

1 ENERGY AND ENVIRONMENT CABINET

2 The Kentucky State Board on Electric Generation and Transmission Siting

3 (Amendment)

4 807 KAR 5:100. Board application fees.

5 RELATES TO: KRS 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714,

6 278.716, 2011 Ky. Acts ch. 82, sec. 6

7 STATUTORY AUTHORITY: KRS 278.702(3), 278.706(3), 278.706(5), 278.714(6) [KRS

8 278.040(3)]

9 NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702 creates the Kentucky
10 State Board on Electric Generation and Transmission Siting. KRS 278.702(3) directs
11 the permanent members of the board to promulgate administrative regulations in
12 accordance with KRS Chapter 13A to implement KRS 278.700 to 278.716. KRS
13 278.706(3) provides that application fees for a construction certificate shall be set by the
14 board and deposited into a trust and agency account to the credit of the Kentucky Public
15 Service Commission. KRS 278.706(5) directs the board to promulgate administrative
16 regulations establishing fees to cover the expenses associated with review of
17 applications filed pursuant to KRS 278.700 to 278.716[~~278.704~~]. KRS 278.706(5)
18 provides that, if a majority of the members of the board find that an applicant's initial
19 fees are insufficient to pay the board's expenses for review of the application, including
20 the board's expenses associated with legal review of the application, the board shall
21 assess a supplemental application fee to cover the additional expenses. An application

1 filed with the board concerns: (1) construction of a merchant electricity generating plant;
2 (2) transfer of authority to construct and operate a merchant electricity generating plant;
3 ~~or~~ (3) construction of a nonregulated transmission line; or (4) construction of a carbon
4 dioxide transmission pipeline. KRS 278.706(5) provides that an applicant's failure to pay
5 a fee assessed pursuant to KRS 278.706 shall be grounds for denial of the application.
6 KRS 278.714(6) directs the board to promulgate administrative regulations to establish
7 an application fee for a construction certificate for nonregulated electric transmission
8 lines and carbon dioxide transmission pipelines. This administrative regulation
9 establishes an initial application fee for each type of application filed with the board and
10 specifies the method by which a supplemental fee may be assessed.

11 Section 1. Application Fee to be Filed with an Application to Construct a Merchant
12 Electricity Generating Plant. A person seeking to obtain a certificate to construct a
13 merchant electricity generating plant shall submit with its application to the Kentucky
14 State Board on Electric Generation and Transmission Siting, at the offices of the
15 Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky, an
16 initial application fee of \$1,000 per megawatt of electricity generating capacity, based on
17 the manufacturer's nameplate rated capacity of the proposed construction, except that
18 the initial application fee for each application for each plant shall be in an amount not
19 less than \$40,000 and not more than \$200,000.

20 Section 2. Application Fee to be Filed with an Application to Construct a Nonregulated
21 Transmission Line. A person seeking board approval of construction of a nonregulated
22 transmission line shall file with its application to the board a fee of fifty (50) dollars per

1 kilovolt of rated capacity per mile of length, except that the initial application fee shall be
2 in an amount not less than \$10,000 and not more than \$200,000.

3 Section 3. Application Fee to be Filed with an Application to Construct a Carbon Dioxide
4 Transmission Pipeline. A person seeking board approval of construction of a carbon
5 dioxide transmission pipeline shall file with its application to the board a fee of \$500 per
6 mile of length, except that the initial application fee shall be in an amount not less than
7 \$10,000 and not more than \$200,000.

8 Section 4. Application Fee to be Filed with an Application to Transfer a Certificate to
9 Construct a Merchant Electricity Generating Facility. A person seeking board approval
10 to transfer any right or obligation associated with a certificate granted by the board to
11 construct a merchant electricity generating facility shall file with its application to the
12 board, at the offices of the Kentucky Public Service Commission, at 211 Sower
13 Boulevard, Frankfort Kentucky, an initial application fee of \$5,000.

14 Section 5[4]. Supplemental Application Fee. No sooner than thirty (30) days after an
15 application has been filed and no later than sixty (60) days after issuance of the board's
16 final decision on an application or, if an applicant has sought judicial review in
17 accordance with KRS 278.712(5), no later than sixty (60) days after all appeals of the
18 board's decision have been exhausted, the board may assess a supplemental
19 application fee to cover an expense related to review of an application filed pursuant to
20 KRS 278.704, 278.710, or 278.714, for which the initial application fee is insufficient.
21 The supplemental fee shall be assessed by order containing an accounting of each
22 expense for which the supplemental fee is assessed.

1 Section 6[5]. Refund. No later than sixty (60) days after issuance of the board's final
2 decision on an application or, if judicial review has been sought, no later than sixty (60)
3 days after all appeals of the board's decision have been exhausted, the board shall
4 refund to the applicant any amount paid which exceeds the amount expended by the
5 board.

Dated this _____ day of September 2011.

DAVID L. ARMSTRONG
Chairman
Kentucky State Board on Electric Generation and
Transmission Siting

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2011 at 9:30 a.m. at the Public Service Commission's office, Hearing Room 2, 211 Sower Boulevard, Frankfort, Kentucky 40602. Individuals interested in attending this hearing shall notify this agency in writing October 17, 2011, five (5) 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 October 31, 2011.

Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

Quang Nguyen
Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602-0615
Tel: (502) 564-3940
Fax: (502) 564-3460

REGULATORY IMPACT ANALYSIS

Administrative Regulation #: 807 KAR 5:110

Contact Person: Quang Nguyen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees related to applications filed under the jurisdiction of the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board or Board).

(b) The necessity of this administrative regulation: This administrative regulation establishes the initial filing fee for an application with the Siting Board for a construction certificate for a carbon dioxide transmission pipeline pursuant to KRS 278.714.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 278.706(5), this administrative regulation establishes the initial filing fee for an application with the Siting Board for a construction certificate for a carbon dioxide transmission pipeline pursuant to KRS 278.714. Pursuant to Senate Bill 50 (2011 Ky. Acts ch. 82, sec. 6), the Board was given jurisdiction over the siting of carbon dioxide transmission pipelines in Kentucky, in addition to its existing authority over the siting of merchant electric generating facilities and nonregulated electric transmission lines.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective implementation of the statutes by ensuring that the Siting Board's expenses for reviewing an application for a carbon dioxide transmission pipeline are funded by an appropriate application fee, as mandated by KRS 278.706(5). If, pursuant to KRS

278.714(1) (as amended by 2011 Ky. Acts ch. 82, sec. 6) the Board hires a consultant to review a carbon dioxide transmission pipeline application, the filing fee pays for the cost of the consultant's review and report. It is anticipated that a consultant's report for a carbon dioxide transmission pipeline could cost between \$20,000 and \$50,000 (or more), depending upon the length of the proposed pipeline and the complexity of the issues presented by the proposed route.

The filing fee also funds Staff salaries, travel expenses for the Board and Staff to review the proposed route and conduct a local public hearing, and all other miscellaneous expenses (printing, postage, etc.) associate with review of an application. The costs associated with litigating an appeal of a Siting Board final order are also funded by the application fee.

Pursuant to 807 KAR 5:100, Section 4, the Board can assess a supplemental filing fee if the expenses for reviewing the application or for conducting any subsequent appeals litigation are greater than the initial filing fee. If any amount of the filing fee deposited by the applicant is not expended by the Board in its review of the application or in any appeal, the Board must refund the remaining filing fee to the applicant within 60 days of the issuance of the final order (or 60 days after all appeals of a final order have been exhausted) pursuant to 807 KAR 5:100, Section 5.

(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 amended Section 3 will establish an initial filing fee of \$500 per mile of carbon dioxide

transmission pipeline, as specified in the application, with a minimum fee of \$10,000 and a maximum fee of \$200,000.

The “Relates To” section is amended to add “KRS 278.708” and “KRS 278.716” which were not previously included in the regulation for unknown reasons, as these statutes are also related to the substance of the regulation and are mentioned in the body of the regulation. The “Relates To” section is further amended to include “Ky. Acts ch. 82, sec. 6” as the authority to establish a filing fee for carbon dioxide transmission pipeline applications is contained in Senate Bill 50, which was passed during the 2011 Regular Session and signed into law on March 16, 2011. That law has not yet been codified in the Kentucky Registered Statutes. Therefore, in compliance with KRS 13A.222(4)(m)2, the reference to 2011 Ky. Acts ch. 82, sec. 6 is included herein. In compliance with KRS 13A.222(4)(m)3, the Siting Board will notify the regulations compiler of the proper citation of the Kentucky Revised Statutes in writing once the law is codified in the Kentucky Registered Statutes, at which time the regulations compiler should eliminate the reference to 2011 Ky. Acts ch. 82, sec. 6, as that law amended existing statutes which are already referenced in the “Relates To” section.

The “Statutory Authority” section is amended to eliminate “KRS 278.040(3),” which provides authority to the *Public Service Commission* to adopt regulations in conformity with KRS Chapter 13A. 807 KAR 5:100 is a regulation under the jurisdiction of the Siting Board, not the Public Service Commission. KRS 278.702(3) provides authority to the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716. Therefore, “KRS 278.702(3)” is added to the “Statutory Authority” section in order to properly reflect the appropriate statutory authority. “KRS 278.706(3)”

and “KRS 278.714(6)” are also added to the “Statutory Authority” section, as each of those statutes also provides authorization to the board to promulgate regulations regarding filing fees.

The “Necessity, Function, and Conformity” section is also amended to delete “KRS 278.704” and to substitute “KRS 278.700 to 278.716,” in order to conform to the language in KRS 278.706(5), which mandates that filing fees be established for all applications “filed...pursuant to KRS 278.700 to 278.716,” not just applications filed under KRS 278.704, as the regulation is currently worded. The “Necessity, Function, and Conformity” section is further amended to include “construction of a carbon dioxide transmission pipeline” among the items for which an application may be filed with the Board. In addition, the section numbers following the new Section 3 are renumbered.

(b) The necessity of the amendment to this administrative regulation: Without adding a new section establishing the initial application fee for an application for a carbon dioxide transmission pipeline the Siting Board would have no filing fee funds with which to carry out its review of such applications. The additional changes to the regulation are required in order to reflect the appropriate statutory authority under which the regulation is promulgated and in order to renumber the sections of the regulation following the addition of the new Section 3.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.706(5) mandates that the Board promulgate administrative regulations prescribing filing fees that must be used to pay the expenses associated with the Board’s review of all applications filed pursuant to KRS 278.700 to 278.716. This regulatory amendment

adds a filing fee for applications for carbon dioxide transmission pipelines, which were placed under the Siting Board's jurisdiction by 2011 Ky. Acts ch. 82, sec. 6.

(d) How the amendment will assist in the effective administration of the statutes: Under the current administrative regulation, there is no filing fee for a carbon dioxide transmission pipeline application. This amendment will provide a reasonable filing fee pursuant to KRS 278.706(5), which will allow the Siting Board to fund its review of such applications and any further judicial review made necessary by an appeal of a final order in such cases.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all individuals, businesses, organizations, and other entities that seek to construct merchant electric generation facilities capable of operating at a capacity of 10 MW or greater, nonregulated electric transmission lines capable of operating at or above 69 kilovolts, or carbon dioxide transmission pipelines of any size within the boundaries of the Commonwealth of Kentucky.

(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: The proposed administrative regulation will impact any party that files an application for a construction certificate for a carbon dioxide transmission pipeline with the Siting Board. The applicant will have to submit a filing fee along with the application in an amount as

calculated by the number of miles of pipeline proposed in the application times \$500, but no less than \$10,000 and no greater than \$200,000.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Between \$10,000 and \$200,000, depending on the length of the proposed pipeline.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be ensured that the Siting Board will have the appropriate resources necessary to provide timely review of their applications for construction certificates.

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

(a) Initially: Implementation of the administrative regulation does not involve costs in addition to those already implicated by statutory requirements.

(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 funding increase is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, it establishes a filing fee for carbon dioxide transmission pipeline applications before the Siting Board.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not used in this proposed amendment. This amendment applies equally to all applicants for a certificate from the Siting Board, because there is no rational need to provide for different levels of filing fees for applicants seeking a construction certificate for a carbon dioxide transmission pipeline, as the Siting Board's review of such applications will be based on the same criteria regardless of who the applicant may be, and the applicants for such construction certificates will be companies or corporations which, pursuant to KRS 154.27-020(4)(f) (as amended by Senate Bill 50) must make a minimum capital investment of fifty million dollars (\$50,000,000) in order to qualify for the incentives under the Incentives for Energy Independence Act. All companies or corporations having the ability to make a capital investment of at least \$50 million dollars should have the ability to pay a filing fee under the amended regulation which will amount to a minor fraction of the total expense for the pipeline project. Therefore, tiering principles do not apply.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation #: 807 KAR 5:110

Contact Person: Quang Nguyen

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No _____

If yes, complete questions 2-4.

2. 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? The proposed administrative regulation will impact any party that files an application for a construction certificate for a carbon dioxide transmission pipeline.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 278.702(3), 278.706(5), 278.714 and 2011 Ky. Acts ch. 82, sec. 6.

4. 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. None.

(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? None.

(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? None.

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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

Revenues (+/-): -0-

Expenditures (+/-): -0-

Other Explanation: