

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 district, or a combined water, gas, or sewer
6 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,
9 278.300

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

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

10 Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15).

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

15 (3) "Federal lending agency" means the U.S. Department of Agriculture or the
16 U.S. Department of Housing and Urban Development.

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
2 to KRS 65.810 and KRS Chapter 74.

3 Section 2. Filing Requirements. A water utility proposing a construction project
4 financed in whole or in part under the terms of an agreement between the water utility
5 and a federal lending agency shall file with the commission:

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

8 (2) A copy of the documents from the federal lending agency stating approval of
9 the project and including all terms and conditions of the agreement, including all
10 amendments;

11 (3) A copy of the letter of concurrence in contract award;

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

13 (5) One (1) copy of each set of plans and specifications on electronic storage
14 medium in portable document format;

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

16 (a) That the proposed plans and specifications for the construction project have
17 been designed to meet the minimum construction and operating requirements
18 established in:

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

22 2. If the construction project involves facilities to collect or treat sewage, 807 KAR
23 5:071, Section 5 and Sections 7(1) through (3);

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

2 (c) That the proposed rates, if any, shall produce the total revenue requirements
3 recommended in the engineering reports; and

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

5 (7) If applicable, a statement that notice meeting the requirements of Section 3 of
6 this administrative regulation has been given, together with a copy of the notice; and

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

11 ~~(9) If a water district or combined water, gas, or sewer district proposes to
12 increase any current rate for water or sewer service or implement a new rate for water
13 or sewer service, a statement from an authorized official of the district indicating the
14 date the proposed rate increase or new rate was reported to the governing body of the
15 county in which the largest number of its customers resides and the date it presented
16 testimony, or is scheduled to present testimony, to that governing body].~~

17 Section 3. Notice. Upon filing for a change in rates as a result of a construction
18 project, a water utility shall provide notice as established in this section.

19 (1) Public postings.

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

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

- 1 1. A copy of the public notice; and
2 2. A hyperlink to the location on the commission's Web site where the case
3 documents are available.

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

6 (2) Customer notice.

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

10 (b) If a water utility has more than twenty (20) customers~~[and is not proposing to~~
11 ~~increase its rates for sewer service]~~, it shall provide notice by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (e) A statement that a person may examine this application at the offices of
23 (water utility name) located at (water utility address);

1 (f) A statement that a person may examine this application at the commission's
2 offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday,
3 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>;

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

7 (h) A statement that the proposed rates are required under the terms of an
8 agreement between (water utility name) and (federal lending agency name) and that
9 KRS 278.023 does not grant the Public Service Commission any discretionary authority
10 to modify or reject any portion of the agreement between (federal lending agency) and
11 (water utility name), or to defer the issuance of all necessary orders to implement the
12 terms of that agreement.

13 Section 4. Additional Construction Activity. If surplus project funds remain after
14 the approved construction project has been completed, the water utility may construct
15 additional facilities without prior commission approval if no change in existing rates will
16 result. The water utility shall notify the commission in writing of additional construction
17 proposed under this section, and shall attach to the notice a statement of the federal
18 lending agency authorizing the water utility to use the remaining project funds in the
19 manner proposed.

20 Section 5. System Maps and Records. Within thirty (30) days after completion of
21 construction authorized under this administrative regulation, the utility shall revise its
22 system maps and records maintained pursuant to 807 KAR 5:006, Section 23, to
23 include 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 Tuesday, July 22, 2014, 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 Tuesday, July 15, 2014, 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 Thursday, July 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

Stephanie Bell
Deputy Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602
Tel: (502) 564-3940
Fax: (502) 564-3460
Stephanie.Bell@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 807 KAR 5:069

Contact Person: Stephanie Bell
Deputy Executive Director

(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 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.

(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 association, a water district, or a combined water, gas, or sewer district and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development. This administrative regulation establishes filing requirements and procedures a water association, a water district, or a combined water, gas, or sewer district 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.

(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.

(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: The amendment eliminates the requirement that sewage utilities mail customer notices. The sewage utility may now provide customer notice in the same manner as other utilities. The amendment also eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with SB 123 and HB 192 which became law during the 2014 legislative session.

(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 association, water district, or a combined water, gas, or sewer district and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development. This administrative regulation establishes filing requirements and procedures a water association, a water district, or a combined water, gas, or sewer district 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.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will benefit both utilities and the Public Service Commission by eliminating the requirement that sewage utilities mail customer notices and eliminating the requirement that water districts seeking a fee increase present or schedule to present testimony to its governing body

(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 jurisdictional water associations, combined water, gas, or sewer districts, and water districts that finance projects 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. .

(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: This amendment will not require additional actions by the utilities.

(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 costs to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sewage utilities are no longer required to mail customer notices. Sewage utilities may publish notice in the same manner as other utilities. Water districts seeking fee increases are no longer required to present or schedule to present testimony to its governing body.

(5) Provide an estimate of how much it will cost 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 expected.

(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 or will be required.

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 807 KAR 5:069

Contact Person: Stephanie Bell

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; jurisdictional water associations; combined water, gas, or sewer districts; and 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 association, a water district, or a combined water, gas, or sewer district and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

(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: