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MEMORANDUM

TO: Gerald E. Wuetcher, Executive Advisor/Attorney
 Public Service Commission

FROM: Donna Little
 Regulations Compiler

RE: Acknowledgement of Proposed Administrative Regulations and/or Amendment –
 807 KAR 5:069 and 807 KAR 5:076

DATE: August 12, 2013

A copy of each administrative regulations listed above is enclosed for your files. These administrative regulations are tentatively scheduled for review by the Administrative Regulation Review Subcommittee at its **October 2013** meeting. We will notify you of the date and time of this meeting when it has been scheduled.

Pursuant to KRS 13A.280, **if** a public hearing is held or you receive written comments during the public comment period, the Statement of Consideration for these administrative regulations is due **by noon on October 15, 2013**. Please reference KRS 13A.270 and 13A.280 for other requirements relating to public hearings and the Statement of Consideration.

If you have any questions, please do not hesitate to contact me at (502) 564-8100.

Enclosures

1 ENERGY AND ENVIRONMENT CABINET

2 Public Service Commission

3 (Amendment)

4 807 KAR 5:069. Filing requirements and procedures for federally funded construction
5 project of a water association, a water~~[commission, or]~~ district, or a combined water,
6 gas, or sewer district.

7 RELATES TO: KRS 278.020(1), 278.023, 278.190, 278.300

8 STATUTORY AUTHORITY: KRS 278.020(1), 278.023, 278.040(3), 278.190, 278.300

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the
10 commission may adopt~~[promulgate]~~ reasonable administrative regulations to implement
11 the provisions of KRS Chapter 278. KRS 278.020(1) authorizes the commission to issue
12 a certificate of public convenience and necessity for utility construction. KRS 278.300
13 authorizes the commission to approve the issuance or assumption of an obligation,
14 liability, or evidence of indebtedness by a utility. KRS 278.190 authorizes the commission
15 to approve proposed changes in rates. KRS 278.023 provides that the commission shall
16 review, recommend modifications to, and issue orders necessary to implement an
17 agreement regarding a federally-funded construction project, including those portions of
18 the agreement relating to financing, construction, and rates. KRS 278.023(2) provides
19 that the commission shall prescribe by administrative regulation the specific documents
20 required to be filed for commission review of a construction project financed in whole or in
21 part under the terms of an agreement between a water utility and~~[with]~~ the U.S.

1 Department of Agriculture or the U.S. Department of Housing and Urban Development
2 and to be undertaken by a water association, a water[commission-or] district, or a
3 combined water, gas, or sewer district formed under KRS Chapter 74 or 273. This
4 administrative regulation establishes~~prescribes~~ filing requirements and procedures a
5 water association, a water[commission,-or] district, or a combined water, gas, or sewer
6 districted formed under KRS Chapter 74 or 273 shall follow when seeking commission
7 approval of a construction project financed in whole or in part under the terms of an
8 agreement with the U.S. Department of Agriculture or the U.S. Department of Housing
9 and Urban Development.

10 Section 1. Definitions.

11 (1) "Commission" is defined by KRS 278.010(15).

12 (2) "Federal lending agency" means the U.S. Department of Agriculture or the U.S.
13 Department of Housing and Urban Development.

14 (3) "Construction project" means activity involving the construction or installation of
15 facilities, plant, or equipment to provide, extend or enhance the quality of water or sewer
16 service within the geographical area that a water utility has the responsibility to serve.

17 (4) "Water utility" means:

18 (a) A water association formed as a non-profit corporation, association, or
19 cooperative corporation having as its purpose the furnishing of a public water supply or
20 the collection or treatment of sewage for the public;

21 (b) A water district formed as a special district pursuant to KRS 65.810 and KRS
22 Chapter 74; or

1 (c) A combined water, gas, or sewer district formed as a special district pursuant to
2 KRS 65.810 and KRS Chapter 74.

3 Section 2. Filing Requirements. A water utility proposing~~[to construct]~~ a
4 construction project financed in whole or in part under the terms of an agreement
5 between the water utility and a federal lending agency shall file with the commission~~[by~~
6 ~~the U.S. Department of Agriculture or the U.S. Department of Housing and Urban~~
7 ~~Development shall file with the commission the following documents and information]:~~

8 (1) All documents and information required by 807 KAR 5:001, Section 7, 8, and
9 14;

10 (2) A copy of the documents from the federal lending agency~~[U.S. Department of~~
11 ~~Agriculture or U.S. Department of Housing and Urban Development, as appropriate,]~~
12 stating approval of the project and including all terms and conditions of the agreement,
13 including all amendments~~[to be met];~~

14 (3) A copy of the letter of concurrence in contract~~[bid]~~ award;

15 (4) A copy of the preliminary and final engineering reports and bid tabulations;

16 (5) Notwithstanding 807 KAR 5:001, Sections 7 and 8, one (1) copy of each set of
17 plans and specifications on electronic storage medium in portable document format;

18 (6) A certified statement from an authorized water utility official confirming:

19 (a) That the proposed plans and specifications for the construction project have
20 been designed to meet the minimum construction and operating requirements established
21 in:

1 1. If the construction project involves facilities to treat or distribute water, 807 KAR
2 5:066, Section 4(3) and (4), Section 5(1), Sections 6 and 7, Section 8(1) through (3),
3 Section 9(1) and Section 10; or

4 2. If the construction project involves facilities to collect or treat sewage, 807 KAR
5 5:071, Section 5 and Sections 7(1) through (3);

6 (b) That all other state approvals or permits have been obtained;

7 (c) That the proposed rates, if any, shall produce the total revenue requirements
8 recommended[set-out] in the engineering reports; and

9 (d) The dates upon which construction will begin and end;

10 ~~(7)[(6)]~~ If applicable, a statement that notice meeting the requirements of Section
11 3[2] of this administrative regulation has been given, together with a copy of the notice;
12 and

13 ~~(8)[(7)]~~ If applicable, a motion requesting approval to deviate from a minimum
14 construction standard or operating condition required by subsection ~~(6)[(5)]~~(a) of this
15 section, together with supporting evidence to identify and explain the reasons that the
16 minimum requirements cannot be met.

17 (9) If a water district or combined water, gas, or sewer district proposes to
18 increase any current rate for water or sewer service or implement a new rate for water
19 or sewer service, a statement from an authorized official of the district indicating the
20 date the proposed rate increase or new rate was reported to the governing body of the
21 county in which the largest number of its customers resides and the date it presented
22 testimony, or is scheduled to present testimony, to that governing body.

1 Section 3. Notice. When filing for a change in rates as a result of a construction
2 project, a water utility shall provide notice as follows:

3 (1) Public postings.

4 (a) A water utility shall post at its place of business a copy of the notice no later
5 than the date the application is submitted to the commission.

6 (b) A water utility that maintains a Web site shall, within five (5) business days of
7 the date the application is submitted to the commission, post on its Web sites:

8 1. A copy of the public notice; and

9 2. A hyperlink to the location on the commission's Web site where the case
10 documents are available.

11 (c) The information required in paragraphs (a) and (b) of this subsection shall not
12 be removed until the commission issues a final decision on the application.

13 (2) Customer notice.

14 (a) If a water utility has twenty (20) or fewer customers or is proposing to increase
15 its rates for sewer service, it shall mail a written notice to each customer no later than the
16 date on which the application is submitted to the commission.

17 (b) If a water utility that has more than twenty (20) customers and is not proposing
18 to increase its rates for sewer service, it shall provide notice by:

19 1. Including notice with customer bills mailed no later than the date the application
20 is submitted to the commission;

21 2. Mailing a written notice to each customer no later than the date the application is
22 submitted to the commission;

1 3. Publishing notice in a prominent manner in a newspaper of general circulation in
2 the water utility's service area no later than the date the application is submitted to the
3 commission; or

4 4. Publishing notice in a trade publication or newsletter delivered to all customers
5 no later than the date the application is submitted to the commission.

6 (c) A water utility that provides service in more than one (1) county and is not
7 proposing to increase its rates for sewer service may use a combination of the notice
8 methods listed in paragraph (b) of this subsection.

9 (3) Proof of notice. A water utility shall file with the commission no later than fifteen
10 (15) days from the date the application was initially submitted to the commission:

11 (a) If notice is mailed to its customers, an affidavit from an authorized
12 representative of the water utility verifying the contents of the notice, that notice was
13 mailed to all customers, and the date of the mailing;

14 (b) If notice is published in a newspaper of general circulation in a water utility's
15 service area, an affidavit from the publisher verifying the contents of the notice, that the
16 notice was published, and the dates of the notice's publication; or

17 (c) If notice is published in a trade publication or newsletter delivered to all
18 customers, an affidavit from an authorized representative of the water utility verifying the
19 contents of the notice, the mailing of the trade publication or newsletter, that notice was
20 included in the publication or newsletter, and the date of mailing.

21 (4) Notice content. Each notice issued in accordance with this section shall contain
22 a brief description of the construction project and shall also contain:

23 (a) The proposed effective date of the proposed rate adjustment;

1 (b) The present rates and proposed rates for each customer classification to which
2 the proposed rates will apply;

3 (c) The amount of the change requested in both dollar amounts and percentage
4 change for each customer classification to which the proposed rates will apply;

5 (d) The amount of the average usage and the effect upon the average bill for each
6 customer classification to which the proposed rates will apply;

7 (e) A statement that a person may examine this application and any related
8 documents the water utility has filed with the Public Service Commission at the offices of
9 (water utility name) located at (water utility address);

10 (f) A statement that a person may examine this application and any related
11 documents at the commission's offices located at 211 Sower Boulevard, Frankfort,
12 Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's
13 Web site at <http://psc.ky.gov>;

14 (g) A statement that comments regarding the application may be submitted to the
15 Public Service Commission through its Web site or by mail to Public Service Commission,
16 Post Office Box 615, Frankfort, Kentucky 40602;

17 (h) A statement that the proposed rates are required under the terms of an
18 agreement between (water utility name) and (federal lending agency name) and that KRS
19 278.023 does not grant the Public Service Commission any discretionary authority to
20 modify or reject any portion of the agreement between (federal lending agency) and
21 (water utility name), or to defer the issuance of all necessary orders to implement the
22 terms of that agreement.~~[Section 2- Notice to Customers of Rate Change- If a change in~~
23 ~~rates is required to finance the construction project, the utility shall, before application is~~

1 ~~made, mail to each customer, or publish in a newspaper of general circulation in the local~~
2 ~~service area, a notice that contains the current and proposed rates and a brief description~~
3 ~~of the construction project.]~~

4 Section 4[3]. Additional Construction Activity. If surplus project funds remain after
5 the approved construction project has been completed, the water utility may construct[an]
6 additional facilities[~~plant facility~~] without prior commission approval if no change in existing
7 rates will result. The water utility shall notify the commission in writing of additional
8 construction proposed under this section, and shall attach to the notice a statement of the
9 federal lending agency authorizing the water utility to use the remaining project funds in
10 the manner proposed.

11 Section 5[4]. System Maps and Records. Within thirty (30) days after completion of
12 construction authorized under this administrative regulation, the utility shall revise its
13 system maps and records maintained pursuant to 807 KAR 5:006, Section 23, to include
14 all required information regarding the new construction.

David L. Armstrong, Chairman
Public Service Commission

DATE: _____

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2013, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

Gerald E. Wuetcher
Executive Advisor/Attorney
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602
Tel: (502) 564-3940
Fax: (502) 564-3460
gerald.wuetcher@ky.gov

REGULATORY IMPACT ANALYSIS

Administrative Regulation #: 807 KAR 5:069

Contact Person: Gerald E. Wuetcher, Executive Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the contents of applications for certificates of public convenience and necessity, authorization for issuance of evidences of indebtedness or securities, and approval of rate adjustments that are related to construction projects that are undertaken by a water district or water association and financed 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.

(b) The necessity of this administrative regulation: This revision clarifies the contents of applications for certificates of public convenience and necessity, authorization for issuance of evidences of indebtedness or securities, and approval of rate adjustments that are related to construction projects that are undertaken by a water district or water association and financed 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. This revision further reflects reporting requirements to the governing bodies of counties that the recent enactment of KRS 65A.100 imposes upon water districts. It further clarifies that the expedited review provisions are available only for projects involving the construction or installation of facilities, plant, or equipment to provide, extend or enhance the quality of water or sewer service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.023 provides that the Public Service Commission shall 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) provides that the Public Service Commission shall 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 Chapter 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. It further requires a water district to advise the Public Service Commission as to whether it has complied with the requirements of KRS 65A.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It resolves the confusion that earlier Public Service Commission decisions created regarding the application of KRS 278.023 to wastewater projects that were 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. It reminds a water district that is adjusting its rates for water service in accordance with the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development to finance a water construction project of its statutory obligation to advise the governing bodies of the counties in which it serves of its proposed rate adjustment in accordance with KRS 65A.100.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It clarifies that the expedited review provisions are available only for projects involving the construction or installation of facilities, plant, or equipment to provide, extend or enhance the quality of water or sewer service. It specifies the contents of the public notice that water utilities using the expedited procedure must provide to their users. It requires a water utility that uses the expedited procedure to file on electronic storage medium in portable document format a set of plans and specifications for any proposed construction project that is financed 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.

(b) The necessity of the amendment to this administrative regulation: The amendment establishes the contents of public notices for proposed rate adjustments implemented pursuant to KRS 278.023 and ensures that all persons are adequately notified of such rate adjustment and the extent of Public Service Commission review of the proposed rate adjustment. By requiring a set of plans and specifications for any proposed construction project that is financed 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, the amendment ensures that the Public Service Commission has a full and complete record of a regulated water utility's facilities. Recent enactment of KRS 65A.100 required procedures to ensure that water districts are aware of the need to advise the governing bodies of the counties in which they serve of any proposed rate adjustment implemented pursuant to KRS 278.023.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.023 provides that the Public Service Commission shall 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) provides that the Public Service Commission shall 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 Chapter 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. KRS 65A.100 further requires a water district to advise the governing body of the county in which the largest number of its customers are located of any pending increase in rates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment seeks to clarify filing procedures, establish uniform public notice requirements, and reduce confusion as to which types of federally-financed projects are subject to limited Public Service Commission review.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect 138 water districts and water associations.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In addition to the materials that they currently place in their applications, water districts and water associations must provide a copy of the bid tabulations for the proposed water construction project and a set of plans and specifications of the proposed project on electronic storage medium in portable document format. They must also use a slightly longer form of public notice for any proposed rate adjustment made pursuant to KRS 278.023.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no significant costs to comply. The water districts are already required to publish notice. The added length of notice is not expected to significantly increase the cost of such notice. The number of times that notice must be published has not changed. Water districts and water associations must provide a set of plans and specifications of the proposed project on electronic storage medium in portable document format. Since most of these documents are currently required to be submitted in a similar format to other regulatory agencies, no significant increase in cost to a water district or association is expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The revised notice should reduce public confusion over proposed rate adjustment and eliminate false expectations regarding Public Service Commission review of any proposed rate adjustments made pursuant to KRS 278.023. Filing a set of plans and specifications of the proposed project on electronic storage medium will reduce need to respond to subsequent Public Service Commission requests for such documents or to maintain additional paper copies in the event of a request outside of a Public Service Commission proceeding.

(5) Provide an estimate of how much it will cost to the administrative body to implement this administrative regulation:

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary. No new fees or funding will be required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering has not been applied. Tiering is neither required nor permitted. KRS 278.023 applies only to water districts and water associations that have entered into an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development to finance a construction project. All water districts and water associations are included. No other type of water utility falls within the statute's coverage.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No.: 807 KAR 5:069

Contact Person: Gerald Wuetcher

Phone Number: (502) 564-3940

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; water districts

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 278.023 provides that the Public Service Commission shall 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) provides that the Public Service Commission shall 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 Chapter 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. KRS 65A.100 further requires a water district to advise the governing body of the county in which the largest number of its customers are located of any pending increase in rates.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the

proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing applications pursuant to KRS 278.023 is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulating small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: