

1 ENERGY AND ENVIRONMENT CABINET

2 Kentucky State Board on Electric Generation and Transmission Siting

3 (Amendment)

4 807 KAR 5:110. Board proceedings.

5 RELATES TO: KRS 61.870-61.844, 278.702, 278.704, 278.706, 278.708,  
6 278.710, 278.712, 278.714, 278.716

7 STATUTORY AUTHORITY: KRS 278.702(3), 278.706(2)(c), 278.712(2)

8 NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702(3) authorizes the  
9 Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3)  
10 requires the board to promulgate administrative regulations to implement KRS 278.700  
11 to 278.716. KRS 278.712(2) requires the board to promulgate administrative regulations  
12 governing a board hearing. KRS 278.706(2)(c) requires an applicant seeking to obtain a  
13 construction certificate from the board to give proper notice of his intention to the public.  
14 This administrative regulation establishes procedures related to applications, filings,  
15 notice requirements, hearings, and confidential material.

16 Section 1. General Matters Pertaining to All Formal Proceedings. (1) Address of the  
17 board. Written communication shall be addressed to Kentucky State Board on Electric  
18 Generation and Transmission Siting, 211 Sower Boulevard, PO Box 615, Frankfort,  
19 Kentucky 40602-0615.

20 (2) Form of papers filed. A pleading in a formal proceeding shall be printed or  
21 typewritten on one (1) side of the paper only, and typewriting shall be double-spaced.

1 (3) Signing of pleadings. Every pleading of a party represented by an attorney shall be  
2 signed by at least one (1) attorney of record in his individual name and shall state his  
3 address.

4 (4) Service of process. If a party has appeared by attorney, service upon the  
5 attorney shall be deemed proper service upon the party.

6 Section 2. Notice of Intent to File Application. (1) At least thirty (30) days but no  
7 more than six (6) months prior to filing an application to construct a carbon dioxide  
8 transmission pipeline, merchant electricity generating plant, or nonregulated electric  
9 transmission line, an applicant shall file at the offices of the Public Service Commission,  
10 211 Sower Boulevard, Frankfort, Kentucky 40602, a Notice of Intent to File Application.  
11 If an applicant fails to file an application within six (6) months of the filing of the Notice of  
12 Intent to File Application, the Notice shall automatically expire without further notice to  
13 the applicant.

14 (2) A Notice of Intent to File Application shall include:

15 (a) The name, address,~~and~~ telephone number, and electronic mail address of the  
16 person who intends to file the application;

17 (b) A brief description of the proposed construction that will be the subject of the  
18 application;

19 (c) A description of the location of the proposed construction, including:

20 1. The name of the city and county in which the construction will be proposed;

21 2. The street address and latitude and longitude of the site of the construction to be  
22 proposed; and

23 3. If the proposed construction will be within the boundaries of a city;

1 (d) The address of the planning and zoning commission, if any, with jurisdiction over  
2 the site of the construction to be proposed;

3 (e) If applicable, a description of the setback requirements of the planning and  
4 zoning commission with jurisdiction over the site of the construction to be proposed; and

5 (f) If the planning commission's setback requirements are less stringent than those  
6 prescribed by statute, or if the planning commission with jurisdiction, if any, has not  
7 established setbacks, a statement as to if a deviation from the statutory setback  
8 requirements will be requested in the application.

9 Section 3. Board Applications and Subsequent Filings. (1) An applicant shall file an  
10 original and ten (10) paper copies, and one (1) copy in electronic format, of its  
11 application at the offices of the Public Service Commission, 211 Sower Boulevard,  
12 Frankfort, Kentucky 40602.

13 (2) A paper copy of an application shall:

14 (a) Be in a bound volume with each document tabbed; and

15 (b) Contain a table of contents that lists, for each document enclosed,

16 1. The number of the tab behind which the document is located;

17 2. The statutory provision pursuant to which the document is submitted; and

18 3. The name of the person who will be responsible for responding to questions  
19 concerning information contained in the document.

20 (3) Administrative staff for the board shall determine if the application is  
21 administratively complete and shall inform the applicant of its determination by letter.

22 (4) The secretary shall reject for filing any document that does not comply with an  
23 administrative regulation in 807 KAR Chapter 5.

1 Section 4. Intervention and Parties. (1) A person who wishes to become a party to  
2 the proceeding before the board may, by written motion filed no later than thirty (30)  
3 days after the application has been submitted, request leave to intervene.

4 (2) A motion to intervene shall be granted if the movant has shown:

5 (a) That he has a special interest in the proceeding; or

6 (b) That his participation in the proceeding will assist the board in reaching its  
7 decision and would not unduly interrupt the proceeding.

8 Section 5. Confidential Material. (1) Material on file with the board shall be available  
9 for examination by the public unless the material is determined to be confidential.

10 (2) Procedure for determining confidentiality.

11 (a) A person requesting confidential treatment of material related to his application  
12 shall file a petition with the executive director. The petition shall:

13 1. In accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884,  
14 establish each basis upon which the petitioner believes the material should be classified  
15 as confidential; and

16 2. Attach one (1) copy of the material that identifies, by underscoring, highlighting  
17 with transparent ink, or other comparable method, only the portion alleged to be  
18 confidential. A text page or portion thereof that does not contain confidential material  
19 shall not be included in the identification.

20 (b) The petition, one (1) copy of the material identified by underscoring or  
21 highlighting, and ten (10) copies of the material with the portion for which confidentiality  
22 is sought obscured, shall be filed with the board.

1 (c) The petition and a copy of the material, with only the portion for which  
2 confidentiality is sought obscured, shall be served on each party. The petition shall  
3 contain a certificate of service on each party.

4 (d) The burden of proof to show that the material is exempt from the disclosure  
5 requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884, shall be upon  
6 the person requesting confidential treatment.

7 (e) A person may respond to the petition for confidential treatment. If a person  
8 responds to the petition, the person shall do so within five (5) days after it is filed with  
9 the board.

10 (3) Pending action on the petition, the material specifically identified shall be  
11 temporarily accorded confidential treatment.

12 (4) If the petition for confidential treatment of material is denied, the material shall  
13 not be placed in the public record for twenty (20) days to allow the petitioner to petition  
14 the board directly or to seek other remedy afforded by law.

15 (5) Procedure for requesting access to confidential material filed in a proceeding.

16 (a) A party to a proceeding before the board shall not cite confidentiality as a basis  
17 for failure to respond to a discovery request by the board or its staff or another party to  
18 the proceeding. If a party responding to a discovery request seeks to have a portion or  
19 all of the response held confidential by the board, the party shall follow the procedure  
20 for determining confidentiality established in subsection (2) of this section. A party's  
21 response to a discovery request shall be served upon each party, with only the portion  
22 for which confidential treatment is sought obscured.

1 (b) If confidential protection is granted and if each party has not entered into a  
2 protective agreement, then a party may petition the board requesting access to the  
3 material on the basis that it is essential to a meaningful participation in the proceeding.  
4 The petition shall include a description of any effort made to enter into a protective  
5 agreement. Unwillingness to enter into a protective agreement shall be fully explained.  
6 A party may respond to the petition. If a person responds to the petition, the person  
7 shall do so within five (5) days after it is filed with the board. The board shall determine  
8 if the petitioner is entitled to the material, and the manner and extent of the disclosure  
9 necessary to protect confidentiality.

10 (6) Request for access to records pursuant to KRS 61.870-61.884. A time period  
11 prescribed in this section shall not limit the right of a person to request access to a  
12 board record pursuant to KRS 61.870-61.884. Upon a request filed pursuant to KRS  
13 61.870-61.884, the board shall respond in accordance with the procedure prescribed in  
14 KRS 61.880.

15 (7) Procedure for requesting access to confidential material. A person denied  
16 access to a record requested pursuant to KRS 61.870-61.884 or to material deemed  
17 confidential by the board in accordance with the procedure established in this section,  
18 shall obtain the information only pursuant to KRS 61.870-61.884, and other applicable  
19 law.

20 (8) Use of confidential material during a formal proceeding. Material deemed  
21 confidential by the board may be addressed and relied upon during a formal hearing. If  
22 confidential material is considered during a formal hearing, it shall be considered as  
23 established in the following procedure:

1 (a) The person seeking to address the confidential material shall advise the board  
2 prior to the use of the material.

3 (b) Except for members of the board or its staff, a person not a party to a protective  
4 agreement related to the confidential material shall be excused from the hearing room  
5 during direct testimony and cross-examination directly related to confidential material.

6 (9) Material granted confidentiality that later becomes publicly available or otherwise  
7 shall no longer warrant confidential treatment.

8 (a) The petitioner who sought confidential protection shall inform the executive  
9 director in writing if material granted confidentiality becomes publicly available.

10 (b)1. If the executive director becomes aware that material granted confidentiality is  
11 publicly available or otherwise no longer qualifies for confidential treatment, he shall by  
12 letter so advise the petitioner who sought confidential protection, giving the petitioner  
13 ten (10) days to respond.

14 2. If the executive director becomes aware that material has been disclosed by  
15 someone other than the person who requested confidential treatment, in violation of a  
16 protective agreement or board order, the information shall not be deemed to be publicly  
17 available and shall not be placed in the public record.

18 (c) The material shall not be placed in the public record for twenty (20) days  
19 following an order finding that the material no longer qualifies for confidential treatment  
20 to allow the petitioner to seek any remedy afforded by law.

21 Section 6. Evidentiary Hearings. (1) Upon its own motion or on written motion of a  
22 party to a case before it, filed no later than thirty (30) days after an application has been  
23 filed, the board shall schedule an evidentiary hearing.

1 (2) A party wishing to present an expert witness at an evidentiary hearing shall, no  
2 later than five (5) days prior to the hearing date, file with the board, with a copy to each  
3 party of record, the report prepared by the expert and a full description of the credentials  
4 qualifying the witness to testify as an expert on the subject matter for which he will  
5 testify.

6 (3) No later than five (5) days prior to an evidentiary hearing, a party to the case  
7 shall file the name of each witness he expects to present at the hearing, together with a  
8 brief statement of each matter regarding which the witness will testify.

9 (4) An evidentiary hearing shall be conducted before the board or before a person  
10 designated by the board to conduct a specific hearing.

11 (5) Testimony before the board shall be given under oath or affirmation.

12 (6) If an objection is made to the admission or exclusion of evidence before the  
13 board, the objecting party shall state briefly the basis for objection.

14 (7) The board shall cause to be made a record of an evidentiary hearing.

15 Section 7. Filing of Briefs. If applicable, a party of record shall file a brief no later  
16 than seven (7) days after the conclusion of the evidentiary hearing.

17 Section 8. Local Public Hearings and Local Public Information Meetings. (1) A local  
18 public hearing or local public information meeting may be conducted before the board or  
19 before a person designated by the board to conduct a specific hearing;

20 (2) A request for a local public hearing or local public information meeting shall be  
21 made in writing and shall be filed no later than thirty (30) days after a complete  
22 application is filed.



1 (3) The board shall, at least fourteen (14) days before the hearing date, give notice  
2 of the hearing or local public information meeting to:

3 (a) All parties to the proceeding;

4 (b) The judge or executive of the county in which the construction of the facility is to  
5 be located;

6 (c) The mayor of the city in which the facility is to be located, if applicable; and

7 (d) The planning commission with jurisdiction over the area in which the facility is to  
8 be located, if applicable.

9 (4) The board or its designated hearing officer shall accept unsworn, oral comment  
10 from any member of the public who provides his name and address on a sign-in sheet  
11 to be provided at the hearing or local public information meeting.

12 (5) Within seven (7) calendar days after the local public hearing or local public  
13 information meeting, administrative staff for the board shall file in the official record of  
14 the case, with a copy to each party of record, a summary of public comments made at  
15 the local hearing or local public information meeting that:

16 (a) Identifies each person who made oral comments; and

17 (b) Summarizes the comments received.

18 Section 9. Notice Requirements. (1) Notice of an evidentiary hearing. At least three  
19 (3) days before the hearing date, the applicant shall submit to the board proof that it has  
20 given notice of the hearing to each party and to the general public by publication in a  
21 newspaper of general circulation in the county or municipality in which the pipeline,  
22 plant, or transmission line is proposed to be located.

1 (2) Notice of a local public hearing or local public information meeting. At least three  
2 (3) days before the hearing date or local public information meeting date, the applicant  
3 shall submit to the board proof that the general public has been provided notice of the  
4 hearing or local public information meeting in a newspaper of general circulation in the  
5 county or municipality in which the pipeline, plant, or transmission lines is proposed to  
6 be located.

7 (3) An applicant giving public notice pursuant to KRS 278.706(2) shall include in the  
8 notice the following information:

9 (a) A person who wishes to become a party to a proceeding before the board may,  
10 by written motion filed no later than thirty (30) days after the application has been  
11 submitted, request leave to intervene;

12 (b) A party may, upon written motion filed no later than thirty (30) days after an  
13 application has been filed, request the board to schedule an evidentiary hearing at the  
14 offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky;  
15 and

16 (c) A request for a local public hearing or local public information meeting shall be  
17 made by at least three (3) interested persons who reside in the county or municipal  
18 corporation in which the pipeline, plant, or transmission line is proposed to be located.  
19 The request shall be made in writing and shall be filed within thirty (30) days following  
20 the filing of a completed application.

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David L. Armstrong, Chairman  
Kentucky State Board on Electric  
Generation and Transmission Siting

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 5:110

Contact Person: Stephanie Bell  
Deputy Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures related to applications, filings, notice requirements, and hearings before the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board).

(b) The necessity of this administrative regulation: This administrative regulation establishes the procedural rules for the Siting Board to administer KRS 278.700-278.716.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedural rules necessary to implement the authorizing statutes, KRS 278.702(3), which authorizes the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the rules of procedure that merchant electric generators and the Siting Board must follow.

(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 proposed amendment will add the requirement of including an electronic mailing address to the notice of intent.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment allows the regulation to conform to changes in 807 KAR 5:001 as well as recent revisions to KRS 278.380, which changed the method of delivery of the Public Service Commission's orders from United States mail to electronic transmission. The Siting Board is attached to the Public Service Commission for administrative purposes pursuant to KRS 278.702(3).

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the procedural rules necessary to implement the authorizing statutes, KRS 278.702(3), which authorizes the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more guidance to merchant electric generators in regards to proceedings before the Siting Board and conforms the regulation to recent changes in KRS 278.380 and 807 KAR 5:001.

(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 merchant electric generators.

(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 filing its notice of intent, a merchant electric generator will be responsible for providing the Siting Board with its electronic mail address.

(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 additional costs to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment provides clarity regarding proceedings before the Siting Board.

(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 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 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 5:110  
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; Kentucky State Board on Electric Generation and Transmission Siting; Office of Attorney General (Utility Rate and Intervention Division).

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

KRS 278.040(3) authorizes the commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. This administrative regulation establishes the procedural rules necessary to implement the authorizing statutes, KRS 278.702(3), which authorizes the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716.

(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 amendments for any governmental agency. The proposed amendments do not provide for the Public Service Commission or the Kentucky State Board on Electric Generation and Transmission Siting 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 or the Kentucky State Board on Electric Generation and Transmission Siting to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? There should be no increase in the Public Service Commission's or the Kentucky State Board on Electric Generation and Transmission Siting's cost of operations related to the revision of the administrative regulation for the first year. The Public Service Commission and the Kentucky State Board on Electric Generation and Transmission

Siting will continue performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? There should be no increase in the Public Service Commission's or the Kentucky State Board on Electric Generation and Transmission Siting's cost of operations related to the revision of the administrative regulation for subsequent years. The Public Service Commission and the Kentucky State Board on Electric Generation and Transmission Siting will continue performing the same level of review and require the same number of employees to conduct its review.

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: