third (1/3) of his outstanding bill or $200, whichever is less; and

(c) Agrees to a repayment schedule that would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15.

1. If the customer applies for reconnection and the customer has an outstanding bill in excess of $600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then the plan shall be accepted.

2. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.

(d) A utility shall not require a new deposit from a customer whose service is reconnected due to paragraphs (a), (b), or (c) of this subsection.

(2) Certificate of need for reconnection. A customer who is eligible for energy assistance under the Cabinet for Health and Family Services' guidelines or is certified as being in genuine financial need, which is defined as a household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the cabinet (or its designee) to be used in obtaining a service reconnection from the utility.

(3) Weatherization program. Customers obtaining a certificate of need pursuant to this administrative regulation shall agree to accept referral to and utilize weatherization services administered by the Cabinet for Health and Family Services. The provision and acceptance of weatherization services shall be contingent on the availability of funds and other program guidelines. Weatherization services include, for example, weather stripping, insulation, and caulking. A customer current with his or her payment plan pursuant to subsection 1(c) of this section shall not be disconnected.

Section 17. Meter Testing. (1) All electric, gas, and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically established in 807 KAR 5:022, 5:041, and 5:066. Before being installed for use by a customer, an electric, gas, and water meter shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically established in 807 KAR 5:022, Section 8(3)(a), 5:041, Section 17(1)(a)-(c), and 5:066, Section 15(2)(a)-(b). [See Editor's Note]

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that purpose. Each utility having tests made by another agency or utility shall notify the commission of those arrangements in detail to include make, type, and serial number of standards used to make the tests.

(3) A utility shall not place in service a basic measurement standard required by 807 KAR Chapter 5 unless the calibration has been approved by the commission. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of a basic standard requiring commission approval of the calibration.

(4) An electric, gas, and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the commission. These certified meter testers shall perform tests as necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by 807 KAR Chapter 5.

(5) A utility or agency desiring to have an employee certified as meter tester shall submit the name of each applicant on an "Application for Appointment of Meter Tester." The applicant shall pass a written test administered by commission staff and have his competency in the testing of meters verified by commission staff, at which time the applicant shall be certified as a meter tester and furnished with a card authorizing him to perform meter tests.

(6) A utility or agency may employ apprentices in training for certification as meter testers.

(a) The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section.

(b) All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

Section 18. Meter Test Records. (1)(a) A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. The record shall include:

1. Information to identify the unit and its location;
2. Date of tests;
3. Reason for the tests;
4. Readings before and after test;
5. Statement of "as found" and "as left" accuracies sufficiently complete to permit checking of calculations employed;
6. Notations showing that all required checks have been made;
7. Statement of repairs made, if any;
8. Identifying number of the meter;
9. Type and capacity of the meter; and
10. The meter constant.

(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.

(2) Historical records. (a) A utility shall keep numerically arranged and properly classified records for each meter that it owns, uses, and inventories.

(b) These records shall include:

1. Identification number;
2. Date of purchase;
3. Name of manufacturer;
4. Serial number;
5. Type;
6. Rating; and
7. Name and address of each customer on whose premises the meter has been in service with date of installation and removal.

(c) These records shall also contain condensed information concerning all tests and adjustments including dates and general results of the adjustments. The records shall reflect the date of the last test and indicate the proper date for the next periodic test required by the applicable commission administrative regulation in 807 KAR Chapter 5.

(3) Sealing of meters. Upon completion of adjustment and test of a meter pursuant to 807 KAR Chapter 5, a utility shall affix to the meter a suitable seal in a manner that adjustments or registration of the meter cannot be altered without breaking the seal.

(4) A utility may store the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.

Section 19. Request Tests. (1) A utility shall make a test of a meter upon written request of a customer if the request is not made more frequently than once each twelve (12) months.

(a) The customer shall be given the opportunity to be present at the requested test.

(b) If the tests show the as-found meter accuracy is within the limits allowed by 807 KAR 5:022, Section 8(3)(a)1, 5:022, Section 8(3)(b)1, 5:041, Section 17(1), or 5:066, Section 15(4), the utility may make a reasonable charge for the test. [See Editor's Note]

(c) The commission-approved amount of the charge shall be established in the utility's filed tariff.

(d) The utility shall maintain a meter removed from service for testing, in a secure location under the utility's control, for a period of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the utility or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved, or the meter is picked up for testing by personnel from the commission's Meter Standards Laboratory.

(2) After having first obtained a test from the utility, a customer of the utility may request a meter test by the commission upon written application.

(a) The request shall not be made more frequently on one (1) meter than once each twelve (12) months.

(b) Upon request, personnel from the commission's Meter Standards Laboratory shall pick up the meter from the utility and maintain the meter for a minimum of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the commission's Meter Standards Laboratory or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

Section 20. Access to Property. The utility shall at all reasonable hours have access to meters, service connections, and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement, or removal of its property. An employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, and show a badge or other identification that shall identify him as an employee of the utility.

Section 21. Pole Identification. (1) Each utility owning poles or other structures supporting its wires shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every structure can be readily determined.

(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.

(3) If a utility's structures are located outside of a built-up community, at least every tenth structure shall be marked as established in subsection (2) of this section.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) A utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.

Section 22. Cable Television Pole Attachments and Conduit Use. [See Editor's Note] (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.

(2) The tariffs of the utility shall establish the rates, terms, and conditions under which the utility's facilities may be used.

(3) With respect to a complaint before the commission in an individual matter concerning cable television pole attachments, final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

Section 23. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve. The map or maps should be available preferably in electronic format as a PDF file or as a digital geographic database. The following data shall be available on the map or maps:

(a) Operating districts;

(b) Rate districts;

(c) Communities served;

(d) Location and size of transmission lines, distribution lines and service connections;

(e) Location and layout of all principal items of plant; and

(f) Date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above construction information in (1)(f) on maps, a card record or suitable digital data may be used.

(a) The construction data about a plant feature, such as a pipeline, may be stored in a table and linked to the geographic plant feature by a unique identifier that is present in both the table and the geographic database.

(b) For all prospective construction the records shall also show the date of construction by month and year.

Section 24. Location of Records. All records required by 807 KAR Chapter 5 shall be kept in the office of the utility and shall be made available to representatives, agents, or staff of the commission upon reasonable notice at all reasonable hours.

Section 25. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:

(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees;

(2) Instruct employees in safe methods of performing their work. For electric utilities, this is to include the standards established in 807 KAR 5:041, Section 3; and

(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation, or drowning, in accepted methods of artificial respiration.

Section 26. Inspection of Systems. (1) A utility shall adopt inspection procedures to assure safe and adequate operation of the utility's facilities and compliance with KRS Chapter 278 and 807 KAR Chapter 5 and shall file these procedures with the commission for review.

(2) Upon receipt of a report of a potentially hazardous condition at a utility facility, the utility shall inspect all portions of the system that are the subject of the report.

(3) Appropriate records shall be kept by a utility to identify the inspection made, the date and time of inspection, the person conducting the inspection, deficiencies found, and action taken to correct the deficiencies.

(4) Electric utility inspection. An electric utility shall make systematic inspections of its system in the manner established in this subsection to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than established in this subsection for various classes of facilities and types of inspection.

(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.

(b) At intervals not to exceed six (6) months, the utility shall inspect:

1. Unmanned production facilities, including peaking units not on standby status, and all monitoring devices, for evidence of abnormality;

2. Transmission switching stations if the primary voltage is sixty-nine (69) KV or greater, for damage to or deterioration of components including structures, fences, gauges, and monitoring devices;

3. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, for leaks, condition of case, connections, temperature, and overloading; and

4. Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage, deterioration and vegetation management consistent with the utility's vegetation management practices.

(c) In addition to the requirements established in paragraph (b) of this subsection, all electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities shall be inspected from the ground for damage, deterioration, and vegetation management consistent with the utility's vegetation management practices at intervals not to exceed:

1. Six (6) years for each electric line supported by a wood pole or other wood support structure; or

2. Twelve (12) years for each electric line supported by a pole or other support structure constructed of steel or other nonwood material.

(d) At intervals not to exceed one (1) year, the utility shall inspect:

1. Production facilities maintained on a standby status. Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected; and

2. Distribution substations with primary voltage of fifteen (15) to sixty-nine (69) KV.

(e) At intervals not to exceed two (2) years, the utility shall inspect all electric facilities operating at voltages of less than sixty-nine (69) KV, to the point of service including insulators, conductors, meters, and supporting facilities from the ground for damage, deterioration, and vegetation management consistent with the utility's vegetation management practices.

(f) The utility shall inspect other facilities as follows:

1. Utility buildings shall be inspected for compliance with safety codes at least annually; and

2. Construction equipment shall be inspected for defects, wear, and operational hazards at least quarterly.

(g) Aerial inspections shall not be used as the basis for compliance with paragraphs (b)1. through 3., support facilities provisions in (b)4., (d)1., and (f) of this subsection.

(5) Gas utility inspection. A gas utility shall make systematic inspections of its system to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is prescribed or recommended by the Department of Transportation, 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities.

(a) The following maximum time intervals shall be established for certain inspections provided for in 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety

Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in the code.

1. At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine:

a. Production wells, storage wells, and well equipment, including their exterior components;

b. Pressure limiting stations, relief devices, pressure regulating stations, and vaults; and

c. Accessibility of the curb box and valve on a service line.

2. At intervals not to exceed three (3) years, gas meters shall be manually inspected and visually examined for proper working condition.

3. The utility shall inspect other facilities as follows:

a. Utility buildings shall be inspected for compliance with safety codes at least annually; and

b. Construction equipment under the control of the utility shall be inspected for defects, wear, and operational hazards at least quarterly.

(b) At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents, and relief valve vents shall be checked for operable condition.

(c) At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.

(d) Aerial inspections shall not be used as the basis for compliance with paragraphs (a) through (c) of this subsection.

(6) Water utility inspections. Each water utility shall make systematic inspections of its system as established in paragraphs (a) through (c) of this subsection to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than as established in paragraphs (a) through (c) of this subsection for various classes of facilities and types of inspection.

(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation;

(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity, and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; and hydrants, mains, meters, meter settings and valves; and

(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.

(7) Telephone utility inspection. Each telephone utility shall make systematic inspections of its system as established in paragraphs (a) through (f) of this subsection to insure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than as established in paragraphs (a) through (f) of this subsection for various classes of facilities and types of inspection.

(a) The utility shall inspect aerial plant for electrical hazards, proper clearance for electric clearances of facilities, vegetation management consistent with the utility’s vegetation management practices, and climbing safety every two (2) years;

(b) The utility shall inspect underground plant for presence of gas, proper clearance from electric facilities, and safe working conditions at least annually;

(c) The utility shall inspect utility-provided station equipment and connections for external electrical hazards, damaged instruments or wiring, and appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises;

(d) The utility shall inspect utility buildings for compliance with safety codes at least annually;

(e) The utility shall inspect construction equipment for defects, wear, and operational hazards at least quarterly; and

(f) Aerial inspections shall not be used as the basis for compliance with this subsection.

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner established in 807 KAR 5:071 to ensure that the commission’s safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than established in 807 KAR 5:071.

Section 27. Reporting of Accidents, Property Damage, or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of a utility related accident that results in:

(a) Death or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;

(b) Actual or potential property damage of $25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident. For good cause shown, the executive director of the commission, shall, upon application in writing, allow a reasonable extension of time for submission of this report.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

Section 28. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Annual Financial and Statistical Reports:

1. "FERC Form 1 – Annual Report of Major Electric Utilities, Licensees and Others", March 2007;
2. "Annual Reporting Form for Rural Electric Cooperative Corporations", July 2012;
3. "FERC Form 2 – Annual Report of Major Natural Gas Companies", December 2007;
4. "Annual Reporting Form for Class C and D Gas Utilities", August 2005;
5. "Annual Reporting Form for Local Exchange Carriers", August 2005;
6. "Annual Reporting Form for Local Exchange Carriers – Kentucky Operations Only", August 2004;
7. "Annual Reporting Form for Water Company – Class A & B", July 2012;
8. "Annual Reporting Form for Water Company – Class C", July 2012;
9. "Annual Reporting Form for Water Districts/Water Associations – Class A & B", July 2012;
10. "Annual Reporting Form for Water Districts/Water Associations – Class C", July 2012; and
11. "Annual Reporting Form for Sewer Utilities", September 2005;

(b) Quarterly Meter Reports:

1. "Quarterly Meter Report-Electric", August 2011;
2. "Quarterly Meter Report-Water", July 2012; and
3. "Quarterly Meter Report-Gas", July 2007;

(c) Non-payment Disconnection/Reconnection Reports:

1. "Water Utility-Non-Payment Disconnection/Reconnection Report", February 2012;
2. "Electric Utility-Non-Payment Disconnection/Reconnection Report", September 2000; and
3. "Gas Utility Non-Payment Disconnection/Reconnection Report" September 2000;

(d) "Application for Appointment of Meter Testers", August 2012; and

(e) Gross Annual Operating Revenue Reports:

1. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business", December 2010;
2. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Electric Utilities", October 2012;
3. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Long Distance Carriers and Operator Services", September 2010;
4. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Paging and Cellular", September 2010; and
5. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Local Exchange Carriers and Competitive Local Exchange Carriers", September 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at the commission's Web site at http://psc.ky.gov.

HISTORY:

8 Ky.R. 791; Am. 961; 1137; eff. 4-7-82; 9 Ky.R. 217; 473; eff. 8-25-82; 11 Ky.R. 790; 1048; eff. 1-7-85; 12 Ky.R. 967; 1343; 1510; eff. 2-4-86; 18 Ky.R. 1953; 2554; eff. 2-26-92; TAm eff. 8-9-2007; 39 Ky.R. 295; 1015; 1136; eff. 1-4-2013; TAm 1-30-2013; Crt eff. 3-27-2019.

Editor's Note: References to 807 KAR 5:022, Section 8 pertaining to gas meter accuracy standards are no longer valid. On 8-6-2018, 807 KAR 5:022 was amended. Section 3 of the current version of 807 KAR 5:022 addresses gas meter accuracy standards.

Editor's Note: Section 22 has been superseded by the promulgation of 807 KAR 5:015 on 2-1-2022.

807 KAR 5:007. Filing and notice requirements for a generation and transmission cooperative or a distribution cooperative to decrease rates or for a distribution cooperative to change rates to reflect a change in the rates of its wholesale supplier.

RELATES TO: KRS 278.180, 278.455
STATUTORY AUTHORITY: KRS 278.040(3), 278.180(1), 278.455(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.180(1) provides that, except upon application of a utility for a lesser time, a change shall not be made in a rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates shall go into effect. KRS 278.455(1) provides that a generation and transmission cooperative or a distribution cooperative may decrease regulated operating revenues if the decrease is allocated proportionately among customer classes so that a change will not result to the rate design currently in effect. KRS 278.455(2) provides that a distribution cooperative may change its rates to reflect a change in the rate of its wholesale supplier if the effects of an increase or decrease are allocated to each class and within each tariff on a proportional basis that will result in no change in the rate design currently in effect. KRS 278.455(4) requires the commission to promulgate administrative regulations establishing filing requirements and notice requirements to the commission, the Attorney General, and the public for rate changes made pursuant to KRS 278.455. This administrative regulation prescribes filing and notice requirements for a generation and transmission cooperative or a distribution cooperative to decrease rates and for a distribution cooperative to change rates to reflect a change in the rates of its wholesale supplier.

Section 1. Filing Requirements. To decrease rates, a generation and transmission cooperative or a distribution cooperative shall file with the commission an original and five (5) copies, and with the Attorney General's Office of Rate Intervention one (1) copy, of the following information:
(1) The tariff incorporating the reduced rates, specifying an effective date no sooner than thirty (30) days from the date filed;
(2) The name and address of the filing cooperative;
(3) A brief statement of the facts demonstrating that the filing is made pursuant to the authority of KRS 278.455;
(4) A comparison of the current and proposed rates;
(5) An analysis demonstrating that:
(a) The rate change does not change the rate design currently in effect; and
(b) The revenue change has been allocated to each class and within each tariff on a proportional basis;
(6) A certification that a complete copy of the materials filed with the commission has been sent to the Attorney General's Office of Rate Intervention;
(7) A statement that notice of the rate change pursuant to Section 3 of this administrative regulation has been given, not more than thirty (30) days prior to the date the application is filed, by one (1) of the following methods:
(a) By typewritten notice mailed to all customers;
(b) By publication in a newspaper of general circulation in the affected area; or
(c) By publication in a periodical distributed to all members of the cooperative; and
(8) A copy of the notice given pursuant to subsection (7) of this section.

Section 2. To change rates to reflect an increase or decrease in its wholesale supplier's rates, a distribution cooperative shall file with the commission an original and five (5) copies, and with the Attorney General's Office of Rate Intervention one (1) copy, of the following information:
(1) The tariff incorporating the new rates and specifying an effective date no sooner than the effective date of the wholesale supplier's rate change; and
(2) The information required by Section 1(2) through (8) of this administrative regulation.

Section 3. Contents of Notice. Notice given pursuant to Section 1(7) of this administrative regulation shall include the following information:
(1) The name, address, and phone number of the cooperative;

(2) The existing rates and the revised rates for each customer class;
(3) The effect of the rate change, stated both in dollars and as a percentage, upon the average bill for each customer class;
(4) A statement, as appropriate, that:
(a) The rate reduction is being made at the sole discretion of the utility, pursuant to KRS 278.455(1); or
(b) The rates are being revised to reflect a change in wholesale rates pursuant to KRS 278.455(2); and
(5) A statement that a person may examine the rate application at the main office of the utility or at the office of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky.

HISTORY:

25 Ky.R. 2989; Am. 26 Ky.R. 385; eff. 8-20-99; Crt eff. 3-27-2019.

807 KAR 5:011. Tariffs.

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.030, 278.160, 278.170, 278.180, 278.190, KRS 369.102(8)

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) requires the commission to promulgate an administrative regulation to establish requirements for each utility to file schedules showing all rates and conditions established by it and collected or enforced. This administrative regulation establishes requirements for utility tariffs.

Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15).

(2) "Date of issue" means the date the tariff sheet is signed by the representative of the utility authorized to issue tariffs.

(3) "Electronic signature" is defined by KRS 369.102(8).

(4) "Nonrecurring charge" means a charge or fee assessed to a customer to recover the specific cost of an activity, which:

(a) Is due to a specific request for a service activity for which, once the activity is completed, additional charges are not incurred; and

(b) Is limited to recovery of an amount no greater than the cost of the specific service.

(5) "Person" is defined by KRS 278.010(2).

(6) "Rate" is defined by KRS 278.010(12).

(7) "Signature" means any manual, facsimile, conformed, or electronic signatures.

(8) "Statutory notice" means notice made in accordance with KRS 278.180.

(9) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(10) "Tariff filing" means the revised or new tariff sheets and all supporting documents that a utility submits to revise its rate schedules.

(11) "Utility" is defined by KRS 278.010(3).

(12) "Utility's office or place of business" means a location at which the utility regularly employs and stations one (1) or more employees and is open to the public for customer service.

(13) "Water district" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

(14) "Web site" means an identifiable site on the internet, including social media, which is accessible by the public.

Section 2. General. (1) Each tariff sheet and supporting document filed with the commission shall be electronically submitted to the commission using the commission's electronic Tariff Filing System located at https://psc.ky.gov/psc_portal.

(2) Each utility shall maintain a complete tariff with the commission.

(3) A utility furnishing more than one (1) type of service (water and electricity for example) shall file a separate tariff for each type of service.

(4) A utility shall make available a paper or electronic copy of the utility's current tariff for public inspection in the utility's office or place of business.

(5) A utility that maintains a Web site for its utility operations shall:

(a) Make available on that Web site for public viewing and downloading a copy of the utility's current tariff for each type of service that it provides; or

(b) Place on that Web site a hyperlink to the location on the commission's Web site where the tariff has been posted.

Section 3. Format. (1) A new tariff or revised sheet of an existing tariff filed with the commission shall be:

(a) Printed or typewritten;

(b) Eight and one-half (8 1/2) by eleven (11) inches in size; and

(c) In type no smaller than nine (9) point font, except headers and footers, which shall be in type no smaller than eight (8) point font.

(2) Tariff Form-1. The first sheet of a tariff shall be on Tariff Form-1, shall be used as the tariff's cover page, and shall contain:

(a) The utility's name, mailing address, street address of the utility's principal office if different from the mailing address, and Web site if applicable;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) A statement of the type of service offered;

(d) A statement of the area served;

(e) The date of issue and date on which the tariff is to become effective;

(f) The signature of the representative of the utility authorized to issue tariffs; and

(g) The signatory's title or position.

(3) Tariff Form-2. With the exception of the first sheet of the tariff, which shall be on Tariff Form-1, all other tariff sheets shall be on Tariff Form-2 and shall contain:

(a) The utility's name and territory served;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) In the upper right-hand corner, the tariff sheet number and, if applicable, the cancelled tariff sheet number (Example: First Revised Sheet No. 1, Cancelling Original Sheet No. 1);

(d) The date of issue and date on which the tariff is to become effective;

(e) The signature of the utility representative authorized to issue tariffs;

(f) The signatory's title or position; and

(g) If applicable, a statement that the tariff is "Issued by authority of an Order of the Public Service Commission in Case No. _____ Dated_____, 20____".

(4) Each tariff sheet shall contain a blank space at its bottom right corner that measures at least three and one-half (3.5) inches from the right of the tariff sheet by two and one-half (2.5) inches from the bottom of the tariff sheet to allow space for the commission to affix the commission's stamp.

Section 4. Contents of Schedules. (1) In addition to a clear statement of all rates, each rate schedule shall state the city, town, village, or district in which rates are applicable.

(a) If a schedule is applicable in a large number of communities, the schedule shall be accompanied by an accurate index so that each community in which the rates are applicable may be readily ascertained.

(b) If a utility indicates the applicability of a schedule by reference to the index sheet, the utility shall use language indicating "Applicable within the corporate limits of the City of _____," or "see Tariff Sheet No. ____ for applicability."

(2) The following information shall be shown in each rate schedule, if applicable, under the following captions in the order listed:

(a) Applicable: show the territory covered;

(b) Availability of service: show the classification of customers affected;

(c) Rates: list all rates offered;

(d) Minimum charge: state the amount of the minimum charge, the quantity allowed (if volumetrically based), and if it is subject to a late payment charge;

(e) Late payment charge: state the amount or reference the tariff section containing the amount;

(f) Term: if a tariff provision or a contract will be effective for a limited period, state the term; and

(g) Special rules: list special rules or requirements that are in effect covering this tariff.

(3) Each rate schedule shall state the type or classification of service available pursuant to the stated rates, by using language similar to "available for residential lighting" or "available for all purposes."

(4) For a tariff in which a number of rate schedules are shown available for various uses, each rate schedule shall be identified either by:

(a) A number in the format "Schedule No. ___"; or

(b) A group of letters, with a designation indicating the type or classification of service for which the rate schedule is available. (Example: Tariff R.S. for residential service rates.)

(5) A tariff may be further divided into sections.

Section 5. Filing Requirements. (1) Each tariff filing shall include a cover letter and conform to the requirements established in this subsection.

(a) With the exception of supporting documents, which may be submitted in an Excel spreadsheet in.xls format, each document shall be submitted in portable document format ("PDF") capable of being viewed with Adobe Acrobat Reader.

(b) Each document shall be search-capable and optimized for viewing over the internet.

(c) Each scanned document shall be scanned at a resolution of 300 dots per inch (dpi).

(d) A document may be bookmarked to distinguish different sections of the filing.

(2) A document shall be considered filed with the commission if it has:

(a) Been successfully transmitted using the commission's electronic tariff filing system; and

(b) Met all other requirements established in this administrative regulation.

Section 6. Tariff Addition, Revision, or Withdrawal. (1) A tariff, tariff sheet, or tariff provision shall not be changed, cancelled, or withdrawn except as established by this section and Section 9 of this administrative regulation.

(2) A new tariff or revised sheet of an existing tariff shall be issued and placed into effect by:

(a) Order of the commission; or

(b) Issuing and filing with the commission a new tariff or revised sheet of an existing tariff and providing notice to the public in accordance with Section 8 of this administrative regulation and statutory notice to the commission.

(3) The following symbols shall be placed in the margin to indicate a change:

(a) "(D)" to signify deletion;

(b) "(I)" to signify increase;

(c) "(N)" to signify a new rate or requirement;

(d) "(R)" to signify reduction; or

(e) "(T)" to signify a change in text.

Section 7. Tariff Filings Pursuant to Orders. If the commission has ordered a change in the rates or rules of a utility, the utility shall file a new tariff or revised sheet of an existing tariff establishing:

(1) The revised rate, classification, charge, or rule;

(2) The applicable case number;

(3) The date of the commission order; and

(4) The margin symbols required by Section 6(3) of this administrative regulation.

Section 8. Notice. A utility shall provide notice if a charge, fee, condition of service, or rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service. (1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the tariff filing is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the tariff filing is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the tariff filing is available.

(c) The information required in subsection (1)(a) and (b) of this section shall not be removed until the tariff filing has become effective or the commission issues a final decision on the tariff filing.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the date the tariff filing is submitted to the commission.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the tariff filing is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the tariff filing is submitted to the commission;

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the tariff filing is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the tariff filing is submitted to the commission.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods established in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the tariff filing was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this tariff filing at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this tariff filing at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov;

(g) A statement that comments regarding this tariff filing may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of the initial publication or mailing of the notice, the commission may take final action on the tariff filing.

(5) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. Notice given pursuant to subsection (2)(a) or (b) of this section shall substitute for the notice required by 807 KAR 5:051, Section 2, if the notice contained a clear and concise explanation of the proposed change in the rate schedule applicable to each customer. [See Editor's Note]

(6) Periodic recalculation of a formulaic rate that does not involve a revision of the rate and that is performed in accordance with provisions of an effective rate schedule, special contract, or administrative regulation does not require notice in accordance with this section.

Section 9. Statutory Notice to the Commission. (1) The proposed rates on a new tariff or revised sheet of an existing tariff shall become effective on the date stated on the tariff sheet if:

(a) Proper notice was provided to the public in accordance with Section 8 of this administrative regulation;

(b) Statutory notice was provided; and

(c) The commission does not suspend the proposed rates pursuant to KRS 278.190.

(2) All information and notices required by this administrative regulation shall be furnished to the commission with the filing of the proposed rate. If a substantial omission occurs, which is prejudicial to full consideration by the commission or to the public, the statutory notice period to the commission shall not commence until the omitted information and notice is filed.

Section 10. Nonrecurring Charges. A utility may revise a nonrecurring charge. The revision shall be performed pursuant to this section and Sections 6 and 9 of this administrative regulation. (1) Each request to revise a current nonrecurring charge or to implement a new nonrecurring charge shall be accompanied by:

(a) A specific cost justification for the proposed nonrecurring charge, including all supporting documentation necessary to determine the reasonableness of the proposed non-recurring charge;

(b) A copy of the public notice of each requested nonrecurring charge and verification that it has been made pursuant to Section 8 of this administrative regulation;

(c) A detailed statement explaining why the proposed revisions were not included in the utility's most recent general rate case and why current conditions prevent deferring the proposed revisions until the next general rate case;

(d) A statement identifying each classification of potential or existing customers affected by the rate revision; and

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period or an affidavit from an authorized representative of the utility attesting that the utility's income statement and balance sheet are on file with the commission.

(2) The proposed rate shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3)(a) If the revenue to be generated from the proposed rate revision exceeds by five (5) percent the total revenues provided by all nonrecurring charges for a recent period of twelve (12) consecutive calendar months ending within ninety (90) days of submitting the tariff filing, the utility shall, in addition to the information established in subsection (1) of this section, file an absorption test.

(b) The absorption test shall show that the additional net income generated by the tariff filing shall not result in an increase in the rate of return (or other applicable valuation method) to a level greater than that allowed in the most recent general rate case.

(c) As part of the absorption test, a general rate increase received during the twelve (12) month period shall be annualized.

(4) Upon a utility submitting the tariff filing to the commission, the utility shall transmit by electronic mail a copy in PDF to rateintervention@ag.ky.gov or mail a paper copy to the Attorney General's Office of Rate Intervention, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

Section 11. Adoption Notice. (1) A utility shall file an adoption notice on Tariff Form-3 if:

(a) A change of ownership or control of a utility occurs;

(b) A utility or a part of its business is transferred from the operating control of one (1) company to that of another;

(c) A utility's name is changed; or

(d) A receiver or trustee assumes possession and operation of a utility.

(2) Unless otherwise authorized by the commission, the person operating the utility business going forward shall adopt, ratify, and make as its own the predecessor's rates, classifications, and requirements on file with the commission and effective at the time of the change of ownership or control.

(3) An adoption notice may be filed and made effective without previous notice.

(4) An adoption notice filed with the commission shall be in consecutive numerical order, beginning with Public Service Commission adoption notice No. 1.

(5) Within ten (10) days after the filing of an adoption notice by a utility that had no tariff on file with the commission, the utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or a tariff it proposes to place into effect in lieu thereof, in the form established in Sections 2 through 4 of this administrative regulation with proper identifying designation.

(6) Within ten (10) days after the filing of an adoption notice by a utility that had other tariffs on file with the commission, the utility shall issue and file one (1) of the following:

(a) A complete reissue of its existing tariff that establishes the rates and requirements:
1. Of the predecessor utility then in effect and adopted by the successor utility; or
2. The utility proposes to place into effect for the customers served by the predecessor utility; or
(b) New or revised tariff sheets that establish the rates and requirements:
1. Of the predecessor utility then in effect and adopted by the successor utility; or
2. The utility proposes to place into effect for the customers served by the predecessor utility.

(7)(a) If a new tariff or a revised sheet of an existing tariff states the rates and requirements of the predecessor utility without change, the successor utility shall not be required to provide notice of the filing.

(b) If a new tariff or a revised sheet of an existing tariff changes or amends the rates or requirements of the predecessor utility, the successor utility shall provide notice pursuant to KRS 278.180 and Section 8 of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations, and Statutes. (1) Each utility shall display a suitable placard, in large type, that states that the utility's tariff and the applicable administrative regulations and statutes are available for public inspection.

(2) Each utility shall provide a suitable table or desk in its office or place of business on which it shall make available for public viewing:

(a) A copy of all effective tariffs and supplements establishing its rates, classifications, charges, rules, and requirements, together with forms of contracts and applications applicable to the territory served from that office or place of business;

(b) A copy of all proposed tariff revisions that the utility has filed and are pending before the commission and all documents filed in a commission proceeding initiated to review the proposed tariff revisions;

(c) A copy of KRS Chapter 278; and

(d) A copy of 807 KAR Chapter 5.

(3) The information required in subsection (2) of this section shall be made available in an electronic or nonelectronic format.

Section 13. Special Contracts. Each utility shall file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff.

Section 14. Confidential Materials. A utility may request confidential treatment for materials filed pursuant to this administrative regulation. Requests for confidential treatment shall be made and reviewed in accordance with 807 KAR 5:001, Section 13(3).

Section 15. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Tariff Form-1", July 2013;

(b) "Tariff Form-2", July 2013; and

(c) "Tariff Form-3", Adoption Notice, July 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov.

HISTORY:

8 Ky.R. 797; Am. 1148; eff. 6-2-1982; 11 Ky.R. 69; eff. 8-4-1984; 39 Ky.R. 312; 1032; 1152; eff. 1-4-2013; 40 Ky.R. 447; 812; eff. 10-18-2013; 41 Ky.R. 143; 775; eff. 10-31-2014; Crt eff. 3-27-2019.

Editor's Note: Pursuant to KRS 13A.3102, 807 KAR 5:051 expired on 3-1-2020.

807 KAR 5:013. Management and operation audits.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.040, 278.255
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.255(4) provides that the Public Service Commission (hereinafter referred to as "commission") shall adopt rules and administrative regulations setting forth the scope and application of audits, and procedures for conducting management and operations audits of regulated utilities.

Section 1. Definitions. (1) "Audit" means an examination, inspection, evaluation and investigation of records, administrative regulations, policies, objectives, goals, plans, practices, methods or other criteria utilized by management of a utility to conduct its business, and may include appropriate recommendations for improved management and operation techniques.
(2) "Bidders list" means a list of independent firms which have notified the commission of their interest in performing audits.
(3) "Staff" means commission staff.
(4) "Utility" means a utility as defined by KRS 278.010(3).

Section 2. Procedures for Audits Performed by an Independent Firm. (1) When the commission decides to employ an independent firm to audit a utility, the commission shall issue a request for proposal to all firms on the bidders list.
(2) The request for proposal shall include the objectives and scope of the audit, the proposed role of staff in the audit, proposed contractual arrangements, selection criteria, and items, including testimony, reports, and work papers, to be performed or supplied as part of the audit.
(3) The commission shall evaluate all proposals received. It may select one (1) bidder and enter a contract with the successful bidder and the utility, which shall govern performance of the audit, or it may reject all proposals and reissue the request for proposal.
(4) The auditing firm shall forward all invoices for payment to staff. After review and verification of the invoices, staff shall forward the invoices to the utility which shall pay the auditing firm directly.

Section 3. Minimum Requirements of Audits. The following materials shall be submitted to the utility and the staff when the audit is performed by an independent auditing firm and to the utility when the audit is performed by staff:
(1) Detailed work plans describing the technical procedures for performing the work.
(2) Initial draft report describing preliminary findings and conclusions.
(3) A final draft report including a management summary and recommendations.
(4) A final report including:
(a) A management summary.
(b) An action plan for each recommendation detailing the reason for each recommendation, a proposed improvement baseline, an estimate of monetary savings, or other benefits to be realized from implementing it, and an estimate of implementation costs.
(5) Work papers identifying the source of information upon which each finding is based and any other documentation the staff finds necessary shall be provided with the final report.

Section 4. Opportunity for Comment. The utility may comment in writing within the following times:
(1) Fifteen (15) working days from receipt of the draft request for proposal.
(2) Fifteen (15) working days from receipt of each bidder's proposal including the initial work plan.
(3) Twenty (20) working days from receipt of the preliminary draft report.
(4) Ten (10) working days from receipt of the final draft report.

Section 5. Implementation of Audit Recommendations. (1) The utility shall respond to all action plans and shall adopt, adopt with exception, or reject each recommendation. The response shall include detailed steps by which the utility proposes to implement each recommendation adopted or adopted with exception. The utility shall provide a detailed basis for rejecting any recommendation.

(2) Except for recommendations which staff has agreed are complete, the utility shall file progress reports for each open recommendation every six (6) months for the first two (2) years after the final audit report is issued, and annually thereafter.

Section 6. Deviations from Rules. For good cause shown, the commission may permit deviations from these rules.

(22 Ky.R. 503; eff. 9-25-95; Crt eff. 3-27-2019.)

807 KAR 5:015. Access and attachments to utility poles and facilities.

RELATES TO: KRS Chapter 278, 47 C.F.R. 1.1412, 47 U.S.C. 224(c)
STATUTORY AUTHORITY: KRS 278.030(1), (2), (3), 278.040(2), 278.5464(5), 47 U.S.C. 224(c)(2)(A), 224(c)(3)(A)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) requires the commission to have exclusive jurisdiction over the regulation of rates and service of utilities. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires every utility to provide adequate, efficient, and reasonable service. KRS 278.5464(5) requires the commission to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband. 47 U.S.C. 224(c) requires that state regulation of pole attachments shall only preempt federal regulation of poles under federal jurisdiction if the state regulates the rates, terms, and conditions of access to those poles, has the authority to consider and does consider the interest of the customers of attachers and the pole owning utilities, has effective rules and administrative regulations governing attachments, and addresses complaints regarding pole attachments within 180 days. This administrative regulation establishes the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, establishes specific criteria and procedures for obtaining access to utility poles within the commission's jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law.

Section 1. Definitions.
(1) "Attachment" means any attachment by a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a utility.
(2) "Broadband internet provider":
(a) Means an entity that owns, controls, operates, or manages any facility used or to be used to offer internet service to the public with download speeds of at least twenty-five (25) megabits per second and upload speeds of at least three (3) megabits per second; and
(b) Does not mean a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.
(3) "Communications space" means the lower usable space on a utility pole, which is typically reserved for low-voltage communications equipment.
(4) "Complex make-ready" means any make-ready that is not simple make-ready, such as the replacement of a utility pole; splicing of any communication attachment or relocation of existing wireless attachments, even within the communications space; and any transfers or work relating to the attachment of wireless facilities.
(5) "Existing attacher" means any person or entity with equipment lawfully on a utility pole.
(6) "Governmental unit" means an agency or department of the federal government; a department, agency, or other unit of the Commonwealth of Kentucky; or a county or city, special district, or other political subdivision of the Commonwealth of Kentucky.
(7) "Macro cell facility" means a wireless communications system site that is typically high-power and high-sited, and capable of covering a large physical area, as distinguished from a distributed antenna system, small cell, or WiFi attachment, for example.
(8) "Make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.
(9) "New attacher":
(a) Means a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility; and
(b) Does not mean a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach or a person seeking to attach macro cell facilities.
(10) "Red-tagged pole" means a pole that a utility that owns or controls the pole that:
(a) Is designated for replacement based on the pole's non-compliance with an applicable safety standard;
(b) Is designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment; or
(c) Would have needed to be replaced at the time of replacement even if the new attachment were not made.
(11) "Telecommunications carrier":
(a) Means an entity that owns, controls, operates, or manages any facility used or to be used for or in connection with the transmission or conveyance over wire, in air, or otherwise, any message by telephone or telegraph for the public, for compensation; and

(b) Does not mean a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.

(12) "Simple make-ready" means make-ready in which existing attachments in the communications space of a pole could be rearranged without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

Section 2. Duty to Provide Access to Utility Poles and Facilities.

(1) Except as established in paragraphs (a) through (c) of this subsection, a utility shall provide any cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit, nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(a) A utility may deny access to any pole, duct, conduit, or right-of-way on a non-discriminatory basis if there is insufficient capacity or for reasons of safety, reliability, or generally applicable engineering purposes.

(b) A utility shall not be required to provide access to any pole that is used primarily to support outdoor lighting.

(c) A utility shall not be required to secure any right-of-way, easement, license, franchise, or permit required for the construction or maintenance of attachments or facilities from a third party for or on behalf of a person or entity requesting access pursuant to this administrative regulation to any pole, duct, conduit, or right-of-way owned or controlled by the utility.

(2) A request for access to a utility's poles, ducts, conduits or rights-of-way shall be submitted to a utility in writing, either on paper or electronically, as established by a utility's tariff or a special contract between the utility and person requesting access.

(3) If a utility provides access to its poles, ducts, conduits, or rights-of-way pursuant to an agreement that establishes rates, terms, or conditions for access not contained in its tariff:

(a) The rates, terms, and conditions of the agreement shall be in writing; and

(b) The utility shall file the written agreement with the commission pursuant to 807 KAR 5:011, Section 13.

Section 3. Pole Attachment Tariff Required.

(1) A utility that owns or controls utility poles located in Kentucky shall maintain on file with the commission a tariff that includes rates, terms, and conditions governing pole attachments in Kentucky that are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(2) The tariff may incorporate a standard contract or license for attachments if the tariff's terms and conditions are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(3) Standard contracts or licenses for attachments allowed by subsection (2) of this section, shall prominently indicate that:

(a) The contracts or licenses are based wholly on the utility's tariff; and

(b) The tariff shall control if there is a difference between the tariff and the contract or license.

(4) The tariff may include requirements or provisions, approved by the commission based on compliance with this administrative regulation and KRS Chapter 278, if the requirements or provisions are fair, just, and reasonable For example, requirements may include certain limitations on liability, indemnification and insurance requirements, and restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.

(5) (a) The tariff shall include the URL for a utility-maintained website; and

(b) The website shall include:

1. A form created by the utility that a new attacher shall submit to the utility that shall require a new attacher to:

a. Designate appropriate personnel responsible for overseeing all attachments with the utility; and

b. Identify appropriate personnel associated with each application, who shall be responsible for coordinating with the utility and ensuring that attachment-related issues are addressed in a timely manner;

2. Pole attachment information, including the identity and contact information for contractors approved in accordance with Section 5 of this administrative regulation, to conduct surveys and make-ready self-help;

3. Construction standards for attachments; and

4. The identity and contact information for:

a. The primary utility personnel responsible for invoicing, payment, make-ready work, and escalation of disputes; and

b. The alternate utility personnel responsible for invoicing, payment, make-ready work, and escalation of disputes if the primary personnel are unavailable.

(6) Overlashing.

(a) A utility shall not require prior approval for:

1. An existing attacher that overlashes its existing wires on a pole; or

2. A third party overlashing of an existing attachment that is conducted with the permission of an existing attacher.

(b) 1. A utility shall not prevent an attacher from overlashing because another existing attacher has not resolved a preexisting violation.

2. A utility shall not require an existing attacher that overlashes its existing wires on a pole to resolve preexisting violations caused by another existing attacher, unless failing to resolve the preexisting violation would create a capacity, safety, reliability, or engineering issue.

(c) 1. A utility shall not require more than thirty (30) days' advance notice of planned overlashing.

2. If a utility requires advance notice for overlashing, then the utility shall include the notice requirement in its tariff or include the notice requirement in the attachment agreement with the existing attacher.

3. If, after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, the utility shall provide specific documentation of the issue to the party seeking to overlash within the thirty (30) day advance notice period, and the party seeking to overlash shall address any identified issues before continuing with the overlash either by modifying the party's proposal or by explaining why, in the party's view, a modification is unnecessary.

(d) 1. A party that engages in overlashing shall be responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices.

2. If damage to a pole or other existing attachment results from overlashing or overlashing work causes safety or engineering standard violations, then the overlashing party shall be responsible at its expense for any necessary repairs.

(e) An overlashing party shall notify the affected utility within fifteen (15) days of completion of the overlash on a particular pole.

1. The notice shall provide the affected utility at least ninety (90) days from receipt in which to inspect the overlash.

2. The utility shall have fourteen (14) days after completion of its inspection to notify the overlashing party of any damage or code violations to the utility's equipment caused by the overlash.

3. If the utility discovers damage or code violations caused by the overlash on equipment belonging to the utility, then the utility shall inform the overlashing party and provide adequate documentation of the damage or code violations.

4. The utility shall either:

a. Complete any necessary remedial work and bill the overlashing party for the reasonable costs related to resolving the damage or code violations; or

b. Require the overlashing party to resolve the damage or code violations at the overlashing party's expense within fourteen (14) days following notice from the utility.

(7) Signed standard contracts or licenses for attachments allowed by subsection (2) of this section shall be submitted to the commission but shall not be filed pursuant to 807 KAR 5:011, Section 13.

(8) Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than December 3, 2025, shall be filed by November 3, 2025.

Section 4. Procedure for New Attachers to Request Utility Pole Attachments.

(1) All time limits established in this section shall be calculated according to 807 KAR 5:001, Section 4(7).

(2) Application review and survey.

(a) Application completeness.

1. A new attacher shall, prior to submitting a pole attachment application to a utility:

a. Review the application for completeness; and

b. Submit the information required by Section 3(5).

2. A utility shall review a new attacher's pole attachment application for completeness before reviewing the application on the application's merits and shall notify the new attacher if the application is incomplete within the time established in subparagraph 8. of this paragraph after receipt of the new attacher's pole attachment application.

3. A new attacher's pole attachment application shall be considered complete if the application provides the utility with the information necessary under the utility's procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to begin to survey the affected poles.

4. If the utility notifies a new attacher that its attachment application is not complete, then the utility shall state all reasons for finding it incomplete.

5. A utility shall not require a new attacher to submit a survey or pole loading analysis as a filing requirement for an application.

6. A new attacher may submit a survey with an application of 500 poles or less, which the utility shall accept if the new attacher used an approved contractor, as established in Section 5 of this administrative regulation, listed on the utility's website and the survey was conducted no later than thirty (30) days prior to submission. A utility shall conduct the survey for applications exceeding 500 poles.

7. If a utility rejects an application, the rejection shall state the reason for the denial and shall include specific citations to this administrative regulation and the utility's tariff that form the basis of the rejection.

8. A utility shall complete a review of an application of 500 poles or less within ten (10) business days after receipt of the application. A utility shall have an additional one (1) business day to complete its review for each additional 500-pole increment in an application.

9. A new attacher, if it submits an application while a previous application is still under review, may prioritize the order in which a utility shall review the applications. Prioritizing a new application resets the respective review time period of the new attacher's deprioritized applications currently under review and over which the new application is being prioritized.

10. a. Any resubmitted application need only address the utility's reasons for finding the original application incomplete and shall be deemed complete within ten (10) business days after the application's resubmission, unless the utility states which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons.

b. The new attacher may follow the resubmission procedure as many times as the new attacher chooses if in each case the new attacher makes a good faith attempt to correct the reasons identified by the utility.

c. The deadline established in this paragraph shall apply to the utility's review.

11. If the utility does not respond within the time established in subparagraph 8. of this paragraph after receipt of the application, or if the utility rejects the application as incomplete but fails to state any reasons in the utility's response, then the application shall be deemed complete and the time for the utility's next procedural step begins to run.

(b) Survey and application review on the merits.

1. A utility shall complete a survey of poles for which access has been requested within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within 120 days in the case of larger orders as established in subsection (8) of this section) for the purpose of determining if the attachments may be made and identifying any make-ready to be completed to allow for the attachment.

2. Participation of attachers in surveys conducted by a utility.

a. A utility shall allow the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of a utility's survey conducted pursuant paragraph (b)1. Of this subsection.

b. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than five (5) business days of any field inspection as part of the survey and shall provide the date, time, and location of the inspection, and name of the contractor, if any, performing the inspection.

3. If a new attacher has conducted a survey pursuant to subsection (10)(b) of this section, or a new attacher has otherwise conducted and provided a survey, after giving existing attachers notice and an opportunity to participate in a manner consistent with subsection (10)(b) of this section, a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachers of the intent to use the survey conducted by the new attacher and by providing a copy of the survey to the affected attachers within the time period established in subparagraph 1. of this paragraph.

4. Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attacher either by granting access or denying access within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within 120 days in the case of larger orders as established in subsection (8) of this section).

5. A utility's denial of a new attacher's pole attachment application shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how the evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

6. Payment of survey costs and estimates.

a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness before a utility shall be obligated to conduct surveys pursuant to this section.

b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per-pole estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.

c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's pole attachment application even if the new attacher decides not to go forward with the attachments.

(3) Payment of make-ready estimates.

(a) Within fourteen (14) days of providing a response granting access pursuant to subsection (2)(b)4. of this section, a utility shall send a new attacher whose application for access has been granted a detailed, itemized estimate in writing, on a pole-by-pole basis, if requested, reasonably calculable, and consistent with subsection (7)(b) of this section, of charges to perform all necessary make-ready.

(b) A utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate.

(c) A utility may withdraw an outstanding estimate of charges to perform make-ready beginning fourteen (14) days after the estimate is presented.

(d) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except a new attacher shall not accept the estimate after the estimate is withdrawn.

(e) Invoices for estimates shall clearly identify the application or project for which payment is requested.

(f) Payment for the estimate shall clearly identify the application or project for which payment is made.

(4) Make-ready. Upon receipt of payment for survey costs owed to-date pursuant to the utility's tariff and the make-ready estimate established in subsection (3)(d) of this section, a utility shall, as soon as practical but in no case more than seven (7) days, notify all known entities with existing attachments in writing that could be affected by the make-ready.

(a) For make-ready in the communications space, the notice shall:

1. State where and what make-ready will be performed;

2. State a date for completion of make-ready in the communications space that is no later than forty-five (45) days after notification is sent (or up to 120 days in the case of larger orders as established in subsection (8) of this section);

3. State that any entity with an existing attachment may modify the attachment. Modification shall be consistent with the specified make-ready before the date established for completion;

4. State that, if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph, the new attacher may complete the make-ready, which shall be completed as established in subparagraph 1. of this paragraph; and

5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(b) For make-ready above the communications space, the notice shall:

1. State where and what make-ready will be performed;

2. State a date for completion of make-ready that is no later than ninety (90) days after notification is sent (or 165 days in the case of larger orders, as established in subsection (8) of this section).

3. State that any entity with an existing attachment may modify the attachment. Modification shall be consistent with the specified make-ready before the date established for completion;

4. State that the utility may assert the utility's right to up to fifteen (15) additional days to complete make-ready;

5. State that if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later), the new attacher may complete the make-ready, which shall be completed as established pursuant to subparagraph 1. of this paragraph; and

6. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(c) Once a utility provides the notices required by this subsection, the utility shall provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage completion of make-ready by the dates established by the utility pursuant to paragraph (a)2. of this subsection for communications space attachments or paragraph (b)2. of this subsection for attachments above the communications space.

(5) A utility shall complete its make-ready in the communications space by the same dates established for existing attachers in subsection (4)(a)2. of this section or its make-ready above the communications space by the same dates for existing attachers in subsection (4)(b)2. of this section (or if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later).

(6) An attacher shall, within fifteen (15) business days following completion of all attachments within an application, provide written notice to a utility in the manner and form stated in the utility's tariff.

(7) Final invoice.

(a) Within a reasonable period, not to exceed 120 days after a utility completes the utility's make-ready, the utility shall provide the new attacher:

1. A detailed, itemized final invoice of the actual survey charges incurred if the final survey costs for an application differ from the amount previously paid; and

2. A detailed, itemized final invoice, on a pole-by-pole basis if requested and reasonably calculable, of the actual make ready costs to accommodate attachments if the final make-ready costs differ from the estimate provided pursuant to subsection (3)(d) of this section.

(b) Limitations on make ready costs.

1. A utility shall not charge a new attacher, as part of any invoice for make-ready, to bring poles, attachments, or third-party or utility equipment into compliance with current published safety, reliability, or pole owner construction standards if the poles, attachments, or third-party or utility equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

2. A utility shall not charge a new attacher, as part of any invoice for make ready, the cost to replace any red-tagged pole with a replacement pole of the same type and height.

3. If a red-tagged pole is replaced with a pole of a different type or height, then the new attacher shall be responsible, as part of any invoice for make ready, only for the difference, if any, between the cost for the replacement pole and the cost for a new utility pole of the type and height that the utility would have installed in the same location in the absence of the new attachment.

4. The make ready cost, if any, for a pole that is not a red-tagged pole to be replaced with a new utility pole to accommodate the new attacher's attachment shall be charged in accordance with the utility's tariff or a special contract regarding pole attachments between the utility and the new attacher.

(8) For the purposes of compliance with the time periods in this section:

(a) A utility shall apply the timeline as established in subsections (2) through (4) of this section to all requests for attachment up to the lesser of 500 poles or zero and .75 percent of the utility's poles in the state;

(b) A utility may, for every 500-pole increment, add up to fifteen (15) days to the survey period established in subsection (4) of this section to larger orders up to the lesser of 3,000 poles or three (3) percent of the utility's poles in Kentucky;

(c) A utility may, for every 500-pole increment, add up to fifteen (15) days to the make-ready periods established in subsection (4) of this section to larger orders up to the lesser of 3,000 poles or three (3) percent of the utility's poles in Kentucky;

(d) A utility and a new attacher, unless the utility owns or controls fewer than 500 poles, shall negotiate a special contract in good faith, which shall include all requests for attachment larger than the lesser of 3,000 poles or three (3) percent of the utility's poles in Kentucky. The special contract, at a minimum, shall contain:

1. An agreement for a prepaid account from the new attacher to cover the cost of the request;

2. Direction from the new attacher regarding make ready work that the utility may complete without further direction from the new attacher including;

a. The maximum cost per pole; and

b. The total cost for make ready work for each project or line of each project;

3. The new attacher's prioritization of projects if the new attacher has submitted multiple requests for attachment;

4. Contact information, including phone numbers and email addresses, for all necessary utility and new attacher personnel;

5. The cadence, location, and necessary personnel for each project; and

6. The timing of surveys and make ready;

(e) If a special contract established in paragraph (d) of this subsection cannot be agreed to within fifteen (15) business days from submission of a formal written request to engage from the attacher, the new attacher may file a complaint with the commission, with a copy that the new attacher shall serve contemporaneously to the utility, on which the commission shall rule within twenty (20) business days of filing of the complaint;

(f) For the calculation of any deadlines in this regulation a utility may treat multiple applications from a single new attacher as one (1) application if the applications are submitted within thirty (30) days of one another;

(g) As soon as reasonably practicable, but no less than ninety (90) days before the new attacher expects to submit an application in which the number of requests exceed the lesser of the amounts identified in paragraph (a) of this subsection, a new attacher shall provide written notice to a utility in the manner and form stated in the utility's tariff that the new attacher expects to submit a request; and

(h) As soon as reasonably practicable, a utility shall provide written notice to an attacher if the utility determines it will be unable to meet survey or other make-ready deadlines. The notice shall entitle an attacher to immediately proceed with self-help remedies in accordance with subsection (10) of this section.

(9) Deviations from make-ready timeline.

(a) A utility may deviate from the time limits established in this section before offering an estimate of charges if the new attacher failed to satisfy a condition in the utility's tariff or in a special contract between the utility and the new attacher.

(b) A utility may deviate from the time limits established in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits

established in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits established in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination once the utility returns to routine operations.

(c) An existing attacher may deviate from the time limits established in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits established in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which shall not extend beyond sixty (60) days from the completion date provided in the notice established in subsection (4) of this section as sent by the utility (or up to 105 days in the case of larger orders established in subsection (8)(b) and (c) of this section). The existing attacher shall not deviate from the time limits established in this section for a period for longer than necessary to complete make-ready on the affected poles.

(10) Self-help remedy.

(a) Surveys. If a utility fails to complete a survey as established in subsection (2)(b) of this section or if a utility waives its right to perform the survey in writing, then a new attacher may conduct the survey in place of the utility by hiring a contractor to complete a survey, which shall be completed as established in Section 5 of this administrative regulation.

1. A new attacher shall allow the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey the attacher conducts.

3. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(b) Make-ready. If make-ready is not complete by the applicable date established in subsection (4) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers by hiring a contractor to complete the make-ready, which shall be completed as established in Section 5 of this administrative regulation. The make-ready shall be performed in compliance with this administrative regulation, the utility's tariff, and the construction standards listed on the utility's website. Make-ready work performed by the new attacher within the electric space shall be conducted by an approved contractor, as established in Section 5 of this administrative regulation, listed on the utility's website.

1. A new attacher shall allow the affected utility and existing attachers to be present for any make-ready.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than seven (7) days of the impending make-ready.

3. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(c) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

(d) Pole replacements. Self-help shall not be available for pole replacements.

(11) One-touch make-ready option. For attachments involving simple make-ready, new attachers may elect to proceed with the process established in this subsection in lieu of the attachment process established in subsections (2) through (6) and (9) of this section.

(a) Attachment application.

1. A new attacher electing the one-touch make-ready process shall elect the one-touch make-ready process in writing in its attachment application and shall identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines if the make-ready requested in an attachment application is simple.

2. Application completeness.

a. The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within ten (10) business days after receipt of the new attachers attachment application whether or not the application is complete.

b. An attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to make an informed decision on the application.

c. If the utility notifies the new attacher that an attachment application is not complete, then the utility shall state all reasons for finding the application incomplete.

d. If the utility fails to notify a new attacher in writing that an application is incomplete within ten (10) business days of receipt, then the application shall be deemed complete.

3. Application review on the merits. The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within fifteen (15) days of the utility's receipt of a complete application (or within thirty (30) days in the case of larger orders as established in subsection (8)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in subsection (8)(d) of this section).

a. If the utility denies the application on its merits, then the utility's decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how the evidence and information relate to a denial of access.

b. Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as established in subsection (8)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in subsection (8)(d) of this section), a utility or an existing attacher may object to the designation by the new attacher's contractor that certain make-ready is simple.

c. An objection made pursuant to clause b. of this subparagraph shall be specific and in writing, include all relevant evidence and information supporting the objection, be made in good faith, and explain how the evidence and information relate to a determination that the make-ready is not simple.

d. If the utility's or the existing attacher's objection to the new attacher's determination that make-ready is simple complies with clause c. of this subparagraph, then the make-ready shall be deemed to be complex and the new attacher shall not proceed with the affected proposed one-touch make-ready.

(b) Surveys.

1. The new attacher shall be responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as established in Section 5(2) of this administrative regulation to complete surveys.

2. The new attacher shall allow the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys.

3. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey and shall provide the date, time, location of the surveys, and name of the contractor performing the surveys.

(c) Make-ready. If the new attacher's attachment application complies with this administrative regulation and the pole owner's tariff, is approved by the pole owner, and if the new attacher has provided at least fifteen (15) days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready. The new attacher shall use a contractor in the manner established for simple make-ready in Section 5(2) of this administrative regulation.

1. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

2. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

3. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then all make-ready on the impacted poles shall be halted and the determining party shall provide immediate notice to the other party of its determination and the impacted poles. All remaining make-ready on the impacted poles shall then be governed by subsections (2) through (9) of this section, and the utility shall provide the notices and estimates required by subsections (2)(a), (3), and (4) of this section as soon as reasonably practicable.

(d) Post-make-ready timeline. A new attacher shall notify the affected utility and existing attachers within fifteen (15) days after completion of make-ready on a one-touch make ready application.

Section 5. Contractors for Survey and Make-ready.

(1) Contractors for self-help complex and above the communications space make-ready. A utility shall make available and keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on the utility's poles. The new attacher shall use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(2) Contractors for surveys and simple work. A utility may keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform surveys and simple make-ready. If a utility provides this list, then the new attacher shall choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(a) 1. If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that shall meet the requirements in subsection (3) of this section.

2. If choosing a contractor that is not on a utility-provided list, the new attacher shall certify to the utility that the attacher's contractor meets the minimum qualifications established in subsection (3) of this section upon providing notices required by Section 4(10)(a)2., (10)(b)2.,(b)3., and (10)(c) of this administrative regulation.

(b) 1. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but a disqualification shall be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications established in subsection (3) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards.

2. The utility shall provide notice of the utility's objection to the contractor within the notice periods established by the new attacher in Section 4(10)(a)2., (10)(b)2.,(b)3., and (10)(c) of this administrative regulation and in the utility's objection shall identify at least one (1) available qualified contractor.

(3) Contractor minimum qualification requirements. Each utility shall ensure that contractors on a utility-provided list, and new attachers shall ensure that contractors selected pursuant to subsection (2)(a) of this section, meet the minimum requirements established in paragraphs (a) through (e) of this subsection.

(a) The contractor shall agree to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines, incorporated by reference in 807 KAR 5:041.

(b) The contractor shall acknowledge that the contractor knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility.

(c) The contractor shall agree to comply with all local, state, and federal laws and regulations including the rules established in 47 C.F.R. 1.1412 regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules.

(d) The contractor shall agree to meet or exceed any uniformly applied and reasonable safety and reliability thresholds established by the utility, if made available.

(e) The contractor shall be adequately insured or shall establish an adequate performance bond for the make-ready the contractor will perform, including work the contractor will perform on facilities owned by existing attachers.

(4) A consulting representative of a utility may make final determinations, on a nondiscriminatory basis, if there is insufficient capacity and for reasons of safety, reliability, or generally applicable engineering purposes.

Section 6. Notice of Changes to Existing Attachers.

(1) Unless otherwise established in a joint use agreement or special contract, a utility shall provide an existing attacher no less than sixty (60) days written notice prior to:

(a) Removal of facilities or termination of any service to those facilities if that removal or termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any special contract regarding pole attachments between the utility and the attacher; or

(b) Any modification of facilities by the utility other than make-ready noticed pursuant to Section 4 of this administrative regulation, routine maintenance, or modifications in response to emergencies.

(2) Stays from removals, terminations, and modifications noticed pursuant to subsection (1) of this section.

(a) An existing attacher may request a stay of the action contained in a notice received pursuant to subsection (1) of this section. A motion for a stay of action shall be submitted by filing a motion pursuant to 807 KAR 5:001, Section 4 within fifteen (15) days of the receipt of the first notice provided pursuant to subsection (1) of this section.

(b) The motion shall be served on the utility that provided the notice pursuant to 807 KAR 5:001, Section 5(1).

(c) The motion shall not be considered unless it includes the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television system operator or telecommunication service, a copy of the notice, and a certification that service was provided pursuant to paragraph (b) of this subsection.

(d) The utility may file a response, which shall be submitted within ten (10) days of the date the motion for a temporary stay was filed.

(e) Further filings under this subsection shall not be considered unless requested or authorized by the commission as necessary to develop the record.

(3) Transfer of attachments to new poles.

(a) Unless an applicable tariff, special contract, or Section 4 of this administrative regulation establishes a different timeframe, existing attachers shall transfer their attachments within sixty (60) days of receiving written notice from the utility pole owner.

(b) Existing attachers may deviate from the time limit established in paragraph (a) of this subsection for good and sufficient cause that renders it infeasible for the existing attacher to complete the transfer within the time limit established. An existing attacher that requires a deviation shall immediately notify, in writing, the utility and shall identify the affected poles and include a detailed explanation of the reason for the deviation and the date by which the attacher shall complete the transfer. An existing attacher shall deviate from the time limits established in paragraph (a) of this subsection for a period no longer than is necessary to complete the transfer.

(c) If an existing attacher fails to transfer its attachments within the timeframe established in paragraph (a) of this subsection and the existing attacher has not notified the utility of good and sufficient cause for extending the time limit pursuant to paragraph (a) of this subsection, a utility pole owner may transfer attachments and the transfer shall be at the existing attacher's expense.

(d) A utility pole owner may transfer an existing attacher's attachment prior to the expiration of any period established by paragraph (a) or (b) of this subsection if an expedited transfer is necessary for safety or reliability purposes.

Section 7. Complaints for Violations of This Administrative Regulation.

(1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a violation is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged violation; and

(d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) Filing procedure.

(a) Complaints shall be filed in accordance with the electronic filing procedures in 807 KAR 5:001, Section 8.

(b) The complainant shall serve a copy of the complaint on the defendant at the same time as the complainant files the complaint with the commission.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if the complaint establishes a prima facie case and complies with this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not comply with this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a stated time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and complies with this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of, and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order. The commission may require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, the defendant shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, pursuant to KRS Chapter 278 and this administrative regulation, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time stated in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

(7) Burden of proof.

(a) The complainant shall have the burden of establishing that the complainant is entitled to the relief sought.

(b) A pole replaced to accommodate a new attachment shall be considered a red-tagged pole if:

1. a. There is a dispute regarding the condition of the pole at the time it was replaced; and

b. The utility failed to document and maintain records that:

(i) Inspections were conducted pursuant to 807 KAR 5:006; and

(ii) Deficiencies were not found on the pole or poles at issue, or;

2. Inspections of poles are not required pursuant to 807 KAR 5:006 and the utility failed to periodically inspect and document the condition of the utility's poles.

(8) Time for final action.

(a) The commission shall take final action on a complaint regarding the rates, terms, or conditions for access to a utility's pole, duct, conduit, or right-of-way within sixty (60) days of a complaint establishing a prima facie case being filed, unless the commission finds it is necessary to continue the proceeding for good cause for up to 180 days from the date the complaint establishing a prima facie case is filed.

(b) The period within which final action shall be taken may be extended beyond 180 days by order of the commission upon agreement of the complainant and defendant.

HISTORY:

47 Ky.R. 2778; 48 Ky.R. 1181, 1555; eff. 2-1-2022; 51 Ky.R. 1813; 52 Ky.R. 392; eff. 9-18-2025.

807 KAR 5:016. Advertising.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.040, 278.190(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.190(3) provides that at any hearing involving a rate or charge of a utility for which an increase is sought, the burden of proof shall be on the utility to show that the increased charge or rate is just and reasonable. This administrative regulation specifies what advertising expenses of a utility will be allowable as a cost to the utility for rate-making purposes.

Section 1. General. The purpose of this administrative regulation is to insure that no direct or indirect expenditures may be includable in a gas or electric utility's cost of service for rate-making purposes which are for promotional advertising, political advertising or institutional advertising. It is also the purpose of the administrative regulation to insure that no direct or indirect expenditures may be includable in a telephone, water, or sewage utility's cost of service for rate-making purposes which are for political advertising or institutional advertising. "Advertising" means the commercial use of any media, including newspaper, printed matter, radio and television, in order to transmit a message to a substantial number of members of the public or to utility consumers.

Section 2. Advertising Allowed. (1) No advertising expenditure of a utility shall be taken into consideration by the commission for the purpose of establishing rates unless such advertising will produce a material benefit for the ratepayers.
(2) As used in this administrative regulation, advertising expenditures shall include costs of advertising directly incurred by the public utility and those costs of advertising incurred by contribution to third parties, including parent and affiliated companies.

Section 3. Material Benefit. (1) Advertising expenditures by gas or electric utilities which produce a "material benefit" include, but are not limited to the following:
(a) Advertising limited exclusively to demonstration of means for ratepayers to reduce their bills or conserve energy;
(b) Advertising conveying safety information in the direct use of utility equipment;
(c) Advertising which furnishes factual and objective data programs to educational institutions on the subject of energy technology;
(d) Advertising providing information to the public regarding potential safety hazards associated with construction or a utility's maintenance program;
(e) Legal advertising notices to ratepayers required by statute, rule or order of the commission;
(f) Advertising which explains a utility's proposed or existing rate structure, its energy-related problems and its public programs and activities, provided such reference includes a description of how a consumer benefits from or is affected by same.
(2) Advertising expenditures by telephone, water, or sewage utilities which produce a "material benefit" include, but are not limited to the following:
(a) Advertising limited exclusively to demonstration of means for ratepayers to reduce their bills or conserve energy;
(b) Advertising promoting competitive or other services which would have the effect of holding down the cost of providing basic service;
(c) Advertising conveying safety information in the direct use of utility equipment;
(d) Advertising promoting off-peak usage of existing facilities;
(e) Advertising which explains the use, cost, applicability or availability of new or existing utility equipment and other utility services where energy consumption would either be reduced or not materially increased;
(f) Advertising which furnishes factual and objective data programs to educational institutions on the subject of water, sewer or communications technology;
(g) Advertising providing information to the public regarding potential safety hazards associated with construction or a utility's maintenance program;
(h) Legal advertising notices to ratepayers required by statute, rule or order of the commission.

Section 4. Advertising Disallowed. (1) Advertising expenditures for political, promotional, and institutional advertising by electric or gas utilities shall not be considered as producing a material benefit to the ratepayers and, as such, those expenditures are expressly disallowed for rate-making purposes.

(a) “Political advertising” means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(b) “Promotional advertising” means any advertising for the purpose of encouraging any person to select or use the service or additional service of an energy utility, or the selection or installation of any appliance or equipment designed to use such utility’s service.

(c) “Institutional advertising” means advertising which has as its sole objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public, investors, and potential employees.

(d) The terms “political advertising,” “promotional advertising,” and “institutional advertising” do not include:

1. Advertising which informs utility customers how they can conserve energy;
2. Advertising required by law or administrative regulation;
3. Advertising regarding service interruption, safety measures, or emergency conditions;
4. Advertising concerning current employment opportunities;
5. Advertising which promotes the use of energy efficient appliances, equipment, or services.

(2) Advertising expenditures for political and institutional advertising by telephone, water, or sewage utilities shall not be considered as producing a material benefit to the ratepayers and, as such, these expenditures are expressly disallowed for rate-making purposes.

(a) “Political advertising” means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(b) “Institutional advertising” means advertising which has as its primary objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public, investors, and potential employees.

(c) The terms “political advertising” and “institutional advertising” do not include:

1. Advertising which informs utility customers how they can conserve energy;
2. Advertising required by law or administrative regulation;
3. Advertising regarding service interruption, safety measures, or emergency conditions;
4. Advertising concerning current employment opportunities;
5. Advertising which promotes the use of energy efficient appliances, equipment, or services.

Section 5. Burden of Proof. The utility shall have the burden of proving that any advertising cost or expenditures proposed for inclusion in its operating expenses for rate-making purposes within a given test year fall within the categories enumerated in Section 3 of this administrative regulation or that such advertising is otherwise of material benefit to its ratepayers.

HISTORY:

8 Ky.R. 802; eff. 4-7-82; Crt eff. 3-27-2019.

807 KAR 5:022. Gas service.

RELATES TO: KRS 278.485
STATUTORY AUTHORITY: KRS 278.040(3), 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the Public Service Commission to adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278 and to investigate methods and practices of utilities subject to commission jurisdiction. KRS 278.280(2) requires the commission to prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation establishes general rules which apply to gas utilities.

Section 1. Definitions.
(1) "British thermal unit (BTU)" means quantity of heat that is required to be added to one (1) pound of pure water to raise its temperature from fifty-eight and one-half (58.5) degrees Fahrenheit to fifty-nine and one-half (59.5) degrees Fahrenheit at the absolute pressure of a column of pure mercury thirty (30) inches high at thirty-two (32) degrees Fahrenheit under standard gravity (32.174 ft. per sec-sec).
(2) "Commission" means the Public Service Commission.
(3) "Cubic foot of gas" means the following:
(a) If gas is supplied and metered to customers at standard distribution pressure, a cubic foot of gas means that volume of gas which, at the temperature and pressure existing in the meter, occupies one (1) cubic foot.
(b) If gas is supplied to customers through turbine, orifice, or positive displacement meters at other than standard distribution pressure, a cubic foot of gas means that volume of gas which, at sixty (60) degrees Fahrenheit and at absolute pressure of 14.73 pounds per square inch, (thirty (30) inches of mercury), occupies one (1) cubic foot; except if different bases that are considered by the commission to be fair and reasonable are provided for in gas sales contracts or in rules or practices of a utility, these different bases shall be effective.
(c) The standard cubic foot of gas for testing the gas itself for heating value means the volume of gas that occupies one (1) cubic foot if:
1. Saturated with water vapor and at temperature of sixty (60) degrees Fahrenheit; and
2. Under pressure equivalent to that of thirty (30) inches of mercury (mercury at thirty-two (32) degrees Fahrenheit and under standard gravity) occupies one (1) cubic foot.
(4) "Meter" means any device used to measure the quantity of gas delivered by utility to a customer.
(5) "Service line" means a distribution line that:
(a) Transports gas from a common source of supply to:
1. An individual customer;
2. Two (2) adjacent or adjoining residential or small commercial customers; or
3. Multiple residential or small commercial customers served through a meter header or manifold; and
(b) Ends at the:
1. Outlet of the customer meter or connection to a customer's piping, whichever is farther downstream; or
2. Connection to a customer's piping if there is no customer meter.
(6) "State" means Commonwealth of Kentucky.
(7) "Transmission line" means a pipeline, other than a gathering line that:
(a) Transports gas from a gathering line or storage facility to a distribution center, storage facility or large volume customer that is not down-stream from a distribution center;
(b) Operates at a hoop stress of twenty (20) percent or more of SMYS; or
(c) Transports gas within a storage field.

Section 2. Minimum Service Standards for Natural Gas Utilities Operating under the Jurisdiction of the Commission. (1) Utilities serving customers under KRS 278.485 or other retail customers, under the jurisdiction of the commission, directly from transmission or gathering lines shall be exempt from the following sections of this administrative regulation insofar as they apply to these customers:
(a) Section 4;
(b) Section 5; and

(c) Section 6.

(2) Outage.

(a) Each utility shall make all reasonable efforts to prevent interruptions of service and if interruptions occur, shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its consumers and the general public. Planned interruptions shall always be preceded by adequate notice to all affected customers.

(b) At the earliest practicable moment following discovery, each utility shall give notice to the commission of an outage that results in the loss of service to forty (40) or more customers for four (4) or more hours. Each notice shall be made by electronic mail to Pipeline.Safety@ky.gov and shall include:

1. Name of utility, person making the report, and contact telephone number;
2. Location of outage;
3. Time of outage; and
4. All other significant facts known by the utility that are relevant to the cause of the outage or extent of damage.

(c) Each notice made in accordance with this subsection shall be supplemented by a written report within thirty (30) days giving full details such as cause of the outage; number of customers affected by the outage; time when all service was restored; and steps, if any, taken to prevent reoccurrence.

Section 3. Minimum requirements for measurement of gas, accuracy of measuring meters, meter testing facilities and periodic testing of meters. (1) Method of measuring service.

(a) All gas sold by a utility and all gas consumed by a utility in the State of Kentucky shall be metered through meters that comply with this section except in cases of emergency or when otherwise authorized by the commission in accordance with Section 8 of this administrative regulation. Each meter shall bear an identifying number. If gas is sold at high pressures or large volumes, the contract or rate schedule shall specify standards used to calculate gas volume. Prepayment meters shall not be used unless there is no other satisfactory method of collecting payment for services rendered.

(b) All gas delivered as compensation for leases, rights-of-way, or for other reasons, not charged at the utility's regular schedule of charges, shall be metered and a record shall be kept of each transaction. All meters and regulators installed to measure gas and to regulate pressure of gas shall be under the control of the utility and subject to the rules of the utility and 807 KAR Chapter 5.

(c) The utility shall make no charge for furnishing and installing any meter or appurtenance necessary to measure gas furnished, except as approved by the commission in accordance with Section 8 of this administrative regulation or if duplicate or check meters are requested by the customer.

(d) Each gas utility shall adopt a standard method of meter and service line installation, if practicable. These methods shall be set out with a written description and with drawings as necessary for clear understanding of the requirements, all of which shall be filed with the commission. Copies of these standard methods shall be made available to prospective customers, contractors, or others engaged in installing pipe for gas utilization. All meters shall be set in place by the utility.

(e) Each customer shall be metered separately except in cases of multioccupants under the same roof sharing a common entrance or an enclosure where it is unreasonable or uneconomical to measure each unit separately.

(f) The utility may render temporary service to a customer and may require the customer to bear all costs of installing and removing service in excess of any salvage realized. In this respect, temporary service shall be considered to be service that is not required or used for more than one (1) year.

(2) Accuracy requirements for meters. All tests to determine accuracy of registration of any gas meters shall be made by a meter tester certified in accordance with 807 KAR 5:006, Section 17, and with facilities that meet the requirements of subsection (3) of this section.

(a) Diaphragm displacement meters:

1. Before being installed for use by any customer, every diaphragm displacement gas meter, whether new, repaired, or removed from service for any cause shall be in good working condition and shall be adjusted to be correct to within one-half (1/2) of one (1) percent, plus or minus when passing gas at approximately twenty (20) percent and 100 percent of the rated capacity of the meter as specified by the manufacturer based on five-tenths (0.5) inch water column differential. A pilot test or quartering test to determine that the meter will register at one-half (1/2) of one (1) percent of the rated capacity shall be made before placing meters in service.

2. Meters removed from service for periodic testing shall be tested for accuracy as soon as practical after removal. An "as found" test shall be made at a flow-rate of approximately twenty (20) percent and

100 percent of the rated capacity of the meter based on five-tenths (0.5) inch water column differential and results of these tests algebraically averaged to determine accuracy. If error is less than two (2) percent, this shall be reported as the “as found” test. If error is more than two (2) percent, two (2) additional tests shall be made at twenty (20) percent and 100 percent, and the average of these three (3) tests shall be reported as the “as found” test. The three (3) test procedures shall apply to any customer request test, complaint test, or bill adjustment made on the basis of the meter.

3. Meters of good working condition that are removed from service for reasons other than periodic, customer, or commission request tests shall be tested as soon as practicable after removal if elapsed time since the last test exceeds fifty (50) percent of the periodic test period for those meters.

(b) Other than diaphragm displacement meters.

1. All meters other than diaphragm displacement meters shall be tested at the intervals required by subsection (4) of this section by the utility meter tester using flow provers or methods approved in accordance with the requirements of this section either in the shop or at the location of use at the utility’s option and with facilities that meet the requirements of subsection (3) of this section. Accuracy of these meters shall be maintained as near 100 percent as possible. Test ranges and procedures shall be as prescribed in subsection (3) of this section.

2. All meter installations shall be inspected for proper design and construction and all instruments, regulators, and valves used in conjunction with installation shall be tested for desired operation and accuracy before being placed in service. This inspection shall be made by a qualified person. Test data as to conditions found, corrected if in error, and conditions as left shall be made available for inspection by commission staff. Subsequent test results shall be a portion of regular meter test reports submitted to the commission by the utility.

(3) Meter testing facilities and equipment.

(a) Meter shop.

1. Each utility shall maintain a meter shop to inspect, test, and repair meters. The shop shall be open for inspection by commission staff at all reasonable times.

2. The meter shop shall consist of a repair room or shop proper and a proving room. The proving room shall be designed so that meters and meter testing apparatus are protected from excessive changes in temperature and other disturbing factors, such as humidity and dust. The proving room or the entire meter shop shall be air conditioned, if necessary, to achieve temperature control required by subparagraph (3) of this paragraph.

3. The proving room shall be well lighted and preferably not on an outside wall of the building. Temperatures within the proving room shall not vary more than two (2) degrees Fahrenheit per hour nor more than five (5) degrees Fahrenheit over a twenty-four (24) hour period.

(b) Working standards.

1. Each utility shall own and make proper provision to operate at least one (1) approved belltype meter prover, preferably of ten (10) cubic feet capacity, but not less than five (5) cubic feet capacity. The prover shall be equipped with suitable thermometers and other necessary accessories. This equipment shall be maintained in proper condition and adjustment so that it shall be capable of determining the accuracy of any service meter, practical to test by it, to within one-half (1/2) of one (1) percent plus or minus.

2. The prover shall be accurate to within three-tenths (0.3) of one (1) percent at each point used in testing meters.

3. The prover shall not be located near any radiator, heater, steam pipe, or hot or cold air duct. Direct sunlight shall not be allowed to fall on the prover or the meters under test.

4. During conditions of satisfactory operation air temperature in the prover shall be within one (1) degree Fahrenheit of the ambient temperature, and oil temperature in the prover shall not differ from the temperature of ambient air by more than one (1) degree Fahrenheit.

5. Meters to be tested shall be stored in a manner that temperature of the meters is substantially the same as temperature of the prover. To achieve this, meters shall be placed in the environment of the prover for a minimum of five (5) hours.

(c) All testing instruments and other equipment certified by the commission shall be accompanied at all times by a certificate showing the date when it was last tested and adjusted. The certificate shall be signed by a proper authority of the party providing the certification. A tag referring to the certificate may be attached to the instruments if practicable. These certificates, when superseded, shall be kept on file by the utility.

(d) Sixty (60) days after the effective date of a commission order granting convenience and necessity for a new utility, that utility shall advise the commission in writing as to kind and amount of testing equipment available.

(4) Periodic tests.

(a) Periodic tests of all meters shall be made according to the following schedule based on rated capacities. Rated meter capacity shall be defined as the capacity of the meter at five-tenths (0.5) of one (1) inch water column differential for diaphragm meters and as specified by the manufacturer for all other meters.

1. Positive-displacement meters, with rated capacity up to and including 500 cubic feet per hour, shall be tested at least once every ten (10) years.

2. Positive-displacement meters, with rated capacity above 500 cubic feet per hour, up to and including 1,500 cubic feet per hour, shall be tested at least once every five (5) years.

3. Positive-displacement meters above 1,500 cubic feet per hour shall be tested at least once every year.

4. Orifice meters shall have their recording gauges tested at least once every six (6) months. Orifice size and condition shall be checked at the required meter test interval.

5. Auxiliary measurement devices such as pressure, temperature, volume, load demand, and remote reading devices shall be tested at the required meter test interval as specified by the manufacturer.

(b) If the number of meters of any type which register in error beyond the limits specified in these rules is deemed excessive, this type shall be tested with an additional frequency as the commission may direct.

(c) A utility desiring to adopt a scientific sample meter test plan for positive displacement meters shall makes its request in accordance with Section (8) of this administrative regulation. Upon approval, the sample testing plan may be followed instead of tests prescribed in subsections (2) and (4) of this section and 807 KAR 5:006, Section 17(1).

(5) Measuring production and shipment into and out of the state.

(a) The utility shall measure and record the quantity of all gas produced and purchased by it in Kentucky.

(b) The utility shall measure and record the quantity of all gas piped out of or brought into the state of Kentucky.

Section 4. Customer Service Line Extensions and Connections. (1) Extension of services.

(a) Normal extension. An extension of 100 feet or less shall be made by a utility to an existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more and provides guarantee for the service.

(b) Other extensions.

1. If an extension of the utility's main to serve an applicant or group of applicants amounts to more than 100 feet per customer, the utility shall, if not inconsistent with its filed tariff, require the total cost of the excessive footage over 100 feet per customer to be deposited with the utility by the applicant, based on average estimated cost per foot of the total extension.

2. Each customer receiving service under this extension shall be reimbursed under the following plan: each year for a refund period of not less than ten (10) years, the utility shall refund to the customer who paid for the excessive footage, the cost of 100 feet of extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. After the end of the refund period, no refund shall be required.

(c) An applicant desiring an extension to a proposed real estate subdivision may be required to pay all costs of the extension. Each year for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 100 feet of extension installed for each additional customer connected during the year. Total amount refunded shall not exceed the amount paid to the utility. After the end of the refund period from the completion of the extension, a refund shall not be required.

(d) Nothing contained in this administrative regulation shall be construed to prohibit the utility from making extensions under different arrangements if these arrangements have been included in the utility's tariff and approved by the commission.

(e) Nothing contained in this administrative regulation shall be construed to prohibit a utility from making, at its expense, greater extensions than prescribed, if the same free extensions are made to other customers under similar conditions.

(f) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 100 feet upon a finding by the commission that this extension is reasonable.

(2) Service connections.

(a) Ownership of service lines.

1. Utility's responsibility. When a utility establishes new service to a customer or an existing service line is repaired or replaced, the utility shall furnish and install at its own expense, for the purpose of connecting its distribution system to customer premises, the service line from its main to the meter, including the curb stop and curb box if used. If meters are located outdoors, the curb box and curb stop may be omitted if meter installation is provided with a stopcock and connection to the distribution main is made with a service tee that incorporates a positive shutoff device that can be operated with ordinary, readily available tools and the service tee is not located under pavement.

2. Customer's responsibility. The customer shall furnish and install necessary pipe to make the connection from the meter to place of consumption and shall keep the line in good repair and in accordance with reasonable requirements of the utility's rules and 807 KAR Chapter 5.

(b) All services shall be equipped with a stopcock near the meter. If the service is not equipped with an outside shutoff, the inside shutoff shall be of a type which can be sealed in the off position.

Section 5. Purity of Gas. (1) All gas supplied to customers shall not contain more than: a trace of hydrogen sulfide, thirty (30) grains of total sulphur per 100 cubic feet; or five (5) grains of ammonia per 100 cubic feet. Gas shall not contain impurities that may cause excessive corrosion of mains or piping or form corrosive or harmful fumes if burned in a properly designed and adjusted burner.

(2) If necessary, tests for the presence of hydrogen sulfide shall be made at least once each day, except Sundays and holidays, with equipment capable of measuring hydrogen sulfide levels as low as one (1) grain per 100 cubic feet. Results of these tests shall be retained and provided to the commission upon request.

(3) Manufactured and mixed gas shall be tested at least once each month for the presence of total sulphur and ammonia, except that any gas containing no coal gas shall not require testing for ammonia. Testing shall be in accordance with excepted American Society for Testing and Materials methodologies. Records of all tests shall be retained and provided to the Commission upon request.

Section 6. Heating Value of Gas. (1) Definitions of heating value. The heating value of gas shall be the number of British Thermal Units (BTUs) produced by the combustion at constant pressure, of that amount of gas that would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit:

(a) If saturated with water vapor;

(b) Under pressure equivalent to thirty (30) inches of mercury at a temperature of thirty-two (32) degrees Fahrenheit;

(c) Under gravity;

(d) With air of the same temperature and pressure as the gas;

(e) When the products of combustion are cooled to the initial temperature of the gas and air; and

(f) When the water formed by combustion is condensed to liquid stage.

(2) Each utility shall establish and maintain a standard heating value for its gas. The heating value standard adopted shall comply with the following:

(a) It shall be consistent with good service as specified in the utility's tariff approved by the Commission.

(b) It shall be that value that the utility determines is most practical and economical to supply to its customers.

(3) Each utility shall file with the commission its standard heating value as part of its schedule of Rates, Rules and Regulations.

(4) The utility shall maintain the heating value of the gas with as little variation as practicable, but this variation shall not be more than five (5) percent above or below the established standard heating value.

(5) The heating value standard shall be the monthly average heating value of gas delivered to customers at any point within one (1) mile of the center of distribution, and shall be obtained in the

(6) Each utility, selling more than 300,000,000 cubic feet of gas annually, shall maintain a calorimeter, gas chromatograph, or other equipment for testing the heating value of gas or shall retain the services of a testing laboratory. All testing equipment shall be accompanied at all times by a certificate showing the date it was last tested and adjusted. Utilities served directly from a transmission line shall be exempt from this rule if there is approved equipment for measuring the heating value of gas maintained by the transmission company and if this equipment is available for testing and certification by the commission.

(7) Each utility shall conduct tests and maintain necessary records to document that the requirements of this section are being met. Those utilities that bill on the basis of heating value shall, as part of its schedule of Rates, Rules and Regulations, file with the commission the schedule of tests and test procedures it will conduct to determine the heating value of its gas.

(8) Any change in heating value greater than that allowed in subsection (4) of this section shall not be made without a change to the utility's tariff approved by the commission and without adequate notice to affected customers. In this event, the utility shall make any adjustments to the customer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customer.

Section 7. Waste. All practices in the production, distribution, consumption, or use of natural gas that are wasteful shall be expressly prohibited.

Section 8. Deviations from Rules. In special cases for good cause shown the commission may permit deviations from these rules.

HISTORY:

10 Ky.R. 1029; eff. 3-31-1984; Am. 16 Ky.R. 1994; eff. 5-13-1990; TAm 1-30-2013; 44 Ky.R. 2405; 45 Ky.R. 62; eff. 8-6-2018; Crt eff. 3-27-2019.

807 KAR 5:026. Gas service; gathering systems.

RELATES TO: KRS Chapter 278, 49 C.F.R. 192
STATUTORY AUTHORITY: KRS 278.040(3), 278.485
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the Public Service Commission to adopt, in keeping with KRS Chapter 13A, reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.485(1) requires gas service to be furnished at rates and charges determined by the commission. KRS 278.485(3) authorizes the commission to prescribe safety standards for installation of service lines. This administrative regulation applies to service from natural gas gathering pipeline systems.

Section 1. Definitions. For purposes of this administrative regulation:
(1) "Average volumetric rate" means the rate of a local gas distribution utility subject to rate regulation by the commission, which is an average of the utility's volumetric retail gas sales rates for residential customers.
(2) "Customer line" means all equipment and material required to transfer natural gas from the tap on the gathering line to the customer's premises and includes the saddle or tapping tee, the first service shutoff valve, the meter, and the service regulator, if one is required.
(3) "Customer meter" means the device that measures the transfer of gas from the pipeline company to the consumer.
(4) "Gas company" means the owner of any producing gas well or gathering line.
(5) "Gathering line" means a pipeline that transports gas from as current production facility to a transmission line or main.
(6) "Interior line" means pipe used to transfer natural gas from the point of entry into a building to the point or points of use.
(7) "Price index" means the average of the producer price index-utility natural gas (PPI 05-5) for the most recent twelve (12) month period as published monthly by the United States Department of Labor, Bureau of Labor Statistics.

Section 2. Construction Standards. Construction not specifically addressed by this administrative regulation shall meet applicable requirements of the "American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ASME B31.8)" 2016 edition, as published by the American Society of Mechanical Engineers, Two Park Avenue, New York, N.Y. 10016-5990.

Section 3. Requirements for Service. (1) Persons desiring gas service under KRS 278.485 shall apply at the local gas company office. Applications shall contain:
(a) The name and address of the applicant.
(b) The purpose for which gas is requested.
(c) The name and address of the contractor who will install the customer line.
(d) The name and address of the gas company from which service is requested.
(2) The gas company shall furnish the applicant with construction drawings specifying the installation methods and the materials for service installation.
(3) Prior to providing service, the gas company shall furnish a copy of the application to the commission.
(4) Upon receipt of a copy of the application, the commission shall cause the customer line to be inspected for compliance with this administrative regulation prior to commencement of service.
(5) The commission shall notify the applicant by mail if the customer line does not comply with commission specifications. If subsequent inspection reveals that defects have not been corrected, the commission shall notify the gas company, and the gas company shall take no further action on the application until the defects have been corrected.
(6) The gas company shall furnish, install, and maintain the meter and the service tap, including saddle and first service shutoff valve, which shall remain its property. The gas company shall ensure that its name appears on each of its meters.
(7) All other approved equipment and material required for the service shall be furnished, installed, and maintained by the customer at his expense and shall remain his property.

(8) If leaks or other hazardous conditions are detected in the customer line, the gas company shall discontinue service until the hazardous conditions have been remedied.

Section 4. Connections to High Pressure Gathering Lines. (1) Connections shall be smaller than the diameter of the gathering line.

(2) Connections shall be on the upper one-half (1/2) of the gathering line surface, and at a forty-five (45) degree angle, if practicable.

(3) Connections shall be at right angles to the center line of the gathering line.

(4) A service shutoff valve shall immediately follow the connection to the gathering line.

(5) A drip tank shall be installed preceding the regulating equipment, unless the gas company has dehydrated the natural gas supply prior to providing to the customer.

Section 5. Control and Limitation of Gas Pressure. (1) If maximum gas pressure on the gathering line is capable of exceeding sixty (60) psig, a service regulator shall be installed between the service shutoff valve and the customer meter, and a secondary regulator shall be installed between the service regulator and the customer meter. Regulators shall be spring type, and the service regulator shall not be set to maintain pressure higher than sixty (60) psig. A spring type relief valve shall be installed to limit pressure on the inlet of the service regulator to sixty (60) psig or less.

(2) Every customer line shall be equipped with a properly-sized spring type relief valve to avoid over pressuring the customer line. The valve may be part of the final stage regulator.

(3) Regulators shall not be bypassed.

(4) Each relief valve shall be vented into outside air, and all vents shall be covered to prevent water and insects from entering.

(5) All metering and regulating equipment shall be as near to the gathering line as practicable, in accordance with safe and accepted operating practices.

(6) Regulating equipment shall be properly protected by the customer.

Section 6. Customer Lines and Metering Facilities. (1) The customer shall furnish and install the customer line from the tap to the point of use. The customer shall secure all rights-of-way and railroad, highway, and other crossing permits. The customer line shall be laid on undisturbed or well compacted soil in a separate trench, avoiding all structures and hazardous locations. A structure shall not be erected over the line.

(2) A branch tee or other connection shall not be installed on the line to serve any user other than the customer without prior written consent of the gas company and the customer. If consent is given, service to each user shall have an automatic shutoff valve with manual reset located on the riser in a horizontal position. The shutoff valve shall have maximum operating pressure of eight (8) ounces PSIG with a shutoff pressure setting of not less than two (2) ounces.

(3) Customer lines shall not be constructed nearer than thirty-six (36) inches to any subsurface structure.

(4) Customer lines, including the connection to the main, if feasible, shall be checked for leaks by the gas company prior to first use. If it is not feasible to test the connection to the main before first use, it shall be tested for leaks at the operating pressure when placed into service. Customer lines shall be tested by the gas company with air, natural gas, or inert gas at fifty (50) psig for at least thirty (30) continuous minutes.

(5) Customer lines shall be purged after testing to remove any accumulated air.

(6) Metering pressure shall not exceed eight (8) ounces or.5 psig.

(7) Steel customer lines shall be constructed of black finish steel pipe, shall have a diameter determined by the maximum hourly load for the gas service, and shall conform to standards in the Standard Specification for Pipe, Steel, Black, and Hot-dipped, Zinc Coated, Welded and Seamless (A53/A53M-12) 2012 edition, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania 19428-2959. All joints and fittings shall be coated or taped, in accordance with manufacturer's recommendations, from the gas meter to the outlet side of the stopcock located on the riser entering the building. Steel customer lines shall be installed with at least twelve (12) inches of cover on private property and at least eighteen (18) inches of cover on streets and roads. If the steel customer line passes through tillable land, the trench shall be of sufficient depth to permit twenty-four (24) inches of backfill above the service line.

(8) Each steel customer line shall have two (2) insulating joints, one (1) between the secondary regulator and the customer meter, and one (1) at the point of entry into the building.

(9) Plastic customer lines shall have a diameter determined by the maximum hourly load for the gas service and shall meet the Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing and Fittings (D2513-16a), 2016 edition, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania 19428-2959. Plastic customer lines shall be installed with at least twelve (12) inches of cover on private property and at least eighteen (18) inches of cover on streets and roads. If passing through tillable land, the plastic customer line shall be installed with at least twenty-four (24) inches of cover. Plastic customer lines shall be buried with an electrically conductive wire to enable inspectors to locate the plastic line. All joints in plastic lines shall be made by persons operator-qualified in accordance with 49 C.F.R. Part 192 to make plastic pipe joints. A plastic line shall not be installed above ground.

(10) Customer lines shall enter the building above ground level, and a stopcock valve shall be located on the riser.

(11) Each customer's service shall have an automatic shutoff valve with manual reset to stop gas flow if gas pressure fails. The valve may be part of the final stage regulator and shall have operating pressure of eight (8) ounces with shutoff pressure setting of not less than two (2) ounces.

(12) A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.

Section 7. Failure to Pay Bills or Other Default. (1) Customers shall be required to pay the installation charge and to pay for all gas delivered at rates approved by the commission in accordance with KRS Chapter 278 and 807 KAR Chapter 5. The gas company shall render statements to the customer at regular monthly or bimonthly intervals. Statements shall be rendered within ten (10) days following each billing period. Service shall not be discontinued to any customer for nonpayment of charges unless the gas company has first made a reasonable effort to obtain payment from the customer. The customer shall be given at least forty-eight (48) hours' written notice of termination, but termination of service shall not be made until at least fifteen (15) days after the original bill has been mailed. Service shall not be reestablished until the customer has paid the gas company all amounts due for gas delivered plus a turn-on charge of twenty-five (25) dollars. If the customer has not paid amounts owed, or if the customer has not complied with commission administrative regulations within thirty (30) days from the date the gas is turned off, the gas company may disconnect the customer line from its gathering line. Service shall not be reestablished until the customer has complied with provisions of this administrative regulation pertaining to initial service.

(2) The gas company may require a cash deposit or other guaranty from the customer to secure payment of bills.

Section 8. General Provisions. The gas company shall have reasonable access to the customer's premises, and may shut off gas and remove its property from the premises upon reasonable notice for any of the following reasons:

(1) Need for repairs;
(2) Nonpayment;
(3) Failure to make a cash deposit, if required;
(4) Any violation of this administrative regulation;
(5) Customer's removal from premises;
(6) Tampering with the meter, regulators, or connections;
(7) Shortage of gas or reasons of safety;
(8) Theft of gas;
(9) Any action by a customer to secure gas through his meter for purposes other than those for which it was requested, or for any other party without written consent of the gas company; or
(10) False representation with respect to ownership of property to which service is furnished.

Section 9. Rates and Charges. (1) Rates. Each gas company shall charge rates filed with and approved by the commission in accordance with KRS Chapter 278 and 807 KAR Chapter 5. A gas company may request an adjustment in its rates to reflect changes in its costs to provide service pursuant to KRS 278.485.

(a) A gas company which provides service pursuant to KRS 278.485 may request an adjustment in rates through a proposed tariff submitted at least sixty (60) days prior to its proposed effective date if:

1. The percentage change in rates does not exceed the percentage change in the price index during the most recent twelve (12) month period immediately preceding the date the proposed tariff is filed; and

2. The proposed rate does not exceed the highest average volumetric rate of a local gas distribution utility approved by the commission in accordance with KRS 278 and 807 KAR Chapter 5 and in effect on the date the proposed tariff is filed. The commission shall provide the current percentage change in the price index and the highest prevailing rate upon written request.

(b) If the proposed percentage increase in rates exceeds the percentage change in the price index but the proposed rate remains below the highest prevailing gas rate approved by the commission, the gas company shall submit, with its proposed tariff, cost data which support the proposed increase. The data shall include the gas company's costs to provide the service during each of the previous two (2) years and shall be current within ninety (90) days of the date the proposed tariff is filed.

(c) A proposed tariff increasing rates shall not be filed with a proposed effective date less than one (1) year later than the last commission approved increase. Once the commission has determined that sufficient information has been filed with the proposed tariff, the commission shall either approve or deny the proposed adjustment within sixty (60) days. The commission may suspend the proposed tariff beyond the sixty (60) day review period.

(d) A gas company which files a proposed tariff to increase rates shall mail notice to its customers no later than twenty (20) days prior to the filing date of the proposed tariff. The notice shall be dated, shall state the proposed rate and the estimated amount of monthly increase per customer, and shall state that any customer may file comments or a request to intervene by mail to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.

(e) Instead of a rate adjustment through a proposed tariff, a gas company may file an application with the commission for authority to adjust rates pursuant to 807 KAR 5:001, Section 10. If eligible, the gas company may file under the alternative rate adjustment procedure, 807 KAR 5:076. [See Editor's Note]

(2) Charges.

(a) Any nonrecurring, customer-specific charge, such as those listed in 807 KAR 5:006, Section 8, that is assessed by the gas company shall be listed in its tariff. These charges may be adjusted by filing a proposed tariff with the commission at least thirty (30) days prior to the effective date of the adjustment.

(b) Each gas company may charge $150 for each service tap, including saddle and first shutoff valve which, under this administrative regulation, it shall furnish and install.

(3) Provisions contained in this administrative regulation shall apply only to connections made and services provided pursuant to KRS 278.485 after the effective date of this administrative regulation.

(4) In providing notice as required by Section 9(1)(d) of this administrative regulation, the gas company shall use the following form:

NOTICE OF PROPOSED RATE CHANGE

(Name of gas company) has filed a request with the Public Service Commission to increase its rates. The rates contained in this notice are the rates proposed by (name of gas company). However, the Public Service Commission may order rates to be charged that differ from the rates in this notice. Any corporation, association, body politic, or person may file written comments or a written request for intervention within thirty (30) days of the date of this notice with the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. Copies of the request for an increase in rates may be obtained by contacting the gas company at (address of gas company). A copy of the request for an increase in rates is available for public inspection at this address.

Present Rate	Proposed Rate	Estimated Monthly Increase Per Customer

Section 10. Exceptions. (1) A utility may submit a written request to the commission to obtain an exception based on good cause for a requirement listed in this administrative regulation. The utility shall attach supporting evidence of good cause to the written request.

(2) Once the request is received, the commission shall determine whether good cause exists to grant an exception to a requirement of this administrative regulation. The commission shall notify the utility, in writing, of:

(a) The decision as to whether good cause exists; and

(b) If good cause exists:

1. The scope and duration of any exception granted; and

2. Any conditions that the utility is required to meet to maintain the exception.

(3) In determining whether good cause exists, the commission shall consider whether the evidence shows that complying with the relevant requirement would be impracticable or contrary to the public interest.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ASME B31.8)", 2016 edition, as published by the American Society of Mechanical Engineers, Two Park Avenue, New York, N. Y. 10017-5990;

(b) "Standard Specification for Pipe, Steel, Black, and Hot-dipped, Zinc Coated, Welded and Seamless (A53-/53M)", 2012 edition, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania 19428; and

(c) "Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing and Fittings (D 2513-16a)", 2016 edition, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, Pennsylvania 19428.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602-0615, Monday through Friday, 8:00 a.m. through 4:30 p.m.

HISTORY:

8 Ky.R. 811; eff. 4-7-1982; Am. 9 Ky.R. 742; 917; eff. 1-6-1983; 16 Ky.R. 2039; eff. 5-13-1990; 22 Ky.R. 2114; 23 Ky.R. 433; eff. 7-19-1996; 44 Ky.R. 2436; 45 Ky.R. 92; eff. 8-6-2018; Crt 3-27-2019.

Editor's Note: Since 807 KAR 5:026 was last amended, 807 KAR 5:001 has been amended. Section referred to as 807 KAR 5:001, Section 10 is now 807 KAR 5:001, Section 16.

807 KAR 5:027. Gas pipeline safety; reports of leaks; drug testing.

RELATES TO: KRS Chapter 278, 49 C.F.R. Parts 191, 192, 199, 49 U.S.C. 1671
STATUTORY AUTHORITY: KRS 278.040(3), 278.230(3), 278.495
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the Public Service Commission to adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278 and to investigate methods and practices of utilities subject to commission jurisdiction. KRS 278.230(3) requires utilities to file any reports reasonably required by the commission. KRS 278.495 authorizes the commission to promulgate administrative regulations consistent with federal pipeline safety laws. This administrative regulation establishes rules that apply to gas pipeline safety, reports of leaks, and drug testing by operators of natural gas facilities.

Section 1. Definition. (1) "Operator" means any utility, county, or city that is subject to the Commission's jurisdiction under KRS 278.495(2).

Section 2. Gas Pipeline Safety. Each operator shall comply with the minimum federal safety requirements for pipeline facilities set forth in 49 C.F.R. Part 192.

Section 3. Reports. Each operator who files an incident notice or report, a safety-related condition report, or an annual report with the United States Department of Transportation ("USDOT") pursuant to 49 C.F.R. Part 191 shall concurrently file this report with the Commission by electronic mail to Pipeline.Safety@ky.gov.

Section 4. Drug and Alcohol Testing. Each operator shall comply with 49 C.F.R. Part 199.

Section 5. Odorization of Gas. Each Operator shall conduct sampling of combustible gases to assure proper concentrations of odorant in accordance with this section. (1) The operator shall sample gases in each separately odorized system at approximate furthest point from injection of odorant or sampling point(s) identified by engineering studies.

(2) Sampling shall be conducted with equipment designed to detect and verify proper level of odorant.

(3) Separately odorized systems with ten (10) or fewer customers shall be sampled for proper odorant level at least once each ninety-five (95) days.

(4) Separately odorized systems with more than ten (10) customers shall be sampled for proper odorant level at least once every thirty (30) days.

Section 6. Inspection prior to service connection. Each operator shall perform a leak test on all piping downstream from the meter for gas leaks, each time gas is turned on, by performing a dial check or pressure test in accordance with accepted industry practices when all appliances are turned off. The operator shall refuse to turn on gas until all gas leaks so disclosed have been properly repaired.

HISTORY:

9 Ky.R. 755; Am. 920; eff. 1-6-1983; 16 Ky.R. 2042; eff. 5-13-1990; Amd 44 Ky.R. 1702, 2212; eff. 5-4-2018; Crt eff. 3-27-2019.

Editor's Note: 49 U.S.C. § 1671 is now found at 49 U.S.C. § 60101.

807 KAR 5:041. Electric.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by the utility. This administrative regulation establishes general rules which apply to electric utilities.

Section 1. Definitions. For purposes of this administrative regulation:
(1) "Applicant" means for purposes of Section 21 of this administrative regulation the developer, builder or other person, partnership, association, corporation or governmental agency applying for the installation of an underground electric supply system.
(2) "Building" means a structure enclosed within exterior walls or fire walls, built, erected and framed of component structural parts and designed for less than five (5) family occupancy.
(3) "Customer" means for purposes of Section 21 of this administrative regulation the developer, builder or other person, partnership, association, corporation or governmental agency applying for installation of an underground electric supply system.
(4) "Customer premises" means the building for which service is intended or in use.
(5) "Distribution system" means electric service facilities consisting of primary and secondary conductors, transformers, and necessary accessories and appurtenances for furnishing electric power at utilization voltage.
(6) "Multiple-occupancy building" means a structure enclosed within exterior walls or fire walls, built, erected and framed of component structural parts and designed to contain five (5) or more individual dwelling units.
(7) "Subdivision" means a tract of land which is divided into ten (10) or more lots for the construction of new residential buildings, or for construction of two (2) or more new multiple occupancy buildings.

Section 2. General Requirements. Every utility shall furnish adequate service and facilities at rates filed with the commission, and in accordance with administrative regulations of the commission and applicable rules of the utility. Energy shall be generated, transmitted, converted and distributed by the utility, and utilized, whether by the utility or the customer, in such manner as to obviate undesirable effects upon the operation of standard services or equipment on the utility, its customers and other utilities.

Section 3. Acceptable Standards. A utility shall construct and maintain its plant and facilities in accordance with good accepted engineering practices. Unless otherwise specified by the commission, the utility shall use applicable provisions in the following publications as standards of accepted good engineering practice for construction and maintenance of plant and facilities, herein incorporated by reference:
(1) National Electrical Safety Code; ANSI C-2. 1990 Edition, available by contacting the IEEE Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855-1331. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time. [See Editor's Note]
(2) National Electrical Code; ANSI-NFPA 70. 1990 Edition, available by contacting the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02169. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.
(3) American National Standard Code for Electricity Metering; ANSI C-12.1. 1982 Edition, available by contacting the Institute of Electrical and Electronics Engineers, Inc., 345 E. 47th Street, New York, New York 10017;
(4) USA Standard Requirements, for Instrument Transformers; ANSI Standard C57.13, 1978 Edition, available by contacting the IEEE Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855-1331. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.

(5) The adoption and applicability of the National Electrical Code as a standard of utility construction is limited to electric utility auxiliary buildings which are not an integral part of a generating plant, substation, or control center. Integral part is defined as essential to the operation or necessary to make complete.

(6) All materials incorporated by reference above are available for public inspection and copying at the Public Service Commission of Kentucky, 211 Sower Boulevard, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m.

Section 4. Generating Station Meter Records. Every utility shall install such watt-hour meters as necessary to obtain a record of output of its generating station or stations. Every utility purchasing electrical energy shall install such meters as necessary to furnish a proper record of its purchases, unless such instruments are installed by the selling company.

Section 5. Maintenance or Continuity of Service. (1) Each utility shall make all reasonable efforts to prevent interruptions of service, and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay. Whenever service is necessarily interrupted or curtailed for the purpose of working on equipment, it shall be done at a time if practicable, that will cause least inconvenience to customers, and those customers which may be seriously affected shall be notified in advance, except in cases of emergency.

(2) Each utility shall keep a record of: time of starting and shutting down the principal units of its power station equipment and feeders for major divisions; indications of sufficient switchboard instruments to show voltage and quantity of the load; all interruptions to service affecting the entire distribution system of any single community or important division of a community; and date and time of interruption, date and time of restoring service, and when known, cause of each interruption.

(3) When complete distribution systems or portions of communities have service furnished from unattended stations, the utility shall keep these records to the extent practicable. The records of unattended stations shall show interruptions which require attention to restore service, with estimated time of interruption. Breaker or fuse operations affecting service shall also be indicated even though duration of interruption may not be known.

Section 6. Voltage and Frequency. (1) Each utility shall adopt a standard nominal voltage or standard nominal voltages, as required by its distribution system for its entire constant-voltage service, or for each of several districts into which the systems may be divided, which standard voltages shall be stated in every schedule of rates of each utility or in its terms and conditions of service.

(2) Voltage at the customer's service entrance or connection shall be maintained as follows:

(a) For service rendered primarily for lighting purposes, variation in voltage between 5 p.m. and 11 p.m. shall not be more than five (5) percent plus or minus the nominal voltage adopted, and total variation of voltage from minimum to maximum shall not exceed six (6) percent of the nominal voltage.

(b) 1. For service rendered primarily for power purposes, voltage variation shall not at any time exceed ten (10) percent above or ten (10) percent below standard nominal voltage.

2. Where a limited amount of lighting is permitted under these contracts, the entire load shall be considered power as far as voltage variation is concerned.

(c) Where utility distribution facilities supplying customers are reasonably adequate and of sufficient capacity to carry actual loads normally imposed, the utility may require that starting and operating characteristics of equipment on customer premises shall not cause an instantaneous voltage drop of more than four (4) percent of standard voltage nor cause objectionable flicker in other customer's lights.

(d) Equipment supplying constant current circuits shall be adjusted to furnish as nearly as practicable the rated current of the circuit supplied, and in no case shall the current vary more than four (4) percent above or below the circuit rating.

(3) Each utility supplying alternating current shall adopt a standard frequency of sixty (60) hertz which shall be stated in the schedule of rates of each utility.

(4) A frequency meter monitor shall be maintained for each system frequency. Accuracy of the frequency meter shall be checked each day and frequency shall be governed within limits as set forth in this section so that the frequency meters on the system are correct once daily.

(5) The following shall not be considered a violation of this section: Voltage variations in excess of those caused by operation of power apparatus on customer premises which require large starting currents and

affect only the user of such apparatus, by action of the elements and infrequent and unavoidable fluctuations of short duration due to system operation.

(6) Greater variation of voltage than specified under this section may be allowed if service is supplied directly from a transmission line, if emergency service, or if in a limited or extended area in which customers are widely scattered or business done does not justify close voltage administrative regulation. In such cases the best voltage administrative regulation shall be provided that is practicable under the circumstances.

Section 7. Voltage Surveys and Records. (1) Every utility shall have two (2) or more portable indicating voltmeters and two (2) or more recording or graphic voltmeters of type and capacity suited to the voltage supplied. Every utility shall make a sufficient number of voltage surveys to indicate the service furnished from each center of distribution. To satisfy the commission of its compliance with voltage requirements, each utility shall keep at least one (1) of these instruments in continuous service at some representative point on its system. All records of the most recent voltage surveys taken within the last three (3) calendar years shall be available for inspection by the utility's customers and commission staff.

(2) Each graphic recording voltmeter shall be checked with a working standard indicating voltmeter when it is placed in operation and when it is removed, or periodically if the instrument is in a permanent location. Notations on each chart shall indicate beginning time and date of registration and when the chart was removed, as well as the point where voltage was taken, and results of the check with indicating voltmeter.

Section 8. Servicing Utilization Control Equipment. (1) Utilities shall service and maintain any equipment they use on customer's premises and shall adjust thermostats, clocks, relays, or time switches, if such devices must be so adjusted to provide service in accordance with their rate provisions.

(2) Time switches used by the utility for controlling equipment such as water heaters and street lights shall be of such quality that the timing mechanism may be adjusted to be accurate within ten (10) minutes per month. Time switches used by the utility for controlling street lighting or display lighting shall be inspected or monitored at least once a month and, if in error, adjusted. Time switches shall also be adjusted upon complaint if found in error or when service interruptions cause them to be in error by one-half (1/2) hour or more.

(3) Time switches and control devices used by the utility for controlling off-peak appliances shall be inspected or monitored periodically and adjusted if in error, and also adjusted upon complaint if found in error or whenever service interruptions result in error of two (2) hours or more or in supplying service to off-peak appliances during peak periods.

Section 9. Measuring Customer Service. (1) All energy sold within the State of Kentucky shall be measured by commercially acceptable measuring devices owned and maintained by the utility, except where it is impracticable to meter loads, such as multiple street lighting, temporary or special installations, in which case consumption may be calculated. The utility shall meter its own electrical energy use except when such service is for emergency or incidental lighting such as outdoor substations, or at remote points on its transmission or distribution lines. All other electrical quantities which the utility's tariff indicates are to be metered shall be metered by commercially acceptable instruments owned and maintained by the utility.

(2) The utility shall regard each point of delivery as an independent customer and meter the power delivered at each point. Combined meter readings shall not be taken at separate points, nor shall energy used by more than one (1) residence or place of business on one (1) meter be measured to obtain a lower rate.

(3) Metering facilities located at any point where energy may flow in either direction and where the quantities measured are used for billing purposes shall consist of meters equipped with ratchets or other devices to prevent reverse registration and be so connected as to separately meter energy flow in each direction.

(4) Whenever possible reactive meters required to meet the conditions of a given rate schedule shall be either all ratcheted or none shall be ratcheted. Reactive metering shall not be employed for determining average power factor for billing purposes where energy may flow in either direction or where a customer may generate an appreciable amount of his own requirements.

(5) Meters which are not direct reading and those operating from instrument transformers shall have the multiplier plainly marked on the dial of the instrument or otherwise suitably marked and all charts taken from recording meters shall be marked with the record date, meter number, customer and chart multiplier.

(6) The register ratio shall be marked on all electro-mechanical meter registers. Meters already in service may be so marked when they are tested.

(7) The watt-hour constant for the meter itself shall be placed on all watt-hour meters. Meters already in service shall be so marked when they come to the meter shop.

Section 10. Service Connections. (1) The utility shall pay all costs of a service drop or an initial connection to its line with the customer's service outlet, except the attachment of the wire support to customer premises. When the customer's outlet is inaccessible to the utility, or the customer desires that the service outlet on any building be at a location other than that closest to the utility's line, cost of such special construction as necessary shall be borne by the customer. The utility shall furnish at its expense an amount of wire, labor and material equivalent to that furnished for a like service connection not requiring such special construction.

(2) Underground service requirements and administrative regulations shall be established by each utility and be on file with the commission.

(3) All equipment and material furnished by the utility at its own expense shall remain the property of the utility and may be removed by it at any reasonable time after discontinuance of service.

Section 11. Distribution Line Extensions. (1) Normal extensions. An extension of 1,000 feet or less of single phase line shall be made by a utility to its existing distribution line without charge for a prospective customer who shall apply for and contract to use the service for one (1) year or more and provides guarantee for such service. The "service drop" to customer premises from the distribution line at the last pole shall not be included in the foregoing measurements. This distribution line extension shall be limited to service where installed transformer capacity does not exceed 25 KVA. Any utility which extends service to a customer who may require polyphase service or whose installed transformer capacity will exceed 25 KVA may require the customer to pay in advance additional cost of construction which exceeds that for a single phase line where the installed transformer capacity does not exceed 25 KVA.

(2) Other extensions.

(a) When an extension of the utility's line to serve an applicant or group of applicants amounts to more than 1,000 feet per customer, the utility may, if not inconsistent with its filed tariff, require total cost of the excessive footage over 1,000 feet per customer to be deposited with the utility by the applicant or applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: Each year, for a refund period of not less than ten (10) years, the utility shall refund to the customer(s) who paid for the excessive footage the cost of 1,000 feet of extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid the utility. No refund shall be made after the refund period ends.

(c) For additional customers connected to an extension or lateral from the distribution line, the utility shall refund to any customer who paid for excessive footage the cost of 1,000 feet of line less the length of the lateral or extension.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 1,000 feet of the extension installed for each additional customer connected during the year. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends.

(4) Nothing contained herein shall be construed as to prohibit the utility from making extensions under different arrangements if such arrangements have been approved by the commission.

(5) Nothing contained herein shall be construed to prohibit a utility from making at its expense greater extensions than herein prescribed, if similar free extensions are made to other customers under similar conditions.

(6) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 1,000 feet upon a finding by the commission that such extension is reasonable.

Section 12. Distribution Line Extensions to Mobile Homes. (1) All extensions of up to 150 feet from the nearest distribution line shall be made without charge.

(2) Extensions greater than 150 feet from the nearest distribution line and up to 300 feet shall be made if the customer pays the utility a “customer advance for construction” of fifty (50) dollars in addition to any other charges required by the utility for all customers. This advance shall be refunded at the end of one (1) year if service to the mobile home continues for that length of time.

(3) For extensions greater than 300 feet and less than 1,000 feet from the nearest distribution line, the utility may charge an advance equal to reasonable costs incurred by it for that portion of service beyond 300 feet plus fifty (50) dollars. Beyond 1,000 feet the extension policies set forth in Section 11 of this administrative regulation shall apply.

(a) This advance shall be refunded to the customer over a four (4) year period in equal amounts for each year service is continued. The customer advance for construction of fifty (50) dollars shall be added to the first of four (4) refunds.

(b) If service is discontinued for a period of sixty (60) days, or the mobile home is removed and another does not take its place within sixty (60) days, or is not replaced by a permanent structure, the remainder of the advance shall be forfeited.

(c) No refunds shall be made to any customer who did not make the advance originally.

(4) If a utility implements specific requirements pertaining to mobile homes, such requirements shall be subject to approval by the commission and comply with the provisions of this administrative regulation.

Section 13. Testing Equipment and Standards. (1) Each utility shall maintain sufficient laboratories, meter testing shops, standards, instruments and facilities to determine accuracy of all types of meters and measuring devices used by the utility except as provided in 807 KAR 5:006, Section 17.

(2) The following testing equipment shall be available as minimum requirements for each utility or agency making tests or checks for a utility pursuant to 807 KAR 5:006, Section 17(2):

(a) One (1) or more working watt-hour standards and associated devices of capacity and voltage range adequate to test all watt-hour meters used by the utility.

(b) One (1) or more watt-hour standards, which shall be the utility’s master watt-hour standards, used for testing the working watt-hour standards of the utility. These standards shall be of an approved type, shall be well compensated for both classes of temperature errors, practically free from errors due to ordinary voltage variations, and free from erratic registration. These master watt-hour standards shall be of capacity and voltage range adequate to test all working watt-hour standards at all loads and voltages at which they are used. These standards shall be kept permanently at one place and not used for routine testing.

(c) Working indicating instruments, such as ammeters, voltmeters and watt-meters, of such various types required to determine the quality of service to customers.

(d) A voltmeter and ammeter, which shall be master indicating instruments, and which shall be used for testing of working indicating and recording instruments. These instruments shall be of an approved type and of accuracy class and range sufficient to determine accuracy of working instruments to within five-tenths (0.5) percent of all ranges and scale deflections at which working instruments are used. They shall be kept permanently at one place and not used for routine testing.

(3) The utility’s master watt-hour standards shall not be in error by more than plus or minus three-tenths (0.3) percent at 100 percent power factor, nor more than plus or minus five-tenths (0.5) percent at fifty (50) percent power factor at loads and voltages at which they are used, and shall not be used to check or calibrate working standards unless the master standard has been certified as to accuracy by the commission within the preceding twelve (12) months. Each master watt-hour standard shall have a history card and calibration data available, and when used to calibrate working standards, correction for any error of the master standard shall be applied.

(4) All working watt-hour standards when regularly used shall be compared with a master standard at least once in every four (4) weeks. Working watt-hour standards infrequently used shall be compared with a master standard before they are used.

(5) Working watt-hour standards shall be adjusted, if necessary, so that their accuracy will be within plus or minus three-tenths (0.3) percent at 100 percent power factor and within plus or minus five-tenths (0.5) percent at fifty (50) percent lagging power factor at all voltages and loads at which the standard may be used. A history and calibration record shall be kept for each working watt-hour standard showing all pertinent data and name of person performing tests.

(6) After having adjusted working watt-hour standards to the accuracy specified above, service measuring equipment shall be adjusted to within the accuracies required, assuming working watt-hour standards to be 100 percent accurate.

(7) If calibration charts are attached to working watt-hour standards and the error indicated is applied to all tests run and the accuracy on any range has not varied more than two-tenths (0.2) percent during the past twelve (12) regular test periods, accuracy limits may be extended to plus or minus five-tenths (0.5) percent at 100 percent power factor and plus or minus seven-tenths (0.7) percent at fifty (50) percent lagging power factor at all voltages and loads at which the standard may be used.

(8) The utility's master indicating instruments shall not be in error by more than plus or minus five-tenths (0.5) percent of indication at commonly used scale deflections and shall not be used to check or calibrate working indicating instruments unless the master instrument has been checked and adjusted, if necessary, and certified as to accuracy by the commission within the preceding twenty-four (24) months. A calibration record shall be maintained for each instrument.

(9) All working indicating instruments shall be checked against master indicating instruments at least once in each six (6) months. If the working instrument is found appreciably in error at zero or in error by more than one (1) percent of indication at commonly used scale deflections, it shall be adjusted. A calibration record shall be maintained for each instrument showing all pertinent data and name of person performing tests.

Section 14. Check of Standards by Commission. (1) Each utility, and/or agency making tests or checks for a utility, shall submit to the commission Meter Standards Laboratory, its master watt-hour standard once in each year, and its master indicating voltmeter and ammeter once in each two (2) years.

(2) At the discretion of the commission any or all of these required tests may be made at the utility's or agency's testing facility by means of portable transfer standards. If the standards satisfy the requirements of the commission a Certificate of Accuracy shall be issued by the commission's Division of Engineering.

(3) Each utility which normally checks its own master watt-hour standards and master indicating instruments against primary standards such as precision watt-meters, volt boxes, resistances, standard cells, potentiometers, and timing devices, shall calibrate the master watt-hour standards and indicating instruments before they are submitted to the commission for test, and attach to them a record of such calibration.

Section 15. Testing of Metering Equipment. (1) Testing of any unit of metering equipment shall consist of a comparison of its accuracy with a standard of known accuracy. All metering equipment shall be in good order, and shall be adjusted to as close to zero error as possible.

(2) No meter or measuring device shall be deliberately set in error by any amount. Because of unavoidable irregularities of work done on a commercial scale, some accuracy tolerance shall be allowed. Meters shall be set as near as practicable to 100 percent accuracy but in no case shall the inaccuracy exceed one (1) percent. Further, meters with defective parts shall be repaired regardless of their accuracy.

(3) Metering equipment, including instrument transformers and demand meters, shall be tested for accuracy prior to being placed in service, periodically in accordance with the schedule below, upon complaint, when suspected of being in error, or when removed from service for any cause.

Period Test Schedule		
	Self-Contained Meters	
	Single phase	8 years
	3 wire network	8 years
	Polyphase	6 years
Meters used with instrument transformers		
	Single phase	6 years
	Polyphase	4 years
Demand Meters		
	Indicating block-interval and lagged-demand meters	same as associated watt-hour meter
	Graphic and pulse operated recording demand meters	2 years
Instrument Transformers		
	Current: high burden test	same as associated watt-hour meter
	Potential: secondary voltage test	same as associated watt-hour meter
	Var-hour Meters	same as associated watt-hour meter
Direct Current Watt-hour Meters:		
	Up to and including 6 KW	4 years
	Over 6 KW through 100 KW	2 years
	Over 100 KW	1 year

(4) Tests may be made at a meter shop, on the customer's premises, or in a mobile shop.

Section 16. Sample Testing of Single Phase Meters. A utility desiring to adopt a scientific sample meter testing plan for single phase meters shall submit its application to the commission for approval. Upon approval the sample testing plan may be followed in lieu of the periodic test prescribed in Section 15(3) of this administrative regulation. The plan shall include the following:

(1) Meters shall be divided into separate groups to recognize differences in operating characteristics due to changes in design, taking into consideration date of manufacture and serial number.

(2) The sampling procedure shall be based upon accepted statistical principles.

(3) The same sampling procedure shall be applied to each group.

(4) Each utility authorized to test meters by sample meter testing plan shall comply with the following conditions:

(a) The number of meters in addition to the sample shall be taken from those meters in each group longest in service since last test unless a particular meter type is known to be increasing the percentage of meters requiring test for the sample group. In such a case where a particular meter type is increasing the percentage of meters requiring test in any group, these meters may be selected first regardless of test date with any additional tests as required for that group coming from those in that group longest in service since last test. Each year the utility shall use the following table to determine the percentage of the total meters in each group to be tested.

Percentage of Meters Within Limits of 2% Fast or Slow (Indicated by Sample)		Percentage of Meters to be Tested the Next Year
99.0	100.0	2
98.0	98.9	4
97.0	97.9	6
96.0	96.9	8
95.0	95.9	10
93.0	94.9	12
91.0	92.9	14
Less than	91.0	16

(b) Provided, however, that no meter shall remain in service without periodic test for a period longer than twenty-five (25) years.

(5) Whenever a meter is found to be more than two (2) percent fast or slow, refunds or back billing shall be made for the period during which the meter error is known to have existed or if not known for one-half (1/2) the elapsed time since the last test but in no case to exceed three (3) years. This provision shall apply only when sample testing of single phase meters has been approved by the commission and utilized by the utility.

Section 17. Test Procedures and Accuracy Requirements. (1) Meters and associated devices shall be tested at the loads indicated below and adjusted as close as practicable to zero error when found to exceed the tolerance prescribed below.

AC Watt-hour Meters		
% of Test Current	Power Factor	Allowable Tolerance
100	1.0	+ or - 1.0%
10	1.0	+ or - 1.0%
100	0.5	+ or - 1.0%
DC Watt-hour Meters		
% of Test Current		Allowable Tolerance
100	1.0%	
10	1.0%	

(a) Only one (1) test run shall normally be required at each test configuration. However if the test indicates the meter is more than two (2) percent in error fast or slow, additional tests shall be made to verify accuracy prior to refunding or back billing the customer.

(b) When a meter is tested on complaint or request, additional test runs shall be made and care exercised to insure that any trouble with the meter will be detected.

(c) For refund and back billing purposes, accuracy of the meter shall be determined by adding the average registration at light load (ten (10) percent of test current) and the average registration at full load (100 percent of test current) and dividing by two (2).

(2) Demand meters. A demand meter, demand register, or demand attachment used to measure customer's service shall:

(a) Be in good mechanical and electrical condition.

(b) Have proper constants, indicating scale, contact device, and resetting device.

(c) Not register at no load.

(d) Be accurate to the following degrees:

1. Graphic meters which record quantity-time curves and integrated-demand meters shall be accurate to within plus or minus two (2) percent of full scale throughout their working range. Timing elements measuring specific demand intervals shall be accurate to within plus or minus two (2) percent and the timing element

which serves to provide a record of the time of day when demand occurs shall be accurate to within plus or minus four (4) minutes in twenty-four (24) hours.

2. Lagged-demand meters shall be accurate to within plus or minus two (2) percent at final indication.

(3) Instrument transformers.

(a) Instrument transformers used in conjunction with metering equipment to measure customer's service shall:

1. Be in proper mechanical condition and have electrical insulation satisfactory for the service on which used.

2. Have characteristics such that the combined inaccuracies of all transformers supplying one (1) or more meters in a given installation shall not exceed the following:

	100% Power Factor		50% Power Factor	
	10% Current	100% Current	10% Current	100% Current
Purchased after Jan. 1, 1942	1%	.75%	3%	2%
Purchased prior to Jan. 1, 1942	2%	1.50%	5%	3%

(b) Meters used in conjunction with instrument transformers shall be adjusted so that verall accuracies will come within the limits specified in this administrative regulation.

(c) Instrument transformers shall be tested with the meter with which they are associated by making an overall test, or may be checked separately. If transformers are tested separately, meters shall also be checked to see that overall accuracy of installation is within the prescribed accuracy requirements.

(d) Results of tests of instrument transformers shall be kept on record and be available for use during the life of the transformer.

(e) Phase shifting transformers shall have secondary voltages under balanced line voltage conditions within one (1) percent plus or minus of the voltage impressed on the primary.

Section 18. Location of Meters. (1) Meters shall be installed in a clean, dry, safe, convenient place as free as possible from vibration. Meters shall be easily accessible for reading, testing, and making necessary adjustments and repairs, and where indoor type meters are necessary they shall not be placed in coal or wood bins or on partitions forming bins, nor on any unstable supports. Unless absolutely unavoidable, meters shall not be installed in attics, sitting rooms, bathrooms, bedrooms, restaurant kitchens, over doors, over windows, or in any location where visits of the meter reader or tester will cause annoyance to the customer or a severe inconvenience to the utility.

(2) Districts subject to flood are excepted from this rule as far as it applies to the location of meters.

(3) Proper provision shall be made by the customer for installation of the utility's meter. Unless the meter is to be mounted upon a panel or installed within a cabinet, such provision shall consist of a board not less than three-quarters (3/4) of an inch in thickness which shall be mounted not less than five (5) or not more than seven (7) feet from the floor, and in general as near as possible to point of entrance of service. At least six (6) inches clear space shall be available, on all sides of the meter board and not less than thirty (30) inches in front of it. The above provisions as to method of mounting and height from floor do not apply to the installation of weatherproof outdoor meters. Electric meters shall not be installed close to either water or gas meters or anything liable to damage the meter, thereby constituting a hazard to customer's safety and continuous service.

(4) When more than one (1) meter is installed without a meter cabinet in the same building, proper space shall be allotted and provision made by the customer for locating the meters at one (1) place. When a number of meters are placed in the same cabinet or upon the same board, each meter shall be tagged or marked to indicate the circuit metered by it.

Section 19. Overhead and Underground Wire Entrances. (1) The overhead wire entrance shall be located on the exterior of the building nearest the utility's lines at a point not less than twelve (12) nor more than thirty (30) feet above the ground. When proper ground clearance cannot be obtained due to height of building, a proper supporting structure shall be provided by the customer unless arrangements can be made with the utility whereby their overhead service wires can be carried to the building in such a manner that these wires will not constitute an obstruction to free passage of vehicles or fire fighting apparatus.

(2) Approval shall be obtained from the utility as to the proper location for a service entrance.

(3) New service drops, both overhead and underground, shall be installed in accordance with the National Electrical Safety Code.

Section 20. Operation of Illegal Gambling Devices. (1) When an electric utility, subject to the jurisdiction of this commission, is notified in writing by a federal or state law enforcement agency, the Attorney General of Kentucky, a Commonwealth's Attorney or a County Attorney acting in his official capacity, that electric energy furnished by it is being used or will be used for operating an illegal gambling device, it shall discontinue rendering electric service to such customer, after reasonable notice to the customer. No damages, penalty or forfeiture, civil or criminal, shall be found against any electric utility for any act done in compliance with any such notice received from the law enforcement agency or officer. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate judicial determination that such service should not be discontinued, or should be restored.

(2) As provided by KRS 278.230, any electric utility subject to commission jurisdiction shall furnish to the commission upon request any records or information in the possession of such electric utility that may assist in the enforcement of this rule.

Section 21. Underground Electric Distribution Systems for New Residential Customers. (1) Purpose of rules. To formulate requirements for underground electric distribution systems for all new customers of those systems which will insure safe and adequate service and which will be uniformly applicable within a utility's service area.

(2) Applicability. New residential customers and subdivisions as defined below after the effective date of this rule.

(3) Rights of way and easements.

(a) The utility shall construct, own, operate and maintain distribution lines only along easements, public streets, roads and highways which are by legal right accessible to the utility's equipment and which the utility has legal right to occupy, and on public lands and private property across which rights of way and easements satisfactory to the utility may be obtained without cost or condemnation by the utility.

(b) Rights of way and easements suitable to the utility for underground distribution facilities shall be furnished by the applicant in reasonable time to meet service requirements. The utility may require that the applicant make the area in which underground distribution facilities are to be located accessible to the company's equipment, remove all obstructions from such area, stake to show property lines and final grade, perform rough grading to reasonable approximation of final grade, and maintain clearing and grading during construction by the utility. The utility may require that suitable land rights be granted to it, obligating the applicant and subsequent property owners to provide continuing access to the utility for operation, maintenance or replacement of its facilities, and to prevent any encroachment in the utility's easement or substantial changes in grade or elevation.

(4) Installation of underground distribution system within new subdivision.

(a) Where appropriate contractual arrangements have been made, the utility shall install within the subdivision an underground electric distribution system of sufficient capacity and suitable materials which, in its judgment, will assure that the property owners will receive safe and adequate electric service for the foreseeable future.

(b) Facilities required to be underground:

1. All single phase conductors installed by the utility shall be underground. Appurtenances such as transformers, pedestal-mounted terminals, switching equipment and meter cabinets may be placed above ground.

2. Three (3) phase primary mains or feeders required within a subdivision to supply local distribution or to serve individual three (3) phase loads may be overhead unless underground is required by governmental

authority or chosen by the applicant, in either of which case the differential cost of underground shall be borne by the applicant.

(c) If the applicant has complied with the requirements herein and with the utility's specifications on file with the commission, and has given the utility not less than 120 days written notice prior to anticipated date of completion (i.e., ready for occupancy) of the first building in the subdivision, the utility shall complete installation thirty (30) days prior to estimated completion date. (Subject to weather and ground conditions and availability of materials and barring extraordinary or emergency circumstances beyond reasonable control of the utility.) However, nothing in these administrative regulations shall be interpreted to require the utility to extend service to portions of subdivisions not under active development.

(5) Schedule of charges.

(a) Within sixty (60) days after the effective date of these rules, each utility shall file with the commission a statement setting forth the utility's policy with respect to electric underground extensions. Such policy shall provide for payment by the applicant for the difference between the cost of providing underground facilities and that of providing overhead facilities. The payment made by applicant shall be expressed in terms of an amount per foot of conductor or other appropriate measure.

(b) The utility's policy as filed with the commission shall set forth an "estimated average cost differential," if any, between the average or representative cost of underground distribution systems and of equivalent overhead distribution systems within the utility's service areas. The payment made by applicant as provided for in paragraph (a) of this subsection shall not be more than the estimated average cost differential and shall be nonrefundable.

(c) Detailed supporting data used to determine estimated average cost differential shall be concurrently filed by the utility with the commission and shall be updated annually.

(d) Applicant may be required to deposit the entire estimated cost of the extension. If this is done, the amount deposited in excess of the normal charge for underground extensions, as provided in paragraph (a) of this subsection, shall be refunded to the applicant over a ten (10) year period as provided in Section 11 of this administrative regulation.

(e) Upon agreement by both parties, if the applicant chooses to perform all necessary trenching and backfilling in accordance with utility specifications, the utility shall credit applicant's cost in an amount equal to the utility's cost for trenching and backfilling.

(f) Utility extension from the property or boundary of the subdivision to its existing supply facilities shall normally be made overhead, and any deposit required for that extension is subject to refund under Section 11 of this administrative regulation. Upon request, such extension may be made underground, if the applicant agrees to pay the excess cost for the underground extension, which excess cost shall be nonrefundable.

(g)1. Point of service shall be that point where utility facilities join customer facilities, irrespective of the location of the meter. Such point of service shall normally be either at the property line or at the corner of the building nearest the point at which underground systems enter the property to be served, depending upon whether the utility or the customer owns the underground service lateral.

2. If established utility practice dictates service termination at the customer's property line, the utility shall credit the applicant fifty (50) dollars or the equivalent cost of an overhead service line to the applicant's meter base, whichever is greater.

3. Where established utility practice does not dictate service termination at the customer property line, the utility shall include in its underground plan the furnishing, installation, ownership, and maintenance of the service lateral to the meter base providing the applicant installs in the building adequate electric service entrance capacity to the satisfaction of the utility to assure that the underground service conductors will be adequate to handle present and future load requirements of the building. In this instance the utility will determine the size and type of service lateral conductors and appurtenances to be used in any installation.

4. If, by mutual agreement of the parties, service terminates at some other point on the building or property, the applicant shall pay the full cost of any additional extension required in excess of that provided for in paragraph (g)1, 2 and 3 of this subsection.

(h) When an existing utility-owned supply circuit or service lateral requires replacement or reinforcement due to added loads, etc., the utility at its expense will replace or reinforce it.

(i) Nothing in this administrative regulation shall be construed to prevent any utility from assuming any part of the cost differential of providing underground distribution systems within subdivisions, provided the utility demonstrates to the commission that such practice will not result in increased rates to the general body of rate payers.

(j) The utility shall not be obligated to install any facility within a subdivision until satisfactory arrangements for payment of charges have been completed by the applicant.

(6) Cooperation by applicant. Charges specified in these rules are based on the premise that each applicant will cooperate with the utility in an effort to keep the cost of construction and installation of the underground electric distribution system as low as possible and make satisfactory arrangements for payment of the above charges prior to installation of the facilities.

(7) Construction. All electrical facilities shall be installed and constructed to comply with applicable codes, rules and administrative regulations of the commission.

Section 22. Deviations from Rules. In special cases for good cause shown the commission may permit deviations from these rules.

HISTORY:

8 Ky.R. 814; eff. 4-7-1982; Am. 16 Ky.R. 2046; 2430; eff. 6-10-1990; 17 Ky.R. 2507; eff. 4-4-1991; TAm 1-30-2013; Crt eff. 3-27-2019.

Editor's Note: KRS 278.042 requires compliance with the most recent edition of the National Electrical Safety Code.

807 KAR 5:046. Prohibition of master metering.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.010(4)(a), 278.040(3), 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service by any utility. This administrative regulation requires electric utilities to meter new buildings individually pursuant to the federal standard established by Section 113(b)(1) of the Public Utility Regulatory Policies Act of 1978.

Section 1. Definitions. (1) "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or a sleeping place by one (1) or more persons maintaining a common household.
(2) "Multidwelling unit building" means a structure with two (2) or more dwelling units.
(3) "High rise building" means a building with more than four (4) stories.

Section 2. Individual Meters Required. An individual electric meter to record the retail sales of electricity shall be installed for each newly constructed dwelling unit in a nontransient multidwelling unit residential building, a mobile home park, or a commercial building for which the building permit application is made after May 31, 1981.

Section 3. Exclusions. Individual unit metering will not be required for:
(1) Transient multidwelling buildings including, but not limited to hotels, motels, campgrounds, hospitals, nursing homes, convalescent homes, college dormitories, fraternities, sororities, boatdocks, and mobile homes without a permanent foundation and which is not connected to sanitation facilities.
(2) Commercial unit spaces where the commercial unit space requirements are subject to alteration with a change in tenants as evidenced by temporary versus permanent type of wall construction.
(3) Electricity used in central heating, ventilating, and air conditioning systems.
(4) Electricity used in high rise buildings.

Section 4. Complaints. Applicants for electric service who desire master metering of electricity in a building for which master metering is prohibited may make a formal complaint to the commission as provided in 807 KAR 5:001, Section 19 [See Editor's Note]. The applicant shall have the burden of proving that the costs of purchasing and installing separate meters in the building are greater than the long-run benefits of individual metering to the consumers of the electricity at the building.

HISTORY:

8 Ky.R. 821; eff. 4-7-1982; TAm 1-30-2013; Crt eff. 3-27-2019.

Editor's Note: 807 KAR 5:001 was amended after the promulgation of 807 KAR 5:046. Reference to Section 19 refers to present-day 807 KAR 5:001, Section 20.

807 KAR 5:054. Small power production and cogeneration.

RELATES TO: KRS Chapter 278, 18 C.F.R. 292.203, 292.204, 292.205, 292.206
STATUTORY AUTHORITY: KRS 278.040(3), 18 C.F.R. 292.203, 292.204, 292.205, 292.206
NECESSITY, FUNCTION, AND CONFORMITY: Under Title II of the Public Utility Regulatory Policies Act of 1978, the Federal Energy Regulatory Commission (FERC) was required to adopt rules to encourage cogeneration and small power production by requiring electric utilities to sell electricity to qualifying cogeneration and small power production facilities and purchase electricity from such facilities. Section 210(f) of this Act requires the state regulatory authority with jurisdiction over electric utilities to implement the FERC rules. As the state regulatory authority for Kentucky, the Public Service Commission proposes to implement those rules.

Section 1. Definitions. (1) "Avoided costs" means incremental costs to an electric utility of electric energy or capacity or both which, if not for the purchase from the qualifying facility, the utility would generate itself or purchase from another source.

(2) "Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

(3) "Cogeneration facility" means equipment used to produce electricity and another form of useful energy which is used for industrial purposes or commercial heating or cooling purposes through sequential use of input energy and which facility meets criteria at 18 C.F.R. Part 292.203(b) and 292.205, as published in the Federal Register on March 20, 1980 (45 F.R. 17959).

(4) "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to installation and maintenance of physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent those costs are in excess of corresponding costs which the utility would have incurred if it had not engaged in interconnected operations but instead had generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity or both from other sources. Interconnection costs do not include any costs included in calculation of avoided costs.

(5) "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

(6) "Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

(7) "Purchase" means purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

(8) "Qualifying facility" means a cogeneration facility as defined in this administrative regulation, construction of which was commenced on or after November 9, 1978, or a small power production facility as defined in this administrative regulation, construction or substantial renovation of which was begun on or after November 9, 1978, neither of which is owned in equity interest greater than fifty (50) percent by a person primarily engaged in generation of electric power other than as described in these rules.

(9) "Sale" means sale of electric energy or capacity or both by an electric utility to a qualifying facility.

(10) "Small power production facility" means an arrangement of equipment for the production of electricity with capacity no greater than eighty (80) megawatts, which equipment is located within a one (1) mile radius or, if hydroelectric facilities, on the same impoundment of water, and which equipment is powered at least seventy-five (75) percent by biomass, waste, renewable resources, or any combination thereof and not more than twenty-five (25) percent by coal or oil or natural gas or any combination thereof and which meets criteria at 18 C.F.R. Part 292.204 as published in the Federal Register on March 20, 1980 (45 F.R. 17959).

(11) "Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

(12) "System emergency" means a condition on a utility's system which may result in imminent significant disruption of service to customers or may imminently endanger life or property.

Section 2. General. This administrative regulation sets forth the manner in which the Public Service Commission will discharge duties conferred upon it by Title II of the Public Utility Regulatory Policies Act of 1978.

Section 3. Applicability. This administrative regulation shall apply to any electric utility, subject to the jurisdiction of the commission, which purchases from or sells to any qualifying facility.

Section 4. Criteria for Qualifying Facility. (1) Criteria for qualification of small power production facilities and cogeneration facilities constructed on or after November 9, 1978, are the same as those adopted by the Federal Energy Regulatory Commission including 18 C.F.R. Parts 292.203, 292.204, 292.205, and 292.206 as published in the Federal Register March 20, 1980 (45 F.R. 17959).

(2) The qualifying status of small power production facilities and cogeneration facilities, the construction of which was commenced prior to November 9, 1978, but which were not selling power to the interconnected utility under an existing contract as of November 9, 1978, will be determined under this administrative regulation on a case-by-case basis.

(3) Small power production facilities and cogeneration facilities constructed prior to November 9, 1978, but which were selling power to their interconnected utility under an existing contract on that date will not be considered qualifying facilities. Upon expiration of the power sales contract between a small power production or cogeneration facility and the electric utility, the commission will determine the qualifying status of the facility under this administrative regulation on a case-by-case basis.

Section 5. (1)(a) All electric utilities with annual retail sales greater than 500 million kilowatt hours shall provide data to the commission from which avoided costs may be derived not later than June 30, 1982, and not less often than every two (2) years thereafter unless otherwise determined by the commission.

(b) In the case of a utility required to purchase all of its electricity from a wholesale supplier by contract, the utility shall file the contracts under which its capacity and energy are purchased, in addition to data provided by the supplying utility required by subsection (2) of this section.

(2) Each electric utility as described in subsection (1) of this section shall file with the commission and shall maintain for public inspection the following data:

(a) Estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1,000 megawatts or more, and in blocks equivalent to not more than ten (10) percent of system peak demands for systems with peak demand of less than 1,000 megawatts. Avoided costs shall be stated on a cents per kilowatt-hour basis during daily, seasonal peak and off-peak periods, by year, for the current calendar year, and each of the next five (5) years.

(b) The electric utility's plan for addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding ten (10) years.

(c) Estimated capacity costs at completion of planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy cost of each unit, expressed in cents per kilowatt-hour. These costs shall be expressed separately for each individual unit and individual planned firm purchases.

(3)(a) Any data submitted by an electric utility beginning with the scheduled June 30, 1982, data shall be subject to review by the commission.

(b) The electric utility has the burden of proof to justify the data it supplies.

Section 6. Electric Utility Obligations. (1) Each electric utility shall purchase any energy and capacity which is made available from a qualifying facility except as provided in subsections (2) and (3) of this section.

(2) The qualifying facility's right to sell power to the utility shall be curtailed in periods when purchases from qualifying facilities will result in costs greater than those which the utility would incur if it generated an equivalent amount of energy instead of purchasing that energy.

(3) During any system emergency, an electric utility may discontinue:

(a) Purchases from a qualifying facility if such purchases would contribute to such emergency; or

(b) Sales to a qualifying facility if discontinuance is nondiscriminatory.

(4) Any utility which invokes subsection (2) of this section shall provide adequate notice to the qualifying facility. In addition, the commission may require the utility to furnish documentation within ten (10) working days after suspension occurs. If the utility fails to provide adequate notice or incorrectly identifies such a period, it will be required to reimburse the qualifying facility for energy or capacity or both available for delivery on a legally enforceable basis as if that period had not occurred.

(5) Rates for sale. An electric utility shall sell power to a qualifying facility upon request except as provided in subsection (3)(b) of this section. Rates for sale shall be just and reasonable, in the public interest and nondiscriminatory. Rates for sale which are based on accurate data and consistent system costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the utility's other customers with similar load or cost-related characteristics. If a utility provides back-up or supplementary power to a qualifying facility, then costs associated with that capacity reservation are properly recoverable from the qualifying facility.

(6) Obligation to interconnect.

(a) An electric utility is required to make any interconnection with a qualifying facility that is necessary for purchase and sale. Owners of qualifying facilities shall be required to pay for any additional interconnection costs to the extent that those costs are in excess of costs that the electric utility would have incurred if the qualifying facility's output had not been purchased. Payment shall be over a reasonable period of time, and terms of payment shall be a part of the contract between the electric utility and the qualifying facility.

(b) Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with applicable standards established in accordance with Section 7(6) of this administrative regulation.

Section 7. Purchase of Output from Qualifying Facilities. (1) Qualifying facilities shall be permitted the option of either:

(a) Using output of the qualifying facility to supply their power requirements and selling their surplus; or

(b) Simultaneously selling their entire output to the interconnecting utility while purchasing their own requirements from that utility.

(2) Rates for purchase of output of qualifying facility with design capacity of 100 kilowatts or less. Each electric utility shall prepare standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. These rates shall be just and reasonable to the electric customer of the utility, in the public interest and nondiscriminatory. These rates shall be based on avoided costs after consideration of the factors listed in subsection (5)(a) of this section and shall be subdivided into an energy component and a capacity component.

(a) Rates for power offered on an "as available" basis shall be based on the purchasing utility's avoided energy costs estimated at time of delivery.

(b) Rates for power offered on all legally enforceable obligations shall be based at the option of the qualifying facility on either avoided costs at the time of delivery or avoided costs at the time the legally enforceable obligation is incurred. The capacity component shall be based on supply characteristics of qualifying facilities, and the aggregate capacity value of all 100 kilowatts or less facilities which supply power on a legally enforceable basis.

(3) Electric utilities shall design and offer a standard contract to qualifying facilities with a design capacity of 100 kilowatts or less. This contract shall be subject to commission approval.

(4) Rates for purchase of output of qualifying facility with design capacity over 100 kilowatts. Each electric utility shall provide a standard rate schedule for qualifying facilities with design capacity over 100 kilowatts. The rate schedule shall be based on avoided costs which shall be subdivided into an energy component and a capacity component. These rates shall be used only as the basis for negotiating a final purchase rate with qualifying facilities after proper consideration has been given to factors affecting purchase rates listed in subsection (5)(a) of this section. Negotiated rates shall be just and reasonable to the electric customer of the utility, in the public interest and nondiscriminatory. If the electric utility and qualifying facility cannot agree on the purchase rate, then the commission shall determine the rate after a hearing.

(a) Rates for power offered on an "as available" basis shall be based on the purchasing utility's avoided costs estimated at time of delivery.

(b) Rates for energy or capacity or both offered on a legally enforceable basis shall be based at the option of the qualifying facility on either avoided costs at the time of delivery or avoided costs at the time the legally enforceable obligation is incurred.

(5) Factors affecting rates for purchase for all qualifying facilities. In determining the final purchase rate, the following factors shall be taken into account:

(a) Availability of capacity or energy from a qualifying facility during the system daily and seasonal peak. The utility should consider for each qualifying facility the ability to dispatch, reliability, terms of contract, duration of obligation, termination requirements, ability to coordinate scheduled outages, usefulness of

energy and capacity during system emergencies, individual and aggregate value of energy and capacity, and shorter construction lead times associated with cogeneration and small power production.

(b) Ability of the electric utility to avoid costs due to deferral, cancellation, or downsizing of capacity additions, and reduction of fossil fuel use.

(c) Savings or costs resulting from line losses that would not have existed in the absence of purchases from a qualifying facility.

(6) Utility safety and system protection requirements. The qualifying facility shall provide adequate equipment to insure the safety and reliability of interconnected operations. This equipment shall be designed to protect interconnect operations between the qualifying facility and the electric utility grid. If the electric utility and qualifying facility cannot agree, then the qualifying facility may apply to the commission for a determination of adequate system protection.

(7) Additional services to be provided to qualifying facilities. Upon request by a qualifying facility each electric utility shall provide supplementary power, back-up power, maintenance power, and interruptible power. The commission may waive this requirement if the electric utility demonstrates that compliance with it would impair its ability to render adequate service to its other customers or would be unduly burdensome.

(8) Wheeling. The electric utility may wheel power to another utility if the qualifying facility approves. This provision shall not eliminate the responsibility of the interconnected electric utility to purchase power from the qualifying facility if the qualifying facility does not approve the wheeling transaction. The electric utility which agrees to purchase power shall pay to the qualifying facility its avoided cost connected with the transmission of this power adjusted for line losses.

(9) This administrative regulation is not intended to restrict voluntary agreements between qualifying facilities and electric utilities. All contracts between qualifying facilities and electric utilities shall be provided to the commission for its review.

(10) Disputes. The commission's inquiry and determination shall be limited to those parts of a proposed contract which are in dispute.

HISTORY:

8 Ky.R. 216; Am. 837; eff. 4-7-82; 16 Ky.R. 1478; 1945; eff. 3-8-90; Crt eff. 3-27-2019.

807 KAR 5:056. Fuel adjustment clause.

RELATES TO: KRS 61.870 - 61.884, 143.020, Chapter 278
STATUTORY AUTHORITY: KRS 278.030(1), (2), 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the Public Service Commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires every utility to furnish adequate, efficient, and reasonable service. This administrative regulation establishes the requirements with respect to the implementation of automatic fuel adjustment clauses by which electric utilities may immediately recover increases in fuel costs subjected to later scrutiny by the Public Service Commission.

Section 1. Fuel Adjustment Clause. Fuel adjustment clauses that are not in conformity with the requirements established in subsections (1) through (6) of this section are not in the public interest and may result in suspension of those parts of the rate schedules based on severity of the nonconformity and any history of nonconformity.

(1) The fuel adjustment clause shall provide for periodic adjustment per Kilowatt Hour (KWH) of sales equal to the difference between the fuel costs per KWH sale in the base period and in the current period according to the following formula:

$$\text{Adjustment Factor} = \frac{F(m)}{S(m)} - \frac{F(b)}{S(b)}$$

Where F(b) is the cost of fuel in the base period, F(m) is the cost of fuel in the current period, S(b) is sales in the base period, and S(m) is sales in the current period, all as established in subsections (2) through (6) of this section.

(2) F(b)/S(b) shall be determined so that on the effective date of the commission's approval of the utility's application of the formula, the resultant adjustment shall be equal to zero.

(3) Fuel costs (F) shall be the most recent actual monthly cost, based on weighted average inventory costing, of:

(a) Fossil fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants, plus the cost of fuel that would have been used in plants suffering forced generation or transmission outages, but less the cost of fuel related to substitute generation; plus

(b) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than as established in paragraph (c) of this subsection, but excluding the cost of fuel related to purchases to substitute for the forced outages; plus

(c) The net energy cost of energy purchases, exclusive of capacity or demand charges irrespective of the designation assigned to the transaction, if the energy is purchased on an economic dispatch basis. Costs, such as the charges for economy energy purchases, the charges as a result of scheduled outage, and other charges for energy being purchased by the buyer to substitute for the buyer's own higher cost energy, may be included; and less

(d) The cost of fossil fuel recovered through intersystem sales, including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis.

(4) Forced outages are all nonscheduled losses of generation or transmission that require substitute power for a continuous period in excess of six (6) hours. If forced outages are not the result of faulty equipment, faulty manufacture, faulty design, faulty installations, faulty operation, or faulty maintenance, but are Acts of God, riot, insurrection, or acts of the public enemy, then the utility may, upon proper showing, with the approval of the commission, include the fuel cost of substitute energy in the adjustment. In making the calculations of fuel cost (F) in subsection (3)(a) and (b) of this section, the forced outage costs to be subtracted shall be no less than the fuel cost related to the lost generation until approval is obtained.

(5) Sales (S) shall be all KWH's sold, excluding intersystem sales. Utility used energy shall not be excluded in the determination of sales (S). If, for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to:

(a) Generation; plus
(b) Purchases; plus
(c) Interchange-in; less

(d) Energy associated with pumped storage operations; less
(e) Intersystem sales referred to in subsection (3)(d) of this section; less
(f) Total system losses.

(6) The cost of fossil fuel shall only include the cost of the fuel itself and necessary charges for transportation of the fuel from the point of acquisition to the unloading point, as listed in Account 151 of FERC Uniform System of Accounts for Public Utilities and Licensees, less any cash or other discounts.

Section 2. Filing Requirements. (1) If a utility initially proposes a fuel adjustment clause, the utility shall submit copies of each fossil fuel purchase contract not otherwise on file with the commission and all other agreements, options, amendments, modifications, and similar documents related to the procurement of fuel supply or purchased power.

(2) Any changes in the contracts or other documents filed pursuant to subsection (1) of this section, including price escalations, and any new agreements entered into after the initial submission, shall be submitted at the time they are entered into.

(3) If fuel is purchased from utility-owned or controlled sources, or the contract contains a price escalation clause, those facts shall be noted, and the utility shall explain and justify them in writing.

(4) The monthly fuel adjustment shall be filed with the commission no later than ten (10) days before it is scheduled to go into effect, along with all the necessary supporting data to justify the amount of the adjustment.

(5) Copies of all documents required to be filed with the commission under this administrative regulation shall be open and made available for public inspection at the office of the Public Service Commission pursuant to the provisions of KRS 61.870 to 61.884.

Section 3. Review of Fuel Adjustment Clauses. (1) Fuel charges that are unreasonable shall be disallowed and may result in the suspension of the fuel adjustment clause based on the severity of the utility's unreasonable fuel charges and any history of unreasonable fuel charges.

(2) The commission on its own motion may investigate any aspect of fuel purchasing activities covered by this administrative regulation.

(3) (a) At six (6) month intervals, the commission shall conduct a formal review and may conduct public hearings on a utility's past fuel adjustments.

(b) The commission shall order a utility to charge off and amortize, by means of a temporary decrease of rates, any adjustments the commission finds unjustified due to improper calculation or application of the charge or improper fuel procurement practices.

(4) (a) Every two (2) years following the initial effective date of each utility's fuel clause, the commission shall conduct a formal review and evaluate past operations of the clause, disallow improper expenses and, to the extent appropriate, reestablish the fuel clause charge in accordance with Section 1(2) of this administrative regulation.

(b) The commission may conduct a public hearing if the commission finds that a hearing is necessary for the protection of a substantial interest or is in the public interest.

HISTORY:

8 Ky.R. 822; eff. 4-7-1982; Crt eff. 3-27-2019; 45 Ky.R. 3272; 46 Ky.R. 41, 435; eff. 8-20-2019; 47 Ky.R. 1485, 1964; eff. 6-3-2021.

807 KAR 5:058. Integrated resource planning by electric utilities.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.040(3), 278.230(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278. This administrative regulation prescribes rules for regular reporting and commission review of load forecasts and resource plans of the state's electric utilities to meet future demand with an adequate and reliable supply of electricity at the lowest possible cost for all customers within their service areas, and satisfy all related state and federal laws and regulations.

Section 1. General Provisions. (1) This administrative regulation shall apply to electric utilities under commission jurisdiction except a distribution company with less than $10,000,000 annual revenue or a distribution cooperative organized under KRS Chapter 279.

(2) Each electric utility shall file triennially with the commission an integrated resource plan. The plan shall include historical and projected demand, resource, and financial data, and other operating performance and system information, and shall discuss the facts, assumptions, and conclusions, upon which the plan is based and the actions it proposes.

(3) Each electric utility shall file ten (10) bound copies and one (1) unbound, reproducible copy of its integrated resource plan with the commission.

Section 2. Filing Schedule. (1) Each electric utility shall file its integrated resource plan according to a staggered schedule which provides for the filing of integrated resource plans one (1) every six (6) months beginning nine (9) months from the effective date of this administrative regulation.

(a) The integrated resource plans shall be filed at the specified times following the effective date of this administrative regulation:

1. Kentucky Utilities Company shall file nine (9) months from the effective date;
2. Kentucky Power Company shall file fifteen (15) months from the effective date;
3. East Kentucky Power Cooperative, Inc. shall file twenty-one (21) months from the effective date;
4. The Union Light, Heat & Power Company shall file twenty-seven (27) months from the effective date;
5. Big Rivers Electric Corporation shall file thirty-three (33) months from the effective date; and
6. Louisville Gas & Electric Company shall file thirty-nine (39) months from the effective date.

(b) The schedule shall provide at such time as all electric utilities have filed integrated resource plans, the sequence shall repeat.

(c) The schedule shall remain in effect until changed by the commission on its own motion or on motion of one (1) or more electric utilities for good cause shown. Good cause may include a change in a utility's financial or resource conditions.

(d) If any filing date falls on a weekend or holiday, the plan shall be submitted on the first business day following the scheduled filing date.

(2) Immediately upon filing of an integrated resource plan, each utility shall provide notice to intervenors in its last integrated resource plan review proceeding, that its plan has been filed and is available from the utility upon request.

(3) Upon receipt of a utility's integrated resource plan, the commission shall establish a review schedule which may include interrogatories, comments, informal conferences, and staff reports.

Section 3. Waiver. A utility may file a motion requesting a waiver of specific provisions of this administrative regulation. Any request shall be made no later than ninety (90) days prior to the date established for filing the integrated resource plan. The commission shall rule on the request within thirty (30) days. The motion shall clearly identify the provision from which the utility seeks a waiver and provide justification for the requested relief which shall include an estimate of costs and benefits of compliance with the specific provision. Notice shall be given in the manner provided in Section 2(2) of this administrative regulation.

Section 4. Format. (1) The integrated resource plan shall be clearly and concisely organized so that it is evident to the commission that the utility has complied with reporting requirements described in subsequent sections.

(2) Each plan filed shall identify the individuals responsible for its preparation, who shall be available to respond to inquiries during the commission's review of the plan.

Section 5. Plan Summary. The plan shall contain a summary which discusses the utility's projected load growth and the resources planned to meet that growth. The summary shall include at a minimum:

(1) Description of the utility, its customers, service territory, current facilities, and planning objectives;

(2) Description of models, methods, data, and key assumptions used to develop the results contained in the plan;

(3) Summary of forecasts of energy and peak demand, and key economic and demographic assumptions or projections underlying these forecasts;

(4) Summary of the utility's planned resource acquisitions including improvements in operating efficiency of existing facilities, demand-side programs, nonutility sources of generation, new power plants, transmission improvements, bulk power purchases and sales, and interconnections with other utilities;

(5) Steps to be taken during the next three (3) years to implement the plan;

(6) Discussion of key issues or uncertainties that could affect successful implementation of the plan.

Section 6. Significant Changes. All integrated resource plans, shall have a summary of significant changes since the plan most recently filed. This summary shall describe, in narrative and tabular form, changes in load forecasts, resource plans, assumptions, or methodologies from the previous plan. Where appropriate, the utility may also use graphic displays to illustrate changes.

Section 7. Load Forecasts. The plan shall include historical and forecasted information regarding loads.

(1) The information shall be provided for the total system and, where available, disaggregated by the following customer classes:

(a) Residential heating;

(b) Residential nonheating;

(c) Total residential (total of paragraphs (a) and (b) of this subsection);

(d) Commercial;

(e) Industrial;

(f) Sales for resale;

(g) Utility use and other.

The utility shall also provide data at any greater level of disaggregation available.

(2) The utility shall provide the following historical information for the base year, which shall be the most recent calendar year for which actual energy sales and system peak demand data are available, and the four (4) years preceding the base year:

(a) Average annual number of customers by class as defined in subsection (1) of this section;

(b) Recorded and weather-normalized annual energy sales and generation for the system, and sales disaggregated by class as defined in subsection (1) of this section;

(c) Recorded and weather-normalized coincident peak demand in summer and winter for the system;

(d) Total energy sales and coincident peak demand to retail and wholesale customers for which the utility has firm, contractual commitments;

(e) Total energy sales and coincident peak demand to retail and wholesale customers for which service is provided under an interruptible or curtailable contract or tariff or under some other nonfirm basis;

(f) Annual energy losses for the system;

(g) Identification and description of existing demand-side programs and an estimate of their impact on utility sales and coincident peak demands including utility or government sponsored conservation and load management programs;

(h) Any other data or exhibits, such as load duration curves or average energy usage per customer, which illustrate historical changes in load or load characteristics.

(3) For each of the fifteen (15) years succeeding the base year, the utility shall provide a base load forecast it considers most likely to occur and, to the extent available, alternate forecasts representing lower and upper ranges of expected future growth of the load on its system. Forecasts shall not include load impacts of additional, future demand-side programs or customer generation included as part of planned resource acquisitions estimated separately and reported in Section 8(4) of this administrative regulation. Forecasts shall include the utility's estimates of existing and continuing demand-side programs as described in subsection (5) of this section.

(4) The following information shall be filed for each forecast:

(a) Annual energy sales and generation for the system and sales disaggregated by class as defined in subsection (1) of this section;

(b) Summer and winter coincident peak demand for the system;

(c) If available for the first two (2) years of the forecast, monthly forecasts of energy sales and generation for the system and disaggregated by class as defined in subsection (1) of this section and system peak demand;

(d) The impact of existing and continuing demand-side programs on both energy sales and system peak demands, including utility and government sponsored conservation and load management programs;

(e) Any other data or exhibits which illustrate projected changes in load or load characteristics.

(5) The additional following data shall be provided for the integrated system, when the utility is part of a multistate integrated utility system, and for the selling company, when the utility purchases fifty (50) percent of its energy from another company:

(a) For the base year and the four (4) years preceding the base year:

1. Recorded and weather normalized annual energy sales and generation;

2. Recorded and weather-normalized coincident peak demand in summer and winter.

(b) For each of the fifteen (15) years succeeding the base year:

1. Forecasted annual energy sales and generation;

2. Forecasted summer and winter coincident peak demand.

(6) A utility shall file all updates of load forecasts with the commission when they are adopted by the utility.

(7) The plan shall include a complete description and discussion of:

(a) All data sets used in producing the forecasts;

(b) Key assumptions and judgments used in producing forecasts and determining their reasonableness;

(c) The general methodological approach taken to load forecasting (for example, econometric, or structural) and the model design, model specification, and estimation of key model parameters (for example, price elasticities of demand or average energy usage per type of appliance);

(d) The utility's treatment and assessment of load forecast uncertainty;

(e) The extent to which the utility's load forecasting methods and models explicitly address and incorporate the following factors:

1. Changes in prices of electricity and prices of competing fuels;

2. Changes in population and economic conditions in the utility's service territory and general region;

3. Development and potential market penetration of new appliances, equipment, and technologies that use electricity or competing fuels; and

4. Continuation of existing company and government sponsored conservation and load management or other demand-side programs.

(f) Research and development efforts underway or planned to improve performance, efficiency, or capabilities of the utility's load forecasting methods; and

(g) Description of and schedule for efforts underway or planned to develop end-use load and market data for analyzing demand-side resource options including load research and market research studies, customer appliance saturation studies, and conservation and load management program pilot or demonstration projects.

Technical discussions, descriptions, and supporting documentation shall be contained in a technical appendix.

Section 8. Resource Assessment and Acquisition Plan. (1) The plan shall include the utility's resource assessment and acquisition plan for providing an adequate and reliable supply of electricity to meet forecasted electricity requirements at the lowest possible cost. The plan shall consider the potential impacts of selected, key uncertainties and shall include assessment of potentially cost-effective resource options available to the utility.

(2) The utility shall describe and discuss all options considered for inclusion in the plan including:

(a) Improvements to and more efficient utilization of existing utility generation, transmission, and distribution facilities;

(b) Conservation and load management or other demand-side programs not already in place;

(c) Expansion of generating facilities, including assessment of economic opportunities for coordination with other utilities in constructing and operating new units; and

(d) Assessment of nonutility generation, including generating capacity provided by cogeneration, technologies relying on renewable resources, and other nonutility sources.

(3) The following information regarding the utility's existing and planned resources shall be provided. A utility which operates as part of a multistate integrated system shall submit the following information for its operations within Kentucky and for the multistate utility system of which it is a part. A utility which purchases fifty (50) percent or more of its energy needs from another company shall submit the following information for its operations within Kentucky and for the company from which it purchases its energy needs.

(a) A map of existing and planned generating facilities, transmission facilities with a voltage rating of sixty-nine (69) kilovolts or greater, indicating their type and capacity, and locations and capacities of all interconnections with other utilities. The utility shall discuss any known, significant conditions which restrict transfer capabilities with other utilities.

(b) A list of all existing and planned electric generating facilities which the utility plans to have in service in the base year or during any of the fifteen (15) years of the forecast period, including for each facility:

1. Plant name;
2. Unit number(s);
3. Existing or proposed location;
4. Status (existing, planned, under construction, etc.);
5. Actual or projected commercial operation date;
6. Type of facility;
7. Net dependable capability, summer and winter;
8. Entitlement if jointly owned or unit purchase;
9. Primary and secondary fuel types, by unit;
10. Fuel storage capacity;
11. Scheduled upgrades, deratings, and retirement dates;
12. Actual and projected cost and operating information for the base year (for existing units) or first full year of operations (for new units) and the basis for projecting the information to each of the fifteen (15) forecast years (for example, cost escalation rates). All cost data shall be expressed in nominal and real base year dollars.

a. Capacity and availability factors;
b. Anticipated annual average heat rate;
c. Costs of fuel(s) per millions of British thermal units (MMBtu);
d. Estimate of capital costs for planned units (total and per kilowatt of rated capacity);
e. Variable and fixed operating and maintenance costs;
f. Capital and operating and maintenance cost escalation factors;
g. Projected average variable and total electricity production costs (in cents per kilowatt-hour).

(c) Description of purchases, sales, or exchanges of electricity during the base year or which the utility expects to enter during any of the fifteen (15) forecast years of the plan.

(d) Description of existing and projected amounts of electric energy and generating capacity from cogeneration, self-generation, technologies relying on renewable resources, and other nonutility sources available for purchase by the utility during the base year or during any of the fifteen (15) forecast years of the plan.

(e) For each existing and new conservation and load management or other demand-side programs included in the plan:

1. Targeted classes and end-uses;
2. Expected duration of the program;
3. Projected energy changes by season, and summer and winter peak demand changes;
4. Projected cost, including any incentive payments and program administrative costs; and
5. Projected cost savings, including savings in utility's generation, transmission and distribution costs.

(4) The utility shall describe and discuss its resource assessment and acquisition plan which shall consist of resource options which produce adequate and reliable means to meet annual and seasonal peak demands and total energy requirements identified in the base load forecast at the lowest possible cost. The utility shall provide the following information for the base year and for each year covered by the forecast:

(a) On total resource capacity available at the winter and summer peak:

1. Forecast peak load;
2. Capacity from existing resources before consideration of retirements;
3. Capacity from planned utility-owned generating plant capacity additions;

4. Capacity available from firm purchases from other utilities;
5. Capacity available from firm purchases from nonutility sources of generation;
6. Reductions or increases in peak demand from new conservation and load management or other demand-side programs;
7. Committed capacity sales to wholesale customers coincident with peak;
8. Planned retirements;
9. Reserve requirements;
10. Capacity excess or deficit;
11. Capacity or reserve margin.

(b) On planned annual generation:
1. Total forecast firm energy requirements;
2. Energy from existing and planned utility generating resources disaggregated by primary fuel type;
3. Energy from firm purchases from other utilities;
4. Energy from firm purchases from nonutility sources of generation; and
5. Reductions or increases in energy from new conservation and load management or other demand-side programs;

(c) For each of the fifteen (15) years covered by the plan, the utility shall provide estimates of total energy input in primary fuels by fuel type and total generation by primary fuel type required to meet load. Primary fuels shall be organized by standard categories (coal, gas, etc.) and quantified on the basis of physical units (for example, barrels or tons) as well as in MMBtu.

(5) The resource assessment and acquisition plan shall include a description and discussion of:

(a) General methodological approach, models, data sets, and information used by the company;

(b) Key assumption and judgments used in the assessment and how uncertainties in those assumptions and judgments were incorporated into analyses;

(c) Criteria (for example, present value of revenue requirements, capital requirements, environmental impacts, flexibility, diversity) used to screen each resource alternative including demand-side programs, and criteria used to select the final mix of resources presented in the acquisition plan;

(d) Criteria used in determining the appropriate level of reliability and the required reserve or capacity margin, and discussion of how these determinations have influenced selection of options;

(e) Existing and projected research efforts and programs which are directed at developing data for future assessments and refinements of analyses;

(f) Actions to be undertaken during the fifteen (15) years covered by the plan to meet the requirements of the Clean Air Act amendments of 1990, and how these actions affect the utility's resource assessment; and

(g) Consideration given by the utility to market forces and competition in the development of the plan.

Technical discussion, descriptions and supporting documentation shall be contained in a technical appendix.

Section 9. Financial Information. The integrated resource plan shall, at a minimum, include and discuss the following financial information:

(1) Present (base year) value of revenue requirements stated in dollar terms;
(2) Discount rate used in present value calculations;
(3) Nominal and real revenue requirements by year; and
(4) Average system rates (revenues per kilowatt hour) by year.

Section 10. Notice. Each utility which files an integrated resource plan shall publish, in a form prescribed by the commission, notice of its filing in a newspaper of general circulation in the utility's service area. The notice shall be published not more than thirty (30) days after the filing date of the report.

Section 11. Procedures for Review of the Integrated Resource Plan. (1) Upon receipt of a utility's integrated resource plan, the commission shall develop a procedural schedule which allows for submission of written interrogatories to the utility by staff and intervenors, written comments by staff and intervenors, and responses to interrogatories and comments by the utility.

(2) The commission may convene conferences to discuss the filed plan and all other matters relative to review of the plan.

(3) Based upon its review of a utility's plan and all related information, the commission staff shall issue a report summarizing its review and offering suggestions and recommendations to the utility for subsequent filings.

(4) A utility shall respond to the staff's comments and recommendations in its next integrated resource plan filing.

HISTORY:

17 Ky.R. 1289; Am. 1720; eff. 12-18-90; 21 Ky.R. 2799; 22 Ky.R. 287; eff. 7-21-95.

Editor's Note: The Union Light, Heat & Power Company was acquired by Duke Kentucky Energy, Inc. on April 3, 2006 and now operates under that name.

807 KAR 5:061. Telephone.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishings of any commodity by the utility. This administrative regulation establishes general rules which apply to telephone utilities.

Section 1. Definitions. (1) "Access line" means wires or channels used to connect network interface at the subscriber premises with the central office.

(2) "Average busy season; busy hour traffic" means the average traffic volume for the busy season, busy hours.

(3) "Base rate area" means the developed portion or portions within each exchange service area as set forth in telephone utility tariffs, maps or descriptions. Access line service within this area is furnished at uniform rates without mileage charges.

(4) "Basic or regular service" includes all one (1), two (2), four (4) and eight (8) party access line service.

(5) "Busy hour" means the two (2) consecutive half-hours during which the greatest volume of traffic is handled in the central office.

(6) "Busy season" means that period of the year during which the greatest volume of traffic is handled in the central office.

(7) "Calls" means telephone messages attempted by a customer.

(8) "Central office" means a unit of a telephone utility, including switching equipment and appurtenant facilities used to establish connections between customer lines or between customer lines and trunk or toll lines to other central offices within the same or at other exchanges.

(9) "Class of service" means the various categories of telephone service generally available to customers, such as business or residence.

(10) "Customer or subscriber" means any person, firm, partnership, corporation, municipality, cooperative, organization or governmental agency provided with telephone service by any telephone utility.

(11) "Customer trouble report" means any oral or written report from a subscriber or user of telephone service relating to a physical defect or difficulty with the operation of telephone facilities.

(12) "Direct distance dialing (DDD)" means customer dialing over the nationwide intertoll telephone network of calls to which toll charges are applicable. No operator assistance is required for DDD calls.

(13) "Exchange" means a geographical area established by a telephone utility for the administration of telephone service. It may embrace a city, town, or village and its environs or a portion thereof. It may consist of one (1) or more central offices together with associated plant used in furnishing communication service in that area.

(14) "Extended area service (EAS)" means the provision of toll free calling between or among two (2) or more exchange areas.

(15) "Grade of service" means the number of parties served on a telephone line such as one (1) party, two (2) party, four (4) party, etc.

(16) "Intercept service" means a service arrangement provided by the utility whereby calls placed to a disconnected, discontinued, or improperly listed telephone number are intercepted and the calling party is informed that the called telephone number has been disconnected, discontinued, changed, or that calls are being received by another telephone. This may be accomplished by recording or by operator.

(17) "Message" means a completed customer telephone call.

(18) "Outside plant" means telephone equipment and facilities installed on, along, over or under streets, alleys, highways, or on private rights-of-way between central office and customer's location or between central offices.

(19) "Regrade" means an application for a different class or grade of service.

(20) "Service line" means those facilities owned and maintained by a customer or group of customers. Lines of those facilities are connected with facilities of a telephone utility at an agreed point for communication service.

(21) "Service objectives," as construed in these administrative regulations, shall mean a designated number or percentage, applicable to various service measures, maintenance of which shall indicate a minimum satisfactory level of service.

(22) “Special service” means unusual and complex services such as data terminals, teletypewriter, full period circuits, wide area telephone service (WATS), or other items that require special engineering, installation or manufacturing to provide service.

(23) “Switching service” means switching performed for service lines.

(24) “Tariff” means the entire body of rates, tolls, rentals, charges, classifications, regulations and rules, adopted by a public utility in accordance with laws governing the provisions of public utility service.

(25) “Telephone utility” means any person, firm, partnership, cooperative, organization or corporation furnishing telephone service to the public under the jurisdiction of the commission.

(26) “Toll connecting trunks” means a general classification of trunks carrying toll traffic and ordinarily extending between a local office and a toll office.

(27) “Toll station” means an access line and associated equipment connected to a toll line or directly to a toll board.

(28) “Traffic” means telephone call volume, based on number and duration of messages.

Section 2. General Provisions. This administrative regulation governs furnishing of intrastate telephone service and facilities to the public by telephone utilities subject to the jurisdiction of the commission. These rules set forth reasonable service standards and procedures for rendering adequate and satisfactory service to the public.

Section 3. Acceptable Standards. Unless otherwise specified by the commission, the utility shall use applicable provisions in the following publications as standards of accepted good engineering practice for construction and maintenance of plant and facilities, incorporated in this administrative regulation by reference. Copies are available at the Commission office, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.

(1) National Electrical Safety Code; ANSI C2. 1990 Edition, available by contacting the IEEE Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855-1331. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.

(2) National Electrical Code; ANSI/NFPA 70, 1990 Edition, available by contacting the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02169. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.

Section 4. Basic Utility Obligations. (1) Each telephone utility shall provide telephone service to the public in its service area in accordance with its rules and tariffs on file with the commission. Such service shall meet or exceed standards set forth in this administrative regulation.

(2) Each telephone utility shall continually review its operations to assure adequate service.

(3) Each telephone utility shall maintain records of its operations in sufficient detail necessary to permit review, and those records shall be available for inspection by the commission upon request.

(4) Each utility shall maintain records of various service objectives by exchange, district, or as otherwise approved by the commission. A records summary shall be submitted monthly to the commission. If the utility's performance falls below the service objective for two (2) consecutive months, the utility shall submit to the commission a report setting forth action taken or planned to correct performance levels.

(5) Where a telephone utility is generally operated in conjunction with any other enterprise, suitable records shall be maintained so that results of the telephone operation may be determined upon reasonable notice and request by the commission.

Section 5. Directories. (1) Telephone directories shall be published at least yearly for each exchange listing the name, location and telephone numbers of all customers, except public telephones and numbers unlisted at customer request, which can be called within the service area without a long distance charge.

(2) Upon issuance, a copy of each directory shall be distributed by each utility to all its subscribers served by that directory, and a copy of each directory shall be furnished to the commission.

(3) The name of the telephone utility, the area included in the directory, and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for police and fire departments shall appear conspicuously in the front part of directory pages.

(4) The directory shall contain such instructions concerning placing local and long distance calls, calls to repair and information services, and location of telephone company business offices appropriate to the area served by the directory. Rates between frequently called points may also be included.

(5)(a) Information operators shall have access to records which include all listed telephone numbers, except public telephones and numbers that are unlisted at customer's request, in the area for which they are responsible for furnishing information service.

(b) Intercept operators shall have access to records which indicate the status of all telephone numbers in the area for which they are responsible for furnishing intercept service.

(6) In the event of an error in the listed number of any customer, the telephone utility shall intercept all calls to the listed number for ninety (90) days provided the number is not in service. In the event of an error or omission in the name listing of a customer, such customer's correct name and telephone number shall be in the files of information or intercept operators and the correct number furnished the calling party either upon request or interception.

(7) Whenever any customer's telephone number is changed after a directory is published, and if central office capacity exists to do so, the utility shall intercept all calls to the former number for ninety (90) days, and give the calling party the new number if the customer so desires.

(8) When a large group of number changes are scheduled due to additions or changes in plant, records or operations, reasonable notice shall be given to all customers so affected even though the additions or changes may be coincident with a directory issue.

Section 6. Exchange Maps. (1) Each telephone utility shall file maps with the commission showing the current exchange service area for each telephone exchange operated. Maps shall be in sufficient detail to reasonably permit locating exchange service area boundaries in the field. A copy of such map shall be included in the utility's tariff, in accordance with requirements of 807 KAR 5:011.

(2) With every revised map, the telephone utility so filing shall submit proof of notice of the proposed revision to each telephone utility whose exchange area adjoins exchange area boundary lines or is located reasonably near territory which would be changed by such revisions. This shall include provision for the signature of an official of each telephone utility concerned on the copy of the exchange maps filed with the commission.

Section 7. Tariffs. Each telephone utility shall file with its tariff the various exchange areas, base rate areas where they exist, conditions and circumstances under which service will be furnished, and definition of the classes and grades of service available to customers, in accordance with 807 KAR 5:011.

Section 8. Extensions of Service. (1) The utility shall extend service to applicants within the base rate area where it exists without a construction charge except in cases of special requirements as identified by the utility in its approved tariff.

(2) Each telephone utility shall make an extension of 750 feet or less, free of charge, from existing plant facilities to provide service to applicants who shall apply for and contract to use the service for up to one (1) year and guarantee payment for the service.

(3) Other extensions.

(a)1. When an extension to serve an applicant or a group of applicants amounts to more than 750 feet per applicant, the utility may, if not inconsistent with its filed tariff, require the total cost of excessive footage over 750 feet per customer to be paid to the utility by the applicant or applicants, based on average estimated cost per foot of the total extension.

2. Each customer receiving service under such extension will be reimbursed under the following plan: Each year for a refund period of not less than ten (10) years, the utility shall refund to any customer who paid for the excessive footage the cost of 750 feet of the extension in place for each additional customer connected to the extension installed and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid the utility. After the refund period ends, no refund will be required.

(b) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 750 feet of the extension installed

for each additional customer connected during the year. Total amount refunded shall not exceed the amount paid to the utility. After the refund period ends, no refund shall be required.

(4) Nothing contained in this administrative regulation shall be construed to prohibit a utility from making at its expense greater extensions than prescribed, if similar free extensions are made to other customers under similar conditions.

(5) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 750 feet upon a finding by the commission that such extension is reasonable.

(6) Nothing contained in this administrative regulation shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

Section 9. Grade of Service. (1) Within the base rate area, no telephone utility shall place more than four (4) customers on any local exchange access line. Within the service area no telephone utility shall connect more customers on any line than are contemplated under the grade of service charged the customer on such line.

(2) On rural lines where multiparty service is provided, no more than eight (8) customers shall be connected to any local exchange access line. The telephone utility may regroup customers in such a manner as necessary to carry out the provisions of this administrative regulation.

Section 10. Provision of Service. (1) It shall be the service objective of all utilities to fill ninety (90) percent of applications for regular service within five (5) working days of receipt unless applicant specifically requests a later date.

(2) The service objective for regular regrades shall be to fill ninety (90) percent of applications within thirty (30) days unless applicant specifically requests a later date.

(3) Applications for special service shall be filled as expeditiously as equipment and facilities permit.

(4) All applications which are not filled within five (5) working days for initial regular service and within thirty (30) days for regular regrades shall be considered as held applications.

(5) The utility shall keep a record by exchanges showing name and address of each applicant, date of application, date service desired, class and grade of service applied for, and any reason for inability to provide new or regrade service to applicant.

(6) When, because of shortage of facilities, a utility is unable to supply telephone service on dates requested by applicant, first priority shall be given to furnishing those services which are essential to public health and safety. In cases of prolonged shortage or other emergency, the commission may require establishment of a priority plan subject to its approval for clearing held orders, and may request periodic reports concerning progress being made.

(7) If circumstances beyond the control of the utility make it impossible to provide service within the time limits specified above, the utility shall promptly notify applicant of the reason for delay and give him a commitment date based upon best available information.

Section 11. Public Telephone Service. In each exchange, the telephone utility shall supply at least one (1) public coin-activated telephone that will be available on a twenty-four (24) hour basis. This public telephone shall be located in a prominent location in the exchange and shall be lighted at night. The utility may establish additional public telephone service at other locations. The commission may direct additional public telephone service upon finding that public convenience would be served.

Section 12. Discontinuance of Service. (1) When a telephone utility is notified in writing by the commission, federal or state law enforcement agency, Attorney General of Kentucky, a Commonwealth's attorney, or a county attorney acting within the agency or official's jurisdiction, that any facility furnished by it is being used or will be used for transmitting or receiving gambling information, that utility shall discontinue or refuse, to lease, furnish, or maintain such facility, after reasonable notice to the subscriber. No damages, penalty or forfeiture, civil or criminal, shall be recovered from any telephone utility for any act done in compliance with any notice received from the commission or law enforcement agency.

(2) Nothing in this section shall be deemed to prejudice the right of any person affected by this administrative regulation to secure an appropriate judicial determination that such facility should not be discontinued or removed, or should be restored.

(3) Nothing in this administrative regulation shall be construed to prevent transmission of information for use in legitimate news reporting of sporting events or contests by recognized news media.

Section 13. Customer Billing. Bills to customers shall be rendered regularly and shall contain clear listings of all charges. The utility shall comply with reasonable customer requests for an itemized statement of charges. All toll charges shall be itemized separately.

Section 14. Adequacy of Service. (1) Each utility shall employ recognized engineering and administrative procedures to determine adequacy of service being provided to the customer.
(2) Traffic studies shall be made and records maintained to the extent and frequency necessary to determine that sufficient equipment and an adequate operating force are provided at all times including the busy hour, busy season.
(3) Each telephone utility shall provide for operator assistance on a twenty-four (24) hour per day basis.
(4) Each utility shall employ adequate procedures for assignment of facilities. The assignment record shall be kept current and checked periodically to determine if adjustments are necessary to maintain proper balance in all groups.

Section 15. Dial Service Requirements. Sufficient central office capacity and equipment shall be provided to meet the following minimum requirements during the busy season:
(1) Dial tone within three (3) seconds on at least ninety-five (95) percent of telephone calls.
(2) No more than five (5) percent of dialed, local interoffice calls shall experience blockage due to an equipment or all-trunk busy condition.
(3) Sufficient toll connecting or interexchange trunks shall be provided by each utility in its service area so that no more than three (3) percent of calls offered to the telephone final trunk group will encounter an all-trunks busy condition.
(4) Each utility shall employ appropriate procedures to determine adequacy of central office equipment and local interoffice and EAS trunks.

Section 16. Grounded Circuits. The utility shall not construct any telephone lines less than a two (2) wire circuit or equivalent.

Section 17. Transmission Requirements. Telephone utilities shall furnish and maintain adequate plant equipment and facilities to provide satisfactory transmission of communications between customers in their service areas. Transmission shall be at adequate volume levels and free of excessive distortion. Levels of noise and crosstalk shall not impair communications.

Section 18. Minimum Transmission Objectives. (1) Transmission objectives set forth in this administrative regulation are based upon use of standard Federal Communications Commission registered telephone sets connected to a minimum forty-eight (48) volt dial central office and measured at a frequency of 1,000 cycles.
(2) Access lines shall have a loop resistance not exceeding the operating design of associated central office equipment.
(3) Telephone utilities shall, as nearly as possible, design access line loops having a transmission loss of no more than eight and five-tenths (8.5) decibels measured to the network interface.
(4) Overall transmission loss, including terminating equipment, on local interoffice trunks shall be no more than seven (7) decibels.
(5) Whenever feasible, overall transmission loss, including terminating equipment, on intertoll trunks and terminating links shall be no more than five (5) decibels.

Section 19. Provisions for Testing. Each telephone utility shall provide test facilities to determine the operating and transmission capabilities of circuit and switching equipment.

Section 20. Selective Ringing. Each telephone utility shall provide full selective ringing to all subscribers.

Section 21. Traffic Rules. (1) Suitable practices shall be adopted by each telephone utility that furnishes operator services concerning operating methods to be employed by operators with the objective of providing

efficient and agreeable service to customers. The utility shall comply with provisions of the Communications Act of 1934 in maintaining secrecy of communications.

(2) When a utility is notified by a customer that he has reached a wrong number on a call provided by that utility, the customer shall be given credit on his bill when the claim has been substantiated.

Section 22. Answering Time. (1) Utilities that furnish operator services shall provide adequate personnel for operator assisted calls and operator number identification (ONI) to meet the service objective so that the average speed of answering time shall not exceed eight (8) seconds.

(2) The service objective for calls to the utility's repair service shall be an average speed of answering time no greater than twenty (20) seconds.

Section 23. Maintenance of Plant and Equipment. Each telephone utility shall have a written preventative maintenance program aimed at achieving efficient operation of its system to render safe, adequate and continuous service at all times. The written program shall include a plan depicting the types and frequency of preventive maintenance performed on outside plant, central office equipment, vehicles and buildings. The utility shall maintain records descriptive of its preventative maintenance program indicating both accomplished and planned work, carried out on a routine periodic basis.

Section 24. Emergency Operations. (1) Each telephone utility shall have a written plan to meet service emergencies resulting from failures of power service, sudden and prolonged increase in traffic, fire, storm, or acts of God. Each telephone utility shall train employees in procedure to be followed in an emergency.

(2) All central offices and toll centers shall adequately provide for emergency power. Each central and/or toll office shall have a minimum of four (4) hours of battery reserve. In exchanges exceeding 5,000 lines and in toll offices, a permanent auxiliary power unit shall be installed. In offices without installed emergency power facilities there shall be a mobile power unit available of suitable capacity which can be delivered and connected within two (2) hours, or one-half (1/2) the battery reserve time, whichever is greater.

Section 25. Service Interruption. (1) Each utility shall have arrangements to receive customer trouble reports twenty-four (24) hours per day and to clear trouble as quickly as possible during regular working hours, consistent with the bona fide needs of the customer and personal safety of utility personnel.

(2) Each telephone utility shall maintain an accurate record of trouble reports made by its customers. This record shall include appropriate customer identification; service affected; time, date and nature of report; action taken to clear trouble or satisfy complaint; and date and time of trouble clearance or other disposition. This record shall be available to the commission or its authorized representatives upon request, and shall be retained for at least one (1) year.

(3) The service objective shall be to clear eighty-five (85) percent of out-of-service troubles within twenty-four (24) hours of the report received by the utility, unless the customer specifically requests a later time.

(4) The service objective of the utility shall be to maintain service so that the average rate of customer trouble reports in an exchange is no greater than eight (8) per 100 access lines per month.

(5) When a customer's access line is reported to be out of order and remains out of order in excess of twenty-four (24) consecutive hours, the utility shall refund to the customer upon request the pro rata part of that month's charges for the period of days during which the telephone was out of order. This refund may be accomplished by a credit on a subsequent bill for telephone service.

Section 26. Construction Work near Utility Facilities. Telephone utilities shall, when requested, furnish to contractors appropriate information concerning location of underground conduit, cable, and other equipment in order to prevent any interruption of service to telephone customers. Nothing in this administrative regulation is intended to affect the responsibility, liability or legal rights of any party under applicable laws or statutes.

Section 27. Customer Service. A customer may be required to take service of a different type or insufficient quantity if the use of service interferes unreasonably with necessary service of other customers.

Section 28. Deviations from Rules. In special cases for good cause shown the commission may permit deviations from these rules.

HISTORY:

8 Ky.R. 823; eff. 4-7-82; Am.16 Ky.R 1481; eff. 3-8-90; 17 Ky.R. 2515; eff. 4-4-91; Crt eff. 3-2019.

807 KAR 5:062. Changing primary interexchange carrier; verification procedures.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.040(3), 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.280(2) provides that the commission shall prescribe rules for performing any service or furnishing any commodity of the character furnished or supplied by any utility. This administrative regulation establishes procedures by which customer-ordered changes of presubscribed long distance telecommunications carriers shall be confirmed.

Section 1. Definitions. For purposes of this administrative regulation:
(1) "Interexchange carrier" (IXC) means a provider of long distance telecommunications services. Facilities-based carriers of long distance service, resellers of long distance service, and local exchange carriers providing long distance service are included in this definition.
(2) "Letter of agency" means a customer's written statement that authorizes a primary interexchange carrier change and bears the customer's signature.
(3) "Local exchange carrier" means a provider of switched telecommunications service that carries calls originating and terminating within the local calling area.
(4) "Long distance telecommunications service" means service that carries calls to exchanges that are not within the local calling area of the originating number.
(5) "PIC freeze order" means an order submitted by a customer stating he does not want his PIC to be changed until further notice.
(6) "Primary interexchange carrier" (PIC) means a carrier to which a customer has presubscribed for long distance service.
(7) "Two (2) PIC system" means a system which enables a customer to presubscribe to one (1) primary interexchange carrier for interLATA (long haul) long distance service and to another for intraLATA (short haul) long distance service.

Section 2. Verification Procedures. No IXC shall submit to a local exchange carrier a PIC change order unless the customer's authorization to change his PIC has been confirmed by one (1) of the three (3) procedures prescribed in this administrative regulation.
(1) The IXC has obtained a letter of agency from the customer that:
(a) Authorizes the change;
(b) Demonstrates that the customer understands what occurs when a PIC is changed;
(c) States the customer's billing name and address and each telephone number to be covered by the PIC change order;
(d) Demonstrates that the customer understands the PIC change fee; and
(e) If the PIC change order applies to a number in an area with a two (2) PIC system, clearly states whether the customer has authorized the change of his intraLATA PIC, his interLATA PIC, or both; or
(2) The IXC has obtained the customer's electronic authorization, placed from a telephone number on which the customer's PIC is to be changed, to submit a PIC change order. The electronic authorization shall include the information described in subsection (1)(a) through (e) of this section. IXCs electing to confirm sales electronically shall establish one (1) or more toll-free telephone numbers exclusively for that purpose. A call to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information and automatically records the originating number; or
(3) An appropriately qualified and independent third party operating in a location physically separate from the IXC's telemarketing representative has obtained the customer's electronic authorization to submit the PIC change order. The electronic authorization shall include the information described in subsection (1)(a) through (e) of this section and appropriate verification data such as the customer's date of birth or Social Security number.

Section 3. Prohibition of Additional LEC Verification. A local exchange carrier shall not seek independent verification of PIC changes properly submitted to it by IXCs unless the customer whose PIC is to be changed has previously submitted to the local exchange carrier a PIC freeze order that has not been revoked. Nothing in this administrative regulation shall be construed to impose upon a local exchange

carrier a duty to verify a PIC change it did not solicit or to change a PIC that is the subject of a PIC freeze order until the customer has, by notice given directly to the LEC, revoked the PIC freeze order.

Section 4. Records to be Retained. All written and electronic evidence of PIC change orders shall be retained by the soliciting carrier for one (1) year after the date the PIC has been changed.

Section 5. Letters of Agency. (1) Letters of agency shall be separate or severable from inducements or promotions of any kind, except as provided in subsection (2) of this section.

(2) A letter of agency may be combined with a check which states in bold-face type on its front and near the signature line on its back that the customer is authorizing a long distance carrier change by signing the check. A letter of agency check shall contain only the information prescribed in Section 2(1) of this administrative regulation and the language necessary to make the check a negotiable instrument.

HISTORY:

22 Ky.R. 1915; Am. 23 Ky.R. 156; eff. 7-19-96; Crt eff. 3-27-2019.

807 KAR 5:063. Filing requirements and procedures for proposals to construct antenna towers or to co-locate antennas on an existing structure for cellular telecommunications services or personal communications services.

RELATES TO: KRS 100.111, 278.010, 278.020, 278.650, 278.660, 278.665
STATUTORY AUTHORITY: KRS 278.040(3), 278.665(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.665(1) requires the commission to promulgate administrative regulations to establish the minimum content of an application for a certificate of convenience and necessity to construct cellular antenna towers for areas outside the jurisdiction of a planning commission. KRS 278.665(2) requires that an application concerning a site outside of an incorporated city shall, at a minimum, demonstrate that each person who owns property contiguous to the property upon which the construction is proposed has received notice of the proposed construction. KRS 278.280(1) requires the commission to establish proper practices to be observed in regard to the facilities of a utility. KRS 278.020(1) authorizes the commission to issue certificates of public convenience and necessity for utility construction. KRS 278.650 requires a local public hearing upon the request of the local governing body or at least three (3) local residents. KRS 100.987(9) requires an applicant to notify the commission within ten (10) working days of planning commission approval of an application to construct a tower. This administrative regulation prescribes filing requirements and procedures to be followed for: (1) applying for a certificate of public convenience and necessity to construct a telecommunications antenna tower for cellular telecommunications services or personal communications services in an area outside the jurisdiction of a planning unit; (2) notifying the commission of a planning commission approval; and (3) notifying the commission of the placement of an antenna on an existing structure.

Section 1. (1) To apply for a certificate of public convenience and necessity, a utility proposing to construct a telecommunications antenna tower in an area which is not within the jurisdiction of a planning unit that has adopted planning and zoning administrative regulations in accordance with KRS Chapter 100, shall file with the Public Service Commission the following information:

(a) All documents and information required by:

1. 807 KAR 5:001, Section 14, except that the applicant shall file with the commission the original and five (5) copies of the application; and

2. 807 KAR 5:001, Section 15(2)(a), (b), (c), (d) and (g);

(b) A copy of the utility's applications to the Federal Aviation Administration and Kentucky Airport Zoning Commission and written authorizations from these agencies as soon as they are available;

(c) A copy of the utility's application to, and authorization from, the Federal Communications Commission, if applicable;

(d) A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs, foundation design recommendations, and a finding as to the proximity of the proposed site to flood hazard areas, except that the utility may file findings prepared by a land surveyor as to the proximity of the proposed site to flood hazard areas;

(e) Clear directions from the county seat to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions;

(f) The lease or sale agreement for the property on which the tower is proposed to be located, except that, if the agreement has been filed in abbreviated form with the county clerk, utility may file a copy of the agreement as recorded by the county clerk;

(g) The identity and qualifications of each person directly responsible for the design and construction of the proposed tower;

(h) A site development plan or survey, signed and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures within 500 feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within 200 feet of the access drive, including the intersection with the public street system;

(i) A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas;

(j) The tower and foundation design plans and a description of the standard according to which the tower was designed, signed and sealed by a professional engineer registered in Kentucky;

(k) A map, drawn to a scale no less than one (1) inch equals 200 feet, that identifies every structure and every owner of real estate within 500 feet of the proposed tower;

(l) A statement that every person who, according to the records of the property valuation administrator, owns property within 500 feet of the proposed tower has been:

1. Notified by certified mail, return receipt requested, of the proposed construction;

2. Given the commission docket number under which the application will be processed; and

3. Informed of his right to request intervention;

(m) A list of the property owners who received the notice, together with copies of the certified letters sent to listed property owners;

(n) A statement that the county judge executive has been:

1. Notified by certified mail, return receipt requested, of the proposed construction;

2. Given the commission docket number under which the application will be processed; and

3. Informed of his right to request intervention;

(o) A copy of the notice sent to the county judge executive;

(p) A statement that:

1. Two (2) written notices meeting the requirements of subsection (2) of this section have been posted, one (1) in a visible location on the proposed site and one (1) on the nearest public road; and

2. The notices shall remain posted for at least two (2) weeks after the application has been filed;

(q) A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed.

(r) A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved;

(s) A statement that the utility has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to co-locate, including documentation of attempts to co-locate, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the utility attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures, such as a telecommunications tower, or another suitable structure capable of supporting the utility's facilities; and

(t) A map of the area in which the tower is proposed to be located, that is drawn to scale and that clearly depicts the necessary search area within which a site should, pursuant to radio frequency requirements, be located.

(2)(a) The notices required by subsection (1)(p) of this section shall:

1. Be at least two (2) feet by four (4) feet in size; and

2. Except as provided by paragraph (b) of this subsection, state the following: "(Name of utility) proposes to construct a telecommunications ("tower" or "monopole") on this site. If you have questions, please contact (name and address of utility) or the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602. Please refer to (assigned docket number) in your correspondence."

(b) The notice posted on the nearest public road shall state the following: "(Name of utility) proposes to construct a telecommunications ("tower" or "monopole") near this site. If you have questions, please contact (name and address of utility) or the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602. Please refer to (assigned docket number) in your correspondence."

(c) In both posted notices, the word "tower" or "monopole" shall be printed in letters at least four (4) inches high.

Section 2. If the construction is proposed for an area outside the incorporated boundaries of a city, the application shall state that public notices required by Section 1(1)(l) have been sent to every person who, according to the property valuation administrator, owns property contiguous to the property upon which the construction is proposed.

Section 3. (1) A utility planning to co-locate its antennas on an existing structure outside the jurisdiction of a planning unit, or to augment an existing structure outside the jurisdiction of a planning

unit, to enable the utility to place its antennas on that structure shall file with the Executive Director of the Public Service Commission, in lieu of an application, written notice of its intent, including the name and address of the utility filing the notice, the name of the owner of the structure, the latitude and longitude of the structure, and a description of the plan to augment or co-locate, if the proposed augmentation will neither:

(a) Increase the height of the structure more than fifty (50) percent; nor

(b) Result in new lighting requirements for a structure on which lighting is not currently required.

(2) A utility planning to co-locate its antennas on an existing structure that is in an area under the jurisdiction of a planning unit shall file with the commission written notice of its intent. The notice shall include:

(a) Name and address of the utility filing the notice;

(b) Name of the owner of the structure;

(c) Street address and latitude and longitude of the structure; and

(d) A description of the plan to co-locate.

Section 4. (1) A resident of a county in which an antenna tower for cellular telecommunications services or personal communications services is proposed, or the local governing body of a county or municipal corporation for which an antenna tower for cellular telecommunications services or personal communications services is proposed, may request a local public hearing by sending a written request complying with subsections (2) and (3) of this section to the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40601.

(2) A request for a local public hearing shall contain:

(a) The docket number of the case to which the request refers;

(b) The name and address of the person sending the request; and

(c) Statement as to whether the requestor wishes to participate in an evidentiary hearing or to make unsworn public comment.

(3) If a person requesting a local public hearing wishes to participate in an evidentiary hearing, the written request shall include a request to intervene in the Public Service Commission proceedings on the application.

Section 5. To notify the Public Service Commission of a planning commission approval of an application for the construction of an antenna tower for cellular telecommunications services or personal communications services, an applicant shall file with the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40601, the following information:

(1) The name, address, telephone number and facsimile number of the person whose application to construct the tower has been approved;

(2) The street address of the tower site;

(3) The names of the county and, if applicable, the city in which the tower will be located;

(4) The latitude and longitude of the tower site;

(5) A brief description of the tower, including the tower height, the ground elevation at the tower site, and a statement as to whether the tower will be self-supporting or guyed;

(6) The name of the planning commission that approved the construction;

(7) The date of the planning commission decision approving the construction.

HISTORY:

23 Ky.R. 3659; Am. 4185; 24 Ky.R. 367; eff. 8-27-1997; 25 Ky.R. 916; 1402; eff. 12-18-1998; 27 Ky.R. 1096; eff. 12-7-2000; 29 Ky.R. 564; 956; eff. 10-9-2002; TAm 1-30-2013; Crt eff. 3-27-2019.

Editor's Note: "807 KAR 5:001, Section 15(2)(g)" that is referenced in Section 1(1)(a)2 of this regulation does not exist. The provision was deleted from 807 KAR 5:001 in 2013. Prior to its deletion, the provision was 807 KAR 5:001,Section 9(2)(g), and required an application for a certificate of public convenience and necessity to contain "[a]ll other information necessary to afford the commission a complete understanding of the situation."

807 KAR 5:066. Water.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the Public Service Commission (hereinafter referred to as "commission") shall prescribe rules for the performance of any service or the furnishing of any commodity by the utility. This administrative regulation establishes general rules which apply to water utilities.

Section 1. Definitions. (1) "Customer" means, in addition to the definition in 807 KAR 5:006, Section 1(4), a person who purchases water from a utility's water loading station.
(2) "Distribution main" means a line from which service connections with customers are taken at frequent intervals.
(3) "Meter" means any device used for the purpose of measuring the quantity of water delivered by a utility to a customer.
(4) Natural Resources Cabinet" means the state Environmental Public Protection Cabinet, Department for Environmental Protection, Division of Water.
(5) "Point of service" means the outlet of a customer's water meter, or valve if no meter is placed.
(6) "Service connection" means the line from the main to the customer's point of service, and shall include the pipe fittings and valves necessary to make the connection.
(7) "Service line" means the water line from the point of service to the place of consumption.
(8) "Transmission main" means a line which is used for conveying water to the distribution system, reservoirs, tanks or stand pipes, and has generally no service connections with customers.

Section 2. Information Available to Customers. A utility shall provide the following information to any customer upon request:
(1) Characteristics of water. A description in writing of chemical constituents and bacteriological standards of the treated water as required by the Natural Resources Cabinet.
(2) Rates. A schedule of rates for water service applicable to the service to be rendered to the customer.
(3) Reading meters. Information about method of reading meters.
(4) Bill analysis. A statement of the past readings of a customer's meter for a period of two (2) years.

Section 3. Quality of Water. (1) Compliance with Natural Resources Cabinet. Any utility furnishing water service for human consumption or domestic use shall conform to all legal requirements of the Natural Resources Cabinet for construction and operation of its water system as pertains to sanitation and potability of the water.
(2) Water supply. In absence of comparable requirements of the Natural Resources Cabinet, water supplied by any utility shall be:
(a) Adequately protected by artificial treatment to include continuous disinfection throughout the distribution system;
(b) Free from objectionable color, turbidity, taste, and odor; and
(c) From a source reasonably adequate to provide a continuous supply of water.
(3) Operation of supply system.
(a) Sanitary conditions. The water supply system, including wells, reservoirs, pumping equipment, treatment works, mains, and service pipes shall be free from sanitary defects.
(b) Potable water connections. No utility shall make a physical connection between its distribution system and that of any other water supply unless the other water supply maintains a safe sanitary quality in accordance with this administrative regulation, and the utility provides notice to the commission prior to any such interconnections.
(c) Algae growth. The growth of algae in water at the source of supply, in reservoirs or other basins, and in water mains, shall be controlled by proper treatment.
(d) Well integrity. Utilities obtaining water supplies from driven or drilled wells must maintain the tightness of well casings and provide protection at the ground surface to prevent infiltration of water other than that from strata tapped by such wells. Wells shall be a minimum of 300 feet from any source of pollution.

(4) Testing of water.

(a) Test. Each utility shall have representative samples of its water examined by the appropriate state or local agency or by a competent chemist and bacteriologist skilled in the sanitary examination of water, under methods approved by the Natural Resources Cabinet, to insure a safe water supply.

(b) Report to the commission. If a utility is required by the Natural Resources Cabinet to make a public notification pursuant to administrative regulations of the Natural Resources Cabinet, the utility shall provide the commission with a copy of the public notification when it is made.

Section 4. Continuity of Service. (1) Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its consumers and the general public. If an emergency interruption of service affects service to any public fire protection device, the utility shall immediately notify the fire chief or other public official responsible for fire protection.

(2) Scheduled interruptions. If any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption, stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at hours of least inconvenience to customers. If public fire protection is provided by mains affected by the interruptions, the utility shall notify the fire chief or other officials responsible for fire protection of the interruption, stating the time and anticipated duration. The fire chief or other official responsible for fire protection shall be notified immediately upon restoration of service.

(3) Standby equipment. The utility shall have available standby pumps capable of providing the maximum daily pumping demand of the system for use when any pump is out of service.

(4) Storage. The minimum storage capacity for systems shall be equal to the average daily consumption.

(5) Record of interruptions. Each utility shall keep a complete record of all interruptions on its entire system or on major divisions of that system. This record shall show the cause of interruption, date, time, duration, remedy and steps taken to prevent recurrence.

Section 5. Pressures. (1) Standard pressure. Each utility shall, subject to the approval of the commission, adopt and maintain a standard pressure in its distribution system at locations to be designated as the point or points of “standard pressure.” The selection of such points shall be confined to locations fairly representative of average conditions. In selecting points for fixed standard pressure, a utility may divide its distribution system into districts if division is necessary due to differences of elevation or loss of pressure because of friction, or both, and may either adopt a standard pressure for each division or establish a single standard pressure for its distribution system as a whole. In no case shall the constant difference between the highest and lowest pressures in a district for which a standard has been adopted exceed fifty (50) percent of such standard. In the interpretation of this rule it shall be understood that in districts of widely varying elevations or low customer density a utility may undertake to furnish a service which does not comply with the foregoing specifications if the customer is fully advised of the conditions under which average service may be expected. It shall be understood that nothing shall prevent the commission from requiring improvements when, upon investigation, it appears right and proper that such betterments should be made. In no event, however, shall the pressure at the customer’s service pipe under normal conditions fall below thirty (30) psig nor shall the static pressure exceed 150 psig.

(2) Pressure gauges. Each utility shall provide itself with one (1) or more recording pressure gauges to make pressure surveys as required by these rules. These gauges shall be suitable to record the pressure experienced on the utility’s system and shall be able to record a continuous twenty-four (24) hour test. One (1) of these recording pressure gauges shall be maintained for a minimum of one (1) week per month in continuous service at some representative point on the utility’s mains.

(3) Pressure surveys. At least once annually, each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the quality of service being rendered at representative points in its system. Pressure charts for these surveys shall show the date and time of beginning and end of the test and the location at which the test was made. Records of these pressure surveys shall be maintained at the utility’s principal office in Kentucky and shall be made available to the commission upon request.

Section 6. Water Supply Measurement. (1) Measuring devices. Each utility shall install a suitable measuring device at each source of supply so that a record may be maintained of the quantity of water produced by each source.

(2) Records. The quantity of water produced or purchased for resale to customers from each source of supply shall be determined on a monthly basis. The volumes of water distributed to customers and the volume used by the utility shall be determined in the same manner. Twelve (12) month totals of the volumes produced or purchased from each source of supply, distributed to customers, and used by the utility shall be recorded separately and transmitted to the commission in the utility's annual report to the commission.

(3) Unaccounted-for water loss. Except for purchased water rate adjustments for water districts and water associations, and rate adjustments pursuant to KRS 278.023(4), for rate making purposes a utility's unaccounted-for water loss shall not exceed fifteen (15) percent of total water produced and purchased, excluding water used by a utility in its own operations. Upon application by a utility in a rate case filing or by separate filing, or upon motion by the commission, an alternative level of reasonable unaccounted-for water loss may be established by the commission. A utility proposing an alternative level shall have the burden of demonstrating that the alternative level is more reasonable than the level prescribed in this section.

Section 7. Standards of Construction. Design and construction of the utility's facilities shall conform to good standard engineering practice. Plans and specifications for water supplies shall be prepared by an engineer registered in Kentucky, with the submitted plans bearing the engineer's seal. The utility's facilities shall be designed, constructed and operated so as to provide adequate and safe service to its customers and shall conform to requirements of the Natural Resources Cabinet with reference to sanitation and potability of water.

Section 8. Distribution Mains. (1) Depth of mains. Water mains shall be placed a minimum of twenty-four (24) inches below ground level and shall be protected sufficiently to prevent freezing during the coldest weather normally experienced in the community in which laid, and to prevent damage by traffic.

(2) Dead ends. In order to provide increased reliability of service and reduce head loss, dead ends shall be minimized by making appropriate tie-ins whenever practicable. Where dead ends occur they shall be provided with a fire hydrant, if flow and pressure are sufficient to meet the requirements of Section 10(2)(b) of this administrative regulation, or with an approved flushing hydrant or blowoff for flushing purposes. Flushing devices shall be sized to provide flows which will give a velocity of at least two and one-half (2.5) feet per second in the water main being flushed. No flushing device shall be directly connected to any sewer. Mains with dead ends shall be flushed at least once each year but more often if necessary to maintain the quality of the water.

(3) Segmentation of system. Valves or stopcocks shall be provided at reasonable intervals in the mains so that repairs may be made with the least possible interruption of service.

(4) Disinfection of water mains. All new mains shall be thoroughly disinfected before being connected to the system. The method of disinfecting shall comply with requirements of the Natural Resources Cabinet.

(5) Grid systems. Wherever feasible the distribution system shall be laid out in a grid to facilitate identification of line location and minimize service interruptions caused by breaks or repairs.

Section 9. Service Lines. (1) Size of service line. The size, design, material and installation of the service line shall conform to such reasonable requirements of the utility as may be incorporated in its rules and administrative regulations. However, the minimum size of the line shall not be less than three-fourths (3/4) inch nominal size except under unusual circumstances which shall be clearly defined.

(2) Depth of service line. All service lines shall be laid at a depth sufficient to prevent freezing during the coldest weather normally experienced except where services are not intended for use during freezing weather and are actually drained during such periods.

(3) Inspection of service line. In the installation of the service line, the utility shall require the customer to leave the trench open and pipe uncovered, and the utility shall inspect the line to determine it is free from any tee, branch connection, irregularity or defect. The utility may substitute for its inspection an inspection by the appropriate state or local plumbing inspector, if proof of that inspection is presented to the utility by the customer.

Section 10. Construction Requirements. (1) The system shall be adequate to deliver all reasonable water requirements of its customers and meet the requirements of Section 5(1) of this administrative regulation except under emergency conditions.

(2) Distribution system.

(a) Minimum pipe sizes. The distribution system shall be of adequate size and so designed in conjunction with related facilities to maintain the minimum pressures required by Sections 5(1) and 7 of this administrative regulation. The maximum length of any individual small pipe line shall be as follows:

	Circulating	Noncirculating
1 inch nominal size	150 feet	100 feet
1 1/2 inch nominal size	300 feet	200 feet
2 inch nominal size	500 feet	250 feet

In the case of rural water lines, if hydraulic studies indicate they can comply with Section 5(1) of this administrative regulation and can provide adequate flow of water to serve the peak requirements of customers, the above maximum extension lengths may be extended with approval of the commission.

(b) Fire protection.

1. On or after the effective date of this administrative regulation, fire hydrants may be installed by a utility only if:

a. A professional engineer with a Kentucky registration has certified that the system can provide a minimum fire flow of 250 gallons per minute; and

b. The system supporting this flow has the capability of providing this flow for a period of not less than two (2) hours plus consumption at the maximum daily rate.

2. The location, installation, and the responsibility for maintenance of fire hydrants, public and private fire protection facilities, connecting mains, and their ownership may be subject to negotiation between the utility and the applicant. Fire hydrants and public and private fire protection facilities shall be installed as required by the utility and if owned by the utility shall be subject to any conditions the commission may impose, based upon the compensation received for this service.

(3) Transmission systems. Transmission pipe lines from sources of supply shall be designed to deliver in combination with related storage facilities and to the limits of the capacity of those sources of supply the maximum requirements of that portion of the system which is dependent upon such transmission pipe lines.

(4) Water supply requirements. The quantity of water delivered to the utility's distribution system from all source facilities shall be sufficient to supply adequately, dependably and safely the total reasonable requirements of its customers under maximum consumption.

(5) Materials. Metallic and nonmetallic materials may be used separately and in combination to construct component parts of a water system including, but not limited to, conduits, pipes, couplings, caulking materials, protective linings and coatings, services, valves, hydrants, pumps, tanks and reservoirs, provided:

(a) The material shall have a reasonable useful service life.

(b) The material shall be capable of withstanding with ample safety factors the internal and external forces to which it may be subjected in service.

(c) The material shall not cause the deterioration of the potability of the water supply.

(d) Materials and equipment shall be so selected as to mitigate corrosion, electrolysis and deterioration.

Section 11. Extension of Service. (1) Normal extension. An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more.

(2) Other extensions.

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than fifty (50) feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer who paid for service under such extension shall be reimbursed under one (1) of the following plans, which shall be included in the utility's filed tariff:

1. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the customer or customers who paid for the excessive footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension

installed and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid the utility. No refund shall be made after the refund period ends.

2. As an alternative to the refund plan outlined in subparagraph 1 of this paragraph, the utility may use the following plan: for a period of five (5) years after construction of the extension, each additional customer whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom, shall be required to contribute to the cost of the extension based on a recomputation of both the utility's portion of the total cost and the amount contributed by the customers. The utility shall refund to those customers that have previously contributed to the cost of the extension that amount necessary to reduce their contribution to the currently calculated amount for each customer connected to the extension. All customers directly connected to the extension for a five (5) year period after it is placed in service shall contribute equally to the cost of construction of the extension. In addition, each customer shall pay the approved tap-on fee applicable at the time of his application for the meter connection. The tap-on fee shall not be considered part of the refundable cost of the extension and may be changed during the refund period. After the five (5) year refund period expires, any additional customer shall be connected to the extension for the amount of the approved tap-on fee only. After the five (5) year refund period expires, the utility shall be required to make refunds for an additional five (5) year period in accordance with subparagraph 1 of this paragraph.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends.

(4) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements if such arrangements have receive the prior approval of the commission.

(5) Nothing contained herein shall prohibit a utility from making at its expense greater extensions than herein prescribed, provided like free extensions are made to other customers under similar conditions. The conditions under which such extensions will be made shall be stated in the utility's filed tariff.

(6) Upon complaint to and investigation by the commission a utility may be required to construct extensions greater than fifty (50) feet upon a finding by the commission that such extension is reasonable and that an extension of fifty (50) feet or less is unreasonable under the circumstances.

Section 12. Service Connections. (1) Ownership of service.

(a) Utility's responsibility. The utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service connection from its main to and including the meter and meter box. The utility may recoup this expense from the customer in accordance with KRS 278.0152.

(b) In areas where the distribution system follows well-defined streets and roads, the customer's point of service shall be located at that point on or near the street right-of-way or property line most accessible to the utility from its distribution system. In areas where the distribution system does not follow streets and roads, the point of service shall be located as near the customer's property line as practicable. Prior to installation of the meter the utility shall consult with the customer as to the most practical location.

(2) Customer's responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the point of service to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and administrative regulations.

Section 13. Measurement of Service. (1) Metering. All water sold by a utility shall be upon the basis of metered volume sales except as set forth in subsection (2) of this section.

(2) Unmetered service. If water usage can be readily estimated, the utility may, subject to commission approval, provide unmetered service. For unmetered service the utility shall develop standard methods for estimating the volume of water used and maintaining records which show volumes used and associated revenues and expenses. Methods proposed to be used shall be submitted to the commission for approval. Flat rates conforming to the requirements set forth in 807 KAR 5:006, Section 7(2), may be charged for the following:

(a) Temporary service of such duration that installation of a meter is not feasible.

(b) Public and private fire protection service.

(c) Water used for street sprinkling and sewer flushing, when provided for in a contract between the utility and a municipality or other local government authority.

(d) Service to water haulers if installation of coin-operated or other metered stations is not feasible.

(3) Registration of meter. All meters used for metered sales shall have registration devices indicating the volume of water measured in either cubic feet or U.S. gallons. Where a constant or multiplier is necessary to convert the meter reading to cubic feet or gallons, the constant shall be indicated upon the face of the meter.

(4) Standard method of meter and service line installation. Each utility shall adopt a standard method of installing meters and service lines and shall file with the commission a written description and drawings in sufficient detail that the requirements are clearly understandable. Copies of these standard methods shall be made available to prospective customers and contractors or others engaged in the business of placing pipe for water utilization. All meters shall be set in place by the utility.

Section 14. Meter Test Facilities and Equipment. (1) Test facilities. Except as provided in 807 KAR 5:006, Section 17(2), each utility furnishing metered water service shall have the necessary standard facilities, instruments and other equipment for testing its meters in compliance with this administrative regulation.

(2) Shop equipment. The utility's meter test shop shall, insofar as practicable, simulate actual service conditions of temperature, inlet pressure, and outlet pressure. It shall be provided with necessary equipment, including valves on the inlet and outlet sides of the meter test bench, calibrated tanks, a device for regulating flow, a gauge to measure flow rate, pressure gauges and pressure relief valves. The overall error of the calibrated test tanks shall not exceed three-tenths (.3) of one (1) percent.

(3) Test measurement standards.

(a) Basic standard. Measuring devices for testing meters shall consist of a calibrated tank for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be certified as to its accuracy by the commission within the preceding thirty-six (36) months. If a weight standard is used, the scales shall be tested and calibrated at least once a year and certified as to accuracy by the commission.

(b) Size of basic standards. When meters are tested by weight method, utilities whose measure of quantity is the cubic foot shall use test equipment capable of holding not less than one (1) cubic foot of water. Utilities whose measure of quantity is the U.S. gallon shall use equipment holding not less than ten (10) U.S. gallons.

(c) Standard meter. With commission approval, a standard meter may be provided and used by any utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated to a basic standard periodically to insure its accuracy within the limits required by this administrative regulation. In any event, such test shall be made at least once every other week while the standard meter is in use and a record of such tests shall be kept by both the utility and, if applicable, the organization doing the meter testing.

Section 15. Accuracy Requirements of Water Meters. (1) General. All meters used for measuring the quantity of water delivered to a customer shall be in good mechanical condition and shall be adequate in size and design for the type of service which they measure.

(2) Testing of meters. All new meters, and any meter removed from service for any cause, shall be tested for accuracy as specified herein prior to being placed in service.

(a) Test flows. The test flow and normal test flow limits for the various types of cold water meters shall be as follows:

TEST REQUIREMENTS FOR NEW, REBUILT, AND REPAIRED COLD WATER METERS*													
	Maximum Rate (All Meters)				Intermediate Rates (All Meters)				Minimum Rate (New and Rebuilt)				Minimum (Repaired)
Size in.	Flow Rate gpm	Test Quantity		Accuracy Limits %	Flow Rate gpm	Test Quantity		Accuracy Limits %	Flow Rate gpm	Test Quantity		Accuracy Limits Percent	Accuracy Limits % (min.)
		gal	ft^3			gal	ft^3			gal	ft^3		
Displacement Meters													
5/8	15	100	10	98.5-101.5	2	10	1	98.5-101.5	1/4	10	1	95-101	90
5/8 x 3/4	15	100	10	98.5-101.5	2	10	1	98.5-101.5	1/4	10	1	95-101	90
3/4	25	100	10	98.5-101.5	3	10	1	98.5-101.5	1/2	10	1	95-101	90
1	40	100	10	98.5-101.5	4	10	1	98.5-101.5	3/4	10	1	95-101	90
1 1/2	50	100	10	98.5-101.5	8	100	10	98.5-101.5	1 1/2	100	10	95-101	90
2	100	100	10	98.5-101.5	15	100	10	98.5-101.5	2	100	10	95-101	90
3	150	500	50	98.5-101.5	20	100	10	98.5-101.5	4	100	10	95-101	90
4	200	500	50	98.5-101.5	40	100	10	98.5-101.5	7	100	10	95-101	90
6	500	1000	100	98.5-101.5	60	100	10	98.5-101.5	12	100	10	95-101	90
Multijet Meters													
5/8	15	100	10	98.5-101.5	1	10	1	98.5-101.5	1/4	10	1	97-103	90
5/8 x 3/4	15	100	10	98.5-101.5	1	10	1	98.5-101.5	1/4	10	1	97-103	90
3/4	25	100	10	98.5-101.5	2	10	1	98.5-101.5	1/2	10	1	97-103	90
1	35	100	10	98.5-101.5	3	10	1	98.5-101.5	3/4	10	1	97-103	90
1 1/2	70	100	10	98.5-101.5	5	100	10	98.5-101.5	1 1/2	100	10	97-103	90
2	100	100	10	98.5-101.5	8	100	10	98.5-101.5	2	100	10	97-103	90
Class I Turbine Meters													
1 1/2	80	200	20	98-102	Not Required				12	100	10	98-102	-
2	120	300	30	98-102					16	100	10	98-102	-
3	250	500	50	98-102					24	100	10	98-102	-
4	400	1000	100	98-102					40	100	10	98-102	-
6	1000	2000	200	98-102					80	1000	100	98-102	-
8	1500	3000	300	98-102					140	1000	100	98-102	-
10	2200	5000	500	98-102					225	1000	100	98-102	-
12	3300	7000	700	98-102					400	1000	100	98-102	-
Class II Turbine Meters													
2	120	300	30	98.5-101.5	Not Required				4	100	10	98.5-101.5	-
3	275	600	60	98.5-101.5					8	100	10	98.5-101.5	-
4	500	1000	100	98.5-101.5					15	100	10	98.5-101.5	-
6	1100	2500	250	98.5-101.5					30	1000	100	98.5-101.5	-
8	1800	4000	400	98.5-101.5					50	1000	100	98.5-101.5	-
10	3000	6000	600	98.5-101.5					75	1000	100	98.5-101.5	-
12	4000	8000	800	98.5-101.5					120	1000	100	98.5-101.5	-
Propeller Meters													
2	100	200	20	98-102	35	100	10	98-102	30	100	10	95	90
3	150	300	30	98-102	40	100	10	98-102	35	100	10	95	90
4	200	500	60	98-102	50	100	10	98-102	45	100	10	95	90
5	400	1000	100	98-102	75	200	20	98-102	70	200	20	95	90
6	500	1000	100	98-102	90	300	30	98-102	85	300	30	95	90
8	600	2000	200	98-102	100	300	30	98-102	90	300	30	95	90
10	900	3000	300	98-102	125	300	30	98-102	110	300	30	95	90
12	1000	5000	500	98-102	150	400	50	98-102	140	400	50	95	90
14	1100	5000	500	98-102	250	1000	100	98-102	225	1000	100	95	90
16	1400	5000	600	98-102	350	1000	100	98-102	315	1000	100	95	90
18	1600	5000	600	98-102	450	2000	200	98-102	405	2000	200	95	90
20	2000	10000	1000	98-102	550	2000	200	98-102	495	2000	200	95	90
24	3000	10000	1000	98-102	800	5000	500	98-102	720	5000	500	95	90
30	4500	20000	2000	98-102	1200	5000	500	98-102	1080	5000	500	95	90
36	6000	20000	2000	98-102	1500	5000	500	98-102	1350	5000	500	95	90
Compound Meters													
2	100	100	10	97-103	sec.					100	10	90-103	-
3	150	500	50	97-103						100	10	90-103	-
4	200	500	50	97-103						100	10	90-103	-
6	500	1000	100	97-103						100	10	90-103	-
8	600	2000	200	97-103						200	20	90-103	-
10	900	2000	200	97-103						1000	100	90-103	-
Fire-Service Type													
3	100	500	50	97-103	sec.					sec.		Not Less	-
4	200	500	100	97-103								than 85%	-
6	500	3000	200	97-103									-
8	600	3000	300	97-103									-
10	900	5000	500	97-103									-

* - A rebuilt meter is one that has had the measuring element replaced with a factory-made new unit. A repaired meter is one that has had the old measuring element cleaned and refurbished in a utility repair shop.
sec. - Quantity should be one or more full revolution of the test hand but not less than two (2) min running.

(b) Determination of meter accuracy. No new, rebuilt or repaired meter shall be placed in service if the following required tests show that it does not register within the accuracy limits specified in paragraph (a) of this subsection.

1. Displacement, multijet, compound, fire service and propeller type meters. Meters of the displacement, multijet, compound, fire service and propeller type shall be tested at the minimum, intermediate and high test flow rates shown in paragraph (a) of this subsection. At least one (1) additional test shall be performed within the range of flows of compound and fire service meters to determine overall operational efficiency and accuracy of registration.

2. Class I and Class II turbine type meters. Meters of the Class I and Class II turbine type shall be tested at the minimum and high test flow rates shown in paragraph (a) of this subsection.

(3) As found tests. All meters tested in accordance with the rules for periodic, request or complaint tests, shall be tested in the condition as found in the customer's service prior to any alteration or adjustment. This test shall consist of three (3) rates of flow in the minimum, intermediate and high flow range for that type of meter as set out in subsection (2)(a) of this section.

(4) Determination of meter error for bill adjustment purposes. When upon periodic, request or complaint test, a meter is found to be in error in excess of the limits allowed by the commission's administrative regulations, three (3) additional tests shall be made: one (1) at seventy-five (75) percent of rated maximum capacity; one (1) at fifty (50) percent of rated maximum capacity; one (1) at twenty-five (25) percent of the rated maximum capacity. The average meter error shall be the algebraic average of the errors of the three (3) tests.

Section 16. Periodic Tests. (1) Each utility shall test periodically all water meters so that no meter will remain in service without test for a period longer than specified in the following table:

Size of Meter Inches	Interval Between Tests Years
5/8	10
5/8 x 3/4	10
3/4	10
1	10
1 1/4	4
1 1/2	4
2	4
3	2
4 and larger	1

(2) Meters of the current and compound type shall be cleaned at a minimum of the frequency listed in subsection (1) of this section for testing. If meters are tested in place at the frequency listed in subsection (1) of this section and during the test are flushed at a high rate of flow, the meter shall be considered to be in compliance with this section.

(3) If the number of meters of any type which register in error beyond the limits specified in this administrative regulation is found by the commission to be excessive, then that type shall be tested with such additional frequency as the commission may direct.

Section 17. Water Shortage Response Plans. Each utility which files a water shortage response plan with the Natural Resources Cabinet shall simultaneously file a copy of the plan with the commission. Any utility which has already filed a plan with the Natural Resources Cabinet shall file the plan with the commission within sixty (60) days of the effective date of this administrative regulation.

Section 18. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation.

HISTORY:

8 Ky.R. 828; eff. 4-7-1982; Am. 18 Ky.R. 1968; 3388; eff. 6-7-1992; TAm eff. 8-9-2007; TAm 1-30-2013; Crt eff. 3-27-2019.

Editor's Note: The "Natural Resources Cabinet" is now the "Energy and Environment Cabinet."

807 KAR 5:067. Purchased water adjustment for investor-owned utilities.

RELATES TO: KRS 278.010, 278.030, 278.040
STATUTORY AUTHORITY: KRS 278.030(1), 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation establishes the requirements under which a privately-owned water utility implements a purchased water adjustment to recover the cost of water purchased.

Section 1. Definitions. (1) "Application" means:
(a) A completed Purchased Water Adjustment Form 2;
(b) A schedule listing current and proposed rates;
(c) A copy of the supplier's notice showing a change in supplier's base rate;
(d) The calculation and all supporting documents used to determine the change in purchased water costs sufficient to determine the accuracy of the calculation; and
(e) If the utility is not a sole proprietorship or partnership, a copy of the resolution or other document of the utility's governing body authorizing the proposed rates.
(2) "Changed rate" means the rate of a utility's supplier after the most recent increase or decrease in the supplier's base rate.
(3) "Commission" is defined by KRS 278.010(15).
(4) "Person" is defined by KRS 278.010(2).
(5) "Supplier's base rate" means the rate of a utility's supplier in effect immediately prior to the most recent increase or decrease.
(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.
(7) "Unaccounted for water" means the volumetric sum of all water purchased and produced by the utility less the volume of water:
(a) Sold;
(b) Provided to customers without charge as authorized by the utility's tariff; and
(c) Used by the utility to conduct the daily operation and maintenance of its treatment, transmission, and distribution systems.
(8) "Utility" means a privately-owned utility that meets the requirements of KRS 278.010(3)(d).
(9) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Supplier's Base Rate. (1) Upon an increase in its supplier's base rate, a utility may increase each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased purchased water costs to its customers on a per unit basis regardless of customer classification.
(2) Upon a decrease in the supplier's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased purchased water costs on a per unit basis regardless of customer classification.

Section 3. Purchased Water Adjustment Factor. (1) If unaccounted for water does not exceed fifteen (15) percent, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales}}$$

(a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(2) If unaccounted for water exceeds fifteen (15) percent and no reasonable percentage has been determined, pursuant to 807 KAR 5:066, Section 6, in the utility's last rate case, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{PWA Adjustment Factor} = \frac{\text{(Changed Rate x Total Utility Water Purchases) – (Base Rate x Total Utility Water Purchases)}}{\text{Total Utility Water Sales } \div 85\%}$$

(a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(3) If unaccounted for water exceeds fifteen (15) percent and a reasonable percentage has been determined, pursuant to 807 KAR 5:066, Section 6, in the utility's last rate case, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{PWA Adjustment Factor} = \frac{\text{(Changed Rate x Total Utility Water Purchases) – (Base Rate x Total Utility Water Purchases)}}{\text{Total Utility Water Sales x (100\% - Determined Reasonable Unaccounted for Water Percentage)}}$$

(a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

Section 4. Submitting the Purchased Water Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted in accordance with 807 KAR 5:001, Sections 7 and 8.

Section 5. Notice. Upon filing an application for a purchased water adjustment resulting from a supplier's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission; or

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of mailing; or

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; and

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice.

Section 6. Orders of the Commission. (1) A utility shall not implement its proposed rates until the commission issues an order authorizing the utility to adjust its rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

Section 7. Refund from a Supplier. (1) A utility that receives a refund from its supplier for previously paid for water service due to a reduction in the supplier's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by

reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the supplier's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor upon calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Purchased Water Adjustment Form 2", Purchased Water Adjustment for Privately-Owned Utilities, July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov.

HISTORY:

7 Ky.R. 793; eff. 9-2-81; Am. 1895; eff. 7-2-86; 40 Ky.R. 452; 816; eff. 10-18-2013; Crt eff. 3-27-2019.

807 KAR 5:068. Purchased water adjustment for water districts and water associations.

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.012, 278.015
STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation prescribes the requirements under which a water district or a water association may implement a purchased water adjustment to recover the cost of water purchased.

Section 1. Definitions. (1) "Application" means:
(a) A completed Purchased Water Adjustment Form 1;
(b) A schedule listing current and proposed rates;
(c) A copy of the supplier's notice showing a change in supplier's base rate;
(d) The calculation and all supporting documents used to determine the change in purchased water costs sufficient to determine the accuracy of the calculation; and
(e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates.
(2) "Changed rate" means the rate of a utility's supplier after the most recent increase or decrease in the supplier's base rate.
(3) "Commission" is defined by KRS 278.010(15).
(4) "Person" is defined by KRS 278.010(2).
(5) "Supplier's base rate" means the rate of a utility's supplier in effect immediately prior to the most recent increase or decrease.
(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.
(7) "Utility" means:
(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of water service; or
(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.
(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Supplier's Base Rate. (1) Upon an increase in its supplier's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased purchased water costs to its customers on a per unit basis regardless of customer classification.
(2) Upon a decrease in the supplier's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased purchased water costs on a per unit basis regardless of customer classification.

Section 3. Purchased Water Adjustment Factor. (1) The purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales}}$$

(2) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.
(3) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4)(a) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(b) If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total utility water purchases and total water utility sales.

Section 4. Submitting the Purchased Water Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

(a) In accordance with 807 KAR 5:001, Sections 7 and 8; and

(b) No earlier than thirty (30) days prior to the proposed effective date of the supplier's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its purchased water costs due to the supplier's changed rate.

Section 5. Notice. Upon filing an application for a purchased water adjustment resulting from a supplier's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the issuance of the first bill at the increased rate;

2. Mailing a written notice to each customer no later than the issuance of the first bill at the increased rate;

3. Publishing notice one (1) time in a prominent manner in a newspaper of general circulation in the utility's service area no later than the issuance of the first bill at the increased rate; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the issuance of the first bill at the increased rate.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order approving an adjustment to the utility's rates pursuant to this administrative regulation:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the date of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The effective date;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address); and

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov.

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving or denying the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner prescribed in Section 5(2) of this administrative regulation.

Section 7. Refund from a Supplier. (1) A utility that receives a refund from its supplier for previously paid for water service due to a reduction in the supplier's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the supplier's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor upon calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Purchased Water Adjustment Form 1", July 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov.

HISTORY:

12 Ky.R. 1965; Am. 13 Ky.R. 235; eff. 7-2-86; 40 Ky.R. 457; 820; eff. 10-18-2013; 41 Ky.R. 148; 489; eff. 10-31-2014; Crt eff. 3-27-2019.

807 KAR 5:069. Filing requirements and procedures for a federally funded construction project of a water association, a water district, or a combined water, gas, or sewer district.

RELATES TO: KRS 65.810, Chapter 74, 273, 278.010(15), 278.020(1), 278.023, 278.190, 278.300
STATUTORY AUTHORITY: KRS 278.020(1), 278.023, 278.040(3), 278.190, 278.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.020(1) authorizes the commission to issue a certificate of public convenience and necessity for utility construction. KRS 278.300 authorizes the commission to approve the issuance or assumption of an obligation, liability, or evidence of indebtedness by a utility. KRS 278.190 authorizes the commission to approve proposed changes in rates. KRS 278.023 requires that the commission review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) requires the commission to prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water utility and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273. This administrative regulation establishes filing requirements and procedures a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273 shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15).
(2) "Construction project" means activity involving the construction or installation of facilities, plant, or equipment to provide, extend, or enhance the quality of water or sewer service within the geographical area that a water utility has the responsibility to serve.
(3) "Federal lending agency" means the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.
(4) "Water utility" means:
(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of a public water supply or the collection or treatment of sewage for the public;
(b) A water district formed as a special district pursuant to KRS 65.810 and KRS Chapter 74; or
(c) A combined water, gas, or sewer district formed as a special district pursuant to KRS 65.810 and KRS Chapter 74.

Section 2. Filing Requirements. A water utility proposing a construction project financed in whole or in part under the terms of an agreement between the water utility and a federal lending agency shall file with the commission:
(1) All documents and information required by 807 KAR 5:001, Sections 7, 8, and 14;
(2) A copy of the documents from the federal lending agency stating approval of the project and including all terms and conditions of the agreement, including all amendments;
(3) A copy of the letter of concurrence in contract award;
(4) A copy of the preliminary and final engineering reports and bid tabulations;
(5) One (1) copy of each set of plans and specifications on electronic storage medium in portable document format;
(6) A certified statement from an authorized water utility official confirming:
(a) That the proposed plans and specifications for the construction project have been designed to meet the minimum construction and operating requirements established in:
1. If the construction project involves facilities to treat or distribute water, 807 KAR 5:066, Section 4(3) and (4), Section 5(1), Sections 6 and 7, Section 8(1) through (3), Section 9(1) and Section 10; or
2. If the construction project involves facilities to collect or treat sewage, 807 KAR 5:071, Section 5 and Sections 7(1) through (3);
(b) That all other state approvals or permits have been obtained;

(c) That the proposed rates, if any, shall produce the total revenue requirements recommended in the engineering reports; and

(d) The dates upon which construction will begin and end;

(7) If applicable, a statement that notice meeting the requirements of Section 3 of this administrative regulation has been given, together with a copy of the notice; and

(8) If applicable, a motion requesting approval to deviate from a minimum construction standard or operating condition required by subsection (6)(a) of this section, together with supporting evidence to identify and explain the reasons that the minimum requirements cannot be met.

Section 3. Notice. Upon filing for a change in rates as a result of a construction project, a water utility shall provide notice as established in this section. (1) Public postings.

(a) A water utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A water utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer notice.

(a) If a water utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a water utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;

3. Publishing notice in a prominent manner in a newspaper of general circulation in the water utility's service area no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A water utility that provides service in more than one (1) county and is not proposing to increase its rates for sewer service may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of notice. A water utility shall file with the commission no later than fifteen (15) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the water utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a water utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the water utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice content. Each notice issued in accordance with this section shall contain a brief description of the construction project and shall also contain:

(a) The proposed effective date of the proposed rate adjustment;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (water utility name) located at (water utility address);

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; and

(h) A statement that the proposed rates are required under the terms of an agreement between (water utility name) and (federal lending agency name) and that KRS 278.023 does not grant the Public Service Commission any discretionary authority to modify or reject any portion of the agreement between (federal lending agency) and (water utility name), or to defer the issuance of all necessary orders to implement the terms of that agreement.

Section 4. Additional Construction Activity. If surplus project funds remain after the approved construction project has been completed, the water utility may construct additional facilities without prior commission approval if no change in existing rates will result. The water utility shall notify the commission in writing of additional construction proposed under this section, and shall attach to the notice a statement of the federal lending agency authorizing the water utility to use the remaining project funds in the manner proposed.

Section 5. System Maps and Records. Within thirty (30) days after completion of construction authorized under this administrative regulation, the utility shall revise its system maps and records maintained pursuant to 807 KAR 5:006, Section 23, to include all required information regarding the new construction.

HISTORY:

15 Ky.R. 900; eff. 11-4-1988; Am. 24 Ky.R. 1774; 2122; eff. 4-13-1998; TAm 1-30-2013; 40 Ky.R. 700; 1282; eff. 1-3-2014; 41 Ky.R.150; 779; 10-31-2014; Crt eff. 3-27-2019.

807 KAR 5:070. Filing requirements and standards for commission approval of water district commissioner training programs.

RELATES TO: KRS 74.020(6), (7)
STATUTORY AUTHORITY: KRS 74.020(6), (7)(b), (c), (d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 74.020(6) provides that each water district commissioner may receive an annual salary of not more than $6,000 to be paid out of the water district management fund if he completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the commission. KRS 74.020(7)(b) provides that the commission shall be responsible for the regulation of all water district management training programs for commissioners of water districts, combined water, gas, or sewer districts, or water commissions. KRS 74.020(7)(c) requires the commission to establish standards and procedures to evaluate, accredit, and approve water district management training programs. KRS 74.020(7)(d) provides that the commission may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to implement KRS 74.020. This administrative regulation establishes filing requirements and standards for commission approval of water district commissioner training programs.

Section 1. Filing Requirements. To apply for approval of a proposed water district commissioner training program, an applicant shall file with the commission an original and five (5) copies of the following documents and information concerning the program for which approval is sought:
(1) The name and address of the applicant;
(2) The name and sponsor of the program and the subject matter covered by the program;
(3) A summary of the content of the program in detail sufficient to describe how the program will enhance the management, operation, and maintenance of water treatment and distribution systems;
(4) The number of credit hours requested for the program;
(5) The name and relevant qualifications and credentials of each instructor presenting the program;
(6) A copy of written materials given to water commissioners attending the program; and
(7) If the program has been certified by an organization that provides training to persons associated with the water industry, the name of the certifying organization and a statement that the certification remains valid.

Section 2. Subject Matter. Program hours consisting of one (1) or more of the following areas of instruction shall be approved as to subject matter:
(1) Federal and state law regarding safety standards for drinking water;
(2) Management techniques;
(3) Accounting standards and treatment of costs;
(4) Financing principles;
(5) Rate design;
(6) Water technology and system facilities;
(7) Ethics; and
(8) Other areas of instruction related to, and calculated to enhance the quality of, the management, operation, and maintenance of a water system.

Section 3. Expiration and Renewal. Approval of a program shall automatically expire twelve (12) months after commission approval has been issued, except that an applicant may request that approval be renewed for an additional twelve (12) month period by submitting the following:
(1) A copy of the initial application with a copy of the commission order approving;
(2) Updates, if any, to the application, with supporting documentation, if necessary.

HISTORY:

25 Ky.R. 2245; eff. 5-19-99; Crt eff. 3-27-2019.

Editor's Note: In its Order of March 15, 2018, in Case No. 2018-00085, the Public Service Commission ordered that applications for accreditation must be filed at least 30 days prior to the first date that a program of instruction is offered.

807 KAR 5:071. Sewage.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation establishes general rules which apply to sewage utilities.

Section 1. General. The purpose of this administrative regulation is to provide standard rules and administrative regulations governing the service of sewage utilities operating under the jurisdiction of the Public Service Commission.

Section 2. Definitions. The following terms when used in these rules, shall have the meaning indicated:
(1) "Commission" means the Public Service Commission.
(2) "Collecting sewers" means sewers, including force lines, gravity sewers, interceptors, laterals, trunk sewers, manholes, lampholes and necessary appurtenances and including service wyes, which are used to transport sewage and are owned, operated, or maintained by a sewage disposal utility.
(3) "Customer" means any person, partnership, association, corporation or governmental agency being provided with sewage disposal service by a utility.
(4) "Customer's service pipe" means any sewer pipe extending from the customer's residence or other structure receiving and transporting sewage to the utility's collecting sewer, but excluding service wyes.
(5) "Lift station" means that portion of the sewage system which is used to lift the sewage to a higher elevation.
(6) "Premises" means a tract of land or real estate including buildings and other appurtenances thereon.
(7) "Sewage" means ground garbage, human and animal excretions, and all other domestic type waste normally disposed of by a residential, commercial, or industrial establishment, through the sanitary sewer system.
(8) "Sewage treatment facilities" includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, and controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for the public, or other beneficial or necessary purpose.
(9) "Sewage utility" means any person except a city, who owns, controls or operates or manages any facility used or to be used for or in connection with the treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district. (KRS 278.010(5)(c)) [See Editor's Note]

Section 3. Filings with this Commission. In addition to all filing requirements provided by 807 KAR 5:001, Rules of procedure, the following requirements must also be met for all formal applications (outlined below) by sewage utilities before this commission:
(1) Application for certificates of public convenience and necessity. In addition to the filing requirements provided by 807 KAR 5:001, Sections 14 and 15, the applicant shall submit with its application, the following:
(a) A copy of a valid third-party beneficiary agreement guaranteeing the continued operation of the sewage treatment facilities or other evidence of financial integrity such as will insure the continuity of sewage service.
(b) A copy of a preliminary approval issued by the Division of Water Quality of the Kentucky Department for Natural Resources and Environmental Protection approving the plans and specifications of the proposed construction. [See Editor's Note]
(c) A detailed map of the sewage treatment facilities showing location of plant, effluent discharge, collection mains, manholes, and utility service area.
(d) A detailed estimated cost of construction which should include all capitalized costs (construction, engineering, legal, administrative, etc.).
(e) A financial exhibit as described in 807 KAR 5:001, Section 12.
(f) The manner in detail in which it is proposed to finance the new construction, specifically stating amount to be invested, recouped through lot sales, or contributions (to be) received, etc.

(g) An estimated cost of operation after the proposed facilities are completed.

(h) An estimate of the total number of customers to be served by the proposed sewage treatment facilities, initially and ultimately the class of customers served (i.e., residential, commercial, apartments, recreational, institutional, etc.) and the average monthly water consumption for each class of customer.

(i) A copy of the latest tax returns (federal and state, if applicable) filed by the applicant.

(j) A detailed depreciation schedule of all treatment plant, property and facilities, both existing and proposed, listing all major components of "package;" treatment plants separately.

(k) The proposed rates to be charged for each class of customers and an estimate of the annual revenues derived from the customers using the proposed rate schedules.

(l) A full and complete explanation of corporate or business relationships between the applicant and a parent or brother-sister corporation, subsidiary(ies), a development corporation(s), or any other party or business to afford the commission a full and complete understanding of the situation.

(m) If the establishment of rates is not sought by the applicant, omit paragraphs (i), (j), and (k) of this subsection.

(2) Application for authority to adjust rates. In addition to the filing requirements provided by 807 KAR 5:001, Sections 12, 14, and 17, [See Editor's Note] the applicant shall submit with its application, the following:

(a) A copy of a valid third-party beneficiary agreement guaranteeing the continued operation of the sewage treatment facilities or other evidence of financial integrity such as will insure the continuity of sewage service.

(b) A comparative income statement (PSC Form) showing test period; per books, revenues and expenses, pro forms adjustments to those figures, and explanations for each adjusted entry.

(c) A detailed analysis of any expenses contained in the comparative income statement which represent an allocation or proration of the total expense.

(d) A detailed depreciation schedule of all treatment plant properties and facilities, listing all major components of "package;" treatment plants separately.

(e) Copies of all service contracts entered into by the utility for outside services, such as but not limited to: operation and maintenance, sludge hauling, billing, collection, repairs, etc., in order to justify current contract services and charges or proposed changes in said contracts.

(f) A description of the applicant's property and facilities, including a statement of the net original cost (estimate if not known), the cost thereof to the applicant, and a current breakdown of contributed and noncontributed property and facilities owned by the applicant ("contributed property" means property paid for by others).

(g) A detailed customer listing showing number of customers in each customer class and average water consumption for each class of customers.

(h) If the utility has billing and collection services provided by the Louisville Water Company, remittance advices from the Louisville Water Company showing revenues and collection charges should be submitted for the test period.

(i) A copy of the latest tax returns (federal and state, if applicable) filed by the applicant.

(j) A full and complete explanation of corporate or business relationships between the applicant and a parent or brother-sister corporation, subsidiary(ies), a development corporation(s), or any other party or business, to afford the commission a full and complete understanding of the situation.

(3) Application for authority to issue securities, notes, bonds, stocks, or other evidences of indebtedness. In addition to the filing requirements, provided by 807 KAR 5:001, Sections 12, 14, and 17, [See Editor's Note] the applicant shall submit with its application the following:

(a) Copy of amortization schedules of present and proposed indebtedness.

(b) A full and complete explanation of any corporate or business relationships between the applicant and a parent or brother-sister corporation, subsidiary(ies), a development corporation(s), or any other party or business to afford the commission a full and complete understanding of the situation.

Section 4. Information Available to Customers. (1) System maps or records. Each utility shall maintain up-to-date maps, plans, or records of its entire force main and collection systems, with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving any locality.

(2) Rates, rules, and regulations. A schedule of approved rates for sewage service applicable for each class of customers and the approved rules and regulations of the sewage utility shall be available to any customer or prospective customer upon request.

Section 5. Quality of Service. (1) General. Each utility shall maintain and operate sewage treatment facilities of adequate size and properly equipped to collect, transport, and treat sewage, and discharge the effluent at the degree of purity required by the health laws of the State of Kentucky, and all other regulatory agencies, federal, state, and local, having jurisdiction over such matters.

(2) Limitations of service. No sewage disposal company shall be obliged to receive for treatment or disposal any material except sewage as defined by Section 2(7) of this administrative regulation. In compliance with the administrative regulation, the utility shall make all reasonable efforts to eliminate or prevent the entry of surface or ground water, or any corrosive or toxic industrial liquid waste into its sanitary sewer system. A utility may request assistance from the appropriate state, county, or municipal authorities in its efforts, but such a request does not relieve the utility of its aforementioned responsibilities.

Section 6. Continuity of Service. (1) Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(2) Scheduled interruptions. Whenever any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at such hours as will provide least inconvenience to the customers.

(3) Record of interruptions. Each utility shall keep a complete record of all interruptions on its system. This record shall show the cause of interruption, date, time, duration, remedy, and steps taken to prevent recurrence.

Section 7. Design, Construction, and Operation. (1) General. The sewage treatment facilities of the sewage utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

(2) Design and construction requirements. The design and construction of the sewage utility's collecting sewers, treatment plant and facilities, and all additions thereto and modifications thereof, shall conform to the requirements of the Kentucky Department for Natural Resources and Environmental Protection, Bureau of Environmental Quality, Division of Water Quality. [See Editor's Note]

(3) Adequacy of facilities. The capacity of the sewage utility's sewage treatment facilities for the collection, treatment and disposal of sewage and sewage effluent must be sufficiently sized to meet all normal demands for service and provide a reasonable reserve for emergencies.

(4) Inspection of facilities. Each sewage utility shall adopt procedures for inspection of its sewage treatment facilities to assure safe and adequate operation of its facilities and compliance with commission rules. These procedures shall be filed with the commission. Unless otherwise authorized in writing by the commission, the sewage utility shall make inspections of collecting sewers and manholes on a scheduled basis at intervals not to exceed one (1) year, unless conditions warrant more frequent inspections and shall make inspections of all mechanical equipment on a daily basis. The sewage utility shall maintain a record of findings and corrective actions required, and/or taken, by location and date.

Section 8. Service Pipe Connections. (1) Sewage utility's service pipe. The sewage utility shall install and maintain that portion of the service pipe from the main to the boundary line of the easement, public road, or street, under which such main may be located.

(2) Customer's service pipe.

(a) The customer shall install and maintain that portion of the service pipe from the end of the sewage utility's portion into the premises served.

(b) Requirements for customer's service pipe. That portion of the service pipe installed and maintained by the customer shall conform to all reasonable rules of the utility. It shall be constructed of materials approved by the sewage utility and installed under the inspection of the sewage utility.

(3) Restriction on installation. A sewer service pipe shall not be laid in the same trench with a water pipe.

(4) Inspection. If a governmental agency requires an inspection of the customer's plumbing, the sewage utility shall not connect the customer's service pipe until it has received notice from the inspection agency certifying that the customer's plumbing is satisfactory.

HISTORY:

8 Ky.R. 833; eff. 4-7-1982; TAm 1-30-2013; Crt eff. 3-27-2019.

Editor's Notes:

1. Section 2(9) - the correct statutory reference is KRS 278.010(3)(f).
2. Section 3(1)(b) - "Division of Water Quality of the Kentucky Department for Natural Resources and Environmental Protection" is now the Division of Water, Department of Environmental Protection, Energy and Environment Cabinet.
3. Section 3(2) - Section 17 addresses notice requirements for rate adjustments. The filing requirements for applications for rate adjustments are found at 807 KAR 5:001, Section 16.
4. Section 3(3) - The filing requirements for applications for authority to issue securities and evidences of indebtedness set forth in the Commission's Rules of Procedure are found at 807 KAR 5:001, Sections 12, 14 and 18.
5. Section 7(2) – "Kentucky Department for Natural Resources and Environmental Protection, Bureau of Environmental Quality, Division of Water Quality" is now the Division of Water, Department of Environmental Protection, Energy and Environment Cabinet.

807 KAR 5:075. Treated sewage adjustment for water districts and water associations.

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.012, 278.015, 278.030, 278.040
STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation establishes the requirements under which a water district or a water association may implement a treated sewage adjustment to recover the costs of treated sewage.

Section 1. Definitions. (1) "Application" means:
(a) A completed Treated Sewage Adjustment Form 1;
(b) A schedule listing current and proposed rates;
(c) A copy of the provider's notice showing a change in provider's base rate;
(d) The calculation and all supporting documents used to determine the change in treated sewage costs sufficient to determine the accuracy of the calculation; and
(e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates.
(2) "Changed rate" means the rate of a utility's provider after the most recent increase or decrease in the provider's base rate.
(3) "Commission" is defined by KRS 278.010(15).
(4) "Person" is defined by KRS 278.010(2).
(5) "Provider's base rate" means the rate of a utility's provider in effect immediately prior to the most recent increase or decrease.
(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.
(7) "Utility" means:
(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of sewage service; or
(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.
(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Provider's Base Rate. (1) Upon an increase in its provider's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased treated sewage costs to its customers on a per unit basis regardless of customer classification.
(2) Upon a decrease in the provider's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased treated sewage costs on a per unit basis regardless of customer classification.

Section 3. Treated Sewage Adjustment Factor. (1) The treated sewage adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{TSA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Treated Sewage}) - (\text{Base Rate} \times \text{Total Treated Sewage})}{\text{Total Utility Water Sales}}$$

(2) The treated sewage adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customer bills.
(3) Total treated sewage shall be determined based upon the level of treated sewage for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4)(a) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(b) If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total treated sewage and total utility water sales.

Section 4. Submitting the Treated Sewage Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

(a) In accordance with 807 KAR 5:001, Sections 7 and 8; and

(b) No earlier than thirty (30) days prior to the proposed effective date of the provider's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its treated sewage costs due to the provider's changed rate.

Section 5. Notice. Upon filing an application for a treated sewage adjustment resulting from a provider's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice. (a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the issuance of the first bill at the increased rate;

2. Mailing a written notice to each customer no later than the issuance of the first bill at the increased rate;

3. Publishing notice one (1) time in a prominent manner in a newspaper of general circulation in the utility's service area no later than the issuance of the first bill at the increased rate; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the issuance of the first bill at the increased rate.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order approving an adjustment to the utility's rates pursuant to this administrative regulation:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the date of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The effective date;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address); and

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov.

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving or denying the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner established in Section 5(2) of this administrative regulation.

Section 7. Refund from a Provider. (1) A utility that receives a refund from its provider for previously paid for treated sewage due to a reduction in the provider's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the provider's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customer bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor when calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Treated Sewage Adjustment Form 1", July 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov.

HISTORY:

40 Ky.R. 488; 822; eff. 10-18-2013; 41 Ky.R.153; 492; eff. 10-31-2014; Crt eff. 3-27-2019.)

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

RELATES TO: KRS 278.010, 278.030, 278.160, 278.180, 278.190, 278.310, 278.380
STATUTORY AUTHORITY: KRS 278.040(3), 278.160(1), 278.180
NECESSITY, FUNCTION AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement KRS Chapter 278. This administrative regulation establishes a simplified and less expensive procedure for small utilities to use to apply to the commission for rate adjustments.

Section 1. Definitions. (1) "Annual report" means the financial and statistical report incorporated by reference in 807 KAR 5:006, which requires a utility to file the annual report with the commission.
(2) "Annual report for the immediate past year" means an annual report that covers the applicant's operations for either:
(a) The calendar year period prior to the year in which the applicant's application for rate adjustment is filed with the commission; or
(b) The most recent calendar year period that 807 KAR 5:006, Section 4(1), requires the applicant to have on file with the commission as of the date of the filing of its application for rate adjustment. [See Editor's Note]
(3) "Applicant" means a utility that is applying for an adjustment of rates using the procedure established in this administrative regulation.
(4) "Gross annual revenue" means:
(a) The total revenue that a utility derived during a calendar year; or
(b) If the utility operates two (2) or more divisions that provide different types of utility service, the total amount of revenue derived from the division for which a rate adjustment is sought.
(5) "Rate" is defined by KRS 278.010(12).
(6) "Utility" is defined by KRS 278.010(3).
(7) "Water district" means a special district or special purpose governmental entity created pursuant to KRS Chapter 74.
(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Utilities Permitted to File Application. A utility may apply for an adjustment of rates using the procedure established in this administrative regulation if it:
(1) Had gross annual revenue in the immediate past calendar year of $5,000,000 or less;
(2) Maintained financial records fully separated from a commonly-owned enterprise; and
(3) Filed with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if the utility has been in existence that long.

Section 3. The Record upon which Decision Shall Be Made. The commission shall make its decision based on the:
(1) Applicant's annual report for the immediate past year and the annual reports for the two (2) prior years, if the utility has been in existence that long;
(2) Application required by Section 4 of this administrative regulation;
(3) Information supplied by the parties in response to requests for information;
(4) Written reports submitted by commission staff;
(5) Stipulations and agreements between the parties and commission staff;
(6) Written comments and information that the parties to the proceeding submitted in response to the findings and recommendations contained in a written report that commission staff submitted; and
(7) If a hearing is held, the record of that hearing.

Section 4. Application. (1) An application for alternative rate adjustment shall consist of a:
(a) Completed Application for Rate Adjustment before the Public Service Commission, ARF Form-1, that is made under oath and signed by the applicant or an officer who is duly designated by the applicant and who has knowledge of the matters established in the application;
(b) Copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;

(c) Copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;

(d) Depreciation schedule of all utility plant in service;

(e) Copy of the most recent state and federal tax returns of the applicant, if the applicant is required to file returns;

(f) Detailed analysis of the applicant's customers' bills showing revenues from the present and proposed rates for each customer class;

(g) Copy of the notice of the proposed rate change that is provided to customers of the applicant; and

(h) Statement of Disclosure of Related Transactions, ARF Form-3, for each member of the utility's board of commissioners or board of directors, each person who has an ownership interest of ten (10) percent or more in the utility, and the utility's chief executive officer.

(2) Except as provided in 807 KAR 5:001, Section 8 for electronic filings, the applicant shall:

(a) Submit one (1) original and five (5) paper copies of its application to the executive director of the commission; and

(b) Deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 or transmit by electronic mail an electronic copy in portable document format to the Office of Rate Intervention at rateintervention@ag.ky.gov.

(3) Each party filing documents with the commission shall be responsible for reviewing and redacting any personal identifying information in compliance with the rules and procedures set forth in 807 KAR 5:001, Section 4(10).

(4) The application shall not contain any request for relief from the commission other than an adjustment of rates.

(5) A utility may make written request to the executive director for commission staff assistance in preparing the application.

Section 5. Notice. Upon filing an application for an alternative rate adjustment, a utility shall provide notice as established in this section.

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through the commission's Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

Section 6. Except as provided in 807 KAR 5:001, Section 8(2), an applicant shall not be required to provide the commission with advance notice of its intent to file an application for rate adjustment using the procedure established in this administrative regulation.

Section 7. Effective Date of Proposed Rates. (1) An applicant shall not place the proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first.

(2) If the commission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect.

(3) The applicant shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due if the commission orders a refund.

Section 8. Amendment of Proposed Rates. (1) Except if responding to the findings set forth in a commission staff report filed in accordance with Section 11 of this administrative regulation, an applicant shall not amend the proposed rates set forth in its application unless the applicant:

(a) Files written notice of the proposed amendment with the commission; and

(b) Publishes notice of the amended proposed rates in the manner provided in Section 5 of this administrative regulation.

(2) An applicant shall not place amended proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of the written notice of proposed amendment, whichever occurs first.

(3) If the commission has not issued an order within six (6) months from the date of filing of the notice of amended proposed rates, the applicant may place the amended proposed rates in effect subject to

refund upon providing the commission with written notice of its intent to place the rates into effect but shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due if the commission orders a refund.

Section 9. Test Period. The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measureable changes, that coincides with the reporting period of the applicant's annual report for the immediate past year.

Section 10. Discovery. (1) The minimum discovery available to intervening parties shall be as prescribed by this subsection.

(a) A party in the proceeding may serve written requests for information upon the applicant within twenty-one (21) days of an order permitting that party to intervene in the proceeding.

(b) Upon serving requests upon the applicant, the party shall file a copy of the party's requests with the commission and serve a copy upon all other parties.

(c) Within twenty-one (21) days of service of timely requests for information from a party, the applicant shall serve its written responses upon each party and shall file with the commission one (1) original and five (5) copies.

(2) The commission may establish different arrangements for discovery if it finds different arrangements are necessary to evaluate an application or to protect a party's rights to due process.

Section 11. Commission Staff Report. (1) Within thirty (30) days of the date that an application is accepted for filing, the commission shall enter an order advising the parties if commission staff will prepare a report on the application.

(2) If a commission staff report is prepared, the:

(a) Commission staff shall:

1. File the report with the commission; and

2. Serve a copy of the report on all parties of record; and

(b) Report shall contain the commission staff's findings and recommendations regarding the proposed rates.

(3)(a) Each party shall file with the commission a written response to the commission staff report within fourteen (14) days of the filing of the report.

(b) This written response shall contain:

1. All objections to and other comments on the findings and recommendations of commission staff;

2. A request for hearing or informal conference, if applicable;

3. The reasons why a hearing or informal conference is necessary; and

4. If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or recommends the assessment of an additional rate or charge not proposed in the application, the filing party's position on if the commission should authorize the assessment of the higher rate or the recommended additional rate or charge.

(c) If a party's written response fails to contain an objection to a finding or recommendation contained in the commission staff report, it shall be deemed to have waived all objections to that finding or recommendation. A party's failure to request a hearing or informal conference in the party's written response shall be deemed a waiver of all rights to a hearing on the application and a request that the case stand submitted for decision.

(d) If a party fails to file a written response with the commission within this time period, it shall be deemed to have waived all objections to the findings and recommendations contained in the report and all rights to a hearing on the application.

(e) Acceptance of the findings and recommendations contained in the commission staff report by all parties in a proceeding shall not preclude the commission from conducting a hearing on the application, taking evidence on the applicant's financial operations, or ordering rates that differ from or conflict with the findings and recommendations established in the commission staff report.

(f) If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or commission staff recommends the assessment of an additional rate or charge not proposed in the application and commission staff's proposed rates produce a total increase in revenues that exceeds 110 percent of the total increase in revenues that the applicant's proposed rates will

produce and the applicant amends its application to request commission staff's proposed rates, the commission shall order the applicant to provide notice of the finding or recommendation to its customers.

Section 12. Notice of Hearing. (1) If the commission orders a hearing, the applicant shall publish in a newspaper or mail to the applicant's customers notice of the hearing.

(2) The notice shall state the purpose, time, place, and date of the hearing.

(3) Newspaper notice shall be published once in a newspaper of general circulation in the applicant's service area no fewer than seven (7) and no more than twenty-one (21) days prior to the hearing.

(4) Mailed notices shall be mailed at least fourteen (14) days prior to the date of the hearing.

Section 13. Utility Personnel Participation in Commission Proceedings. (1) An authorized official or employee of the applicant who is not licensed to practice law in Kentucky may, on behalf of an applicant that is a water district, corporation, partnership, or limited liability company, file the application, responses to commission orders and requests for information, as well as appear at conferences related to the application.

(2) An applicant that is a water district, corporation, partnership, or limited liability company shall, at a hearing conducted on the application, be represented by an attorney who is authorized to practice law in Kentucky.

Section 14. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures established in 807 KAR 5:001, Section 8, are used, if a document in paper medium is filed with the commission, five (5) additional copies in paper medium shall also be filed.

(2) All documents filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Except for ARF Form-1 and ARF Form-3, each filing shall be in type no smaller than twelve (12) point, except footnotes, which shall be in type no smaller than ten (10) point.

(d) Binding. A side-bound or top-bound filing shall also include an identical unbound copy.

(3) Except as provided for in 807 KAR 5:001, Section 8, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A document submitted by facsimile transmission shall not be accepted.

Section 15. Use of Electronic Filing Procedures in lieu of Submission of Paper Documents. Upon an applicant's election of the use of electronic filing procedures within the time limits established in 807 KAR 5:001, Section 8(2), the procedures established in 807 KAR 5:001, Section 8, shall be used in lieu of other filing procedures established in this administrative regulation. [See Editor's Notes]

Section 16. The provisions of 807 KAR 5:001, Sections 1 through 6, 8 through 11, and 13, shall apply to commission proceedings involving applications filed pursuant to this administrative regulation.

Section 17. Upon a showing of good cause, the commission may permit deviations from this administrative regulation. Requests for deviation shall be submitted in writing by letter to the commission.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Rate Adjustment before the Public Service Commission", ARF Form 1, July 2014; and

(b) "Statement of Disclosure of Related Party Transactions", ARF Form 3, November 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov/.

HISTORY:

8 Ky.R. 835; eff. 4-7-1982; Am. 22 Ky.R. 994; 1312; 1-3-1996; 38 Ky.R. 132; 629; eff. 11-4-2011; 39 Ky.R. 320, 1159; eff. 1-4-2013; 40 Ky.R. 704; 1123; eff. 1-3-2014; 41 Ky.R. 156; 494; eff. 10-31-2014; Crt eff. 3-27-2019.

Editor's Notes:

1. Reference to 807 KAR 5:006, Section 4(1) refers to Gross Annual Operating Revenue Reports. As this regulation refers to "financial and statistical report," drafters apparently meant to refer to 807 KAR 5:006, Section 4(2).
2. By its Order of July 22, 2021 in Case No. 2020-00085, the Public Service Commission mandated the use of electronic filing procedures for all proceedings except *pro se* complaint proceedings.

807 KAR 5:078. Alternative rate adjustment for electric cooperatives.

RELATES TO: KRS Chapter 278, Chapter 279
STATUTORY AUTHORITY: KRS 278.030(1), (2), 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the Public Service Commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.030(1) requires all rates received by an electric utility subject to the jurisdiction of the Public Service Commission to be fair, just, and reasonable. KRS 278.030(2) requires every utility to provide adequate, efficient, and reasonable service. This administrative regulation establishes a simplified and less expensive procedure for rural electric cooperatives to use to apply to the commission for rate adjustments.

Section 1. Definitions.
(1) "Annual report" means the financial and statistical report incorporated by reference in 807 KAR 5:006, which requires a utility to file the annual report with the commission.
(2) "Attorney General" means the Attorney General, Office of Rate Intervention.
(3) "General rate adjustment" means an adjustment in rates received pursuant to an application filed pursuant to 807 KAR 5:001, Section 16.
(4) "Base rate adjustment" mean a general rate adjustment or an adjustment in rates received pursuant to an application filed pursuant to Section 2 of this administrative regulation.
(5) "Cooperative" means any rural electric cooperative corporation formed under KRS Chapter 279 that distributes electricity.
(6) "OTIER" means the operating times interest earned ratio for the cooperative.
(7) "Rate" is defined by KRS 278.010(12).
(8) "TIER" means the times interest earned ratio for the cooperative.

Section 2. Increase in Rates. A cooperative may apply for an adjustment of rates using the procedure established in this administrative regulation if:
(1) Ten (10) or fewer years have elapsed since the effective date of new rates resulting from a cooperative's most recent base rate adjustment;
(2) At least twelve (12) months have elapsed since the effective date of the cooperative's most recent base rate adjustment;
(3) The cooperative requests a rate increase not exceeding one (1) percent per twelve (12) month period since the cooperative's last base rate adjustment;
(4) The cooperative requests an increase that does not exceed 1.85 OTIER;
(5) Aggregating multiple twelve (12) month periods in the application, the overall cumulative rate increase does not exceed five (5) percent;
(6) The cooperative's most recent embedded class cost of service study was completed within the five (5) years prior to the submission of the cooperative's application under this section;
(7) The cooperative's application includes only request for:
    (a) Adjustments in revenue requirements;
    (b) Changes to rate design; and
    (c) Changes to the cooperative's tariff necessary to reflect changes in rates;
(8) The proposed rate increase is based upon a historical test year that corresponds with the most recent annual report filed with the commission;
(9) The cooperative's application is filed electronically pursuant to the requirements of 807 KAR 5:001, Section 8;
(10) The cooperative has notified the commission in writing of the cooperative's intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing an application; and
(11) Upon filing the notice of intent with the commission, the cooperative mailed to the Attorney General a copy of the notice of intent or sent by electronic mail in a portable document format, to rateintervention@ag.ky.gov.

Section 3. An application filed pursuant to Section 2 of this administrative regulation shall include:
(1) A narrative statement discussing any changes materially affecting the cooperative's rates or service that have occurred since the effective date of its last base rate adjustment and stating the reasons for the proposed adjustment;
(2) If five (5) or more years have elapsed since the cooperative's most recent general rate adjustment, a detailed explanation of why the cooperative did not seek a general rate adjustment in that period;
(3) New or revised tariff sheets, if applicable, in a format that complies with 807 KAR 5:011, Section 3, with an effective date not less than thirty (30) days from the date the application is filed;

(4) New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

(a) 1. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

2. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

(b) A statement that notice has been given in compliance with Section 7 of this administrative regulation with a copy of the notice;

(5) A general statement identifying any electric property or plant held for future use;

(6) All current agreements related to vegetation management, as well as a statement identifying any changes that occurred since the cooperative's base rate adjustment to the cooperative's policies on vegetation management, indicating the effective date and reason for these changes;

(7) A statement identifying any changes that occurred during the test year to the cooperative's written policies on the compensation of its attorneys, auditors, and all other professional service providers, indicating the effective date and reason for these changes;

(8) A statement explaining whether or not the depreciation rates reflected in the application are identical to those most recently approved by the commission.

(a) If the depreciation rates are identical, the application shall identify the case in which they were approved.

(b) If the depreciation rates are different, the application shall include a depreciation study that supports the rates reflected in the application;

(9) The estimated dates for drawdowns of unadvanced loan funds at test year end and the proposed uses of these funds;

(10) A schedule of the cooperative's standard directors' fees, per diems, and any other compensation in effect during the test year. The schedule shall:

(a) Include a description of any changes that occurred during the test year to the cooperative's written policies, including the compensation of directors; and

(b) Indicate the effective date and explanation for any change;

(11) A schedule reflecting the salaries and other compensation of each executive officer for the test year and two (2) preceding calendar years. The schedule shall include:

(a) The percentage of annual increase and the effective date of each salary increase;

(b) The job title, duty, and responsibility of each officer;

(c) The number of employees who report to each executive officer;

(d) To whom each executive officer reports; and

(e) For employees elected to executive officer status during the test year, the salaries for the test year for those persons whom they replaced;

(12) The cooperative's TIER, OTIER, and debt service coverage ratio, as calculated by the Rural Utility Service, for the test year and the five (5) most recent calendar years, including the data used to calculate each ratio;

(13) The cooperative's debt instruments;

(14) A copy of all exhibits and schedules that were prepared for the rate application in Excel spreadsheet format with all formulas intact and unprotected and with all columns and rows accessible;

(15) A schedule comparing balances for each balance sheet account or subaccount included in the cooperative's chart of accounts for each month of the test year to the corresponding month of the twelve (12)-month period immediately preceding the test year;

(16) A schedule comparing each income statement account or subaccount included in the cooperative's chart of accounts for each month of the of the test year to the same month of the twelve (12)-month period immediately preceding the test year. The amounts shall reflect the income or expense activity of each month, and not the cumulative balances at the end of the particular month;

(17) A schedule showing anticipated and incurred rate case expenses, with supporting documentation, which shall be updated every thirty (30) days during the proceeding.

(18) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(19) A statement of the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(20) A summary of the cooperative's determination of its revenue requirements based on return on TIER, OTIER, debt service coverage, and any metric required by the cooperative's current debt instruments, with supporting schedules;

(21) If the cooperative had amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years:

(a) A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;

(b) An explanation of how the allocator for the test period was determined; and

(c) All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;

(22) A calculation of the normalized depreciation expense (test-year end plant account balance multiplied by depreciation rate);

(23) An analysis of FERC Account No. 930, Miscellaneous General Expenses, for the test year. The analysis shall include:

(a) A complete breakdown of this account by the following categories:

1. Industry association dues;
2. Debt-serving expenses;
3. Institutional and conservation advertising;
4. Rate department load studies;
5. Director's fees and expenses;
6. Dues and subscriptions; and
7. Miscellaneous; and

(b) Detailed supporting workpapers that shall include for amounts over $100, the date, vendor, reference, dollar amount, and a brief description of each expenditure;

(24) An analysis of FERC Account No. 426, Other Income Deductions, for the test period. The analysis shall include:

(a) A breakdown of this account by the following categories:

1. Donations;
2. Civic activities;
3. Political activities; and
4. Other; and

(b) Detailed supporting workpapers that shall include for amounts over $1,000, the date, vendor, reference, dollar amount, and a brief description of each expenditure;

(25) A trial balance as of the last day of the test year showing account number, subaccount number, account title, subaccount title, and amount. The trial balance shall include:

(a) All asset, liability, capital, income, and expense accounts used by the cooperative; and

(b) All income statements accounts showing activity for twelve (12) months that includes the balance in each control account and all underlying subaccounts per the company books;

(26) A schedule showing employee health, dental, vision, and life insurance premium contributions by coverage type, including the cost split of each identified premium between the employee and the cooperative;

(27) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments; and

(28) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

Section 4. Revenue Neutral Application. A cooperative may apply for a revenue neutral adjustment of rates using the procedure established in this section if:

(1) It has been at least twelve (12) months since the effective date of the cooperative's last base rate adjustment;

(2) The change in rates does not result in an increase in the revenue requirement used to determine the rates in the cooperative's most recent base rate adjustment case;

(3) The cooperative's application includes only requests for:

(a) Adjustments in revenue allocations;

(b) Changes to rate design; and

(c) Changes to the cooperative's tariff necessary to reflect changes in rates;

(4) The cooperative's most recent embedded class cost of service study was completed within the five (5) years prior to the submission of the cooperative's application under this section;

(5) The cooperative's application is filed electronically pursuant to the requirements of 807 KAR 5:001, Section 8;

(6) A cooperative has notified the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application; and

(7) Upon filing the notice of intent with the commission, the applicant has mailed to the Attorney General Intervention, a copy of the notice of intent or sent by electronic mail in a portable document format, to rateintervention@ag.ky.gov.

Section 5. An application filed pursuant to Section 4 of this administrative regulation shall include:

(1) A narrative statement discussing any changes that have occurred for the cooperative since the effective date of its last change in rate design or revenue allocation and stating the reasons for the proposed adjustment;

(2) If more than five (5) years has elapsed since cooperative's most recent general rate adjustment, a detailed explanation of why the cooperative has not sought a general rate adjustment;

(3) New or revised tariff sheets, if applicable, in a format that complies with 807 KAR 5:011, Section 3, with an effective date not less than thirty (30) days from the date the application is filed;

(4) New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

(a) 1. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

2. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

(b) A statement that notice has been given in compliance with Section 7 of this administrative regulation with a copy of the notice;

(5) A general statement identifying any electric property or plant held for future use;

(6) All current agreements related to vegetation management, as well as a statement identifying any changes that occurred since the cooperative's most recent base rate adjustment to the cooperative's policies on vegetation management, indicating the effective date and reason for these changes; and

(7) A statement identifying any changes that occurred during the test year to the cooperative's written policies on the compensation of its attorneys, auditors, and all other professional service providers, indicating the effective date and reason for these changes.

Section 6. Exclusions for Ratemaking Purposes. The following shall be excluded for ratemaking purposes and from the pro forma test year income statement and supporting documentation included in an application made pursuant to Section 2 of this administrative regulation:

(1) The contribution made for the least generous plans for employer retirement contributions for employees participating in multiple benefit packages;

(2) If employee health care insurance premium contribution is zero, the difference between the amount contributed by the cooperative and the healthcare insurance premiums contributions by employees based on the national average for coverage type;

(3) Life insurance premiums for coverage above an employee's annual salary or $50,000, whichever is less;

(4) Advertising expenses prohibited from rate recovery by 807 KAR 5:016, Section 4;

(5) All fuel adjustment clause and environmental surcharge revenues and expenses;

(6) Charitable and political contribution both in cash and services;

(7) Salary and all company-paid or reimbursed expenses or allowances for lobbying on the local, state, or national level. If any amounts are allocated, show a calculation of the factor used to allocate each amount;

(8) Any non-regulated activities;

(9) All non-utility property and related property taxes; and

(10) For board of directors:

(a) Per diems for attending industry association meetings;

(b) Costs of health insurance coverage;

(c) Costs of post-retirement benefits;

(d) Costs of gifts;

(e) Cost of insurance for spouses or dependents of deceased directors; and

(f) Any costs for a director's spouse.

Section 7. Notice. Upon filing an application pursuant to this administrative regulation, a cooperative shall provide notice as established in this section.

(1) Public postings.

(a) A cooperative shall post at the cooperative's place of business, a copy of the notice required by 807 KAR 5:001, Section 17, no later than the date the application is submitted to the commission.

(b) Within five (5) business days of the date the application is submitted to the commission, the cooperative shall conspicuously post on the cooperative's Web sites and social media accounts:

1. A copy of the public notice; and

2. A hyperlink to the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer notice. A cooperative shall provide public notice by:

(a) Including the notice with customer bills mailed no later than the date on which the application is submitted to the commission;

(b) Mailing a written notice to each customer no later than the date on which the application is submitted to the commission;

(c) Publishing the notice in a newspaper of general circulation, with the first publication being no later than the date on which the application is submitted to the commission, for at least three (3) consecutive weeks inclusive of the first publication; or

(d) Publishing the notice in a trade publication or newsletter received by all cooperative members, delivered no later than the date on which the application is submitted to the commission.

(3) Proof of notice. A cooperative shall file with the commission no later than thirty (30) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the cooperative verifying:

1. The contents of the notice;
2. That notice was mailed to all customers; and
3. The date of the mailing;

(b) If notice is published in a newspaper of general circulation in the cooperative's service area, an affidavit from the publisher verifying:

1. The contents of the notice;
2. That the notice was published; and
3. The dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the cooperative verifying:

1. The contents of the notice;
2. The mailing of the trade publication or newsletter;
3. That notice was included in the publication or newsletter; and
4. The date of mailing.

(4) Notice content.

(a) The notice required by subsection (1) of this section shall include the notice contents required by 807 KAR 5:001, Section 17(4), except for the statement required by 807 KRS 5:001, Section 17(4)(j).

(b) The customer notice required by subsection (2) of this section shall include:

1. The case number for the proceeding;
2. The proposed effective date and the date the proposed rates are expected to be filed with the commission;
3. The present rates and proposed rates for each customer classification to which the proposed rates will apply;
4. The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;
5. The cooperative's business address where a copy of the notice required by subsection (1) of this section may be viewed;
6. A link to Web site notifications where a copy of the notice required by subsection (1) of this section may be viewed;
7. Links or references to social media posts where a copy of the notice required by subsection (1) of this section (or link thereto) may be viewed;
8. A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, or emailed to PSCED@ky.gov, establishing the grounds for the request including the status and interest of the party;
9. A statement that the commission is required to take action within seventy-five (75) days of the date the application is accepted for filing; and
10. A summary of proposed changes to lighting and other miscellaneous rates.

(c) Customer notice required by subsection (2) of this section may omit from the notice any rates under which no customers are receiving service at the time the application is submitted to the commission.

Section 8. Procedure.

(1) Upon submission of the application, the commission shall issue an order that:

(a) Grants the Attorney General intervention;

(b) Allows seven (7) days for the Attorney General to file a written statement that the Attorney General, or the Attorney General's authorized agent, possesses the facilities to receive electronic transmissions or notify the commission in writing that the Attorney General will not participate in the proceeding; and

(c) Allows seven (7) days to file comments regarding the cooperative's application and whether or not it should be accepted for filing pursuant to this administrative regulation or treated as an application file pursuant to 807 KAR 5:001, Section 16.

(2) Within ten (10) business days of the filing of the application, the commission shall complete its initial review of the application and issue an order either accepting or rejecting the application for filing under this administrative regulation.

(3) The commission may only reject an application submitted pursuant to this administrative regulation based on a finding that the:

(a) Application does not comply with the relevant administrative regulations and statutes; or

(b) Proposed rates will not provide the cooperative sufficient revenue to provide the service required by KRS 278.030(2).

(4) If the commission rejects the application for processing under this administrative regulation, the application shall be deemed submitted pursuant to KRS 278.190 and 807 KAR 5:001, Section 16.

(5) An order rejecting the application for the processing under this administrative regulation shall, at minimum, include:

(a) Findings explaining the reason the application was not accepted under this administrative regulation;

(b) An opportunity for the cooperative to amend its application if it wants to proceed for a general rate adjustment pursuant to KRS 278.190 and 807 KAR 5:001, Section 16;

(c) A schedule for the processing of the application, including a deadline by which the cooperative shall amend its application if seeking reconsideration; and

(d) A list of any additional evidence necessary to support reconsideration that the cooperative shall provide in an amended application.

(6) If the commission rejects the cooperative's application for processing under this administrative regulation, the cooperative may, with written notice to the commission, withdraw its application.

(7) An order accepting the cooperative's application for processing under this administrative regulation shall incorporate into the record the two (2) most recent annual reports of the cooperative on file with the commission.

(8) An order accepting the cooperative's application for processing under this regulation shall establish a procedural schedule that includes deadlines for:

(a) Filing of one written set of requests for intervention by parties and commission staff;

(b) Parties' submission of written comments upon the conclusion of the filing of evidence; and

(c) The submission of the case to the commission for a final decision.

(9) Commission staff may issue written requests for information at any time.

(10) The commission shall notify the cooperative of any deficiencies in the application within fourteen (14) days of the application's submission. An application shall not be accepted for filing until the cooperative has cured all noted deficiencies.

(11) The commission shall issue a final order within seventy-five (75) days after an application is filed with the commission, unless it is necessary for good cause to continue the application for longer time than seventy-five (75) days, in which case the order making the continuance shall state fully the facts that make it necessary. Any continuance shall not exceed fourteen (14) days.

Section 9. Communication with Parties.

(1) The cooperative may state in its application that members of commission staff may contact the cooperative's witnesses directly, without counsel present, to seek clarification of certain factual information contained in the application or in responses to requests for information.

(2) Following a communication as established for in subsection (1) of this section, commission staff shall file in the record a memorandum detailing the content and subject of the communication.

(3) In cases in which there are intervenors, commission staff shall not have direct communication with the cooperative's witnesses unless the intervenor participates or has waived participation.

Section 10. Exceptions.

(1) A utility may submit a written request to the commission to obtain an exception, based on good cause, for a requirement established in this administrative regulation. The utility shall attach supporting evidence of good cause to the written request.

(2) Once the request is received, the commission shall, based on the evidence in the written request and as established in subsection (3) of this section, determine if good cause exists. The commission shall notify the utility, in writing, of:

(a) The decision of whether or not good cause is determined to exist; and

(b) If good cause is determined to exist:

1. The scope and duration of any exception granted; and
2. Any conditions that the utility shall meet to maintain the exception.

(3) In determining if good cause exists, the commission shall consider whether or not the evidence shows that compliance with the requirement would be impracticable or contrary to the public interest.

HISTORY:

50 Ky.R. 2118; 51 Ky.R. 44; eff. 7-18-2024.

807 KAR 5:080. Procedural and filing requirements and safeguards concerning nonregulated activities of utilities or utility affiliates.

RELATES TO: KRS 278.010, 278.2201, 278.2203, 278.2205, 278.2207, 278.2213, 278.2215, 278.2219, 278.230, 278.260

STATUTORY AUTHORITY: KRS 278.040(3), 278.2201, 278.280(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.280(1) authorizes the commission to establish proper practices to be observed in regard to a utility's practices and services. KRS 278.2201 prohibits a utility governed by KRS 278.2201 through 278.2219 from subsidizing nonregulated activities performed by the utility or an affiliate and authorizes the commission to promulgate administrative regulations to implement this section. KRS 278.2205(3) requires a utility governed by KRS 278.2201 through 278.2219 to file with the commission a statement that its cost allocation manual has been prepared and adopted, together with the manual. KRS 278.2205(4) requires a utility governed by KRS 278.2201 through 278.2219 to amend its cost allocation manual to reflect any material changes. KRS 278.230 requires a utility to file with the commission any reports, schedules, classifications or other information that the commission reasonably requires. KRS 278.2207 prescribes requirements for transactions between a utility governed by KRS 278.2201 through 278.2219 and its affiliate, and provides for deviations from those requirements. KRS 278.2213(13) requires the commission to establish specifications for a disclaimer to be used by an affiliate using the name, trademark, brand or logo of a utility governed by KRS 278.2201 through 278.2219 and requires commission approval prior to the use of any disclaimer. KRS 278.2213(15) requires a utility governed by KRS 278.2201 through 278.2219 to inform the commission of any new nonregulated activity within the time specified by the commission. KRS 278.2213(17) authorizes the commission to require a utility to file annual reports relating to its transactions with affiliates. KRS 278.2219 authorizes the commission to grant a deviation from a provision of KRS 278.2201 through 278.2213. This administrative regulation prescribes procedures, filing requirements, and safeguards relating to nonregulated activities of a utility or a utility affiliate.

Section 1. Definitions. For purposes of this administrative regulation:

(1) "Affected utility" means a utility not exempted by KRS 278.2215, or other law, from a requirement of KRS 278.2201 through 278.2219.

(2) "Service agreement" means an agreement between an affected utility and an affiliate or subsidiary that delineates the activities, duties, pricing and accounting for transactions between the parties.

Section 2. Annual Reports Relating to a Nonregulated Activity of an Affected Utility or Its Affiliate. (1) An affected utility shall file with the commission, by March 31 of each calendar year, a report containing the following information:

(a) A description of each change in the affected utility's cost allocation manual during the preceding calendar year that has not been previously reported;

(b) A report on the utility's incidental nonregulated activity that describes the activity and provides justification for reporting the nonregulated activity as an incidental nonregulated activity, including:

1. Revenue per year or percentage of total revenue per year of the activity reported as an incidental nonregulated activity;

2. A calculation demonstrating the manner in which the affected utility has determined the percentage of revenue set forth in subparagraph 1 of this paragraph;

3. A full explanation as to why the activity reported as an incidental nonregulated activity is reasonably related to the affected utility's regulated services; and

(c) A list of nonregulated affiliates and a brief description of the activities in which each affiliate is involved, except that an affected utility may meet the requirements of this paragraph for a nonregulated affiliate that has not, within the reporting period, offered or sold goods and services in the Commonwealth of Kentucky or entered into a transaction with an affected utility by stating the name of the nonregulated affiliate and the nature of its business.

(2) A copy of each service agreement existing on the effective date of KRS 278.2201 through 278.2219 and remaining in effect shall be filed as an attachment to the annual report required by this subsection. After the initial filing, an affected utility shall file only new or amended service agreements with the annual report.

Section 3. Filing of the Cost Allocation Manual and Amendments. (1) An affected utility shall file a copy of a new cost allocation manual or a new amendment to its cost allocation manual within:

(a) Sixty (60) days of a material change in matters required to be included in the cost allocation manual; or

(b) Ninety (90) days of engaging in a new nonregulated activity that is not classified as an incidental nonregulated activity pursuant to KRS 278.2203(4).

(2) If an affected utility files a new cost allocation manual or an amendment to a cost allocation manual, it shall include with its filing a cover letter containing a brief description of the activity or material change in circumstance that necessitates the filing of the cost allocation manual or amendment.

(3) An affected utility filing under this section shall include in its filing all documents and information required by 807 KAR 5:001, Section 14, except that only one (1) copy of the cost allocation manual shall be filed.

Section 4. Notice of Establishment of New Nonregulated Activity. (1) Within ten (10) days of establishing a new nonregulated activity, an affected utility shall file with the commission a written notice that:

(a) Briefly describes the new nonregulated activity; and

(b) States whether the new nonregulated activity is proposed to be classified as an incidental nonregulated activity.

(2) If a new nonregulated activity is proposed to be classified as an incidental nonregulated activity, an affected utility shall include in the notice required by subsection (1) of this section the information required by Section 2 (1)(b) of this administrative regulation.

Section 5. Petition for Deviation. (1) To request a deviation pursuant to KRS 278.2219, an affected utility shall file with the commission the following documents and information:

(a) All documents and information required by 807 KAR 5:001, Section 14;

(b) An original and five (5) copies of the petition;

(c) All documents and information required by KRS 278.2219;

(d) A full description of the reasons that compliance with the requirements from which deviation is sought is impractical or unreasonable.

(2) To request a deviation from KRS 278.2207, an affected utility shall file with the commission the following documents and information:

(a) All documents and information required by 807 KAR 5:001, Section 14;

(b) An original and five (5) copies of the petition;

(c) All documents and information required by KRS 278.2219;

(d) The proposed price of services or products proposed by the affected utility or nonregulated affiliate;

(e) A detailed calculation demonstrating the manner in which the affected utility or nonregulated affiliate has determined the proposed price of services or products;

(f) An explanation of the reasons the affected utility believes that the proposed price of services and products is in the public interest; and

(g) A statement demonstrating good cause for the requested deviation.

Section 6. Disclaimer to be Employed When an Affiliate of an Affected Utility Uses the Utility's Name, Trademark, Brand, or Logo. The disclaimer used by an affiliate of an affected utility shall comply with the following requirements:

(1) The disclaimer shall state that "(affiliate's name) is not the same company as (utility's name). (Affiliate's name) is not regulated by the Kentucky Public Service Commission. You do not have to buy (the affiliate's) (products or services, as applicable) in order to continue to receive quality regulated services from the utility.";

(2) If an affiliate of an affected utility uses the utility's name, trademark, brand, or logo in a print format, the disclaimer shall appear in capital letters on the first page or at the first point where the utility's name, trademark, logo or brand appears;

(3) If an affiliate of an affected utility uses the utility's name, trademark, brand, or logo in a televised format, the disclaimer shall appear at the first point at which the utility's name, trademark, logo, or brand appears; and

(4) If an affiliate of an affected utility uses the utility's name in an audio format, the disclaimer shall be spoken at the close of the advertisement.

HISTORY:

28 Ky.R. 204; Am. 640; 1395; eff. 12-19-2001; TAm 1-30-2013; Crt eff. 3-27-2019.

807 KAR 5:090. System development charges for water utilities.

RELATES TO: KRS 278.012, 278.015, 278.030, 278.040, 278.160, 278.180, 278.190, 278.200, 278.230, 278.310

STATUTORY AUTHORITY: KRS 278.040(2), (3), 278.200, 278.230(3), 278.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) grants the commission exclusive jurisdiction over utility rates and services. KRS 278.200 authorizes the commission to originate, establish, change or promulgate any rate standard that has been or may be fixed by any contract or agreement between a utility and any city. KRS 278.030 authorizes a utility to collect fair, just and reasonable rates for its services. KRS 278.230(3) requires a utility to file with the commission any reports or other information that the commission may reasonably require. KRS 278.310 authorizes the commission to adopt rules to govern the conduct of its hearings and investigations. This administrative regulation prescribes filing requirements and procedures to be followed by a public water utility applying for authority to assess a system development charge or a municipal water utility applying for authority to assess a system development charge to a public water utility.

Section 1. Definitions. (1) "Municipal water utility" means any city that provides the services enumerated in KRS 278.010(3)(d) to a public water utility.

(2) "Public water utility" means any person including a water district or water association, except a city, who owns, controls, operates or manages facilities that are used or to be used to provide the services enumerated in KRS 278.010(3)(d).

(3) "System development charge" means a one (1) time charge assessed by a water utility on a real estate developer, on a new customer, or on an existing customer who significantly increases its demand for water service to finance construction of a system improvement necessary to serve that customer or a proposed real estate development.

(4) "Water utility" means any municipal water utility or public water utility.

Section 2. A municipal water utility shall assess a system development charge upon a public water utility only after obtaining commission approval. A public water utility shall assess a system development charge only after obtaining commission approval.

Section 3. To apply to assess a system development charge, a public water utility shall file with the commission an application that includes the following:

(1) All documents and information required by 807 KAR 5:001, Section 14;

(2) A statement of the reason the system development charge is required;

(3) The prepared testimony of each witness the applicant proposes to call in a hearing on its application;

(4) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the property and cost to the applicant;

(5) A general description of how the applicant's property has been financed;

(6) A capital improvement plan that:

(a) Covers a minimum of ten (10) years from the date of the filing of the application;

(b) Projects the amount of and characteristics of projected growth and the demand that growth will place on the system;

(c) States the amount of projected growth for each customer class;

(d) States the proposed level of service after the completion of planned improvements;

(e) Determines the cost of system upgrades and improvements needed to provide the desired level of service;

(f) States when and where the proposed system upgrades and improvements would be needed;

(g) Contains a deficiency analysis of the applicant's current system and identifies the system improvements necessary to provide adequate service at existing and future demand levels; and

(h) If improvements are needed to provide adequate service to existing customers at existing demand levels, identifies the portion of the system improvement that will serve existing customers;

(7) A statement describing when the proposed system development charge will be assessed and explaining why the proposed time for assessment is reasonable;

(8) A statement that notice has been given in compliance with Sections 6 and 7 of this administrative regulation;

(9) A proposed tariff sheet that complies with 807 KAR 5:011, that proposes an effective date not less than thirty (30) days from the date the application is filed, and that sets forth the procedures and rules governing assessment of the proposed system development charge;

(10) A certified copy of the resolution or ordinance of the applicant's governing body authorizing the assessment of the proposed system development charge and the filing of an application with the commission; and

(11) If the applicant proposes to assess a system development charge upon another water utility, a copy of the water utility's current water supply agreement with each effected water utility and a statement explaining why the rates contained in the contract are inadequate and why an assessment of a system development charge to that water utility is necessary.

Section 4. To apply to assess a system development charge to a public water utility, a municipal water utility shall file with the commission an application that includes the following:

(1) All documents and information required by Section 3(1) through (10) of this administrative regulation; and

(2) A copy of the municipal water utility's current water supply agreement with each affected public water utility and a statement explaining why the rates contained in the contract are inadequate and why an assessment of a system development charge to that public water utility is necessary.

Section 5. The commission shall consider a proposed system development charge reasonable if the applicant demonstrates that the proposed charge:

(1) Offsets an increase in cost to fund system expansion to accommodate new growth and demand;

(2) Recovers only the portion of the cost of a system improvement that is reasonably related to new demand; and

(3) Is based upon the cost of a new facility that will increase or expand capacity.

Section 6. Form of Notice. A water utility filing an application pursuant to this administrative regulation shall notify the public in the manner prescribed in this section. The notice shall include:

(1) The amount of the requested system development charge;

(2) A statement that "The rates contained in this notice are the rates proposed by (name of utility); however, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice";

(3) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of the notice of the proposed rate changes request intervention;

(4) A statement that any person who has been granted intervention by the commission may obtain a copy of the rate application and any other filing made by the water utility by contacting the water utility at an address and phone number that is stated in the notice; and

(5) A statement that "Any person may examine the rate application and any other filing made by (the water utility) at (the main office of the water utility) or at the commission's office at 211 Sower Boulevard, Frankfort, Kentucky 40601".

Section 7. Manner of Notification. A water utility shall give the required notice by publishing the notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in its service area, the first publication to be made within seven (7) days of the filing of the application with the commission. It shall file with the commission no later than forty-five (45) days of the filed date of the application an affidavit from the publisher verifying that the notice was published, stating the dates of the publication, and attaching a copy of the published notice. The water utility shall also post a copy of the required notification at its place of business no later than the date on which the application is filed, and the notice shall remain posted until the commission has ruled upon the water utility's application.

Section 8. After reviewing a water utility's application, the commission shall issue an order approving, modifying or rejecting the proposed capital improvement plan and system development charge.

Section 9. Unless a water utility proposes to assess a system development charge upon another water utility, a system development charge shall be based upon a meter or residential equivalent.

Section 10. Offsets and Credits to Charges. A water utility shall reduce or offset a system development charge to an applicant for service if the applicant has constructed facilities or physical improvements in excess of its own system requirements that will benefit another part of the water utility's system. A water utility shall waive a system development charge for any applicant for service electing to construct a utility facility needed to provide the applicant with water service only if the amount paid for the construction is greater than the system development charge.

Section 11. Use of System Development Charge Funds. (1) A water utility shall place all collections from an approved system development charge in a separate interest-bearing account and shall not commingle collected system development charges and interest income on those charges with other utility funds.

(2) A water utility shall use funds from the separate interest-bearing account exclusively for:

(a) The purposes set forth in the capital improvement plan that the commission has approved; or

(b) Reimbursement or repayment to other accounts from which funds have been taken to pay for growth-related capital projects that are set forth in the approved capital improvement plan.

(3) If a water utility has failed to provide water service at the requested level within five (5) years after the collection of the system development charge began, or if amounts collected from a system development charge have not been spent on the approved capital improvement plan within five (5) years of the date the system development charge began, the water utility shall refund with interest the collected system development charge. Interest shall be computed in accordance with KRS 278.460.

Section 12. Records and Reports. A water utility authorized to assess a system development charge shall:

(1) Maintain a record showing the amount and date of each collection;

(2) Maintain a record showing the amount and purpose of all disbursements from its interest-bearing account;

(3) Notify the commission in writing within sixty (60) days of the date it is authorized to assess a system development charge of the location of and provisions governing its interest-bearing account; and

(4) File annually a report that shows for the previous calendar year:

(a) The amount collected pursuant to its system development charge;

(b) The disbursements of funds from its interest-bearing account; and

(c) The status of all projects included in its approved capital improvements plan.

(5)(a) A public water utility shall file the report required by subsection (4) of this section with its annual financial and statistical report filed pursuant to 807 KAR 5:006, Section 4(2).

(b) A municipal water utility shall file the report required by subsection (4) of this section no later than March 31 of each year following the approval of its application to assess a system development charge.

Section 13. Amendments to Approved Capital Improvement Plans. The water utility may apply for commission approval of an amendment to its capital improvement plan to reflect subsequent developments or new information.

Section 14. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation.

HISTORY:

28 Ky.R. 1534; Am. 2048; 2209; eff. 4-15-2002; TAm 1-30-2013; Crt eff. 3-27-2019.

807 KAR 5:095. Fire protection service for water utilities.

RELATES TO: KRS 278.010, 278.012, 278.015, 278.030, 278.040, 278.170(3), 278.280
STATUTORY AUTHORITY: KRS 278.040(3), 278.280(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate, pursuant to KRS Chapter 13A, reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) grants the commission exclusive jurisdiction over utility rates and services. KRS 278.012 states that water associations are subject to the commission's jurisdiction. KRS 278.015 expressly subjects water districts to commission jurisdiction. KRS 278.030 authorizes utilities to collect fair, just, and reasonable rates for their services. KRS 278.170(3) provides that a utility may provide free or reduced rate water service to any city, county, urban-county, fire protection district or volunteer fire protection district for fighting fires or training firefighters under a tariff that is approved by the commission and that requires the water user to provide water usage reports to the utility on a regular basis. KRS 278.280 authorizes the commission to prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility. This administrative regulation governs a utility's provision of water for fire protection service.

Section 1. Definitions. (1) "Private fire protection service" means water service to support the operation of a private fire protection system, including private hydrants, automatic fire sprinkler systems, standpipes, and other appurtenances that a customer installs to assist in extinguishing fires.
(2) "Private fire service line" means a water line that is installed at the customer's expense and that extends from a water main to provide private fire protection service to a single customer, a single multi-unit building or complex, or a single commercial or industrial development.

Section 2. A utility may enter into a special contract with a customer regarding the allocation of costs for system improvements necessary for private fire protection service.

Section 3. A utility shall require a customer requesting private fire protection service to bear the cost of constructing a private fire service line that runs from the water utility's distribution or transmission main through the customer's property. The utility shall own and be responsible for the maintenance, repair, and replacement of the portion of a private fire service line that extends from the utility's distribution or transmission main to the utility's easement. The customer shall own and be responsible for the maintenance, repair, and replacement of the remaining portion of the line.

Section 4. A utility shall permit a customer to connect a private fire protection system to a service line that serves the customer for other purposes, including domestic consumption, if the connection to the service line for the fire suppression system is on the customer's side of the customer's metering point.

Section 5. Rates for Private Fire Protection Services. (1) A utility shall not assess a rate for private fire protection service that includes a component for water usage unless that component is based upon a customer's actual usage.
(2) A utility shall not assess a separate charge or fee for private fire protection service if the customer's private fire protection system is directly connected to a service line that serves the customer for other purposes.
(3) A utility shall assess a rate for service to a fire protection system that is separately connected to the utility's distribution system and that does not receive water service for any other purpose. The rate shall recover, at least, the cost of:
(a) Depreciation and debt service or return on utility investment in the utility facilities that directly connect the utility's main to the fire protection system;
(b) Expenses associated with periodic inspections to ensure against unauthorized use;
(c) Expenses associated with meter reading and billing, if a meter is installed for the fire protection system; and
(d) Expenses for maintenance, repairs, and inspection on the utility facilities that directly connect the utility's main to the fire protection system.

Section 6. A utility shall require a customer who receives private fire service through an unmetered connection to report:

(1) At least annually, his reasonable estimate of water usage for flushing, testing, or other purposes and the basis for his estimate; and

(2) Within one (1) month after the service's use to fight a fire, his estimate of the water usage to fight the fire and the basis for his estimate.

Section 7. (1) As a condition of service, a utility shall require a customer who connects a private fire protection system to the utility's facilities, either directly or indirectly, to install double-acting backflow preventers.

(2) A utility shall have access to a customer's premises at all reasonable hours to inspect the customer's private fire protection system to ensure compliance with subsection (1) of this section.

Section 8. Fire Sprinkler Systems. (1) A utility shall provide service dedicated solely to a fire sprinkler system without the use of metering equipment unless good cause related to the delivery or use of the service exists. If a utility installs a metered service for a fire sprinkler system, it may assess a fee for the cost of its installation that includes the cost for service tap, meter, and meter vault.

(2) A utility may require a customer who connects a fire sprinkler system to its water distribution system to make repairs upon or improvements to his fire sprinkler system to correct any deficiency, defect or problem noted in any report of a test or inspection required by 815 KAR 10:060.

(3) A utility may require a customer who connects a fire sprinkler system to its water distribution system to report:

(a) The location of the fire sprinkler system;

(b) A change in the fire sprinkler system's operating status;

(c) The performance of required maintenance on the fire sprinkler system; and

(d) The results of any test or inspection of the fire sprinkler system required by 815 KAR 10:060.

(4) A utility providing service that complies with 807 KAR 5:066, Section 5(1), shall not be required to increase water pressure levels to support fire sprinkler systems unless the commission finds an increase is reasonable and necessary.

Section 9. A utility that permits a fire department to withdraw water from its water distribution system for fire protection and training purposes at no charge or at reduced rates shall:

(1) Require a fire department to submit quarterly reports demonstrating its water usage for the quarter; and

(2) State in its tariff the penalty to be assessed for failure to submit the reports required by subsection (1) of this section.

Section 10. Deviation. For good cause shown, the commission may permit a deviation from this administrative regulation.

HISTORY:

29 Ky.R. 200; Am. 983; eff. 11-13-02; Crt eff. 3-27-2019.

807 KAR 5:100. Application fees.

RELATES TO: KRS 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, 278.716
STATUTORY AUTHORITY: KRS 278.702(3), 278.706(3), 278.706(5), 278.714
NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702 authorizes the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) requires the permanent members of the board to promulgate administrative regulations in accordance with KRS Chapter 13A to implement KRS 278.700 to 278.716. KRS 278.706(3) requires that application fees for a construction certificate shall be established by the board and deposited into a trust and agency account to the credit of the Kentucky Public Service Commission. KRS 278.706(5) requires the board to promulgate administrative regulations establishing fees to cover the expenses associated with review of applications filed pursuant to KRS 278.700 to 278.716. KRS 278.706(5) also requires that, if a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses for review of the application, including the board's expenses associated with legal review of the application, the board shall assess a supplemental application fee to cover the additional expenses. KRS 278.706(5) requires that an applicant's failure to pay a fee assessed pursuant to KRS 278.706 shall be grounds for denial of the application. KRS 278.714(6)(a) requires the board to promulgate administrative regulations to establish an application fee for a construction certificate for nonregulated electric transmission lines and carbon dioxide transmission pipelines. This administrative regulation establishes an initial application fee for each type of application filed with the board and specifies the method by which a supplemental fee shall be assessed.

Section 1. Application Fee to be Filed with an Application to Construct a Merchant Electricity Generating Plant. A person seeking to obtain a certificate to construct a merchant electricity generating plant shall submit with the application submitted in accordance with 807 KAR 5:110 to the Kentucky State Board on Electric Generation and Transmission Siting, at the offices of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky, an initial application fee of $1,000 per megawatt of electricity generating capacity, based on the manufacturer's nameplate rated capacity of the proposed construction, except that the initial application fee for each application for each plant shall be in an amount not less than $40,000 and not more than $200,000.

Section 2. Application Fee to be Filed with an Application to Construct a Nonregulated Transmission Line. A person seeking board approval of construction of a nonregulated transmission line shall file with the application submitted in accordance with 807 KAR 5:110 to the board a fee of fifty (50) dollars per kilovolt of rated capacity per mile of length, except that the initial application fee shall be in an amount not less than $10,000 and not more than $200,000.

Section 3. Application Fee to be Filed with an Application to Construct a Carbon Dioxide Transmission Pipeline. A person seeking board approval of construction of a carbon dioxide transmission pipeline shall file with the application submitted in accordance with 807 KAR 5:110 to the board a fee of $500 per mile of length, except that the initial application fee shall be in an amount not less than $10,000 and not more than $200,000.

Section 4. Application Fee to be Filed with an Application to Transfer a Certificate to Construct a Merchant Electricity Generating Facility. A person seeking board approval to transfer a right or obligation associated with a certificate granted by the board to construct a merchant electricity generating facility shall file with the application submitted in accordance with 807 KAR 5:110 to the board, an initial application fee of $5,000.

Section 5. Supplemental Application Fee. (1) No sooner than thirty (30) days after an application has been filed and no later than sixty (60) days after issuance of the board's final decision on an application or, if an applicant has sought judicial review in accordance with KRS 278.712(5), no later than sixty (60) days after all appeals of the board's decision have been exhausted, the board shall assess a supplemental application fee to cover an expense related to review of an application filed pursuant to KRS 278.704, 278.710, or 278.714, for which the initial application fee is insufficient.

(2) The supplemental fee shall be assessed by order containing an accounting of each expense for which the supplemental fee is assessed.

Section 6. Refund. No later than sixty (60) days after issuance of the board's final decision on an application or, if judicial review has been sought, no later than sixty (60) days after all appeals of the board's decision have been exhausted, the board shall refund to the applicant any amount paid that exceeds the amount expended by the board.

HISTORY:

29 Ky.R. 610; Am. 958; eff. 10-9-2002; 38 Ky.R. 841; 1136; eff. 1-6-12; Crt eff. 3-27-2019.)

807 KAR 5:110. Board proceedings.

RELATES TO: KRS 61.870-61.844, 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, 278.716

STATUTORY AUTHORITY: KRS 278.702(3), 278.706(2)(c), 278.712(2)

NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702(3) authorizes the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) requires the board to promulgate administrative regulations to implement KRS 278.700 to 278.716. KRS 278.712(2) requires the board to promulgate administrative regulations governing a board hearing. KRS 278.706(2)(c) requires an applicant seeking to obtain a construction certificate from the board to give proper notice of his intention to the public. This administrative regulation establishes procedures related to applications, filings, notice requirements, hearings, and confidential material.

Section 1. General Matters Pertaining to All Formal Proceedings. (1) Address of the board. Written communication shall be addressed to Kentucky State Board on Electric Generation and Transmission Siting, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602-0615.

(2) Form of papers filed. A pleading in a formal proceeding shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double-spaced.

(3) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(4) Service of process. If a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

Section 2. Notice of Intent to File Application. (1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct a carbon dioxide transmission pipeline, merchant electricity generating plant, or nonregulated electric transmission line, an applicant shall file at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602, a Notice of Intent to File Application. If an applicant fails to file an application within six (6) months of the filing of the Notice of Intent to File Application, the Notice shall automatically expire without further notice to the applicant.

(2) A Notice of Intent to File Application shall include:

(a) The name, address, telephone number, and electronic mail address of the person who intends to file the application;

(b) A brief description of the proposed construction that will be the subject of the application;

(c) A description of the location of the proposed construction, including:

1. The name of the city and county in which the construction will be proposed;

2. The street address and latitude and longitude of the site of the construction to be proposed; and

3. If the proposed construction will be within the boundaries of a city;

(d) The address of the planning and zoning commission, if any, with jurisdiction over the site of the construction to be proposed;

(e) If applicable, a description of the setback requirements of the planning and zoning commission with jurisdiction over the site of the construction to be proposed; and

(f) If the planning commission's setback requirements are less stringent than those prescribed by statute, or if the planning commission with jurisdiction, if any, has not established setbacks, a statement as to if a deviation from the statutory setback requirements will be requested in the application.

Section 3. Board Applications and Subsequent Filings. (1) An applicant shall file an original and ten (10) paper copies, and one (1) copy in electronic format, of its application at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602.

(2) A paper copy of an application shall:

(a) Be in a bound volume with each document tabbed; and

(b) Contain a table of contents that lists, for each document enclosed,

1. The number of the tab behind which the document is located;

2. The statutory provision pursuant to which the document is submitted; and

3. The name of the person who will be responsible for responding to questions concerning information contained in the document.

(3) Administrative staff for the board shall determine if the application is administratively complete and shall inform the applicant of its determination by letter.

(4) The secretary shall reject for filing any document that does not comply with an administrative regulation in 807 KAR Chapter 5.

Section 4. Intervention and Parties. (1) A person who wishes to become a party to the proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene.

(2) A motion to intervene shall be granted if the movant has shown:

(a) That he has a special interest in the proceeding; or

(b) That his participation in the proceeding will assist the board in reaching its decision and would not unduly interrupt the proceeding.

Section 5. Confidential Material. (1) Material on file with the board shall be available for examination by the public unless the material is determined to be confidential pursuant to subsection (2) of this section.

(2) Procedure for determining confidentiality.

(a) A person requesting confidential treatment of material related to his application shall file a petition with the executive director. The petition shall:

1. In accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884, establish each basis upon which the petitioner believes the material should be classified as confidential; and

2. Attach one (1) copy of the material that identifies, by underscoring, highlighting with transparent ink, or other comparable method, only the portion alleged to be confidential. A text page or portion thereof that does not contain confidential material shall not be included in the identification.

(b) The petition, one (1) copy of the material identified by underscoring or highlighting, and ten (10) copies of the material with the portion for which confidentiality is sought obscured, shall be filed with the board.

(c) The petition and a copy of the material, with only the portion for which confidentiality is sought obscured, shall be served on each party. The petition shall contain a certificate of service on each party.

(d) The burden of proof to show that the material is exempt from the disclosure requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884, shall be upon the person requesting confidential treatment.

(e) A person may respond to the petition for confidential treatment. If a person responds to the petition, the person shall do so within five (5) days after it is filed with the board.

(3) Pending action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the petition for confidential treatment of material is denied, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to petition the board directly or to seek other remedy afforded by law.

(5) Procedure for requesting access to confidential material filed in a proceeding.

(a) A party to a proceeding before the board shall not cite confidentiality as a basis for failure to respond to a discovery request by the board or its staff or another party to the proceeding.

1. If a party responding to a discovery request seeks to have a portion or all of the response held confidential by the board, the party shall follow the procedure for determining confidentiality established in subsection (2) of this section.

2. A party's response to a discovery request shall be served upon each party, with only the portion for which confidential treatment is sought obscured.

(b) If confidential protection is granted and if each party has not entered into a protective agreement, then a party may petition the board requesting access to the material on the basis that it is essential to a meaningful participation in the proceeding.

1. The petition shall include a description of any effort made to enter into a protective agreement.

2. Unwillingness to enter into a protective agreement shall be fully explained.

3.a. A party may respond to the petition.

b. If a person responds to the petition, the person shall do so within five (5) days after it is filed with the board.

4. The board shall determine if the petitioner is entitled to the material and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Request for access to records pursuant to KRS 61.870-61.884. A time period prescribed in this section shall not limit the right of a person to request access to a board record pursuant to KRS 61.870-61.884. Upon a request filed pursuant to KRS 61.870-61.884, the board shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for requesting access to confidential material. A person denied access to a record requested pursuant to KRS 61.870-61.884 or to material deemed confidential by the board in accordance with the procedure established in this section, shall obtain the information only pursuant to KRS 61.870-61.884, and other applicable law.

(8) Use of confidential material during a formal proceeding. Material deemed confidential by the board may be addressed and relied upon during a formal hearing. If confidential material is considered during a formal hearing, it shall be considered as established in the following procedure:

(a) The person seeking to address the confidential material shall advise the board prior to the use of the material.

(b) Except for members of the board or its staff, a person not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(9) Material granted confidentiality that later becomes publicly available or otherwise shall no longer warrant confidential treatment.

(a) The petitioner who sought confidential protection shall inform the executive director in writing if material granted confidentiality becomes publicly available.

(b)1. If the executive director becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, he shall by letter so advise the petitioner who sought confidential protection, giving the petitioner ten (10) days to respond.

2. If the executive director becomes aware that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or board order, the information shall not be publicly available and shall not be placed in the public record.

(c) The material shall not be placed in the public record for twenty (20) days following an order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 6. Evidentiary Hearings. (1) Upon its own motion or on written motion of a party to a case before it, filed no later than thirty (30) days after an application has been filed, the board shall schedule an evidentiary hearing.

(2) A party wishing to present an expert witness at an evidentiary hearing shall, no later than five (5) days prior to the hearing date, file with the board, with a copy to each party of record, the report prepared by the expert and a full description of the credentials qualifying the witness to testify as an expert on the subject matter for which he will testify.

(3) No later than five (5) days prior to an evidentiary hearing, a party to the case shall file the name of each witness he expects to present at the hearing, together with a brief statement of each matter regarding which the witness will testify.

(4) An evidentiary hearing shall be conducted before the board or before a person designated by the board to conduct a specific hearing.

(5) Testimony before the board shall be given under oath or affirmation.

(6) If an objection is made to the admission or exclusion of evidence before the board, the objecting party shall state briefly the basis for objection.

(7) The board shall cause to be made a record of an evidentiary hearing.

Section 7. Filing of Briefs. If applicable, a party of record shall file a brief no later than seven (7) days after the conclusion of the evidentiary hearing.

Section 8. Local Public Hearings and Local Public Information Meetings. (1) A local public hearing or local public information meeting may be conducted before the board or before a person designated by the board to conduct a specific hearing;

(2) A request for a local public hearing or local public information meeting shall be made in writing and shall be filed no later than thirty (30) days after a complete application is filed.

(3) The board shall, at least fourteen (14) days before the hearing date, give notice of the hearing or local public information meeting to:

(a) All parties to the proceeding;

(b) The judge or executive of the county in which the construction of the facility is to be located;

(c) The mayor of the city in which the facility is to be located, if applicable; and

(d) The planning commission with jurisdiction over the area in which the facility is to be located, if applicable.

(4) The board or its designated hearing officer shall accept unsworn, oral comment from any member of the public who provides his name and address on a sign-in sheet to be provided at the hearing or local public information meeting.

(5) Within seven (7) calendar days after the local public hearing or local public information meeting, administrative staff for the board shall file in the official record of the case, with a copy to each party of record, a summary of public comments made at the local hearing or local public information meeting that:

(a) Identifies each person who made oral comments; and

(b) Summarizes the comments received.

Section 9. Notice Requirements. (1) Notice of an evidentiary hearing. At least three (3) days before the hearing date, the applicant shall submit to the board proof that it has given notice of the hearing to each party and to the general public by publication in a newspaper of general circulation in the county or municipality in which the pipeline, plant, or transmission line is proposed to be located.

(2) Notice of a local public hearing or local public information meeting. At least three (3) days before the hearing date or local public information meeting date, the applicant shall submit to the board proof that the general public has been provided notice of the hearing or local public information meeting in a newspaper of general circulation in the county or municipality in which the pipeline, plant, or transmission lines is proposed to be located.

(3) An applicant giving public notice pursuant to KRS 278.706(2) shall include in the notice a statement that:

(a) A person who wishes to become a party to a proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene;

(b) A party may, upon written motion filed no later than thirty (30) days after an application has been filed, request the board to schedule an evidentiary hearing at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; and

(c) A request for a local public hearing or local public information meeting shall be made by at least three (3) interested persons who reside in the county or municipal corporation in which the pipeline, plant, or transmission line is proposed to be located. The request shall be made in writing and shall be filed within thirty (30) days following the filing of a completed application.

HISTORY:

29 Ky.R. 611; Am. 959; eff. 10-9-2002; 34 Ky.R. 130; eff. 10-5-2007; 38 Ky.R. 844; 1137; eff. 1-6-2012; 41 Ky.R. 160; 780; eff. 10-31-2014; Crt eff. 3-27-2019.

807 KAR 5:120. Applications for certificate of public convenience and necessity for certain electric transmission lines.

RELATES TO: KRS 278.020(2), (8) [See Editor's Note]

STATUTORY AUTHORITY: KRS 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.020(2) requires a certificate of public convenience and necessity to be obtained prior to construction of an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length. This administrative regulation establishes procedures and minimum filing requirements for an application to construct an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length.

Section 1. Notice of Intent to File Application. (1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length, an applicant shall file with the commission a notice of intent to file application. If an applicant fails to file an application within six (6) months of the filing of the notice, the notice shall automatically expire without further notice to the applicant.

(2) A notice of intent to file application shall include:

(a) The name, address, telephone number, and electronic mail address of the utility that intends to file the application;

(b) A description of the proposed construction that will be the subject of the application; and

(c) The name of the county or counties in which the construction will be proposed.

Section 2. Application. To apply for a certificate of public convenience and necessity to construct an electric transmission line of 138 kilovolts or more and more than 5,280 feet, a utility shall file with the commission:

(1) All documents and information required by:

(a) 807 KAR 5:001, Section 14, except that the applicant shall file the original and six (6) copies of the application; and

(b) 807 KAR 5:001, Section 15(2)(a) through (c) and (e) through (f);

(2) Three (3) maps of suitable scale, but no less than one (1) inch equals 1,000 feet for the project proposed.

(a) The map detail shall show the location of the proposed transmission line centerline and right of way, and boundaries of each property crossed by the transmission line right of way as indicated on the property valuation administrator's maps, modified as required.

(b) Sketches of proposed typical transmission line support structures shall also be provided.

(c) A separate map of the same scale shall show any alternative routes that were considered;

(3) A verified statement that, according to county property valuation administrator records, each property owner over whose property the transmission line right-of-way is proposed to cross has been sent by first-class mail, addressed to the property owner at the owner's address as indicated by the county property valuation administrator records, or hand delivered:

(a) Notice of the proposed construction;

(b) The commission docket number under which the application will be processed and a map showing the proposed route of the line;

(c) The address and telephone number of the executive director of the commission;

(d) A description of his or her rights to request a local public hearing and to request to intervene in the case; and

(e) A description of the project;

(4) A sample copy of each notice provided to a property owner and a list of the names and addresses of the property owners to whom the notice has been sent;

(5) A statement that a notice of the intent to construct the proposed transmission line has been published in a newspaper of general circulation in the county or counties in which the construction is proposed, which notice included a:

(a) Map showing the proposed route;

(b) Statement of the right to request a local public hearing; and

(c) Statement that interested persons have the right to request to intervene;

(6) A copy of the newspaper notice described in subsection 5 of this section; and

(7) A statement as to whether the project involves sufficient capital outlay to materially affect the existing financial condition of the utility involved.

Section 3. Local Public Hearing. (1) Any interested person under KRS 278.020(8) [See Editor's Note] may request that a local public hearing be held by sending a written request complying with subsections (2) and (3) of this section to the Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. This hearing shall be requested no later than thirty (30) days after filing of an application for a certificate of public convenience and necessity.

(2) A request for a local public hearing shall contain:

(a) The docket number of the case to which the request refers;

(b) The name, address, and telephone number of the person requesting the hearing; and

(c) A statement as to if the person requesting the hearing wishes to participate in an evidentiary hearing or to make unsworn public comment.

(3) If a person requesting a local public hearing wishes to participate in an evidentiary hearing as well, that person shall also apply to intervene in the commission proceeding on the application pursuant to 807 KAR 5:001, Section 4(11).

(4) At least five (5) days before the date established by the commission for a local public hearing, the applicant shall submit to the commission proof that it has given the general public notice of the hearing in a newspaper of general circulation in the county or counties in which the construction is proposed.

Section 4. Deviation from Rules. The provisions of 807 KAR 5:001, Section 22 apply to applications filed under this administrative regulation, except that the commission shall not permit a deviation from the requirements of this administrative regulation unless the commission finds that failure to permit the deviation will adversely affect utility rates or service.

HISTORY:

31 Ky.R. 515; Am. 1256; eff. 1-14-2005; TAm 1-30-2013; 41 Ky.R. 164; 782; 10-31-2014; Crt eff. 3-27-2019.

Editor's Note: KRS 278.020 has been amended since the last revision to 807 KAR 5:120. KRS 278.020(8) is now KRS 278.020(9).