LAWS AFFECTING PUBLIC UTILITIES IN THE COMMONWEALTH OF KENTUCKY

UNOFFICIAL TEXT OF STATUTES AND ADMINISTRATIVE REGULATIONS
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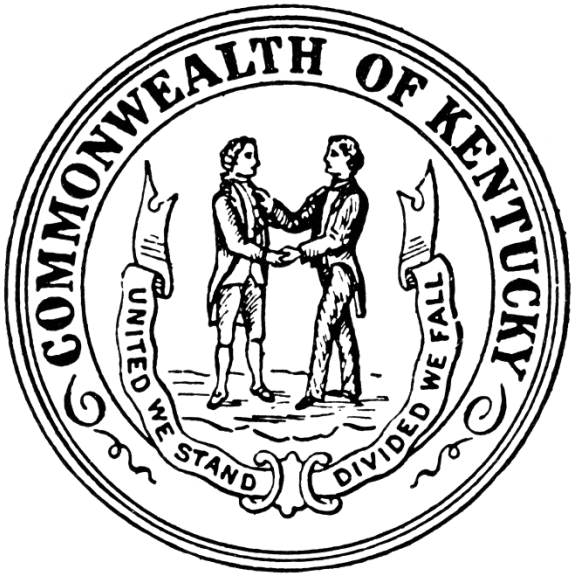

LAWS AND REGULATIONS IN EFFECT AS OF OCTOBER 18, 2013

KRS Chapter 61

Open Meetings of Public Agencies

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61.800 Legislative statement of policy.

The General Assembly finds and declares that the basic policy of KRS 61.805 to 61.850 is that the formation of public policy is public business and shall not be conducted in secret and the exceptions provided for by KRS 61.810 or otherwise provided for by law shall be strictly construed.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 162, sec. 1, effective July 14, 1992.

61.805 Definitions for KRS 61.805 to 61.850.

As used in KRS 61.805 to 61.850, unless the context otherwise requires:

(1) "Meeting" means all gatherings of every kind, including video teleconferences, regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting;

(2) "Public agency" means:

(a) Every state or local government board, commission, and authority;

(b) Every state or local legislative board, commission, and committee;

(c) Every county and city governing body, council, school district board, special district board, and municipal corporation;

(d) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;

(e) Any body created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act in the legislative or executive branch of government;

(f) Any entity when the majority of its governing body is appointed by a "public agency" as defined in paragraph (a), (b), (c), (d), (e), (g), or (h) of this subsection, a member or employee of a "public agency," a state or local officer, or any combination thereof;

(g) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff or a committee formed for the purpose of evaluating the qualifications of public agency employees, established, created, and controlled by a "public agency" as defined in paragraph (a), (b), (c), (d), (e), (f), or (h) of this subsection; and

(h) Any interagency body of two (2) or more public agencies where each "public agency" is defined in paragraph (a), (b), (c), (d), (e), (f), or (g) of this subsection;

(3) "Action taken" means a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body; and

(4) "Member" means a member of the governing body of the public agency and does not include employees or licensees of the agency.

(5) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 245, sec. 1, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 162, sec. 2, effective July 14, 1992. -- Created 1974 Ky. Acts ch. 377, sec. 1.

61.810 Exceptions to open meetings.

(1) All meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times, except for the following:

(a) Deliberations for decisions of the Kentucky Parole Board;

(b) Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency;

(c) Discussions of proposed or pending litigation against or on behalf of the public agency;

(d) Grand and petit jury sessions;

(e) Collective bargaining negotiations between public employers and their employees or their representatives;

(f) Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student without restricting that employee's, member's, or student's right to a public hearing if requested. This exception shall not be interpreted to permit discussion of general personnel matters in secret;

(g) Discussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business;

(h) State and local cabinet meetings and executive cabinet meetings;

(i) Committees of the General Assembly other than standing committees;

(j) Deliberations of judicial or quasi-judicial bodies regarding individual adjudications or appointments, at which neither the person involved, his representatives, nor any other individual not a member of the agency's governing body or staff is present, but not including any meetings of planning commissions, zoning commissions, or boards of adjustment;

(k) Meetings which federal or state law specifically require to be conducted in privacy;

(l) Meetings which the Constitution provides shall be held in secret; and

(m) That portion of a meeting devoted to a discussion of a specific public record exempted from disclosure under KRS 61.878(1)(m). However, that portion of any public agency meeting shall not be closed to a member of the Kentucky General Assembly.

(2) Any series of less than quorum meetings, where the members attending one (1) or more of the meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the requirements of subsection (1) of this section, shall be subject to the requirements of subsection (1) of this section. Nothing in this subsection shall be construed to

prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues.

Effective: March 16, 2005

History: Amended 2005 Ky. Acts ch. 93, sec. 1, effective March 16, 2005. -- Amended 1992 Ky. Acts ch. 162, sec. 3, effective July 14, 1992. -- Created 1974 Ky. Acts ch. 377, sec. 2.

Legislative Research Commission Note (3/16/2005). The Office of the Kentucky Attorney General requested that amendments in 2005 Ky. Acts ch. 93, sec. 1, to the arrangement of the paragraphs of subsection (1) of this section be changed. The change was requested "in the interest of preventing confusion to the public and public agencies" and was made by the Statute Reviser under the authority of KRS 7.136.

61.815 Requirements for conducting closed sessions.

(1) Except as provided in subsection (2) of this section, the following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:

(a) Notice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session;

(b) Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session;

(c) No final action may be taken at a closed session; and

(d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.

(2) Public agencies and activities of public agencies identified in paragraphs (a), (c), (d), (e), (f), but only so far as (f) relates to students, (g), (h), (i), (j), (k), (l), and (m) of subsection (1) of KRS 61.810 shall be excluded from the requirements of subsection (1) of this section.

Effective: March 16, 2005

History: Amended 2005 Ky. Acts ch. 93, sec. 2, effective March 16, 2005. -- Amended 1992 Ky. Acts ch. 162, sec. 4, effective July 14, 1992. -- Created 1974 Ky. Acts ch. 377, sec. 3.

61.820 Schedule of regular meetings to be made available.

(1) All meetings of all public agencies of this state, and any committees or subcommittees thereof, shall be held at specified times and places which are convenient to the public. In considering locations for public meetings, the agency shall evaluate space requirements, seating capacity, and acoustics.

(2) All public agencies shall provide for a schedule of regular meetings by ordinance, order, resolution, bylaws, or by whatever other means may be required for the conduct of business of that public agency. The schedule of regular meetings shall be made available to the public.

Effective: June 25, 2013

History: Amended 2013 Ky. Acts ch. 124, sec. 10, effective June 25, 2013. -- Amended 1992 Ky. Acts ch. 162, sec. 5, effective July 14, 1992. -- Created 1974 Ky. Acts ch. 377, sec. 4.

2012-2014 Budget Reference. See State/Executive Branch Budget, 2012 Ky. Acts ch. 144, Pt. I, M, 9, (1) at 1142.

61.823 Special meetings -- Emergency meetings.

(1) Except as provided in subsection (5) of this section, special meetings shall be held in accordance with the provisions of subsections (2), (3), and (4) of this section.

(2) The presiding officer or a majority of the members of the public agency may call a special meeting.

(3) The public agency shall provide written notice of the special meeting. The notice shall consist of the date, time, and place of the special meeting and the agenda. Discussions and action at the meeting shall be limited to items listed on the agenda in the notice.

(4) (a) As soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to every member of the public agency as well as each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting. The public agency may periodically, but no more often than once in a calendar year, inform media organizations that they will have to submit a new written request or no longer receive written notice of special meetings until a new written request is filed.

(b) A public agency may satisfy the requirements of paragraph (a) of this subsection by transmitting the written notice by electronic mail to public agency members and media organizations that have filed a written request with the public agency indicating their preference to receive electronic mail notification in lieu of notice by personal delivery, facsimile machine, or mail. The written request shall include the electronic mail address or addresses of the agency member or media organization.

(c) As soon as possible, written notice shall also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building which houses the headquarters of the agency. The notice shall be calculated so that it shall be posted at least twenty-four (24) hours before the special meeting.

(5) In the case of an emergency which prevents compliance with subsections (3) and (4) of this section, this subsection shall govern a public agency's conduct of a special meeting. The special meeting shall be called pursuant to subsection (2) of this section. The public agency shall make a reasonable effort, under emergency circumstances, to notify the members of the agency, media organizations which have filed a written request pursuant to subsection (4)(a) of this section, and the public of the emergency meeting. At the beginning of the emergency meeting, the person chairing the meeting shall briefly describe for the record the emergency circumstances preventing compliance with subsections (3) and (4) of this section. These comments shall appear in the minutes. Discussions and action at the emergency meeting shall be limited to the emergency for which the meeting is called.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 20, sec. 1, effective July 15, 2008. -- Created 1992 Ky. Acts ch. 162, sec. 6, effective July 14, 1992.

61.825 Repealed, 1992.

Catchline at repeal: Requirements for holding special meetings.

History: Repealed 1992 Ky. Acts ch. 162, sec. 9, effective July 14, 1992. -- Created 1974 Ky. Acts ch. 377, sec. 5.

61.826 Video teleconferencing of meetings.

(1) A public agency may conduct any meeting, other than a closed session, through video teleconference.

(2) Notice of a video teleconference shall comply with the requirements of KRS 61.820 or 61.823 as appropriate. In addition, the notice of a video teleconference shall:

(a) Clearly state that the meeting will be a video teleconference; and

(b) Precisely identify the video teleconference locations as well as which, if any, location is primary.

(3) The same procedures with regard to participation, distribution of materials, and other matters shall apply in all video teleconference locations.

(4) Any interruption in the video or audio broadcast of a video teleconference at any location shall result in the suspension of the video teleconference until the broadcast is restored.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 245, sec. 2, effective July 15, 1994.

61.830 Repealed, 1992.

Catchline at repeal: Action voidable for noncompliance.

History: Repealed 1992 Ky. Acts ch. 162, sec. 9, effective July 14, 1992. -- Created 1974 Ky. Acts ch. 377, sec. 6.

61.835 Minutes to be recorded -- Open to public.

The minutes of action taken at every meeting of any such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded and such records shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body.

History: Created 1974 Ky. Acts ch. 377, sec. 7.

61.840 Conditions for attendance.

No condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency. No person may be required to identify himself in order to attend any such meeting. All agencies shall provide meeting room conditions, including adequate space, seating, and acoustics, which insofar as is feasible allow effective public observation of the public meetings. All agencies shall permit news media coverage, including but not limited to recording and broadcasting.

Effective: June 25, 2013

History: Amended 2013 Ky. Acts ch. 124, sec. 11, effective June 25, 2013. -- Created 1974 Ky. Acts ch. 377, sec. 8.

2012-2014 Budget Reference. See State/Executive Branch Budget, 2012 Ky. Acts ch. 144, Pt. I, M, 9, (1) at 1142.

61.845 Repealed, 1992.

Catchline at repeal: Enforcement.

History: Repealed 1992 Ky. Acts ch. 162, sec. 9, effective July 14, 1992. -- Created 1974 Ky. Acts ch. 377, sec. 9.

61.846 Enforcement by administrative procedure -- Appeal.

(1) If a person enforces KRS 61.805 to 61.850 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. The person shall submit a written complaint to the presiding officer of the public agency suspected of the violation of KRS 61.805 to 61.850. The complaint shall state the circumstances which constitute an alleged violation of KRS 61.805 to 61.850 and shall state what the public agency should do to remedy the alleged violation. The public agency shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision. If the public agency makes efforts to remedy the alleged violation pursuant to the complaint, efforts to remedy the alleged violation shall not be admissible as evidence of wrongdoing in an administrative or judicial proceeding. An agency's response denying, in whole or in part, the complaint's requirements for remedying the alleged violation shall include a statement of the specific statute or statutes supporting the public agency's denial and a brief explanation of how the statute or statutes apply. The response shall be issued by the presiding officer, or under his authority, and shall constitute final agency action.

(2) If a complaining party wishes the Attorney General to review a public agency's denial, the complaining party shall forward to the Attorney General a copy of the written complaint and a copy of the written denial within sixty (60) days from receipt by that party of the written denial. If the public agency refuses to provide a written denial, a complaining party shall provide a copy of the written complaint within sixty (60) days from the date the written complaint was submitted to the presiding officer of the public agency. The Attorney General shall review the complaint and denial and issue within ten (10) days, excepting Saturdays, Sundays, and legal holidays, a written decision which states whether the agency violated the provisions of KRS 61.805 to 61.850. In arriving at the decision, the Attorney General may request additional documentation from the agency. On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who filed the complaint.

(3) (a) If a public agency agrees to remedy an alleged violation pursuant to subsection (1) of this section, and the person who submitted the written complaint pursuant to subsection (1) of this section believes that the agency's efforts in this regard are inadequate, the person may complain to the Attorney General.

(b) The person shall provide to the Attorney General:

1. The complaint submitted to the public agency;
2. The public agency's response; and
3. A written statement of how the public agency has failed to remedy the alleged violation.

(c) The adjudicatory process set forth in subsection (2) of this section shall govern as if the public agency had denied the original complaint.

(4) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.848.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision, as to whether the agency violated the provisions of KRS 61.805 to 61.850, shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or where the alleged violation occurred.

(5) A public agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding enforcement of KRS 61.805 to 61.850.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 162, sec. 7, effective July 14, 1992.

61.848 Enforcement by judicial action -- De novo determination in appeal of Attorney General's decision -- Voidability of action not substantially complying -- Awards in willful violation actions.

(1) The Circuit Court of the county where the public agency has its principal place of business or where the alleged violation occurred shall have jurisdiction to enforce the provisions of KRS 61.805 to 61.850, as they pertain to that public agency, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.805 to 61.850 shall not have to exhaust his remedies under KRS 61.846 before filing suit in a Circuit Court. However, he shall file suit within sixty (60) days from his receipt of the written denial referred to in subsections (1) and (2) of KRS 61.846 or, if the public agency refuses to provide a written denial, within sixty (60) days from the date the written complaint was submitted to the presiding officer of the public agency.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to subsection (4)(a) of KRS 61.846, the court shall determine the matter de novo.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any rule, resolution, regulation, ordinance, or other formal action of a public agency without substantial compliance with the requirements of KRS 61.810, 61.815, 61.820, and KRS 61.823 shall be voidable by a court of competent jurisdiction.

(6) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.805 to 61.850, where the violation is found to be willful, may be awarded costs, including reasonable attorneys' fees, incurred in connection with the legal action. In addition, it shall be within the discretion of the court to award the person an amount not to exceed one hundred dollars ($100) for each instance in which the court finds a violation. Attorneys' fees, costs, and awards under this subsection shall be paid by the agency responsible for the violation.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 162, sec. 8, July 14, 1992.

61.850 Construction.

KRS 61.805 to 61.850 shall not be construed as repealing any of the laws of the Commonwealth relating to meetings but shall be held and construed as ancillary and supplemental thereto.

History: Created 1974 Ky. Acts ch. 377, sec. 11.

KRS Chapter 61

Open Records

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61.870 Definitions for KRS 61.872 to 61.884.

As used in KRS 61.872 to 61.884, unless the context requires otherwise:

(1) "Public agency" means:

(a) Every state or local government officer;

(b) Every state or local government department, division, bureau, board, commission, and authority;

(c) Every state or local legislative board, commission, committee, and officer;

(d) Every county and city governing body, council, school district board, special district board, and municipal corporation;

(e) Every state or local court or judicial agency;

(f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;

(g) Any body created by state or local authority in any branch of government;

(h) Any body which, within any fiscal year, derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. However, any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection;

(i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;

(j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and

(k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;

(2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;

(3) (a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains

public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.

(b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;

(4) (a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.

(b) "Commercial purpose" shall not include:

1. Publication or related use of a public record by a newspaper or periodical;
2. Use of a public record by a radio or television station in its news or other informational programs; or
3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;

(5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;

(6) "Custodian" means the official custodian or any authorized person having personal custody and control of public records;

(7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards; and

(8) "Mechanical processing" means any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 26, sec. 1, effective July 12, 2012. -- Amended 1994 Ky. Acts ch. 262, sec. 2, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 163, sec. 2, effective July 14, 1992. -- Amended 1986 Ky. Acts ch. 150, sec. 2, effective July 15, 1986. -- Created 1976 Ky. Acts ch. 273, sec. 1.

2012-2014 Budget Reference. See State/Executive Branch Budget, 2012 Ky. Acts ch. 144, Pt. I, M, 9, (2) at 1142.

61.871 Policy of KRS 61.870 to 61.884 -- Strict construction of exceptions of KRS 61.878.

The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 163, sec. 1, effective July 14, 1992.

61.8715 Legislative findings.

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of KRS 42.720 to 42.742, 45.253, 171.420, 186A.040, 186A.285, and 194A.146, dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under KRS 61.878.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 12, sec. 32, effective June 25, 2009. -- Amended 2005 Ky. Acts ch. 99, sec. 16, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 506, sec. 17, effective July 14, 2000; and ch. 536, sec. 17, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 262, sec. 1, effective July 15, 1994.

2012-2014 Budget Reference. See State/Executive Branch Budget, 2012 Ky. Acts ch. 144, Pt. I, M, 9, (2) at 1142.

61.872 Right to inspection -- Limitation.

(1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) Any person shall have the right to inspect public records. The official custodian may require written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.

(3) A person may inspect the public records:

(a) During the regular office hours of the public agency; or

(b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. If the person requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.

(4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.

(5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.

(6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 262, sec. 3, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 163, sec. 3, effective July 14, 1992. -- Created 1976 Ky. Acts ch. 273, sec. 2.

61.874 Abstracts, memoranda, copies -- Agency may prescribe fee -- Use of nonexempt public records for commercial purposes -- Online access.

(1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all public records not exempted by the terms of KRS 61.878. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall duplicate the records or permit the applicant to duplicate the records; however, the custodian shall ensure that such duplication will not damage or alter the original records.

(2) (a) Nonexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. Agencies are not required to convert hard copy format records to electronic formats.

(b) The minimum standard format in paper form shall be defined as not less than 8 1/2 inches x 11 inches in at least one (1) color on white paper, or for electronic format, in a flat file electronic American Standard Code for Information Interchange (ASCII) format. If the public agency maintains electronic public records in a format other than ASCII, and this format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a nonstandardized request.

(3) The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

(4) (a) Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee.

(b) The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The

contract shall permit use of the public records for the stated commercial purpose for a specified fee.

(c) The fee provided for in subsection (a) of this section may be based on one or both of the following:

1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records;

2. Cost to the public agency of the creation, purchase, or other acquisition of the public records.

(5) It shall be unlawful for a person to obtain a copy of any part of a public record for a:

(a) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to subsection (4)(b) of this section; or

(b) Commercial purpose, if the person uses or knowingly allows the use of the public record for a different commercial purpose; or

(c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.

(6) Online access to public records in electronic form, as provided under this section, may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements. Fees shall not exceed:

(a) The cost of physical connection to the system and reasonable cost of computer time access charges; and

(b) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (4) of this section.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 262, sec. 4, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 163, sec. 4, effective July 14, 1992. -- Created 1976 Ky. Acts ch. 273, sec. 3.

61.8745 Damages recoverable by public agency for person's misuse of public records.

A person who violates subsections (2) to (6) of KRS 61.874 shall be liable to the public agency from which the public records were obtained for damages in the amount of:

(1) Three (3) times the amount that would have been charged for the public record if the actual commercial purpose for which it was obtained or used had been stated;

(2) Costs and reasonable attorney's fees; and

(3) Any other penalty established by law.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 262, sec. 7, effective July 15, 1994.

61.876 Agency to adopt rules and regulations.

(1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection, and such rules and regulations shall include, but shall not be limited to:

(a) The principal office of the public agency and its regular office hours;

(b) The title and address of the official custodian of the public agency's records;

(c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;

(d) The procedures to be followed in requesting public records.

(2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public.

(3) The Finance and Administration Cabinet may promulgate uniform rules and regulations for all state administrative agencies.

History: Created 1976 Ky. Acts ch. 273, sec. 4.

61.878 Certain public records exempted from inspection except on order of court -- Restriction of state employees to inspect personnel files prohibited.

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;

(c) 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;

2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:

a. In conjunction with an application for or the administration of a loan or grant;

b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;

c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

d. For the grant or review of a license to do business.

3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to

expand business operations within the state, except as provided in paragraph (c) of this subsection;

(e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;

(f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

(h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;

(i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(k) All public records or information the disclosure of which is prohibited by federal law or regulation;

(l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly;

(m) 1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:

a. Criticality lists resulting from consequence assessments;

b. Vulnerability assessments;

c. Antiterrorism protective measures and plans;

d. Counterterrorism measures and plans;

e. Security and response needs assessments;

f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and

h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.

2. As used in this paragraph, "terrorist act" means a criminal act intended to:

a. Intimidate or coerce a public agency or all or part of the civilian population;

b. Disrupt a system identified in subparagraph 1.f. of this paragraph; or

c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.

3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the Office for Security Coordination and the Attorney General.

4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.

5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law; and

(n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

Effective: June 20 2005

History: Amended 2005 Ky. Acts ch. 45, sec. 6, effective June 20, 2005; and ch. 93, sec. 3, effective March 16, 2005. -- Amended 1994 Ky. Acts ch. 262, sec. 5, effective July 15, 1994; and ch. 450, sec. 34, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 163, sec. 5, effective July 14, 1992. -- Amended 1986 Ky. Acts ch. 494, sec. 24, effective July 15, 1986. -- Created 1976 Ky. Acts ch. 273, sec. 5.

Legislative Research Commission Note (6/20/2005). The Office of the Kentucky Attorney General requested that amendments in 2005 Ky. Acts ch. 45, sec. 6 and ch. 93, sec. 3, to the arrangement of the paragraphs of subsection (1) of this section be changed. The change was requested "in the interest of preventing confusion to the public and public agencies" and was made by the Statute Reviser under the authority of KRS 7.136.

Legislative Research Commission Note (6/20/2005). This section was amended by 2005 Ky. Acts chs. 45 and 93, which do not appear to be in conflict and have been codified together.

61.880 Denial of inspection -- Role of Attorney General.

(1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.

(2) (a) If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within twenty (20) days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.

(b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper resolution of an appeal:

1. The need to obtain additional documentation from the agency or a copy of the records involved;
2. The need to conduct extensive research on issues of first impression; or
3. An unmanageable increase in the number of appeals received by the Attorney General.

(c) On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The Attorney General shall not, however, be named as a party in any Circuit Court

actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he have any duty to defend his decision in Circuit Court or any subsequent proceedings.

(4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.882.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 262, sec. 6, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 163, sec. 6, effective July 14, 1992. -- Created 1976 Ky. Acts ch. 273, sec. 6.

61.882 Jurisdiction of Circuit Court in action seeking right of inspection -- Burden of proof -- Costs -- Attorney fees.

(1) The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.870 to 61.884 shall not have to exhaust his remedies under KRS 61.880 before filing suit in a Circuit Court.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the court shall determine the matter de novo. In an original action or an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the burden of proof shall be on the public agency. The court on its own motion, or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.870 to 61.884 may, upon a finding that the records were willfully withheld in violation of KRS 61.870 to 61.884, be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award the person an amount not to exceed twenty-five dollars ($25) for each day that he was denied the right to inspect or copy said public record. Attorney's fees, costs, and awards under this subsection shall be paid by the agency that the court determines is responsible for the violation.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 163, sec. 7, effective July 14, 1992. -- Created 1976 Ky. Acts ch. 273, sec. 7.

61.884 Person's access to record relating to him.

Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878.

History: Created 1976 Ky. Acts ch. 273, sec. 8.

KRS Chapter 65A

Special Purpose Governmental Entities

- .010 Definitions for chapter.
- .020 Duties of Department for Local Government relating to forms, reporting, and online access -- Information to be submitted by special purpose governmental entities -- Failure to submit information -- Administrative regulations -- Registry -- Registration fee -- Annual report.
- .030 Audits, financial statements, and attestation engagements for fiscal periods beginning on or after July 1, 2014.
- .040 Failure to submit information or submitting noncompliant information -- Notice -- Withholding of funds -- Audit or special examination -- Distribution of funds upon compliance -- Action to enforce reporting requirements.
- .050 Administrative dissolution of special purpose governmental entity -- Dissolution by governing body.
- .060 Educational materials and programs for governing bodies and employees.
- .070 Code of ethics.
- .080 Annual budget -- Publication of information.
- .090 Registration with Department for Local Government -- Notification -- Failure to register -- Action to enforce prohibition against taxes and fees.
- .100 Fees and ad valorem taxes levied by special purpose governmental entities -- Reporting to governing body of city or county.

65A.010 Definitions for chapter.

As used in this chapter:

(1) "County" means any county, consolidated local government, urban-county government, unified local government, or charter county;

(2) "DLG" means the Department for Local Government established by KRS 147A.002;

(3) "Establishing entity" means the city or county, or any combination of cities and counties, that established a special purpose governmental entity and that has not subsequently withdrawn its affiliation with the special purpose governmental entity by ordinance or other official action;

(4) (a) "Fee" means any user charge, rental fee, assessment, fee, schedule of rates, or tax, other than an ad valorem tax, imposed by a special purpose governmental entity.

(b) "Fee" shall not include any fuel cost adjustment that is:

1. Made pursuant to an agreement with a power supplier;

2. Amended by the power supplier based on the variable cost of fuel; and

3. Passed through to the consumer by the utility pursuant to the agreement between the utility and the power supplier;

(5) (a) "Private entity" means any entity whose sole source of public funds is from payments pursuant to a contract with a city, county, or special purpose governmental entity, including funds received as a grant or as a result of a competitively bid procurement process.

(b) "Private entity" does not include any entity:

1. Created by a city, county, or combination of cities and counties to perform one (1) or more of the types of public services listed in subsection (8)(c) of this section; or

2. Governed by a board, council, commission, committee, authority, or corporation whose members are appointed by the chief executive or governing body of a city, county, or combination of cities and counties;

(6) "Public funds" means any funds derived from the levy of a tax, fee, assessment, or charge, or the issuance of bonds by the state or a city, county, or special purpose governmental entity;

(7) "Registry" means the online central registry and reporting portal established pursuant to KRS 65A.020; and

(8) (a) "Special purpose governmental entity" or "entity" means any agency, authority, or entity created or authorized by statute which:

1. Exercises less than statewide jurisdiction;

2. Exists for the purpose of providing one (1) or a limited number of services or functions;

3. Is governed by a board, council, commission, committee, authority, or corporation with policy-making authority that is separate from the state and the governing body of the city, county, or cities and

counties in which it operates; and

4. a. Has the independent authority to generate public funds; or

   b. May receive and expend public funds, grants, awards, or appropriations from the state, from any agency, or authority of the state, from a city or county, or from any other special purpose governmental entity.

(b) "Special purpose governmental entity" shall include entities meeting the requirements established by paragraph (a) of this subsection, whether the entity is formed as a nonprofit corporation under KRS Chapter 273, pursuant to an interlocal cooperation agreement under KRS 65.210 to 65.300, or pursuant to any other provision of the Kentucky Revised Statutes.

(c) Examples of the types of public services that may be provided by special purpose governmental entities include but are not limited to the following:

1. Ambulance, emergency, and fire protection services;
2. Flood control, drainage, levee, water, water conservation, watershed, and soil conservation services;
3. Area planning, management, community improvement, and community development services;
4. Library services;
5. Public health, public mental health, and public hospital services;
6. Riverport and airport services;
7. Sanitation, sewer, waste management, and solid waste services;
8. Industrial and economic development;
9. Parks and recreation services;
10. Construction, maintenance, or operation of roads and bridges;
11. Mass transit services;
12. Pollution control;
13. Construction or provision of public housing;
14. Tourism and convention services; and
15. Agricultural extension services.

(d) "Special purpose governmental entity" shall not include:

1. Cities;
2. Counties;
3. School districts;
4. Private entities;
5. Any incorporated entity that:
   a. Provides utility services;
   b. Is member-owned; and
   c. Has a governing body whose voting members are all elected by the membership of the entity; or
6. Any entity whose budget and financial information are integrated

with and included as a part of the budget and financial reporting of the city, county, or cities and counties in which it operates.

Effective: June 25, 2013

History: Amended 2013 Ky. Acts. ch. 124, sec. 8, effective June 25, 2013. -- Created 2013 Ky. Acts ch. 40, sec. 1, effective March 21, 2013.

Legislative Research Commission Note (3/21/2013). In subsection (5)(b)1. of this statute, a reference to "subsection (7)(c)" has been changed to read "subsection (8)(c)." In the Senate Committee Substitute to the bill that created this statute (2013 Ky. Acts ch. 40, sec. 1), the former subsection (7) was renumbered as subsection (8), but an internal reference to subsection (7)(c) was not corrected. In codifying this section, the Reviser of Statutes has made this correction pursuant to KRS 7.136(1).

Legislative Research Commission Note (3/21/2013). This statute was created in 2013 Ky. Acts ch. 40, sec. 1 (HB 1), and then amended in 2013 Ky. Acts ch. 124, sec. 8, after HB 1 had been enacted. That amendment has been incorporated into the text of this statute as created.

65A.020 Duties of Department for Local Government relating to forms, reporting, and online access -- Information to be submitted by special purpose governmental entities -- Failure to submit information -- Administrative regulations -- Registry -- Registration fee -- Annual report.

(1) The DLG shall:

(a) On or before March 1, 2014, make the necessary reporting and certification forms, online reporting portal, and online central registry available for reporting by special purpose governmental entities. The portal and registry shall serve as a unified location for the reporting of and access to administrative and financial information by special purpose governmental entities; and

(b) On or before October 1, 2014, make available online public access to administrative and financial information reported by special purpose governmental entities.

(2) (a) For each fiscal period beginning on or after July 1, 2014, all special purpose governmental entities shall annually submit to the DLG the information required by this section. The information shall be submitted in accordance with this section, at the time, and in the form and format required by the DLG. The information submitted shall include at a minimum the following:

1. Administrative information:

a. The name, address, and, if applicable, the term and appointing authority for each board member of the governing body of the entity;

b. The fiscal year of the entity;

c. The Kentucky Revised Statute under which the entity was established, the date of establishment, the establishing entity, and the statute or statutes under which the entity operates, if different from the statute or statutes under which it was established;

d. The mailing address and telephone number and, if applicable, the Web site uniform resource locator (URL) of the entity;

e. The operational boundaries and service area of the entity and the services provided by the entity;

f. A listing of all taxes, fees, or charges imposed and collected by the entity, including the rates or amounts charged for the reporting period and the statutory authority for the levy of the tax, fee, or charge;

g. The primary contact for the entity for purposes of communication from the DLG;

h. The code of ethics that applies to the entity, and whether the entity has adopted additional ethics provisions;

i. A listing of all federal, state, and local governmental entities that have oversight authority over the special purpose governmental entity or to which the special purpose

governmental entity submits reports, data, or information; and

j. Any other related administrative information required by the DLG; and

2. Financial information:

a. The most recent adopted budget of the entity;

b. After the close of each fiscal year, a comparison of the budget to actual revenues and expenditures for each fiscal year;

c. Completed audits or attestation engagements as provided in KRS 65A.030; and

d. Other financial oversight reports or information required by the DLG.

(b) The provisions of KRS 65A.040 shall apply when a special purpose governmental entity fails to submit the information required by this section in a timely manner, or submits information that does not comply with the requirements and standards established by this section and the DLG. To facilitate the enforcement of these provisions, the DLG shall establish and maintain an online list of due dates for the filing of reports, audit certifications, and information for each special purpose governmental entity.

(c) The provisions of this subsection shall be in addition to, and shall not supplant or replace any reporting or filing requirements established by other provisions of the Kentucky Revised Statutes.

(3) (a) The DLG shall, by administrative regulation adopted pursuant to KRS Chapter 13A, develop standard forms, protocols, timeframes, and due dates for the submission of information by special purpose governmental entities. All information shall be submitted electronically; however, the DLG may allow submission by alternative means, with the understanding that the DLG shall be responsible for converting the information to a format that will make it accessible through the registry.

(b) In an effort to reduce duplicative submissions to different governmental entities and agencies, during the development of the forms, protocols, timeframes, and due dates, the DLG shall consult with other governmental entities and agencies that may use the information submitted by special purpose governmental entities, and may include the information those agencies and entities need to the extent possible.

(4) (a) Beginning October 1, 2014, all information submitted by special purpose governmental entities under this section shall be publicly available through the registry. The registry shall be updated at least monthly, but may be updated more frequently at the discretion of the DLG. The registry shall include a notation indicating the date of the most recent update.

(b) The registry shall be in a searchable format and shall, at a minimum, allow a search by county, by special purpose governmental entity name, and by type of entity.

(c) To the extent possible, the registry shall be linked to or accessed through the Web site established pursuant to KRS 42.032 to provide public access to expenditure records of the executive branch of state

government.

(5) (a) To offset the costs incurred by the DLG in maintaining and administering the registry, the costs incurred in providing education for the governing bodies and employees of special purpose governmental entities as required by KRS 65A.060, and the costs incurred by the DLG and the Auditor of Public Accounts in responding to and acting upon noncompliant special purpose governmental entities under KRS 65A.040, excluding costs associated with conducting audits or special examinations, each special purpose governmental entity shall pay a registration fee to the DLG on an annual basis at the time of registration under this section.

(b) The initial annual fee shall be as follows:

1. For special purpose governmental entities with annual revenue from all sources of less than one hundred thousand dollars ($100,000), twenty-five dollars ($25);

2. For special purpose governmental entities with annual revenues from all sources of at least one hundred thousand dollars ($100,000) but less than five hundred thousand dollars ($500,000), two hundred fifty dollars ($250); and

3. For special purpose governmental entities with annual revenues of five hundred thousand dollars ($500,000) or greater, five hundred dollars ($500).

(c) If the costs of administering and maintaining the registry, providing education, and enforcing compliance change over time, the fee and tiered structure established by paragraph (b) of this subsection may be adjusted one (1) time by the DLG through the promulgation of an administrative regulation under KRS Chapter 13A. The rate, if adjusted, shall be set at a level no greater than a level that is expected to generate sufficient revenue to offset the actual cost of maintaining and administering the registry, providing education for the governing bodies and employees of special purpose governmental entities, and enforcing compliance.

(d) The portion of the registration fee attributable to expenses incurred by the Auditor of Public Accounts for duties and services other than conducting audits or special examinations shall be collected by the DLG and transferred to the Auditor of Public Accounts on a quarterly basis. Prior to the transfer of funds, the Auditor of Public Accounts shall submit an invoice detailing the actual costs incurred, which shall be the amount transferred; however, the amount transferred to the Auditor of Public Accounts under the initial fee established by paragraph (b) of this section shall not exceed the annual amount agreed to between the DLG and the Auditor of Public Accounts.

(6) By October 1, 2014, and on or before each October 1 thereafter, the DLG shall file an annual report with the Legislative Research Commission detailing the compliance of special purpose governmental entities with the provisions of KRS 65A.010 to 65A.090. The Legislative Research Commission shall refer the report to the Interim Joint Committee on Local Government for review.

Effective: March 21, 2013

History: Created 2013 Ky. Acts ch. 40, sec. 2, effective March 21, 2013.

65A.030 Audits, financial statements, and attestation engagements for fiscal periods beginning on or after July 1, 2014.

(1) For fiscal periods beginning on or after July 1, 2014, requirements relating to audits and financial statements of special purpose governmental entities are as follows:

(a) Every special purpose governmental entity with the higher of annual receipts from all sources or annual expenditures of less than one hundred thousand dollars ($100,000) shall:

1. Annually prepare a financial statement; and
2. Once every four (4) years, contract for the application of an attestation engagement as determined by the DLG, as provided in subsection (2) of this section;

(b) Every special purpose governmental entity with the higher of annual receipts from all sources or annual expenditures equal to or greater than one hundred thousand dollars ($100,000) but less than five hundred thousand dollars ($500,000) shall:

1. Annually prepare a financial statement; and
2. Once every four (4) years, contract for the provision of an independent audit as provided in subsection (2) of this section; and

(c) Every special purpose governmental entity with the higher of annual receipts from all sources or annual expenditures equal to or greater than five hundred thousand dollars ($500,000) shall:

1. Annually prepare a financial statement; and
2. Be audited annually as provided in subsection (2) of this section.

(2) (a) To provide for the performance of an audit or attestation engagement as provided in subsection (1)(a) to (c) of this section, the governing body of a special purpose governmental entity shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to conduct the audit or attestation engagement.

(b) The audit or attestation engagement shall be completed no later than twelve (12) months following the close of the fiscal year subject to the audit or the attestation engagement.

(c) The special purpose governmental entity shall submit for publication on the registry the audit or attestation engagement, in the form and format required by the DLG.

(d) The audit or attestation engagement shall conform to:

1. Generally accepted governmental auditing or attestation standards, which means those standards for audits or attestations of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States;
2. Generally accepted auditing or attestation standards, which means those standards for all audits or attestations promulgated by the American Institute of Certified Public Accountants; and
3. Additional procedures and reporting requirements as may be

required by the Auditor of Public Accounts.

(e) Upon request, the Auditor of Public Accounts may review the final report and all related work papers and documents of the independent certified public accountant relating to the audit or attestation engagement.

(f) If a special purpose governmental entity is required by another provision of law to audit its funds more frequently or more stringently than is required by this section, the special purpose governmental entity shall comply with the provisions of that law, and shall comply with the requirements of paragraph (c) of this subsection.

(g) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, a unit of government furnishing funds directly to a special purpose governmental entity may require additional audits at the expense of the unit of government furnishing the funds.

(h) All audit reports, attestation engagement reports, and financial statements of special purpose governmental entities shall be public records.

(3) The DLG shall determine which procedures conducted under attestation standards will apply to special purpose governmental entities meeting the conditions established by subsection (1)(a) of this section. The DLG may determine that additional procedures be conducted under attestation standards for specific categories of special purpose governmental entities or for specific special purpose governmental entities, as needed, to obtain the oversight and information deemed necessary by the DLG.

(4) Based on the information submitted by special purpose governmental entities under KRS 65A.020 and 65A.090, the DLG shall determine when each special purpose governmental entity was last audited, and shall notify the special purpose governmental entity of when each audit or attestation engagement is due under the new standards and requirements of this section.

(5) The DLG may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the provisions of this section.

Effective: March 21, 2013

History: Created 2013 Ky. Acts ch. 40, sec. 3, effective March 21, 2013.

65A.040 Failure to submit information or submitting noncompliant information -- Notice -- Withholding of funds -- Audit or special examination -- Distribution of funds upon compliance -- Action to enforce reporting requirements.

(1) The provisions of this section shall apply when any special purpose governmental entity fails to submit information or submits noncompliant information under KRS 65A.020.

(2) If a special purpose governmental entity fails to submit information in a timely manner or submits noncompliant information, the DLG shall, within thirty (30) days after the due date of the information, notify the special purpose governmental entity and the establishing entity in writing that:

(a) Either:

1. The required information was not submitted in a timely manner; or

2. The information submitted was noncompliant and the reason for noncompliance;

(b) The special purpose governmental entity shall have thirty (30) days from the date of the notice to submit the information; and

(c) Failure to submit compliant information:

1. Will result in:

a. Any funds due the entity and in the possession of any agency, entity, or branch of state government being withheld by the state government entity until the report or information is submitted; and

b. Publication of a notice of noncompliance in a newspaper having general circulation in the area where the special purpose governmental entity operates; and

2. May result in the Auditor of Public Accounts or the auditor's designee performing an audit or special examination of the special purpose governmental entity at the expense of the entity.

(3) Upon the failure of a special purpose governmental entity to submit information in response to the notice sent under subsection (2) of this section, the DLG shall, within fifteen (15) days after the passage of the thirty (30) day period:

(a) Notify in writing the Auditor of Public Accounts, the establishing entity, and any entity having oversight or responsibility of the special purpose governmental entity at the state level. The notice shall include at a minimum the name, mailing address, and primary contact name for the special purpose governmental entity, as well as details about the information that is past due;

(b) Notify the Finance and Administration Cabinet that the special purpose governmental entity has failed to comply with the reporting requirements of KRS 65A.010 to 65A.090, and that any funds in the possession of any agency, entity, or branch of state government shall be withheld until further notice; and

(c) 1. Cause to be published in the newspaper having general circulation in the area where the special purpose governmental entity operates

a notice of noncompliance. The notice shall meet the requirements of KRS Chapter 424 and shall include:

a. Identification of the special purpose governmental entity;

b. A statement that the special purpose governmental entity failed to comply with the reporting requirements established by KRS 65A.020;

c. The names of the board members of the special purpose governmental entity;

d. The name and contact information of the individual provided as the contact for the special purpose governmental entity; and

e. Any other information the DLG may require.

2. The cost of publication of the notice shall be borne by the special purpose governmental entity. If the notice includes more than one (1) special purpose governmental entity, the cost shall be divided equally among the entities included in the notice.

(4) Upon receipt of notification under subsection (3)(b) of this section, the secretary of the Finance and Administration Cabinet shall, within ten (10) days after receipt of the notice, notify all state agencies, entities, and branches of state government to withhold any funds due the noncompliant special purpose governmental entity.

(5) (a) The Auditor of Public Accounts shall, within thirty (30) days after the receipt of information from the DLG under subsection (3)(a) of this subsection, notify in writing the special purpose governmental entity that the entity may be subject to an audit or special examination at the expense of the special purpose governmental entity.

(b) The Auditor of Public Accounts may initiate an audit or special examination of any special purpose governmental entity any time after sending the notice required by paragraph (a) of this subsection. Any audit or special examination initiated pursuant to this subsection shall be at the expense of the special purpose governmental entity.

(c) Once commenced, an audit or special examination may be completed regardless of whether the special purpose governmental entity subsequently submits the required information.

(d) The audit or special examination shall be prepared and submitted as required by KRS 65A.020 and 65A.030.

(6) Upon receipt of all required information from a noncompliant special purpose governmental entity, the DLG shall notify in writing the Auditor of Public Accounts, the establishing entity, and the Finance and Administration Cabinet, and the secretary of the Finance and Administration Cabinet shall notify all state agencies, entities, and branches of state government that funds withheld may once again be distributed to the special purpose governmental entity.

(7) Any resident or property owner of the service area of a special purpose governmental entity may bring an action in the Circuit Court to enforce the provisions of KRS 65A.020. The Circuit Court, in its discretion, may allow the prevailing party, other than the special purpose governmental entity, a reasonable attorney's fee and court costs, to be paid from the special purpose

governmental entity's treasury.

Effective: March 21, 2013

History: Created 2013 Ky. Acts ch. 40, sec. 4, effective March 21, 2013.

65A.050 Administrative dissolution of special purpose governmental entity -- Dissolution by governing body.

(1) (a) As used in this subsection, "entity seeking dissolution" shall mean:

1. The DLG;
2. If the special purpose governmental entity was established by one (1) county, or by one (1) city, the governing body of the county or city that established the special purpose governmental entity;
3. If the special purpose governmental entity was established by multiple counties and cities, the governing bodies of all establishing entities; or
4. If the special purpose governmental entity was established other than by an establishing entity, the governing body or bodies of the county or counties in which the special purpose governmental entity provides or provided services, or operates or operated.

(b) Any special purpose governmental entity that meets at least one (1) of the following criteria may be administratively dissolved:

1. The special purpose governmental entity has taken no action for two (2) or more consecutive years;
2. Following a written inquiry from the entity seeking dissolution, the chair of the special purpose governmental entity either:
   a. Notifies the entity seeking dissolution in writing that the special purpose governmental entity has not had a governing board, or has not had a sufficient number of governing board members to constitute a quorum for two (2) or more consecutive years; or
   b. Fails to respond to the inquiry within thirty (30) days;
3. The special purpose governmental entity fails to register with the DLG as required by KRS 65A.090;
4. The special purpose governmental entity fails to file the information required by KRS 65A.020 for two (2) or more consecutive years; or
5. The governing body of the special purpose governmental entity provides documentation to the DLG or the governing body or bodies of the establishing entity that it has unanimously adopted a resolution declaring the special purpose governmental entity inactive.

(c) To begin the process of administrative dissolution, the entity seeking dissolution shall provide notification of the proposed administrative dissolution as provided in this paragraph:

1. The entity seeking dissolution shall:
   a. Post a notice of proposed administrative dissolution on the registry established by KRS 65A.020;
   b. For administrative dissolutions under subparagraphs 3., 4., and 5. of paragraph (b) of this subsection, publish, in accordance with the provisions of KRS Chapter 424, a notice

of proposed administrative dissolution, with the cost of the publication billed to the special purpose governmental entity for which administrative dissolution is sought;

c. Mail a copy of the notice to the registered contact for the special purpose governmental entity, if any; and

d. Mail a copy of the notice as follows:

i. If the dissolution is sought by the DLG, to the governing ody of the establishing entity or county, and to all entities at the state level having oversight of or responsibility for the pecial purpose governmental entity; and

ii. If the dissolution is sought by an establishing entity or ounty, to the DLG and any other establishing entities or ounties, and to all entities at the state level having oversight of or responsibility for the special purpose governmental entity; and

2. The notice shall include:

a. The name of the entity seeking dissolution, and contact information for the entity;

b. The name of the special purpose governmental entity for which dissolution is sought;

c. The statutes under which the special purpose governmental entity was organized and operating;

d. A description of the services provided and the territory of the special purpose governmental entity;

e. If there is a plan of dissolution as required by paragraph (e) of this subsection, identification of the place where the plan of dissolution may be reviewed;

f. A statement that any objections to the administrative dissolution shall be filed in writing with the entity seeking to dissolve the special purpose governmental entity within thirty (30) days after the publication date, and the address and process for submitting such objections; and

g. A statement that if no written objections are received within thirty (30) days of publication of the notice, the special purpose governmental entity shall be administratively dissolved.

(d) 1. Any resident living in or owning property in the area served by the special purpose governmental entity for which dissolution is sought, who is not a member of the governing body of the special purpose governmental entity or an immediate family member of a member of the governing body of the special purpose governmental entity, may file a written objection to the dissolution with the entity seeking dissolution. The written objection shall state the specific reasons why the special purpose governmental entity shall not be dissolved, and shall be filed within thirty (30) days after the posting of the notice on the registry as required by paragraph (c) of this subsection.

2. a. Upon the passage of thirty (30) days with no objections filed, and satisfaction of all outstanding obligations of the special purpose governmental entity, the special purpose governmental entity shall be deemed dissolved and, if a dissolution plan was required, the entity seeking dissolution shall proceed to implement the dissolution plan.

b. Notification of dissolution shall be provided by the entity seeking dissolution to all other entities listed under paragraph (a) of this subsection. The DLG shall maintain a list of all dissolved special purpose governmental entities and the date of dissolution on the registry established by KRS 65A.020.

3. If written objections are received within thirty (30) days of the publication on the registry required by paragraph (c) of this subsection, the dissolution process shall be aborted, and the process established by subsection (2) of this section shall be utilized if it is determined that dissolution should still be sought, notwithstanding any other dissolution process that may exist in the Kentucky Revised Statutes for the type of special purpose governmental entity for which dissolution is sought.

(e) If the special purpose governmental entity for which administrative dissolution is sought:

1. Is providing services;

2. Has outstanding liabilities; or

3. Has assets;

the entity seeking dissolution shall, as part of the dissolution process, develop a dissolution plan that includes, as relevant, provisions addressing the continuation of services, the satisfaction of all liabilities, and the distribution of assets of the special purpose governmental entity.

(2) Any special purpose governmental entity not meeting the requirements for dissolution under subsection (1) of this section, and for which no specific dissolution provisions apply in the Kentucky Revised Statutes, may be dissolved as provided in this subsection:

(a) The dissolution of a special purpose governmental entity may be initiated upon:

1. The affirmative vote of two-thirds (2/3) of the governing body of the special purpose governmental entity and the adoption of an ordinance by the affirmative vote of two-thirds (2/3) of the governing body of each establishing entity;

2. The adoption of an ordinance by an affirmative vote of two-thirds (2/3) of the governing body of each establishing entity; or

3. If there is no establishing entity, by the adoption of an ordinance by an affirmative vote of two-thirds (2/3) of the governing body of each county in which the special purpose governmental entity provides services or operates;

(b) Upon initiation of a dissolution after an affirmative vote as provided in paragraph (a) of this subsection, the special purpose governmental entity

for which dissolution is sought shall not assume any new obligations or duties, contract for any new debt, or levy any additional fees or taxes unless the new obligations, duties, debt, fees, or taxes are included in the dissolution plan required by paragraph (c) of this subsection. Any contract or agreement or plan for new obligations, duties, debt, fees, or taxes entered into or devised in violation of this paragraph shall be void;

(c) After voting to commence dissolution of a special purpose governmental entity, the governing body or bodies initiating the dissolution shall:

1. Develop a dissolution plan which, if adopted by an establishing entity shall be by ordinance, which shall include but not be limited to:

   a. A description of how the necessary governmental services provided by the special purpose governmental entity will be provided upon dissolution of the entity or a statement that the services are no longer needed;

   b. A plan for the satisfaction of any outstanding obligations of the special purpose governmental entity, including the continuation of any tax levies or fee payments necessary to meet the outstanding obligations;

   c. Assurances from any organization or entity that will be assuming responsibility for services provided by the special purpose governmental entity, or that will assume the obligations of the special purpose governmental entity, that the organization or entity will, in fact, provide the services or assume the obligations;

   d. A plan for the orderly transfer of all assets of the special purpose governmental entity in a manner that will continue to benefit those to whom services were provided by the special purpose governmental entity;

   e. A date upon which final dissolution of the special purpose governmental entity shall occur; and

   f. Any other information the governing body wishes to include.

   The dissolution plan shall be available for public review at least thirty (30) days prior to the public hearing required by subparagraph 2. of this paragraph;

2. Hold a public hearing in each county and city that is participating in the dissolution to present the proposed dissolution plan and receive feedback from the public. The time and location of the hearing, as well as the location where a copy of the dissolution plan may be reviewed by the public prior to the hearing, shall be advertised as provided in KRS 424.130, and shall be posted on the registry established by KRS 65A.020. The hearing shall be held not less than fifteen (15) days, nor more than thirty (30) days, after the publication of the notice in the newspaper;

3. Send a copy of the notice required by subparagraph 2. of this paragraph to the DLG and to any state entity with oversight authority of the special purpose governmental entity;

4. If the dissolution plan is amended after the public hearing, make the amended dissolution plan available for public inspection for at least fifteen (15) days prior to the final vote of the governing body under subparagraph 6. of this paragraph;

5. If the special purpose governmental entity is a utility as defined in KRS 278.010(3), obtain approval from the Public Service Commission pursuant to KRS 278.020(5); and

6. Within sixty (60) days after the date of the public hearing, finally approve or disapprove the dissolution of the special purpose governmental entity and the dissolution plan. Approval shall require:

   a. If initiated by the governing board of the special purpose governmental entity, the affirmative vote of two-thirds (2/3) of the members of the governing body of the special purpose governmental entity and the adoption of an ordinance by two-thirds (2/3) of the members of the governing body of each establishing entity;

   b. The adoption of an ordinance by two-thirds (2/3) of the members of the governing body of each establishing entity; or

   c. If there is no establishing entity, by the adoption of an ordinance by two-thirds (2/3) of the members of the governing body of each county in which the special purpose governmental entity provided services or operated;

(d) The governing body or bodies shall notify the DLG of the outcome of the vote or votes taken pursuant to subparagraph 6. of paragraph (c) of this subsection; and

(e) Notwithstanding any other provision of this section, the dissolution of a special purpose governmental entity shall not be final until all obligations of the special purpose governmental entity have been satisfied or have been assumed by another entity.

Effective: March 21, 2013

History: Created 2013 Ky. Acts ch. 40, sec. 5, effective March 21, 2013.

Legislative Research Commission Note (3/21/2013). Under the authority of KRS 7.136, the Reviser of Statutes has corrected manifest clerical or technical errors in this statute. In subsection (1)(c)1.d.i., the word "the" has been inserted before "special purpose governmental entity." In subsection (2)(a)1., the words "vote or" have been changed to read "vote of." In subsection (2)(c)5., the word "a" has been inserted before "utility," and in subsection (2)(d), the word "of" has been inserted before "the vote or votes."

Legislative Research Commission Note (3/21/2013). In subsection (2)(c)4. of this statute, a reference to "subparagraph 5." has been changed to read "subparagraph 6." During the drafting of the bill that created this statute (2013 Ky. Acts ch. 40, sec. 5), the former subparagraph 5. was renumbered as subparagraph 6., but an internal reference to subparagraph 5. was not corrected. In codifying this section, the Reviser of Statutes has made this correction pursuant to KRS 7.136(1).

65A.060 Educational materials and programs for governing bodies and employees.

The DLG shall provide, or shall arrange for the provision of, educational materials and programs for the governing bodies and employees of special purpose governmental entities to inform them of their duties and responsibilities under the provisions of this chapter and issues related thereto. In developing the materials and programs, the DLG shall consult with public entities as defined in KRS 65.310. The DLG may promulgate administrative regulations under KRS Chapter 13A to implement this section.

Effective: March 21, 2013

History: Created 2013 Ky. Acts ch. 40, sec. 6, effective March 21, 2013.

65A.070 Code of ethics.

(1) (a) The board, officers, and employees of each special purpose governmental entity shall be subject to the code of ethics of the establishing entity in which the special purpose governmental entity's principal business office is located.

(b) If the principal business office is located in more than one (1) establishing entity, the board of the special purpose governmental entity shall select one (1) of the applicable codes of ethics that will apply.

(c) If there is no establishing entity, the board, officers, and employees of the special purpose governmental entity shall be subject to the code of ethics of the county in which the special purpose governmental entity's principal business office is located.

(2) The governing body of a special purpose governmental entity may adopt ethics provisions that are more stringent than those of the establishing entity in which its principal business office is located. If more stringent provisions are adopted, the governing body of the special purpose governmental entity shall, within twenty-one (21) days of the adoption of the provisions, deliver a copy of the provisions to the DLG and the establishing entity. Any subsequent amendments shall also be delivered to the DLG and the establishing entity within twenty-one (21) days of adoption. The DLG shall include any documents provided under this section as part of the public records and lists maintained under KRS 65.003(5)(a).

Effective: March 21, 2013

History: Created 2013 Ky. Acts ch. 40, sec. 7, effective March 21, 2013.

65A.080 Annual budget -- Publication of information.

(1) The governing body of each special purpose governmental entity shall annually adopt a budget conforming with the requirements established under KRS 65A.020 prior to the start of the fiscal year to which the budget applies. No moneys shall be expended from any source except as provided in the adopted budget.

(2) In lieu of the publication requirements of KRS 424.220, but in compliance with other applicable provisions of KRS Chapter 424, each special purpose governmental entity shall, within sixty (60) days after the close of each fiscal year, publish the location where the adopted budget, financial statements, and most recent audit or attestation engagement reports may be examined by the public.

Effective: March 21, 2013

History: Created 2013 Ky. Acts ch. 40, sec. 8, effective March 21, 2013.

65A.090 Registration with Department for Local Government -- Notification -- Failure to register -- Action to enforce prohibition against taxes and fees.

(1) (a) To establish a complete list of all special purpose governmental entities operating in Kentucky on March 21, 2013, so that the registry established pursuant to KRS 65A.020 will be comprehensive, every existing special purpose governmental entity shall register with the DLG as provided in this subsection.

(b) Registration shall occur prior to December 31, 2013, and shall be in the form and format required by the DLG, provided that in addition to the information required by the DLG, all special purpose governmental entities shall report to the DLG the date the last independent audit of the entity was conducted.

(c) Between March 21, 2013, and December 31, 2013, the DLG, with assistance from the area development districts created under KRS 147A.050, public entities as defined in KRS 65.310, and the Auditor of Public Accounts, shall notify all special purpose governmental entities of which it is aware of the registration requirement established by this subsection, and of the consequences of failing to register in a timely manner.

(2) The governing body of any special purpose governmental entity established on or after January 1, 2014, shall, within fifteen (15) days of the establishment of the entity, file with the DLG the information required by subsection (2)(a)1. of KRS 65A.020 and any other information required by the DLG.

(3) Notwithstanding any other provision of the Kentucky Revised Statutes, any special purpose governmental entity that fails to provide information to the DLG as required under this section shall be:

(a) Subject to administrative dissolution as provided in KRS 65A.050; and

(b) Prohibited from levying or collecting any tax, fee, assessment, or charge beginning January 1, 2014, through the date the entity registers with the DLG.

To enforce paragraph (b) of this subsection, any resident or property owner of the service area of a special purpose governmental entity may bring an action in the Circuit Court. The Circuit Court, in its discretion, may allow the prevailing party, other than the special purpose governmental entity, a reasonable attorney's fee and court costs, to be paid from the special purpose governmental entity's treasury.

Effective: March 21, 2013

History: Created 2013 Ky. Acts ch. 40, sec. 9, effective March 21, 2013.

65A.100 Fees and ad valorem taxes levied by special purpose governmental entities -- Reporting to governing body of city or county.

(1) Beginning January 1, 2014, the provisions of this section shall apply to any fee or ad valorem tax levied by a special purpose governmental entity.

(2) Any special purpose governmental entity that:

(a) 1. Adopts a new fee or ad valorem tax;

2. Increases the rate at which an existing fee or tax, other than an ad valorem tax, is imposed; or

3. Adopts an ad valorem tax rate;

shall report the fee or tax to the governing body of the city or county in which the largest number of citizens served by the special purpose governmental entity reside. If the special purpose governmental entity serves only the residents of a city, the notice shall be provided to the governing body of that city.

(b) The report required by paragraph (a) of this subsection shall be for informational purposes only, and the governing body shall not have the authority to adjust, amend, or veto the fee or tax, provided that any other provision of the Kentucky Revised Statutes that provides greater authority for the governing body of a city or county over taxes, fees, or rates imposed by a special purpose governmental entity shall continue to apply to those taxes, fees, or rates.

(3) The report required by subsection (2) of this section shall be made by:

(a) Submission of written notification of the ad valorem tax or fee to the governing body at least thirty (30) days before the date the ad valorem tax or fee will be effective; and

(b) Presentation of testimony relating to the ad valorem tax or fee at an open, regularly scheduled meeting of the governing body at least ten (10) days prior to the date the ad valorem tax or fee will be effective.

(4) The governing body shall include notification that the ad valorem tax or fee will be presented in all public notices provided for the meeting.

Effective: June 25, 2013

History: Amended 2013 Ky. Acts ch. 124, sec. 8, effective June 25, 2013. -- Created 2013 Ky. Acts ch. 40, sec. 85, effective March 21, 2013.

Legislative Research Commission Note (3/21/2013). This statute was created in 2013 Ky. Acts ch. 40, sec. 85 (HB 1), and then amended in 2013 Ky. Acts ch. 124, sec. 8, after HB 1 had been enacted. That amendment has been incorporated into the text of this statute as created.

KRS Chapter 74

Water Districts

- .010 Creation of a water district.
- .012 Water district -- Creation -- Application to Public Service Commission -- Hearing -- Conditions.
- .015 Repealed, 1972.
- .020 Appointment of commissioners -- Number -- Terms -- Removal -- Vacancies -- Organization -- Bond -- Compensation -- Mandatory training -- Notice of vacancy.
- .030 Legal services -- Payment.
- .040 Chief executive officer -- Employees -- Expenses -- Salary.
- .050 Treasurer -- Duties -- Compensation -- Bond.
- .060 Repealed, 1958.
- .070 Duties and powers of commission -- Corporate powers of water district exercised by or under authority of commission.
- .075 Establishment of fire protection district by water district.
- .076 Limits -- Commissioners.
- .077 Postponement of organization pending decision on prior action.
- .080 Rates and regulations.
- .085 Repealed, 1994.
- .090 Condemnation.
- .100 Acquisition of existing systems -- Extension of mains and laterals -- How paid for.
- .110 Change of districts -- Procedure -- Deficit.
- .115 Extension of district into adjoining county.
- .120 Incorporated city may be included in district -- Consent -- Contract with city.
- .130 Classification of lands for assessments -- Report.
- .140 Acceptance of report -- Notice -- Final hearing.
- .150 Assessment roll -- Statement of costs -- Hearing -- Final order -- Appeal.
- .160 Striking assessments from roll -- Procedure.
- .170 Payment of assessments in thirty days -- Constructive consent to bond issue or loan.
- .175 Deferred assessments -- Limitation on actions.
- .177 Extension of water service to agricultural district land -- Deferral of assessment -- Payment of service connection costs.

- .180 Issuance of bonds or temporary financing of unpaid assessments.
- .190 Collection of unpaid installments -- Sale of land -- Redemption -- Settlement with collecting officers -- Fees.
- .200 Modification of assessment -- Relevy.
- .210 Lien of assessments.
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- .230 Effect of irregularity -- Exclusive remedies -- Effect of release.
- .240 Record of expenses to be kept -- Apportionment of expenses -- Financial report to consumers -- Books to be open for inspection.
- .250 Repealed, 2008.
- .260 Repealed, 2006.
- .270 Repealed, 2002.
- .280 Additions may be acquired.
- .290 Issuance of bonds for additions.
- .300 Payment of bonds for additions -- Operating and depreciation funds.
- .310 Receiver on default.
- .320 Refunding bonds authorized.
- .330 Issuance -- Form of bonds -- Signatures.
- .340 Interest payments and repurchase of bonds out of sinking fund -- Bonds negotiable and nontaxable.
- .350 County may pay part costs.
- .360 Manner of giving notices required by this chapter.
- .361 Merger of water districts -- Hearing -- Orders.
- .363 Merger of water districts -- Board of resulting district -- Transfer of assets -- Payment of obligations.
- .367 Discontinuance of water district -- Procedure.
- .370 Construction, acquisition or enlargement of system by issuance of revenue bonds or by a combination of bonds and assessments.
- .380 Refunding assessment bonds with revenue bonds.
- .390 Revenue bond plan is alternative.
- .395 Financing of an expansion of water district system -- Plan for expansion project -- Applicability.
- .400 District may acquire, develop, maintain and operate gas system -- Procedure.

- .401 Gas system established only if primary supply in district or county.
- .405 Gas distribution system to be administered by water commissioners.
- .407 Operation of sewage disposal systems -- Water district's powers to enforce collection of lawful rates and charges.
- .408 Board to determine order in which water, gas or sewage service is to be commenced.
- .410 Revenue bonds may be issued as provided in KRS 58.010 to 58.140.
- .412 Extending lines through territory of other political subdivision.
- .414 Contract with other municipality or district for services.
- .415 Commissioners may consider installation of fire hydrants on new or extended water lines.
- .416 Repealed, 2008.

Joint Operation of Water Sources

- .420 Definitions for KRS 74.420 to 74.520.
- .430 Authority for joint operation of water sources.
- .440 Procedure for creation of water commission.
- .450 Membership of water commission -- Term -- Compensation -- Removal -- Status.
- .455 Removal of district water commissioner -- Causes.
- .460 Organization of commission -- Powers and duties -- Authority to acquire water supply -- Obligations.
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- .480 Exclusive water supply -- Basis for establishing rate, charges.
- .490 Commission may contract to supply other public bodies.
- .500 Procedure for participation by other city or water districts.
- .510 Commission declared not to constitute a utility.
- .520 Construction of KRS 74.420 to 74.520.

Penalties

- .990 Penalties.

74.010 Creation of a water district.

Subject to the provisions of KRS 74.012 a fiscal court may create a water district in accordance with the procedures of KRS 65.810.

Effective: July 13, 1984

History: Amended 1984 Ky. Acts ch. 64, sec. 10, effective July 13, 1984. -- Amended 1978 Ky. Acts ch. 384, sec. 179, effective June 17, 1978. -- Amended 1968 Ky. Acts ch. 200, sec. 1. -- Amended 1966 Ky. Acts ch. 70, sec. 2; and ch. 239, sec. 20. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-1.

74.012 Water district -- Creation -- Application to Public Service Commission -- Hearing -- Conditions.

(1) Prior to the establishment of any water district as provided by KRS 74.010, and prior to the incorporation or formation of any nonprofit corporation, association or cooperative corporation having as its purpose the furnishing of a public water supply (herein referred to as a "water association"), a committee of not less than five (5) resident freeholders of the geographical area sought to be served with water facilities by the proposed district or the proposed water association shall formally make application to the Public Service Commission of Kentucky in such manner and following such procedures as the Public Service Commission may by regulation prescribe, seeking from the commission the authority to petition the appropriate county judge/executive for establishment of a water district, or to proceed to incorporate or otherwise create a water association. The commission shall thereupon set the application for formal public hearing, and shall give notice to all other water suppliers, whether publicly owned or privately owned, and whether or not regulated by the commission, rendering services in the general area proposed to be served by said water district or water association, and to any planning and zoning or other regulatory agency or agencies with authority in the general area having concern with the application. The commission may subpoena and summon for hearing purposes any persons deemed necessary by the commission in order to enable the commission to evaluate the application of the proponents of said proposed water district or water association, and reach a decision in the best interests of the general public. Intervention by any interested parties, water suppliers, municipal corporations, and governmental agencies shall be freely permitted at such hearing.

(2) The public hearing shall be conducted by the commission pursuant to the provisions of KRS 278.020. At the time of the hearing, no employment of counsel or of engineering services shall have been made to be paid from water district funds, water association funds, or made a charge in futuro against water district or water association funds, if formation of such water district or water association is permitted by the commission.

(3) Before the Public Service Commission shall approve any application for creation of a water district or water association, the commission must make a finding and determination of fact that the geographical area sought to be served by such proposed water district or water association cannot be feasibly served by any existing water supplier, whether publicly or privately owned, and whether or not subject to the regulatory jurisdiction of the commission. If it shall be determined that the geographical area sought to be served by the proposed water district or water association can be served more feasibly by any other water supplier, the commission shall deny the application and shall hold such further hearings and make such further determinations as may in the circumstances be appropriate in the interests of the public health, safety and general welfare.

(4) Any order entered by the commission in connection with an application for creation of a water district or water association shall be appealable to the Franklin Circuit

Court as provided by KRS 278.410.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 384, secs 19 and 180, effective June 17, 1978. -- Created 1972 Ky. Acts ch. 310, sec. 2.

Legislative Research Commission Note. This section was amended by two sections of a 1978 act which do not appear to be in conflict and have been compiled together.

74.015 Repealed, 1972.

Catchline at repeal: Determination by Public Service Commission of necessity for water district prior to organization -- Appeal.

History: Repealed 1972 Ky. Acts ch. 310, sec. 5. -- Created 1966 Ky. Acts ch. 70, sec. 3.

74.020 Appointment of commissioners -- Number -- Terms -- Removal -- Vacancies -- Organization -- Bond -- Compensation -- Mandatory training -- Notice of vacancy.

(1) A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. The term of each commissioner is four (4) years, except as provided in this section:

(a) If a district lies wholly within a single county, or operates as a single-county district, as provided in paragraph (c) of this subsection, the board of commissioners shall be composed of either three (3) or five (5) members as the county judge/executive shall determine. Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established, who shall be appointed by the county judge/executive with the approval of the fiscal court. Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the court.

(b) Except as provided in paragraph (c) of this subsection, if a district formed in a single county extends its area to include territory in one (1) or more adjacent counties, as provided by KRS 74.115, the board of commissioners shall be appointed by the appropriate county judges/executive, with the approval of the respective fiscal courts of the concerned counties as follows: in two (2) county districts, three (3) members from the original district and two (2) members from the extended portion of the district; for extensions into three (3) or more counties, the respective county judges/executive, with the approval of the respective fiscal courts, shall appoint, in addition to the existing membership of the commission, two (2) members from the original one-county district and two (2) members from the newly extended portion of the district. Orders establishing the extension shall provide for the staggering of initial terms in an equitable manner.

(c) If a district acquires an existing water or gas distribution system serving an area which extends beyond the boundaries of the district into one (1) or more additional counties, or if a district extends its area to include territory in one (1) or more adjacent counties as provided by KRS 74.115, it may operate the distribution system so acquired, or extended, without adding additional board members, if the new area to be served shall be deemed to be a minor portion of the total area served by the district, and if the fiscal court of the county containing the minor portion of the total area shall have agreed to the acquisition or to the extension of the distribution system. If less than twenty-five percent (25%) of the total assets of the distribution system are located within any particular county included in the territorial boundaries of the district, it shall be conclusively presumed, with respect to that particular county, that the district comes within the terms of this subsection.

(2) A commissioner may be removed from office as provided by KRS 65.007 or 74.455.

(3) A commissioner who participates in any official action by the water district board of

commissioners which results in a direct financial benefit to him may be removed from office as provided by KRS 65.007 or 74.455.

(4) Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

(5) The commission shall elect a chairman, vice chairman, secretary, treasurer, and any other officers and assistant officers as the commission may deem necessary, each of whom shall be members of the commission. Any two (2) or more offices may be held by the same person, except that the chairman may not hold any other office. Each commissioner shall execute a bond for the faithful performance of the duties of his position.

(6) Each commissioner shall receive an annual salary of not more than thirty-six hundred dollars ($3,600), which shall be paid out of the water district fund, except that beginning January 1, 1999, each commissioner who completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the Public Service Commission may receive an annual salary of not more than six thousand dollars ($6,000) to be paid out of the water district fund. An educational year shall begin on January 1 and end on the following December 31. In the case of single-county districts, which shall be deemed to include districts described in paragraph (c) of subsection (1) of this section, the salary shall be fixed by the county judges/executive with the approval of the fiscal court; in multicounty districts, it shall be fixed by the agreement between the county judges/executive with the approval of their fiscal courts. In fixing and approving the salary of the commissioners, the county judge/executive and the fiscal court shall take into consideration the financial condition of the district and its ability to meet its obligations as they mature.

(7) (a) In order to receive an increase in salary as specified in subsection (6) of this section, commissioners shall successfully complete six (6) instructional hours of water district management training annually. The training shall be approved and paid for by the water district of the county the commissioner represents. Those commissioners not required to complete the six (6) instructional hours shall be reimbursed for the cost of instruction if they choose to complete the water district training.

(b) The Public Service Commission shall be responsible for the regulation of all water district management training programs for commissioners of water districts, combined water, gas, or sewer districts, or water commissions.

(c) The Public Service Commission shall encourage and promote the offering of high quality water district management training programs that enhance a water district commissioner's understanding of his or her responsibilities and duties.

The commission shall, no later than January 1, 1999, establish standards and procedures to evaluate, accredit, and approve water district management training programs.

(8) (a) At least once annually, the Public Service Commission shall provide or cause to be conducted a program of instruction, consisting of at least twelve (12) hours of instruction, that is intended to train newly appointed commissioners in the laws governing the management and operation of water districts and other subjects that the Public Service Commission deems appropriate. The commission may charge a reasonable registration fee to recover the cost of the programs and may accredit programs of instruction that are conducted by other persons or entities and that the commission deems equivalent to its program of instruction.

(b) Within twelve (12) months of his or her initial appointment, each commissioner shall complete the program of instruction described in paragraph (a) of this subsection. Any commissioner who fails to complete the program within twelve (12) months of his or her initial appointment shall forfeit his or her office and all right to act in discharge of the duties of the office. A commissioner required to attend a program under this subsection shall be reimbursed for the cost of instruction by his or her water district.

(9) (a) Within thirty (30) days of the occurrence of a vacancy on its board of commissioners resulting from the expiration of a term or the death, resignation, or removal of the incumbent, a water district shall notify in writing the Public Service Commission of the existence of the vacancy. The notice shall include the name of the commissioner who last held the position and the date on which the unexpired term will end.

(b) Within thirty (30) days of the appointment of a commissioner and the appropriate fiscal court's approval of that appointment, a water district shall notify the Public Service Commission of the appointment. The notice shall include the appointed person's name and the date of the expiration of his or her term.

(10) The Public Service Commission may promulgate administrative regulations in accordance with KRS Chapter 13A to implement the requirements of this section.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 18, sec. 1, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 6, sec. 3, effective July 15, 2008. -- Amended 1998 Ky. Acts ch. 76, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 236, sec. 1, effective April 4, 1996. -- Amended 1994 Ky. Acts ch. 298, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 310, sec. 1, effective July 14, 1992; and ch. 388, sec. 3, effective July 14, 1992. -Amended 1984 Ky. Acts ch. 307, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 330, sec. 9, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 18, sec. 4, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 384, sec. 181, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 257, sec. 1. -- Amended 1974 Ky. Acts ch. 309, sec. 1. -- Amended 1970 Ky. Acts ch. 218, sec. 1. -- Amended 1966 Ky. Acts ch. 170, sec. 1; and ch. 255, sec. 88. -- Amended 1962 Ky. Acts ch. 218, sec. 1. -- Amended 1958 Ky. Acts ch. 174, sec. 1. -- Amended 1952 Ky. Acts ch. 12, sec. 1. -- Recodified 1942 Ky. Acts

ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 928g-2, 938g-4.

74.030 Legal services -- Payment.

The commission may employ legal counsel whose compensation shall be paid from water district funds.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 6, sec. 4, effective July 15, 2008. -- Amended 1958 Ky. Acts ch. 174, sec. 2. -- Amended 1946 Ky. Acts ch. 16, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-18.

Legislative Research Commission Note. A technical correction has been made to this section by the Reviser of Statutes under authority of KRS 7.136.

74.040 Chief executive officer -- Employees -- Expenses -- Salary.

The commission may employ a person to serve as the chief executive officer of the water district. This person shall not be one (1) of the water district's commissioners. The person may be designated the general manager, superintendent, or chief executive officer of the district or by any other similar title. The chief executive officer shall perform such additional duties as the commission may require of him or her and shall be subject to the orders of the commission. The chief executive officer shall employ all necessary labor and assistance in the performance of his or her duties, and he or she shall report to the commission all expenses incurred. The salary of the chief executive officer shall be fixed by the commission.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 6, sec. 5, effective July 15, 2008. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-21.

74.050 Treasurer -- Duties -- Compensation -- Bond.

The treasurer of the commission shall be the lawful custodian of the funds of the water district and shall cause the funds to be disbursed according to procedures adopted by the commission. The procedures shall include a requirement for approval of disbursements by a commissioner in addition to the treasurer. The treasurer shall cause to be maintained a proper record of the receipts and disbursements of the water district in accordance with the Uniform System of Accounts for utilities. In addition to the compensation for commissioners as set out in KRS 74.020, as compensation for his or her services the treasurer shall receive an amount fixed by the commission, not to exceed two hundred dollars ($200) per year. The treasurer shall execute bond to the commission in an amount and with such surety as determined by the commission.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 6, sec. 6, effective July 15, 2008. -- Amended 1966 Ky. Acts ch. 255, sec. 89. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 938g-15, 938g-19.

74.060 Repealed, 1958.

Catchline at repeal: Power of appointment to include power of removal.

History: Repealed 1958 Ky. Acts ch. 174, sec. 3. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-16.

74.070 Duties and powers of commission -- Corporate powers of water district exercised by or under authority of commission.

(1) The commission shall be a body corporate for all purposes, and may make contracts for the water district with municipalities and other persons.

(2) All corporate powers of the water district shall be exercised by, or under the authority of, its commission. The business and affairs of the water district shall be managed under the direction and oversight of its commission.

(3) The commission may prosecute and defend suits, hire the chief executive officer and do all acts necessary to carry on the work of the water district.

(4) The commission may adopt bylaws not inconsistent with the provisions of this chapter.

(5) The commission shall comply with the provisions of KRS 65A.010 to 65A.090.

Effective: March 21, 2013

History: Amended 2013 Ky. Acts ch. 40, sec. 26, effective March 21, 2013. -- Amended 2008 Ky. Acts ch. 6, sec. 7, effective July 15, 2008. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 938g-4, 938g-5.

74.075 Establishment of fire protection district by water district.

The board of commissioners of any legally existing water district created under the authority of KRS Chapter 74 may have the power to create a fire protection district where no fire protection district exists by following the procedures of KRS 65.810 and 75.010.

Effective: July 13, 1984

History: Amended 1984 Ky. Acts ch. 64, sec. 11, effective July 13, 1984. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 64, effective January 2, 1978. -- Created 1972 Ky. Acts ch. 56, sec. 1.

74.076 Limits -- Commissioners.

The newly created fire protection district shall be coextensive with the original water district and the board of commissioners shall be the same for the fire protection district as for the original water district. A fire protection district created under KRS 74.075 to 74.077 shall conform to all the provisions of KRS Chapter 75 except those that are in conflict with KRS 74.075 to 74.077.

History: Created 1972 Ky. Acts ch. 56, sec. 2.

74.077 Postponement of organization pending decision on prior action.

Nothing in KRS 74.075 to 74.077 shall be construed to deny the right to the citizens of a water district to organize a fire protection district as provided under KRS Chapter 75 except that if action has already been taken under KRS 74.075 to 74.077 and remains pending, action for organization of a fire protection district shall be postponed until a final decision has been reached.

History: Created 1972 Ky. Acts ch. 56, sec. 3.

74.080 Rates and regulations.

The commission may establish water rates and make reasonable regulations for the disposition and consumption of water.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-5.

74.085 Repealed, 1994.

Catchline at repeal: Interest rate to be paid by water district.

History: Repealed 1994 Ky. Acts ch. 221, sec. 2, effective July 15, 1994. -- Created 1990 Ky. Acts ch. 357, sec. 1, effective July 13, 1990.

74.090 Condemnation.

If it becomes necessary to acquire a right of way or land, and it cannot be acquired by purchase, the commission may condemn the needed property in the manner provided in the Eminent Domain Act of Kentucky. The owners of land sought to be condemned shall be made parties to the proceeding. Any damage awarded shall be paid by the commission out of the first funds available.

History: Amended 1976 Ky. Acts ch. 140, sec. 24. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-7.

74.100 Acquisition of existing systems -- Extension of mains and laterals -- How paid for.

(1) Whenever a water supply line or system is in operation in any water district, and is supplying water to the citizens and landowners, and the commission deems it expedient to acquire the existing system, they may examine it, and if they find it properly designed and constructed they may purchase it, and pay for it in the same manner as provided for the original construction and improvement; or may pay for it in whole or in part out of any surplus funds in possession, receipt or anticipation of receipt by the commission.

(2) The commission may order any work or improvement it deems necessary to extend the necessary water mains and water laterals in the district to supply water to the residents of the district, and pay for such work by assessment against the land benefited according to benefits, as provided in this chapter, or may pay for the work in whole or in part out of the general fund of the water district realized from all other resources in the district.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-6.

74.110 Change of districts -- Procedure -- Deficit.

The territorial limits of an established water district may be enlarged or diminished in the following way:

(1) The commission shall file a petition with the county judge/executive, describing the territory to be annexed or stricken off, and setting out the reasons therefor.

(2) Notice of the petition shall be given in the manner provided by KRS Chapter 424. Within thirty (30) days after the notice, any resident of the water district or the territory proposed to be annexed may file objections and exceptions.

(3) The county judge/executive shall set the matter for hearing, and if the county judge/executive finds that it is reasonably necessary, he shall enter an order annexing or striking off the proposed territory. If the county judge/executive finds that the proposed change is unnecessary, he shall dismiss the petition. Either party may appeal the order to the Circuit Court.

(4) If any of the territory stricken off has been assessed to pay the costs of any improvements, the commission shall strike the assessments from the assessment roll and refund to the respective owners any assessments collected on the land which have been stricken off.

(5) If a deficit is incurred by striking off part of a water district, or by striking assessments from the assessment roll, so that the assessment roll is insufficient to pay the bonded indebtedness of the district, the deficit shall be paid out of the general fund of the district, realized from all other resources in the district.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 6, sec. 8, effective July 15, 2008. -- Amended 1978 Ky. Acts ch. 384, sec. 182, effective June 17, 1978. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-3.

74.115 Extension of district into adjoining county.

(1) Upon written request of two (2) or more freeholders in a county or counties adjacent to a county containing a water district, the board of commissioners of the district may petition the county judge/executive of the adjoining county or counties for addition of proposed territory. The procedure for such extension shall be the same as prescribed in KRS 74.110 and the county judge/executive of the adjoining county may make such order as is therein provided.

(2) Water districts may be established and extended regardless of whether the entire territory of the district is continuous, provided that such territory lies in a county or counties in which the district has been authorized to serve.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 384, sec. 183, effective June 17, 1978. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 20, sec. 6, effective January 2, 1978. -- Created 1966 Ky. Acts ch. 70, sec. 6.

74.120 Incorporated city may be included in district -- Consent -- Contract with city.

(1) All or any part of an incorporated city may be included in the boundaries of any existing water district or water district being newly organized, provided the governing body of such city by resolution or ordinance gives, or has given, its consent. Said consent may be limited to water, gas or sewage service, and the authority of the water district to serve the area of the incorporated city shall be limited by the exclusion of any type of service from the consent given. Any city which has been included in the boundaries of a water district for ten (10) or more years shall be deemed to have given its consent to the service, whether water, gas, or sewage, which has been provided for such period. The acquisition by a water district of an existing franchise for a water, gas, or sewage distribution system within such a city, whether by purchase, assignment or otherwise, shall be deemed to constitute the consent of the city which granted the franchise in the first instance, but only for the purpose of operating the type of distribution system for which the franchise was granted.

(2) The commission may contract with any city which is not included within the boundaries of the district for the purpose of furnishing water, gas or sewage services to the residents of such city and may contract with any city for the purpose of obtaining water, gas or sewage services for the use of the district.

(3) When the commission shall contract with any city of the first five (5) classes in the manner prescribed in this section, such city shall be deemed a part of the district during the life of the contract, but only for the purpose of carrying out the provisions of the contract. Nothing herein shall impair the ownership by the contracting city of its own system, or empower the district to take any action not authorized by the contract.

Effective: July 15, 1988

History: Amended 1988 Ky. Acts ch. 104, sec. 1, effective July 15, 1988. -- Amended 1966 Ky. Acts ch. 170, sec. 2. -- Amended 1962 Ky. Acts ch. 218, sec. 2. -- Amended 1954 Ky. Acts ch. 106, sec. 1. -- Amended 1952 Ky. Acts ch. 133, sec. 6; and ch. 175, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-24.

74.130 Classification of lands for assessments -- Report.

(1) The commission shall examine the real estate in the district that may be affected by the proposed water system, and classify it into five (5) classes according to the benefit it will receive from the construction and operation of the water system. The real estate receiving the most benefit shall be marked "class A," and the other classes shall be marked "class B," "class C," "class D" and "class E," respectively, the real estate receiving the smallest benefit being marked "class E." All real estate actually receiving water shall be placed in the highest classification. The amount of real estate owned by any person in each class, and the extent benefited shall be determined. The scale of assessment to be made by the commission upon the several classes shall be in the ratio of five (5), four (4), three (3), two (2) and one (1). The classification shall form the basis of the assessment of benefits to the real estate for all purposes.

(2) If the commission believes that substantial injustice will be done any landowner by strict conformity to the five (5) class rule above, the classification may be changed by diminishing or increasing the number of classes so as to conform to existing conditions.

(3) The commission shall make a report containing a statement of the estimated cost of the work and improvement to be made in the district, a description of all real estate in the district, showing the amount of real estate in each class, in tabulated form, and the names of the owners, and a statement of the estimated benefits that will accrue to each class of real estate by reason of the construction of the proposed improvements.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-8.

74.140 Acceptance of report -- Notice -- Final hearing.

When the final report is completed and filed, it shall be examined by the county judge/executive, and if it is found to be sufficient it shall be accepted. If it is not sufficient, it may be referred back to the commission with instructions to secure further information, to be reported at a subsequent date fixed by the county judge/executive. When the report is fully completed and accepted by the county judge/executive, a date not less than twenty (20) days thereafter shall be fixed by the county judge/executive for the final hearing upon the report, and notice of the hearing shall be given by publication pursuant to KRS Chapter 424. During that time, a copy of the report shall be on file in the office of the county clerk, and shall be open to the inspection of any landowner or person interested within the district. Any landowner assessed therein may file exception to the report. The county judge/executive upon final hearing shall confirm or reject the report.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 384, sec. 184, effective June 17, 1978. -- Amended 1966 Ky. Acts ch. 239, sec. 21. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-9.

74.150 Assessment roll -- Statement of costs -- Hearing -- Final order -- Appeal.

(1) After the classification of the land and the ratio of assessment of the different classes to be made has been confirmed by the county judge/executive, the commission shall prepare an assessment roll in duplicate, signed by the chairman and secretary of the commission, giving a description of all the land in the water district, the name of the owner, and the amount of assessment against each of the several tracts of land. In preparing this assessment roll the commission shall ascertain the total cost of the improvement, the cost of the proceedings and all wages paid or to be paid, and the total shall be the amount to be paid by the lands benefited. Attached to this water-assessment roll and filed with it, shall be a statement of all the costs of the work to be done, and five percent (5%) in addition to meet any unforeseen contingencies. This statement of costs shall also be made in duplicate and signed by the chairman and secretary of the commission. One (1) copy of the assessment roll and statement of costs shall be filed with the county clerk in which the proceeding is pending, and he shall then give at least ten (10) days' notice of the time of the hearing on the assessment roll and statement of costs.

(2) At the time fixed for the hearing, the county judge/executive shall hear in a summary way all objections to the cost of the improvement, as set out in the statement made by the commission and filed with the assessment roll, and all objections to the assessments of lands therein set forth, and shall enter an order confirming the assessment roll, or directing the commission to change the assessments in accordance with the finding of the county judge/executive. The order of the county judge/executive confirming or modifying the assessment roll and statement of costs shall be final for all purposes if not appealed within thirty (30) days after the entry of the order. The county judge/executive shall also direct the clerk to certify to the treasurer of the commission a copy of the assessment roll as filed by the commission or changed by the county judge/executive. One (1) copy of the assessment roll shall be retained by the clerk and recorded as part of the record.

Effective: July 15, 1988

History: Amended 1988 Ky. Acts ch. 104, sec. 3, effective July 15, 1988. -- Amended 1978 Ky. Acts ch. 384, sec. 185, effective June 17, 1978. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-10.

74.160 Striking assessments from roll -- Procedure.

After the assessment roll has been confirmed or modified by the county judge/executive, if the commission is unable to furnish water to the owner of any land in the district, or if the land in any part of the district is so sparsely populated that in the opinion of the commission water could not be furnished to the owners thereof without incurring an unreasonable burden of additional assessment against the lands or an unreasonable burden of indebtedness against the water district without receiving any corresponding return in the profits realized from the sale of water in the territory, the commission may strike the assessments on land not receiving water from the assessment roll, or may reduce the assessments to conform with the benefits received, and refund to the respective owners any assessments collected that have been stricken off or reduced. After striking or reducing such assessments, the commission shall file a petition with the county judge/executive setting out the reasons why the assessments should be stricken off or reduced, with a certified copy of the assessments so stricken off or reduced. The county judge/executive shall then set the proceeding for a hearing, and after giving at least ten (10) days' notice of the time of the hearing, the county judge/executive shall hear all objections to the order of the commission striking or reducing the assessment, and shall enter an order confirming the action of the commission or directing them to change the assessment roll in accordance with the finding of the county judge/executive. The order of the county judge/executive confirming or modifying the order of the commission striking off or reducing the assessment may be appealed from. If a deficit is incurred by striking or reducing any assessment so as to make the assessments insufficient to pay any bonded indebtedness of the water district, the deficit shall be paid out of the general fund of the district realized from all other revenues collected or to be collected in the district.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 384, sec. 186, effective June 17, 1978. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-10.

74.170 Payment of assessments in thirty days -- Constructive consent to bond issue or loan.

Any landowner whose land is assessed for any improvement under the provisions of this chapter may pay his assessment in full at any time within thirty (30) days after notice of assessment has been given. Every person who fails to pay the full amount of his assessment to the treasurer of the commission within thirty (30) days shall be deemed as consenting to the issuing of water district bonds or the taking of a loan by the district, to be repaid out of assessment revenues.

Effective: July 15, 1988

History: Amended 1988 Ky. Acts ch. 104, sec. 4, effective July 15, 1988. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 938g-11, 938g-12.

74.175 Deferred assessments -- Limitation on actions.

(1) When the water district desires to construct a water main which shall be primarily a transmission line and secondarily a line to serve customers along the water main, the commission may recommend to the court that the assessments be on a deferred basis. If the court determines that the water main is primarily a transmission main, and secondarily benefits the property owners abutting the water main, the court may provide that the assessments shall be on a deferred basis.

(2) In the event the assessments are on a deferred basis, they shall not be immediately due and payable until the benefit to the abutting property owners is realized either by a sale of the property or when the abutting property owner desires to tap into the water main, and at that time the deferred assessment shall be paid in full without interest. For a deferred assessment on which the district has not initiated collection action in the courts by July 14, 1992, limitations on an action to collect shall not begin to run until the assessment is immediately due and payable as provided for in this subsection.

(3) In the event a property owner who has a deferred assessment against his property sells only a portion of the property or desires water service for only a portion of the property, the deferred assessment shall be prorated and paid only for the portion being sold or for the reasonable area of property being served by the water main. The property owner shall be required to furnish to the commission a plat of the property being sold or the area which will be served with water, and no other area may be served from that service unless an additional portion of the deferred assessment is paid. For an additional portion of a deferred assessment on which the district has not initiated collection action in the courts by July 14, 1992, limitations on an action to collect shall not begin to run until the additional portion is immediately due and payable because of further sale of the property or further extension of water service.

(4) All remaining provisions of the assessment statutes shall apply to deferred assessments, except as same may be inconsistent with this deferred assessment provision.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 388, sec. 1, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 104, sec. 2, effective July 15, 1988.

74.177 Extension of water service to agricultural district land -- Deferral of assessment -- Payment of service connection costs.

(1) When a water district extends its water lines within its district or extends its water lines under KRS 74.110 beyond the district's territorial limits, and the extension would benefit land within an agricultural district created under KRS 262.850, the assessment against the land within the agricultural district for the cost of the extension shall be deferred. The assessment shall become payable when the land is removed, in part or in its entirety, from the agricultural district and developed for nonagricultural use. If only part of the land is removed from the agricultural district, the deferred assessment shall be prorated and paid only on the portion of the land removed. The land remaining in the district shall continue to benefit from the deferred assessment.

(2) The owner of land for which the assessment of costs for a water line extension has been deferred shall pay for any connection to provide water service from the water line extension to the land benefited by the deferred assessment.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 115, sec. 2, effective July 14, 2000.

74.180 Issuance of bonds or temporary financing of unpaid assessments.

(1) If all assessments are not paid in full by thirty (30) days after notice of assessment, the commission may issue bonds for the amount of the unpaid assessments, or may finance improvements on a temporary basis from district revenues or a loan to be repaid when assessments are collected. If the commission decides to issue bonds, it shall give notice that it proposes to issue bonds, giving the amount of bonds to be issued, the rate of interest they are to bear, and the time they will become payable.

(2) At the expiration of thirty (30) days after the publication, the commission may divide the unpaid assessments into not less than ten (10) annual installments, which shall draw interest at the rate or rates or method of determining rates as the commission deems best and be payable annually, from thirty (30) days after the date of publication. The bonds shall mature in series to correspond with the installments into which the unpaid assessments are divided, and shall draw interest at the rate or rates or method of determining rates as the commission determines, be payable at least annually, and be payable at some place to be designated by the commission. The bonds shall be for the exclusive use and benefit of the water district and shall designate on the face the name of the district and the purpose for which they were issued.

(3) The commission, in dividing the unpaid assessments into installments, shall fix the time for payment, and each landowner shall pay the installments due on his land, with interest due on that installment and deferred installments, to the treasurer of the commission on or before the time fixed by the commission for the maturity of the installment.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 274, sec. 7, effective July 15, 1996. -- Amended 1988 Ky. Acts ch. 104, sec. 5, effective July 15, 1988. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 938g-11, 938g-13.

74.190 Collection of unpaid installments -- Sale of land -- Redemption -- Settlement with collecting officers -- Fees.

(1) Upon the first Monday after an installment is due, the commission shall meet and ascertain the parties whose installments are in default and shall within sixty (60) days issue warrants directing the sheriff or other collecting officer to collect the installments that are in default. The collecting officer shall collect the installments, with interest due on them and deferred installments, together with a penalty of six percent (6%), in the same way state and county taxes are collected, and the collecting officer shall settle with the commission within sixty (60) days from the time the installments were certified to him.

(2) All lands upon which the installments have not been collected at the end of sixty (60) days shall be advertised and sold by the collecting officer in the same manner as in the case of state and county taxes. The sale so made shall be subject to the future installments of the assessments, and at the expiration of ninety (90) days from the date of the original certification of the installments to the collecting officer, the collecting officer shall make final settlement with the commission and pay to them all the moneys in his hands. If the collecting officer fails to make a settlement, the commission may compel him to make the settlement by order against him issued by the district court, after giving him five (5) days' notice in writing. In case any land is not purchased at the sale, the collecting officer shall bid in the land for the district and in his final settlement with the commission shall take credit therefor. The collecting officer shall certify each of the sales to the county clerk as required in the sale of lands for state and county taxes, and the clerk shall record each sale in a book kept by him. For collecting the assessments certified to him the collecting officer shall be paid by the water commission the same fees allowed him for collecting state and county taxes and in the same manner. For recording the certificate of sale the clerk shall be allowed and paid the same fees allowed him by law for similar work in reference to state and county taxes.

(3) The owner of such real estate, or his representatives, heirs or assigns, shall have the right to redeem the land from the sale as is provided for the redemption of lands sold for state and county taxes, but only upon the same terms and conditions and within the same time as allowed in such case.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 384, sec. 187, effective June 17, 1978. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 65, effective January 2, 1978. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-13.

74.200 Modification of assessment -- Relevy.

When the county judge/executive has confirmed an assessment for the construction of a water system and the assessment has been modified by a court, or for some unforeseen cause it cannot be collected, the commission may modify the assessment as originally confirmed to conform to the judgment of the court and to cover any deficit caused by the order of the county judge/executive or unforeseen occurrence. The relevy shall be made for the additional sum required, in the same ratio as in the original assessment. In any other case where it is ascertained that the amount assessed against the property in the water district is not sufficient to complete the improvements provided for, such deficit may be paid out of current reserve, or the county judge/executive may order a relevy upon the petition of the commission, or any three (3) or more petitioners. The petition must set forth the amount of the deficit, the causes thereof, and the amount necessary to be raised in order to complete the work. The county judge/executive shall give notice of the filing and purpose of the petition and fix a time, not less than ten (10) nor more than twenty (20) days from the giving of the notice, when the petition shall be acted upon. If upon hearing the county judge/executive finds that the relevy asked for in the petition is necessary in order to complete the work, the county judge/executive shall direct such relevy to be made by the commission. The relevy shall be made in the same ratio as the original assessment was made and shall be collected in the same way.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 384, sec. 188, effective June 17, 1978. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-14.

74.210 Lien of assessments.

The assessment roll and each installment shall be a first lien on the land assessed, subject only to the lien for state and county taxes.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 938g-10, 938g-13.

74.220 Assessment roll as evidence -- Enforcement of liens -- Proceedings -- Costs.

The assessment roll as made up by the commission shall be prima facie evidence in all courts that all steps necessary to be taken have been properly taken, and that all proceedings are regular and valid. The commission may enforce liens under this chapter by an action against the land in the Circuit Court at any time after January 1 of the year for which the assessments were levied. The right to institute such an action shall not prevent sales by the collecting officer as in cases of delinquent state and county taxes. The proceeds of sales in actions under this section shall be paid into the treasury of the district.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-18.

74.230 Effect of irregularity -- Exclusive remedies -- Effect of release.

The collection of an assessment shall not be defeated, where the parties are properly before the court, on account of any irregularity in the proceedings that does not affect the substantial right of the party complaining. The remedies provided for in this chapter are exclusive of all other remedies. If any person or property is released, or any assessment raised or lowered, it shall not affect the rights or liabilities of any other property or person.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-20.

74.240 Record of expenses to be kept -- Apportionment of expenses -- Financial report to consumers -- Books to be open for inspection.

(1) The commission shall keep an account of the time spent by all employees, and each item of expense incurred in connection with any water district, and shall charge such account to the district for which the expense was incurred. Where the time or work is upon more than one (1) district at the same time, it shall be apportioned between the districts. In the event any compensation fixed by the commission for any employee is on a salary basis, such salary shall be equitably apportioned between the districts by the commission.

(2) The commission shall be required to prepare and make available, to the consumers of the water supplied by any water district, an annual statement of receipts and disbursements; and any floating or bonded indebtedness. This report shall show the cost of water, material, labor, other salaries and any other expenses incidental to the operation and maintenance.

(3) All books of the commission shall be open for public inspection during normal business hours.

History: Amended 1946 Ky. Acts ch. 70, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-17.

74.250 Repealed, 2008.

Catchline at repeal: Fees -- Costs.

History: Repealed 2008 Ky. Acts ch. 6, sec. 18, effective July 15, 2008. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-15.

74.260 Repealed, 2006.

Catchline at repeal: Letting of work -- Notice -- Procedure -- Bond of bidder.

History: Repealed 2006 Ky. Acts ch. 158, sec. 2, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 108, sec. 1, effective June 20, 2005. -- Amended 1966 Ky. Acts ch. 239, sec. 22. -- Amended 1952 Ky. Acts ch. 92, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-22.

74.270 Repealed, 2002.

Catchline at repeal: Monthly estimates -- Payment.

History: Repealed 2002 Ky. Acts ch. 193, sec. 1, effective July 15, 2002. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-23.

74.280 Additions may be acquired.

(1) Any water district may construct or acquire, and operate, within or without the district, additions, extensions, and all necessary appurtenances to the water system, the cost of which may not be assessed as a local benefit, for the purpose of supplying the water district with water.

(2) One (1) or more of such additions, extensions, or appurtenances owned by one (1) or more persons may be acquired as a single enterprise, and the commission may agree with the owner as to the value thereof and purchase the same at that value.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-28 (1933 Supplement).

74.290 Issuance of bonds for additions.

(1) For the purpose of defraying the cost of constructing or acquiring any additions, extensions, and necessary appurtenances under KRS 74.280, the water district may borrow money and issue negotiable bonds. Before any bonds are issued an ordinance shall be enacted by the commission specifying the amount of the bonds and the rate of interest they are to bear, and reciting that the proposed additions, extensions, or necessary appurtenances that are to be constructed or acquired are to be made pursuant to the provisions of KRS 74.280 to 74.310.

(2) All bonds issued under this section shall bear interest at a rate or rates or method of determining rates payable at least annually, and shall be executed in a manner, and be payable at times not exceeding fifty (50) years from the date of issue, and at a place, as the commission shall determine.

(3) All bonds shall be negotiable and shall not be subject to taxation. If any officer whose signature or countersignature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature or countersignature shall nevertheless be valid the same as if he had remained in office until delivery. The bonds shall be sold in a manner as the commission shall deem for the best interest of the water district, or the contract for the acquisition of any additions, extensions, and appurtenances to the waterworks may provide that payment shall be made in bonds. The bonds shall be payable solely from the revenues of the waterworks and shall not constitute an indebtedness of the water district within the meaning of the Constitution. It shall be plainly stated on the face of each bond that it has been issued under the provisions of KRS 74.280 to 74.310 and that it does not constitute an indebtedness of the water district within the meaning of the Constitution.

(4) If the commission finds that the bonds authorized will be insufficient to accomplish the purpose desired, additional bonds may be authorized and issued subject to the limitations prescribed for the original bonds.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 274, sec. 8, effective July 15, 1996. -- Amended 1968 Ky. Acts ch. 110, sec. 6. -- Amended 1966 Ky. Acts ch. 70, sec. 7. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-28 (1933 Supp.).

74.300 Payment of bonds for additions -- Operating and depreciation funds.

(1) All money derived from any bonds issued under KRS 74.280 to 74.310 shall be applied solely for the construction or acquisition of the additions, extensions and appurtenances, or to advance the payment of interest on bonds during the first three (3) years following the date of issue of the bonds.

(2) At or before the issuance of such bonds the commission shall by ordinance set aside and pledge the income and revenue of the waterworks into a separate and special fund to be used and applied in the payment of the cost of the additions, extensions or appurtenances and the maintenance, operation and depreciation thereof. The ordinance shall definitely fix and determine the amount of revenue that is necessary to be set apart and applied to the payment of the principal and interest of the bonds, and the proportion of the balance of such income and revenue that is to be set aside as a proper and adequate depreciation account. The balance shall be set aside for the operation and maintenance of the waterworks. The rates to be charged for the service from the waterworks shall be sufficient to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal when due, and to provide for the operation and maintenance thereof and an adequate depreciation account.

(3) If there is a surplus in the operating and maintenance fund equal to the cost of maintaining and operating the waterworks during the remainder of the current calendar or fiscal year, and during the next calendar or fiscal year, the commission may at any time transfer any excess over that amount to the depreciation account.

(4) The funds in the depreciation account shall be expended in balancing depreciation in the waterworks or in making new constructions, extensions or additions thereto. The funds may be invested as the commission designates and the income from investments shall be credited to the depreciation account.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-28 (1933 Supplement).

74.310 Receiver on default.

If there is any default in the payment of the principal or interest of any bonds issued under KRS 74.280 to 74.300, any court having jurisdiction of the action may appoint a receiver to administer the waterworks on behalf of the water district. The receiver shall charge and collect rates sufficient to provide for the payment of any bonds or obligations outstanding against the waterworks and for the payment of the operating expenses and shall apply the income and revenue in conformity with KRS 74.300.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-28 (1933 Supplement).

74.320 Refunding bonds authorized.

Water districts organized and operating under this chapter, or under Chapter 139 of the Acts of 1926, may issue refunding bonds for the purpose of refunding any bonded debt.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-28.

74.330 Issuance -- Form of bonds -- Signatures.

Refunding bonds shall be issued under the signature of the chairman of the commission, the countersignature of the treasurer of the commission, and the seal of the district. The bonds shall be serially numbered. The commission shall prescribe the form and denominations of the bonds, and the time, not exceeding forty (40) years, at which they will mature and be redeemable. The bonds shall bear interest at a rate or rates or method of determining rates as the commission directs, be payable at least annually, and shall have interest coupons attached. The proceeds of the bonds shall be used exclusively for the refunding of bonded debts. In case any officer whose signature or countersignature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature or countersignature shall nevertheless be valid the same as if he had been in office until delivery.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 6, sec. 9, effective July 15, 2008. -- Amended 1996 Ky. Acts ch. 274, sec. 9, effective July 15, 1996. -- Amended 1968 Ky. Acts ch. 110, sec. 7. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-29.

74.340 Interest payments and repurchase of bonds out of sinking fund -- Bonds negotiable and nontaxable.

Upon the issuance of refunding bonds, the water district shall annually, from delinquent assessment collection and other revenues, carry to the sinking fund of the water district an amount sufficient to pay the annual interest on the bonds and create a fund for their purchase. Whenever there is a sufficient sum in the sinking fund over the amount required for the payment of interest, it shall be used in the purchasing of as many bonds as is practicable. All such bonds shall be negotiable and shall not be subject to taxation.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-30.

74.350 County may pay part costs.

Any county may, by resolution of the fiscal court, pay any part of the costs of establishing or purchasing a water line or water system.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-25.

74.360 Manner of giving notices required by this chapter.

The notices required by KRS 74.110, 74.150, 74.160, 74.170, 74.180 and 74.200 shall be given by publication pursuant to KRS Chapter 424.

History: Amended 1966 Ky. Acts ch. 239, sec. 23. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 938g-3, 938g-9, 938g-10, 938g-11, 938g-14.

74.361 Merger of water districts -- Hearing -- Orders.

(1) The General Assembly of the Commonwealth of Kentucky determines as a legislative finding of fact that reduction of the number of operating water districts in the Commonwealth will be in the public interest, in that mergers of such districts will tend to eliminate wasteful duplication of costs and efforts, result in a sounder and more businesslike degree of management, and ultimately result in greater economies, less cost, and a higher degree of service to the general public; and that the public policy favors the merger of water districts wherever feasible.

(2) The Public Service Commission of Kentucky is authorized and empowered to initiate, carry out, and complete such investigations, inquiries, and studies as may be reasonably necessary to determine the advisability as to the merger of water districts. Prior to ordering a hearing with reference to the merger of any water district into one (1) or more additional water districts, the Public Service Commission shall cause to be prepared in writing a feasibility report and study regarding the proposed merger, containing such studies, investigations, facts, historical data, and projections as in the circumstances may be required in order to enable the commission to formulate a proper decision regarding such merger.

(3) Based upon the written report and study required to be made incident to any water district merger, the Public Service Commission may propose by order that a merger of water districts be accomplished, and, upon the issuance of such order, shall give actual notice to all water districts proposed to be merged. Said order shall provide for a formal public hearing to be held before the Public Service Commission on the subject of such proposed merger. Actual notice of such merger hearing shall also be furnished to the county judges/executive of each county containing a water district proposed to be merged, and each water commissioner of a water district proposed to be merged, and notice of such public hearing shall be afforded to the public served by the respective water districts sought to be merged, by newspaper notice in accordance with the provisions of KRS Chapter 424.

(4) A formal hearing before the Public Service Commission shall be held with reference to such merger proposal, and, upon such occasion, all water districts which are sought to be merged into a single entity shall be afforded the right to appear, to present evidence, to examine all exhibits and testimony, to cross-examine all witnesses, and to submit such memoranda, written evidence, and briefs as may be desired. Such public hearing may be adjourned from time to time by the Public Service Commission, and notice of such adjournments may, but need not, be afforded as with reference to the initial public hearing. At the conclusion of such proceedings, the Public Service Commission shall enter its order, either merging the water districts which are the subject of the merger proceedings into a single water district, or abandoning the merger proposal.

(5) Outstanding obligations of any water district merged in accordance with the provisions of this section which are secured by the right to levy an assessment as provided by KRS 74.130 to 74.230, inclusive, or secured by a pledge of the income and revenues of the systems operated by any such merged water district, shall continue to be retired from such moneys and funds as shall be collected from the

users of facilities operated by such merged water districts in the original water district area in accordance with the terms and provisions of the enabling laws and the authorizing resolutions or indentures under which the outstanding obligations were issued, until all such obligations have been retired.

(6) In any order ordering the merger of water districts, the Public Service Commission shall make such additional orders as may be required in connection with the schedule of rates, rentals and charges for services rendered to be levied by the water district which remains in existence following such merger, having due regard to contractual commitments made and entered into by the constituent merged water districts in connection with the issuance of obligations by such districts.

(7) Upon the effective date of any merger of water districts, the water commissioners of the merged water districts shall continue to serve as water commissioners of the resulting district, regardless of their normal term expiration, until one (1) year after approval of the merger by the Public Service Commission. Thereafter, the board shall be composed as set forth in KRS 74.363. The appropriate county judge/executive or county judges/executive shall appoint and reappoint water commissioners to manage the business and affairs of the resultant water district, in the manner provided by KRS 74.363.

(8) Any order of merger entered by the Public Service Commission in accordance with this section shall be subject to all of the provisions of KRS Chapter 278, with reference to petitions for rehearing, and appeal.

(9) Using the authority of this section the Public Service Commission can also cause mergers of water associations into water associations or mergers of water associations into water districts.

(10) Nothing contained herein shall be construed to prohibit or limit in any respect the acquisition by water utilities subject to the jurisdiction of the commission or by municipally owned water utilities of the assets of water districts or water associations or the merger of water districts or water associations and water utilities subject to the jurisdiction of the commission or municipally owned water utilities.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 6, sec. 10, effective July 15, 2008. -- Amended 1978 Ky. Acts ch. 384, sec. 189, effective June 17, 1978. -- Created 1972 Ky. Acts ch. 310, sec. 4.

74.363 Merger of water districts -- Board of resulting district -- Transfer of assets -- Payment of obligations.

(1) Boards of commissioners of any two (2) or more water districts may by concurrent action and by approval of a majority of the membership of the board of each merge their districts into one (1).

(2) The members of the boards of commissioners of the merged water districts shall serve as members of the board of commissioners of the resulting district, regardless of their normal term expiration, until one (1) year after approval of the merger by the Public Service Commission. Thereafter, the board shall be composed as follows:

(a) If the boundaries of the resulting district lie wholly within a single county, the board of commissioners shall be composed of between three (3) and seven (7) members as agreed upon by the merged water districts in their merger documents.

(b) If the boundaries of the resulting district lie within two (2) or more counties, the board of commissioners shall be composed of six (6) or more members as agreed upon by the merged water districts in their merger documents.

(3) Each appointment to the board of commissioners of the resulting district shall be made by the appropriate county judge/executive with the approval of the fiscal court. Each member of the board shall be a resident of the county from which he or she is appointed. The initial terms of the board of commissioners after the merger shall be as follows: approximately one-third (1/3) of the commissioners shall be appointed for a term of two (2) years; approximately one-third (1/3) of the commissioners shall be appointed for a term of three (3) years; and the remaining commissioners shall be appointed for a term of four (4) years. Thereafter, all commissioners shall be appointed for a term of four (4) years. KRS 74.020(2) to (10) shall apply to all commissioners and vacancies on the board of commissioners.

(4) The resulting district shall have all the assets and legal liabilities of the water districts joining in the merger. The separate existences of the water districts joining in the merger, except the resulting district, shall cease, and the title to all real estate and other property owned by the water districts joining in the merger shall be vested in the resulting district without reversion or impairment. Bonded obligations of any district secured by the right to levy an assessment as provided by KRS 74.130 through 74.230 or secured by the revenue of the systems operated by the district shall continue to be retired or a sinking fund for such purpose created from the tax assessments or revenue from the system operated by the district from funds collected over the same area by the new board of commissioners in accordance with the laws under which the bonds were issued until all bonded obligations of the old district have been retired.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 18, sec. 2, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 6, sec. 11, effective July 15, 2008. -- Amended 1998 Ky. Acts ch. 76, sec. 2, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 236, sec. 2, effective April 4, 1996. -- Amended 1994 Ky. Acts ch. 298, sec. 2, effective July 15, 1994. -- Created 1966 Ky. Acts ch. 70, sec. 4.

74.367 Discontinuance of water district -- Procedure.

(1) At any time after the organization of a water district, and after approval by the Public Service Commission in a proceeding similar to that provided by KRS 74.012, more than fifty percent (50%) of the freeholders within the district may file a petition with the county judge/executive who had jurisdiction over the organization of the district requesting discontinuance of the water district. The petition shall state the reasons for discontinuance and that all obligations of the district have been met and that approval of the Public Service Commission has been obtained.

(2) After giving notice as provided in KRS Chapter 424 the county judge/executive may conduct such hearings on the petition as may be necessary to assist in making a determination.

(3) If, after hearings on the petition for discontinuance of the district the county judge/executive determines that a discontinuance is in the best interest of the residents of the district, the water district shall be dissolved by order of the county judge/executive and a copy of the order shall be forwarded to the Public Service Commission.

Effective: July 15, 1980

History: Amended 1980 Ky. Acts ch. 369, sec. 8, effective July 15, 1980. -- Amended 1980 Ky. Acts ch. 188, sec. 53, effective July 15, 1980. -- Created 1966 Ky. Acts ch. 70, sec. 5.

Legislative Research Commission Note. This section was amended by two 1980 acts which do not appear to be in conflict and have been compiled together.

74.370 Construction, acquisition or enlargement of system by issuance of revenue bonds or by a combination of bonds and assessments.

(1) Any water district, created in the manner provided in KRS 74.010 to 74.070, both inclusive, may if the commissioners of such water district deem it feasible, build, or acquire or enlarge a water system without resort to, or in combination with, the right to levy assessments for the cost of such water system, as is provided in KRS 74.130 to 74.240, both inclusive, and may obtain the funds with which to build, acquire or enlarge such system by the issuance of revenue bonds, payable solely from the revenue to be derived from the operation of such system, or payable partially from revenues and partially from assessments.

(2) In the event the commissioners shall decide to finance the cost of such construction, acquisition or enlargement by the issuance of revenue bonds, secured solely by the revenue of the system or partially by the revenue of the system and partially by assessments, the commission shall note such decision by appropriate resolution, and shall thereafter proceed under the provisions of KRS 96.350 to 96.510, both inclusive, and the water district and the commission shall have the same powers and duties as a city of the second to sixth class inclusive under the provisions of KRS 96.350 to 96.510, both inclusive. However, the water district and the commission shall not be limited solely to the revenue of the system in securing revenue bonds so issued.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 6, sec. 12, effective July 15, 2008. -- Amended 1988 Ky. Acts ch. 104, sec. 6, effective July 15, 1988. -- Created 1944 Ky. Acts ch. 141, sec. 1.

74.380 Refunding assessment bonds with revenue bonds.

If any district has previously issued bonds secured entirely or partially by the right to levy an assessment as provided by KRS 74.130 to 74.230, both inclusive, and such bonds are redeemed prior to maturity, bonds to refund same may be issued secured solely by the revenue of said system in the manner provided in KRS 74.370.

History: Created 1944 Ky. Acts ch. 141, sec. 2.

74.390 Revenue bond plan is alternative.

KRS 74.370 and 74.380 shall not repeal nor reduce any existing rights or duties of a water district, and the commissioners thereof, but shall constitute an additional and alternate method of financing.

History: Created 1944 Ky. Acts ch. 141, sec. 3.

74.395 Financing of an expansion of water district system -- Plan for expansion project -- Applicability.

(1) A water district organized under this chapter may elect to finance all or part of an expansion of its system by adding a temporary surcharge to the rates charged for service. All funds so collected shall be set apart in a reserve trust account, shall be invested in securities issued or guaranteed by the United States government until they are needed, and shall be expended, together with any interest or other earnings, solely for the expansions or extensions specified in the plan described under subsection (2) of this section. If construction has not begun five (5) years after the surcharge is implemented, all funds so collected shall be returned to the water district customers, together with interest and earnings. This section shall constitute an additional or alternate method of financing expanded facilities, and shall not repeal or reduce any existing rights or duties of a water district.

(2) A water district which elects to establish a reserve trust account under this section shall develop a plan for the expansion project or projects to be financed from the reserve, which shall include the design and estimated cost of each element of the expansion, a time schedule for each step in the project, the proposed financing, and the amount of surcharge to water district rates needed to collect the amounts to be financed out of district reserves. After approval by the board of commissioners, the plan and proposed rates shall be submitted to the Public Service Commission. The commission, after a public hearing, shall issue an order approving, modifying or rejecting the plan. If a plan is approved, the commission shall establish a reasonable surcharge to implement the plan to be collected for a period no longer than five (5) years. The commission shall require the district to maintain its records in such a manner as will enable it, or the commission or its customers, to determine the amounts to be refunded and to whom they are due in the event that surcharge amounts shall be refunded.

(3) The water district may, with the approval of the commission, amend its plan to reflect subsequent developments or new information, but the changes shall not violate the intent of the initial plan.

(4) The provisions of this section also shall apply to water associations organized under KRS Chapter 273.

Effective: July 15, 1988

History: Created 1988 Ky. Acts ch. 323, sec. 1, effective July 15, 1988.

74.400 District may acquire, develop, maintain and operate gas system -- Procedure.

(1) Any county judge/executive, except in counties containing a city of the first class, upon petition of seventy-five (75) resident freeholders of a water district organized under the provisions of KRS 74.010, may authorize said water district to acquire, develop, maintain, and operate a system for the distribution of gas to the citizens of the county. The petition shall describe the territory intended to be included in the area to be served and shall set out the reasons a gas distribution system is needed.

(2) When the petition is filed, the county judge/executive shall give notice of the filing by publication as provided in KRS Chapter 424. Within thirty (30) days after the publication, any resident of the district may file objections, and the county judge/executive shall set the matter for hearing within ten (10) days. If the county judge/executive finds the establishment of a gas distribution system by such district reasonably necessary for the public health, convenience, and comfort of the residents, he shall make an order authorizing the establishment or acquisition of the gas distribution system.

(3) The county judge/executive may in his order strike off any part of the territory that the testimony shows will not be benefited by the creation of the distribution system. If the county judge/executive does not find that the gas distribution system is necessary he shall dismiss the petition. Either party may appeal the order to the Circuit Court.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 384, sec. 191, effective June 17, 1978. -- Amended 1966 Ky. Acts ch. 170, sec. 3; and ch. 239, sec. 24. -- Created 1952 Ky. Acts ch. 133, secs. 1 to 3.

74.401 Gas system established only if primary supply in district or county.

All other provisions of this chapter to the contrary notwithstanding, no water district created under this chapter shall establish a gas distribution system unless the primary source of the gas to be distributed is natural gas produced from within the territorial limits of the district or of a county in which the district is located. A gas distribution system so established may contract with a seller of gas for supplementing supplies of gas. Nothing in KRS 74.020, 74.120, 74.400, 74.401 and 74.408 shall be construed to enlarge any requirement under existing law relating to the furnishing of gas to a water district by any other supplier. However, nothing in this section shall prohibit the continued operation of a gas distribution system in operation pursuant to the provisions of this chapter prior to June 16, 1966.

History: Created 1966 Ky. Acts ch. 170, sec. 5.

74.405 Gas distribution system to be administered by water commissioners.

If the water district is authorized to establish the gas distribution system, such system shall be established, maintained, and operated by the water commissioners of the district authorized to establish said system and said commissioners shall have all of the powers and authority, as regards the gas distributing system, that are conferred upon them for the purpose of furnishing a water supply under KRS 74.010 to 74.390.

Effective: June 19, 1952

History: Created 1952 Ky. Acts ch. 133, sec. 4, effective June 19, 1952.

74.407 Operation of sewage disposal systems -- Water district's powers to enforce collection of lawful rates and charges.

(1) In addition to the other authority which water districts presently have under this chapter, water districts are hereby authorized to acquire, develop, maintain, and operate sewage disposal systems within the confines of their respective districts, except that such sewer systems shall not include territory within the boundaries of existing municipal corporations having the authority to provide such sewer services without the consent of such municipal corporations.

(2) In the event of annexation of territory within a water district by another municipal corporation authorized to provide sewer systems and services, the water district may continue to provide and charge for sewer services within such newly annexed areas until such annexing municipal corporation makes adequate payment, by negotiation or condemnation, for such sewage disposal facilities owned and operated by the water district. The water district commissioners shall have all of the powers and authority, as regards sewer systems, that are conferred upon them for the purpose of furnishing a water supply under KRS 74.010 to 74.415.

(3) If a water district that provides sewer services is also the water supplier, the water district may provide that rates for water service and sewer service be billed simultaneously and may enforce collection of lawful rates and charges for sewer services by discontinuing water service until payment of the delinquent charges, including penalties, interest, and reasonable fees for disconnection and reconnection, is made or some payment arrangement satisfactory to the water district is reached.

(4) If a water district that provides sewer services is not the water supplier, the water district may enforce collection of delinquent sewer service charges in the manner provided in KRS 96.930 to 96.943.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 30, sec. 1, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 6, sec. 13, effective July 15, 2008. -- Created 1962 Ky. Acts ch. 152, sec. 1.

74.408 Board to determine order in which water, gas or sewage service is to be commenced.

The authority of a water district to establish water and gas distribution systems, and sewage treatment and disposal systems, having been recognized and established, it shall be the function of the board of commissioners of the water district to determine when, and in what order, each of these functions shall be commenced, and the operation of one (1) type of system shall not be a prerequisite for the operation of another type of system.

History: Created 1966 Ky. Acts ch. 170, sec. 4.

74.410 Revenue bonds may be issued as provided in KRS 58.010 to 58.140.

Water districts may, in addition to all other methods provided by law, acquire and develop water systems, systems for the distribution of natural, artificial, or mixed gas and sewage disposal systems through the issuance of revenue bonds under the terms and provisions of KRS 58.010 to 58.140.

History: Amended 1962 Ky. Acts ch. 152, sec. 2. -- Created 1952 Ky. Acts ch. 133, sec. 5.

74.412 Extending lines through territory of other political subdivision.

Where operation of a sewer system requires, because of watershed factors or other reasons, water districts are authorized to extend lines through the territory of any municipal corporation or county with prior consent of such municipal corporation or county.

History: Created 1962 Ky. Acts ch. 152, sec. 3.

74.414 Contract with other municipality or district for services.

The commissioners of a water district, in order to abate possible health menaces in their area and to increase the consumption of water in the area, or whenever such commissioners deem it to be for the general benefit of the water district, shall have the authority to contract with any city, water district or sewer construction district, or other incorporated municipality or district, to provide for the operation of a water system, or a sanitary sewer system, or both, regardless of whether or not such water district operated by said board of commissioners has or will acquire any ownership rights in such systems to be so operated, upon such terms and conditions as such board of commissioners may deem appropriate, with or without any consideration being paid to or received by such water districts, other than the general benefit which may accrue to the water district from having more water or sewer customers and consequent increased use of water or sewer services.

History: Amended 1966 Ky. Acts ch. 146, sec. 1(1). -- Created 1962 Ky. Acts ch. 152, sec. 4.

74.415 Commissioners may consider installation of fire hydrants on new or extended water lines.

(1) The commissioners of a water district, or the governing body of a water association referred to in KRS 74.012(1), in order to provide adequate means of fire protection, may consider the installation of fire hydrants on new or extended water lines within their area. They may investigate the availability of supplementary funding to pay the incremental costs of line sizing and hydrant installation. The commissioners or governing body shall not eliminate fire hydrants from new or extended water lines unless they determine that hydrants are not feasible. Their analysis shall include consideration of the incremental costs of adequately sized pipe and associated pumps and towers, and the benefits of real estate development, water sales, the availability of fire protection insurance, and the reduced fire insurance premiums which may result from the installation of hydrants at specified intervals.

(2) If a private real estate subdivision developer has not included adequately sized pipe and fire hydrants in his development plan, the commissioners of a water district or the governing body of a water association which has the capacity to supply adequate water for fire hydrants shall require, at the time the developer applies for permission to hook into the district's water lines, an analysis by the developer of the incremental cost of hydrants and piping adequately sized for hydrants, the effect of hydrants on the cost and availability of fire protection insurance, and conclusions as to why the installation of hydrants is not feasible.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 122, sec. 2, effective July 14, 1992. -- Created 1966 Ky. Acts ch. 146, sec. 1(2).

74.416 Repealed, 2008.

Catchline at repeal: Approval of sanitary sewer system project in Jefferson County.

History: Repealed 2008 Ky. Acts ch. 6, sec. 18, effective July 15, 2008. -- Created 1962 Ky. Acts ch. 152, sec. 5.

74.420 Definitions for KRS 74.420 to 74.520.

As used in KRS 74.420 to 74.520, unless the context requires otherwise:

(1) "Sources of supply of water" means and includes any or all of the following: wells, impounding reservoirs, standpipes, storage tanks, pumps, machinery, purification plants, softening apparatus, trunk mains, and all other appurtenances useful in connection with developing and furnishing a supply of water under pressure into the water distribution systems of the cities, water districts, water associations or federal agencies which are represented by a commission created pursuant to the provisions of KRS 74.420 to 74.520.

(2) "Water association" means a nonprofit corporation formed for the purpose of furnishing water services to the general public pursuant to KRS Chapter 273.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 167, sec. 1, effective June 24, 2003. -- Amended 1996 Ky. Acts ch. 122, sec. 1, effective July 15, 1996. -- Created 1960 Ky. Acts ch. 207, sec. 1, effective June 16, 1960.

74.430 Authority for joint operation of water sources.

In the interest of the public health and for the purpose of providing an adequate supply of water to cities, water associations, water districts, and facilities owned or operated by federal agencies, any two (2) or more cities, or any two (2) or more water districts organized under this chapter, or any combination of cities, water districts, water associations, and federal agencies may jointly acquire, either by purchase or construction, sources of supply of water and may operate jointly the sources of supply of water and improve and extend them in the manner provided in KRS 74.420 to 74.520. The governing body of any city, water association, water district, or federal agency desiring to avail themselves of the provisions of KRS 74.420 to 74.520 shall adopt a resolution or ordinance determining and electing to acquire and operate jointly sources of supply of water.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 167, sec. 2, effective June 24, 2003. -- Amended 1996 Ky. Acts ch. 122, sec. 2, effective July 15, 1996. -- Created 1960 Ky. Acts ch. 207, sec. 2, effective June 16, 1960.

74.440 Procedure for creation of water commission.

(1) Upon the adoption of an ordinance or resolution by the governing body of each city, water association, or water district, or upon a decision by a federal agency, a certified copy of it shall be filed with the county judge/executive of the county in which the cities, water associations, water districts, or federal agencies proposing the creation of the commission having the greatest aggregate population are situated; and upon the filing, the county judge/executive shall by appropriate order set a date for a public hearing on the creation of the commission and shall give reasonable notice of the public hearing, which notice may be given in the manner as provided by KRS Chapter 424. Any customer of the water systems or resident of the cities proposing the creation of the commission may file objections; and at the public hearing if the county judge/executive finds that the establishment of the commission is reasonably necessary or advantageous for the public health, convenience, and comfort of the customers of all the water systems which proposed the creation of the commission, he shall make an order establishing the commission and designating it by name which name shall include the words "water commission."

(2) If the county judge/executive does not find that the creation of a commission is reasonably necessary or advantageous, he shall make an appropriate order in this regard. Any party in interest may appeal the order to the Circuit Court or the cities, water associations, and water districts may revise and readopt the ordinances or resolutions, or the federal agency may revise its decision.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 167, sec. 3, effective June 24, 2003. -- Amended 1996 Ky. Acts ch. 122, sec. 3, effective July 15, 1996. -- Amended 1978 Ky. Acts ch. 384, sec. 192, effective June 17, 1978. -- Created 1960 Ky. Acts ch. 207, sec. 3, effective June 16, 1960.

74.450 Membership of water commission -- Term -- Compensation -- Removal -- Status.

(1) After the county judge/executive has made an order creating a water commission, the presiding officer of each of the cities, water associations, or water districts which proposed the creation of the commission with the approval of its governing body, and each federal agency which joined in a proposal shall appoint one (1) commissioner. If the number of commissioners so appointed by the presiding officers of the cities, water associations, or water districts and by the federal agency or agencies shall equal or exceed five (5), no further commissioners shall be appointed and the commissioners shall be and constitute the water commission.

(2) If the number of commissioners appointed by the presiding officers of the cities, water associations, water districts, or federal agencies shall be less than five (5), the county judge/executive who entered the order creating the commission shall appoint additional commissioners to the commission as necessary to make the number of commissioners equal five (5). The commissioners shall constitute the commission, which shall be a public corporation and a public body corporate and politic with the powers and duties specified in KRS 74.420 to 74.520. The commission may in its corporate name contract and be contracted with, sue and be sued, adopt and alter at its pleasure a corporate seal, and purchase, own, hold, and dispose of all real and personal property necessary for carrying out its corporate purpose under KRS 74.420 to 74.520.

(3) The commissioners originally appointed shall meet and select by lot their respective terms of office so that approximately one-third (1/3) of the commissioners shall serve for a term of two (2) years, a like number for a term of three (3) years and the remaining commissioner or commissioners for a term of four (4) years. The terms shall be deemed to commence from the first day of the month during which the order of the county judge/executive creating the commission was entered.

(4) Upon the expiration of the term of office of each of the commissioners, a successor shall be appointed to succeed him for a term of four (4) years and the appointment shall be made in the same manner as the original appointment.

(5) Each commissioner shall serve until his successor has been appointed and has been qualified. Each commissioner shall be a resident of the service area of the water systems or an employee of the federal agency which is represented by the commission. A commissioner shall be eligible for reappointment upon the expiration of his term. A vacancy shall be filled for the balance of the unexpired term in the same manner as that prescribed for the appointment of the person who has ceased to hold office. Each commissioner shall receive the same compensation, which shall not be more than five hundred dollars ($500) per year, to be fixed by the commission and to be paid out of commission funds, except that a commissioner representing a federal agency shall serve without compensation. Each commissioner shall furnish a bond for faithful performance of his official duties. This bond shall not be less than five thousand dollars ($5,000); the amount shall be fixed by the commission; and its cost shall be paid by the commission.

(6) Each commissioner may be removed by the official by whom he was appointed, for

cause, after hearing by the appointing official and after at least ten (10) days' notice in writing has been given to the commissioner, which notice shall embrace the charges preferred against him. At the hearing he may be represented by counsel. The finding of the appointing official shall be final and removal results in vacancy in the office. A federal agency shall determine its own appointment and removal procedures for its representative.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 167, sec. 4, effective June 24, 2003. -- Amended 1996 Ky. Acts ch. 122, sec. 4, effective July 15, 1996. -- Amended 1978 Ky. Acts ch. 384, sec. 193, effective June 17, 1978. -- Created 1960 Ky. Acts ch. 207, sec. 4, effective June 16, 1960.

74.455 Removal of district water commissioner -- Causes.

(1) From and after the creation and establishment of a water district and the appointment of water commissioners to manage the affairs of the district, and following the acquisition or construction by any duly created and established water district of a public water system, and the consequent establishment of regulatory jurisdiction over such water district by the Public Service Commission of Kentucky, the Public Service Commission may remove any water commissioner from his office for good cause, including, inter alia, incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office, including without limiting the generality of the foregoing, failure to comply with rules, regulations, and orders issued by the Public Service Commission.

(2) No such order of removal with respect to any water commissioner shall be entered by the Public Service Commission until a public hearing on the merits with reference to such matter has been held by the commission, at which hearing the water commissioner proposed to be removed from office shall be afforded the opportunity to appear, either pro se, or by counsel and file briefs, memoranda and motions, cross-examine witnesses, examine exhibits, and present evidence, both orally and in writing. All such orders of removal entered by the Public Service Commission shall be final and shall not be subject to appeal. Any water commissioner may waive such public hearing, in which case an order on removal may be forthwith entered by the commission.

(3) Using procedures of this section the Public Service Commission may also request the removal of directors, trustees or other governing persons of water associations in like manner.

History: Created 1972 Ky. Acts ch. 310, sec. 3.

74.460 Organization of commission -- Powers and duties -- Authority to acquire water supply -- Obligations.

The commission shall organize by appointing a chairman from its own members and a secretary and a treasurer, who need not be commissioners. The secretary shall keep a record of all proceedings of the commission which shall be available for inspection as other public records. The treasurer shall be the lawful custodian of all funds of the commission and shall pay same out on orders authorized or approved by the commission. The secretary and treasurer shall perform other duties appertaining to the affairs of the commission and shall receive the salaries prescribed by the commission, and either or both may be required to furnish bonds in sums to be fixed by the commission for the use and benefit of the commission. The commission shall adopt its own rules of procedure and provide for its meetings. The commission shall have full and complete supervision, management, and control of the sources of supply of water as provided in the ordinances or resolutions for acquiring and operating them, and in their maintenance, operation, and extension. The commission may contract with cities, water associations, water districts, or federal agencies which are represented by the commission for furnishing a supply of water to the parties for a period not exceeding fifty (50) years and the governing bodies of the cities, water associations, water districts, or federal agencies may enter into the contracts with the commission. For the purpose of acquiring all or any part of its sources of supply of water, the commission may purchase from cities, water associations, water districts, or federal agencies which are represented by the commission for mutually agreed terms without regard to actual value any sources of supply of water separate and apart from the water distribution systems of the parties; and the cities, water associations, water districts, or federal agencies may convey the sources of supply of water to the commission without any election or voter approval notwithstanding any provision of any other law to the contrary. If any city, water association, or water district has outstanding any obligations which by their terms are in any manner payable from the revenues of their waterworks distribution system, the proceeds received from any conveyance shall be sufficient to retire all of the outstanding obligations, including all interest accrued and to accrue thereon to the date of retirement thereof; and the proceeds when received shall be set aside in a special fund and used for that purpose. The commission may appoint or contract for the services of officers, agents, and employees, including engineers, attorneys, accountants, fiscal agents, and other professional persons, prescribe their duties, and fix their compensation.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 167, sec. 5, effective June 24, 2003. -- Amended 1996 Ky. Acts ch. 122, sec. 5, effective July 15, 1996. -- Created 1960 Ky. Acts ch. 207, sec. 5, effective June 16, 1960.

74.470 Authority to issue revenue bonds.

For the purpose of acquiring, either by purchase or construction, sources of supply of water or for making improvements and extensions to sources of supply of water, a commission may issue revenue bonds payable solely from the revenues to be derived pursuant to water supply contracts with the cities, water districts, water associations, federal agencies, political subdivisions, or other public bodies as provided in KRS 74.420 to 74.520. For that purpose the commission may issue revenue bonds and be vested with all of the powers, duties, and responsibilities, including the power of condemnation, delegated and granted to a "governmental agency" under the terms and provisions of KRS Chapter 58, as the law now exists or as it may hereafter be amended. Under the law, the term "governmental agency" means the "commission" and the term "public project" means "sources of supply of water."

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 167, sec. 6, effective June 24, 2003. -- Amended 1996 Ky. Acts ch. 122, sec. 6, effective July 15, 1996. -- Created 1960 Ky. Acts ch. 207, sec. 6, effective June 16, 1960.

74.480 Exclusive water supply -- Basis for establishing rate, charges.

(1) When a commission has been created, the cities, water associations, water districts, or federal agencies represented by the commission shall contract with the commission for water and the contracts may provide that the sources of supply of water of the commission shall be the exclusive water supply for the respective water distribution systems. These cities, water associations, or water districts shall establish charges and rates for water supplied by them to consumers sufficient at all times:

(a) To pay the principal of and interest on all outstanding obligations of the cities, water associations, or water districts which by their terms are payable in any manner from the revenues of their respective waterworks distribution systems; and

(b) To pay the cost of operation and maintenance of their respective waterworks distribution systems, including the payments to be made to the commission pursuant to contracts for the purchase of water by those cities, water associations, or water districts.

(2) The commission shall establish charges and rates for water supplied to those cities, water associations, water districts, or federal agencies represented by the commission sufficient at all times:

(a) To pay the principal of and interest on the revenue bonds issued by the commission under the provisions of KRS 74.420 to 74.520;

(b) To pay the cost of operation and maintenance of the sources of supply of water; and

(c) To provide an adequate fund for renewals, replacements, and reserves.

Contracts entered into between the commission and the cities, water associations, or water districts shall include covenants for the establishment of rates and charges as provided in this section.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 167, sec. 7, effective June 24, 2003. -- Amended 1996 Ky. Acts ch. 122, sec. 7, effective July 15, 1996. -- Created 1960 Ky. Acts ch. 207, sec. 7, effective June 16, 1960.

74.490 Commission may contract to supply other public bodies.

The commission shall also have the right to supply water to any city, water association, water district, political subdivision, federal agency or other public body, or any water distribution system regulated by the Public Service Commission, in addition to the cities, water associations, water districts, or federal agencies which are represented by the commission, upon the payments, terms, and conditions mutually agreed upon. No capital expenditures shall be made by the commission for the purpose of furnishing water to the other party or parties. Any contract entered into to supply water to a city, water association, water district, federal agency, political subdivision, or other public body shall provide that payments to be made thereunder shall be solely from the revenues to be derived by the city, water association, water district, political subdivision, or other public body from the operation of the water works distribution system thereof; and the contract shall be a continuing, valid, and binding obligation of the city, water association, federal agency, water district, political subdivision, or other public body, payable from the revenues for a period of years, not to exceed fifty (50), as provided in the contract. Any contract shall not be a debt of any city, water association, water district, federal agency, political subdivision, or other public body within the meaning of any statutory or constitutional limitations.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 167, sec. 8, effective June 24, 2003. -- Amended 1996 Ky. Acts ch. 122, sec. 8, effective July 15, 1996. -- Created 1960 Ky. Acts ch. 207, sec. 8, effective June 16, 1960.

74.500 Procedure for participation by other city or water districts.

After the creation of a water commission provided for by KRS 74.420 to 74.520, a city or water district which did not participate in the creation of said commission may participate in its operation and appoint a commissioner to serve on said commission in the following manner:

(1) The governing body of such city or water district shall adopt and file with the county judge/executive who entered the order creating said commission an ordinance or resolution electing and requesting that it be permitted to be included in and represented by said commission in the same manner and to the same extent as if said city or water district had originally participated in the creation of said commission.

(2) Upon such filing the county judge/executive shall by appropriate order set a date for a public hearing on the inclusion of such a city or water district in said commission, and shall give notice of such public hearing in the manner as provided by KRS 74.440. Any resident of the city or water district at the time represented by said commission, and any resident of the city or water district requesting to be included in and represented by said commission and to participate in its operation, may file objections, and at the public hearing if the county judge/executive finds that the inclusion of such city or water district in said commission is reasonably necessary or advantageous for the public health, convenience and comfort of the residents of all cities and water districts represented by said commission, including the city or water district requesting to be included in said commission, and provided further that there shall be on file with the county judge/executive a resolution adopted by said commission evidencing its willingness to have such city or water district included in and represented by said commission the county judge/executive shall make an order authorizing the inclusion of such city or water district in the commission. If the county judge/executive does not find that the inclusion of such city or water district is reasonably necessary or advantageous he shall make an appropriate order in this regard. Any party in interest may thereupon appeal to the Circuit Court.

(3) Upon the entering of the order by the county judge/executive authorizing the inclusion of such city or water district in said commission the number of commissioners, if any, to be appointed to said commission by the county judge/executive shall be reduced by one (1) and the presiding officer, with the approval of the governing body of the city or water district which shall by virtue of said proceedings be included in and represented by said commission, shall appoint a commissioner whose term shall begin at the expiration of the term of the commissioner appointed by the county judge/executive whose term shall first expire. In the event there is no commissioner on said commission appointed by the county judge/executive the term of the commissioner appointed by the presiding officer of such city or water district shall be fixed so that the terms of approximately one-third (1/3) of the commissioners will expire in each year.

Effective: June 17, 1978

History: Amended 1978 Ky. Acts ch. 384, sec. 194, effective June 17, 1978. -- Created

1960 Ky. Acts ch. 207, sec. 9, effective June 16, 1960.

74.510 Commission declared not to constitute a utility.

Since the activities of a commission created pursuant to KRS 74.420 to 74.520 are limited to the supply of water under contract to cities, federal agencies, or to water distribution systems which are regulated by the Public Service Commission, including water districts and water associations, as provided in KRS 74.420 to 74.520, and such a commission has no authority to supply water to individual private consumers, such a commission shall not be deemed to constitute a "utility" or "person" within the meaning and application of KRS Chapter 278 and a commission shall not be subject to the jurisdiction of the Public Service Commission.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 167, sec. 9, effective June 24, 2003. -- Amended 1996 Ky. Acts ch. 122, sec. 9, effective July 15, 1996. -- Created 1960 Ky. Acts ch. 207, sec. 10, effective June 16, 1960.

74.520 Construction of KRS 74.420 to 74.520.

KRS 74.420 to 74.520 shall constitute full and complete authority for the creation of water commissions and for carrying out the powers and duties of same as provided in KRS 74.420 to 74.520. The provisions of KRS 74.420 to 74.520 shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals, shall be required in connection therewith except as may be prescribed by KRS 74.420 to 74.520. Every water commission organized under KRS 74.420 to 74.520 is declared to be a public body created and functioning in the interest and for the benefit of the public, and its property and income and any bonds issued by it and income therefrom shall be exempt from taxation.

Effective: June 16, 1960

History: Created 1960 Ky. Acts ch. 207, sec. 11, effective June 16, 1960.

74.990 Penalties.

Any collecting officer who fails to settle and pay any installment of assessments with interest, as and when provided by KRS 74.190, shall be liable to the commission for the full amount certified to him, with interest. Such amount may be collected from such collecting officer by order issued against him by the District Court, on five (5) days' notice in writing. The collecting officer shall be liable on his official bond for acts done under KRS 74.190, and for the faithful performance of his duties prescribed therein.

Effective: January 2, 1978

History: Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 66, effective January 2, 1978. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-13.

KRS CHAPTER 278

Public Utilities Generally

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) "Retail electric service" means electric service furnished to a consumer for ultimate

consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) "Regulated activity" means a service provided by a utility or other person, the rates and charges of which are regulated by the commission;

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

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

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

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

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

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

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

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

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

Effective: June 8, 2011

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

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

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

(1) As provided in KRS 278.023; or

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

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

Effective: July 14, 1992

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

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

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

(1) As provided in KRS 278.023; or

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

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

Effective: July 15, 1996

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

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

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

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

Effective: July 15, 1988

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

278.016 Commonwealth to be divided into geographical service areas.

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

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

278.017 Establishing boundaries of certified areas.

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

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

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

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

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

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

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

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

Effective: July 15, 1982

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

278.018 Right to serve certified territory.

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

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

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

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

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

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

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

Effective: April 1, 1979

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

278.020 Certificate of convenience and necessity required for construction provision of utility service or of utility -- Exceptions -- Approval required for acquisition or transfer of ownership -- Public hearing on proposed transmission line -- Severability of provisions.

(1) No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction. Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement. The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth. The commission, when considering an application for a certificate to construct an electric transmission line, may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric transmission facilities in the Commonwealth. Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.

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

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

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

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

(3) No utility shall exercise any right or privilege under any franchise or permit, after

the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.

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

(5) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

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

(7) Subsection (6) of this section shall not apply to any acquisition of control of any:

(a) Utility which derives a greater percentage of its gross revenue from business

in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection (6) of this section;

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

(c) Utility pursuant to the terms of any indebtedness of the utility, provided the issuance of indebtedness was approved by the commission.

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

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

Effective: July 12, 2006

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

2012-2014 Budget Reference. See State/Executive Branch Budget, 2012 Ky. Acts ch. 144, Pt. I, E, 7, (4) at 1118.

278.021 Receivership for abandoned utility -- Criteria for finding of abandonment -- Consolidation of actions -- Powers and duties of receiver -- Temporary receivership.

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

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

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

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

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

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

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

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

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

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

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

(8) (a) Notwithstanding subsection (1) of this section, the commission may petition the Franklin Circuit Court to appoint temporarily a receiver to operate and

manage the assets of an abandoned utility. After notice to the utility and a hearing, the court may grant a petition, upon terms and conditions as it deems appropriate, upon a showing by a preponderance of the evidence:

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

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

Effective: June 8, 2011

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

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

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

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

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

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

Effective: June 8, 2011

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

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

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

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

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

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

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

Effective: July 15, 1994

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

278.025 Repealed, 2002

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

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

278.027 Application for certificate -- Publishing notice of hearing.

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

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

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

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

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

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

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

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

Effective: January 1, 2009

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

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

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

Effective: July 15, 1996

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

278.040 Public Service Commission -- Jurisdiction -- Regulations.

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

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

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

Effective: July 15, 1982

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

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

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

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

Effective: June 24, 2003

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

278.045 Repealed, 1980.

Catchline at repeal: Transfer of functions of electrical inspection.

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

278.046 Repealed, effective July 15, 1986.

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

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

278.047 Renumbered as KRS 96.534.

278.050 Membership of Public Service Commission -- Appointment -- Terms -- Chairman -- Vacancies.

(1) The Public Service Commission shall consist of three (3) members appointed by the Governor with the advice and consent of the Senate. If the Senate is not in session when a term expires or a vacancy occurs, the Governor shall make the appointment to take effect at once, subject to the approval of the Senate when convened. Appointments to the Public Service Commission made more than ninety (90) days prior to a regular session of the General Assembly shall be subject to confirmation by the Joint Interim Committee on Energy. Each of the three (3) members of the commission shall be appointed on or before the first day of July, 1982, for staggered terms as follows: one (1) shall serve until the first day of July, 1983, one (1) until the first day of July, 1984, and one (1) until the first day of July, 1985, and thereafter for a term of four (4) years and until a successor is appointed and qualified. Each member of the commission shall be a full-time employee as defined in KRS 18A.005(17).

(2) The Governor shall appoint one (1) of the commissioners on the commission to act as chairman thereof and the chairman shall be the chief executive officer of the commission. The Governor shall designate one (1) of the commissioners on the commission to serve as vice chairman thereof and act for the chairman in the latter's absence.

(3) Vacancies for unexpired terms shall be filled in the same manner as original appointments, but the appointee shall hold office only to the end of the unexpired term.

Effective: July 13, 2004

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

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

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

(2) No person shall be appointed to or hold the office of commissioner who holds any official relationship to any utility, or who owns any stocks or bonds thereof, or who has any pecuniary interest therein.

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

(4) In addition to the restrictions on members of the commission set forth in KRS 278.050(1), no commissioner shall engage in any occupation or business inconsistent with his duties as such commissioner.

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

(6) In making appointments to the commission, the Governor shall consider the various kinds of expertise relevant to utility regulation and the varied interests to be protected by the commission, including those of consumers as well as utility investors, and no more than two (2) members shall be of the same occupation or profession.

Effective: July 15, 1982

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

278.070 Removal of commissioners.

The Governor may remove any commissioner for cause, after giving him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense upon not less than ten (10) days' notice. If a commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges against the commissioner and his findings thereon, and a complete record of the proceedings. Any commissioner so removed may bring action in the proper court to determine whether or not he was legally removed in accordance with this section.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-5.

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

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

Effective: July 15, 1982

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

278.090 Office and hours -- Meetings.

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

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

Effective: July 15, 1982

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

278.100 Executive director.

The commission shall appoint an executive director, who shall hold office during its pleasure and shall devote his entire time to the duties of his office. The executive director shall be selected on the basis of experience and training demonstrating capacity to deal with the problems of management and governmental regulation and knowledge relatable to utility regulation. The executive director shall be the chief administrative officer for the commission and shall be responsible for implementing the programs, directing the staff, and maintaining the official records of commission proceedings, including all approved orders.

Effective: July 15, 1986

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

278.110 Additional employees.

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

Effective: July 15, 1982

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

278.115 Commission to establish internal organization of its offices.

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

Effective: July 15, 1986

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

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

(1) The chairman and the other two (2) members of the commission shall be paid a salary fixed under KRS 64.640 to be paid monthly.

(2) The executive director of the commission shall be paid a salary to be fixed by the commission, with the approval of the Governor.

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

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

Effective: July 15, 1994

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

278.130 Assessments against utilities -- Applications for adjustment.

(1) For the purpose of maintaining the commission, including the payment of salaries and all other expenses, and the cost of regulation of the utilities subject to its jurisdiction, the Department of Revenue shall each year assess the utilities in proportion to their earnings or receipts derived from intrastate business in Kentucky for the preceding calendar year as modified by KRS 278.150, and shall notify each utility on or before July 1 of the amount assessed against it. The total amount so assessed shall not in any year exceed two (2) mills on intrastate receipts as so modified, which shall be deposited into the State Treasury to the credit of the general fund. The sum by each utility shall not be less than fifty dollars ($50) in any one (1) year.

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

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

Effective: June 20, 2005

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

278.140 Report of gross earnings from intrastate business.

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

Effective: July 15, 1982

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

278.150 Payment of assessments -- Certification of deduction by commission -- Administration of funds collected.

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

(2) The Finance and Administration Cabinet shall, on or before June 10, establish the assessment rate and give written notification thereof to the Department of Revenue and the commission. The Department of Revenue shall collect and pay the assessment into the State Treasury to the credit of the general expenditure fund. All such assessments shall be paid into the State Treasury through the Department of Revenue on or before July 31 of the year in which the assessments are made.

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

Effective: June 20, 2005

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

2012-2014 Budget Reference. See State/Executive Branch Budget, 2012 Ky. Acts ch. 144, Pt. I, E, 7, (2) at 1118.

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

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

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

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

Effective: July 14, 2000

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

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

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

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

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

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

Effective: July 15, 1996

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

278.172 Rate classification for certain entities.

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

Effective: July 14, 1992

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

278.180 Changes in rates, how made.

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

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

Effective: July 15, 1986

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

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

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

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

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

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

(c) Approve the application of the surcharge.

(3) The amount of the monthly environmental surcharge shall be filed with the commission ten (10) days before it is scheduled to go into effect, along with supporting data to justify the amount of the surcharge which shall include data and information as may be required by the commission. At six (6) month intervals, the commission shall review past operations of the environmental surcharge of each utility, and after hearing, as ordered, shall, by temporary adjustment in the surcharge, disallow any surcharge amounts found not just and reasonable and reconcile past surcharges with actual costs recoverable pursuant to subsection (1) of this section. Every two (2) years the commission shall review and evaluate past

operation of the surcharge, and after hearing, as ordered, shall disallow improper expenses, and to the extent appropriate, incorporate surcharge amounts found just and reasonable into the existing base rates of each utility.

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

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

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 102, sec. 1, effective July 14, 1992.

278.185 Notification to customers of proposed rate change by sewerage corporations.

(1) The Public Service Commission shall require that all sewerage corporations under its jurisdiction shall, when submitting an application for a rate change, notify all its customers of the application.

(2) Notification to the customers of the rate change application shall be in writing and shall include an estimate of the probable financial impact upon the customers.

(3) The cost of notifying customers of a rate change shall be borne by the sewerage corporation.

(4) The commission shall make such reasonable rules and regulations as are deemed necessary to further the purpose of this section.

Effective: July 15, 1982

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

278.190 Procedure when new schedule of rates filed -- Suspension of new rate schedule -- Burden of proof -- Refunds.

(1) Whenever any utility files with the commission any schedule stating new rates, the commission may, upon its own motion, or upon complaint as provided in KRS 278.260, and upon reasonable notice, hold a hearing concerning the reasonableness of the new rates.

(2) Pending the hearing and the decision thereon, and after notice to the utility, the commission may, at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service, but not for a longer period than five (5) months beyond the time when it would otherwise go into effect if an historical test period is used, or longer than six (6) months if a forward-looking test period is used, pursuant to KRS 278.192; and after such hearing, either completed before or after the rate, charge, classification, or service goes into effect, the commission may make those orders with reference thereto as it deems proper in the matter. If the proceeding has not been concluded and an order made at the expiration of five (5) months, or six (6) months, as appropriate, the utility may place the proposed change of rate, charge, classification, or service in effect at the end of that period after notifying the commission, in writing, of its intention so to do. Where increased rates or charges are thus made effective, the commission may, by order, require the interested utility or utilities to maintain their records in a manner as will enable them, or the commission, or any of its customers, to determine the amounts to be refunded and to whom due in the event a refund is ordered, and upon completion of the hearing and decision may, by further order, require such utility or utilities to refund to the persons in whose behalf the amounts were paid that portion of the increased rates or charges as by its decision shall be found unreasonable. Provided, however, if the commission, at any time, during the suspension period, finds that the company's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the period, the commission may, after any hearing or hearings, permit all or a portion of the rates to become effective under terms and conditions as the commission may, by order, prescribe.

(3) At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility, and the commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible, and in any event not later than ten (10) months after the filing of such schedules.

(4) If the commission, by order, directs any utility to make a refund, as hereinabove provided, of all or any portion of the increased rates or charges, the utility shall make the refund within sixty (60) days after a final determination of the proceeding by an order of the court or commission with or without interest in the discretion of the commission. If the utility fails to make the refund within sixty (60) days after the final determination, any party entitled to a refund may, after ten (10) days' written demand, bring an action in any court of competent jurisdiction of this state,

and may recover, in addition to the amount of the refund due, legal interest, court costs, and reasonable attorney's fees. No such action may be maintained unless instituted within one (1) year after the final determination. Any number of persons entitled to refunds may join in as plaintiffs in a single action and the court shall render a judgment severally for each plaintiff as his interest may appear.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 308, sec. 2, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 111, sec. 123, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 82, sec. 24, effective July 15, 1982; and ch. 242, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 26, effective April 1, 1979. -- Amended 1952 Ky. Acts ch. 46, sec. 2, effective March 5, 1952. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-16.

278.192 Test period for proposed rate increase.

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

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

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

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

Effective: July 14, 1992

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

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

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

Effective: July 15, 1982

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

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

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

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

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

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

Effective: July 15, 1998

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

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

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

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

Effective: April 24, 2002

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

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

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

Effective: April 24, 2002

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

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

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

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

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

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

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

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

Effective: June 24, 2003

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

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

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

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

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

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

Effective: April 24, 2002

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

278.220 Uniform system of accounts for utilities.

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

Effective: July 15, 1986

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

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

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

Effective: July 14, 2000

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

278.2203 Cost allocation of regulated and nonregulated activity.

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

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

(a) The fully distributed cost method; or

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

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

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

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

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

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

Effective: July 14, 2000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Effective: July 14, 2000

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

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

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

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

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

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

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

Effective: July 14, 2000

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

278.2209 Documentation regarding cost allocation.

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

Effective: July 14, 2000

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

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

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

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

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

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

Effective: July 14, 2000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Effective: July 14, 2000

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

278.2215 Exemptions.

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

Effective: July 12, 2006

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

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

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

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

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

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

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

Effective: July 14, 2000

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

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

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

Effective: July 15, 1994

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

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

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

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

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

Effective: July 15, 1982

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

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

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

Effective: July 15, 1994

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

278.250 Investigation of condition of utility.

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

Effective: July 15, 1982

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

278.255 Periodic management and operation audits.

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

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

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

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

Effective: July 13, 1984

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

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

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

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

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

Effective: July 15, 1982

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

278.270 Orders by commission as to rates.

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

Effective: July 15, 1982

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

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

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

Effective: March 5, 2013

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

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

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

Effective: July 13, 1984

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

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

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

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

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

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

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

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

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

Effective: July 13, 1984

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

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

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

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

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

Effective: July 15, 1982

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Both of the actions specified

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

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

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

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

Effective: February 25, 2010

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Have a total household income that is at or below one hundred ten percent (110%) of the federal poverty guidelines as defined in KRS 205.5621;

(d) Have liquid monetary resources that do not exceed one thousand five hundred dollars ($1,500) if those liquid monetary resources are not used for the

medical and living expenses of a household member with a catastrophic illness;

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

(f) Are customers of the utility or provider.

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

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

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

(c) Have a total household income that is at or below one hundred ten percent (110%) of the federal poverty guidelines as defined in KRS 205.5621;

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

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

(f) Are utility or provider customers who:

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

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

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

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

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

(b) Have a total household income that is at or below one hundred ten percent (110%) of the federal poverty guidelines as defined in KRS 205.5621;

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

(d) Have liquid monetary resources that do not exceed four thousand dollars

($4,000) if those liquid monetary resources are used for the medical and living expenses of a household member with a catastrophic illness;

(e) Are customers of the utility or provider;

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

(g) Have a household member who:

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

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

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

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

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

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

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

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

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

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

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 231, sec. 1, effective July 12, 2006.

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

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

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

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

Effective: July 15, 1982

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

278.300 Issuance or assumption of securities by utilities.

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

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

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

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

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

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

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

indebtedness, and the application of the proceeds thereof.

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

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

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

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

Effective: July 15, 1994

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

278.310 Rules for hearings and investigations.

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

Effective: July 15, 1982

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

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

278.320 Process.

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

Effective: July 15, 1982

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

278.330 Witnesses.

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

Effective: July 15, 1982

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

278.340 Depositions.

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

Effective: July 13, 1990

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

278.350 Incriminating evidence -- Immunity of witnesses.

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

Effective: July 15, 1982

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

278.360 Record of contested proceedings on formal hearing.

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

Effective: June 24, 2003

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

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

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

Effective: July 15, 1982

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

278.380 Service of orders.

The commission shall deliver a certified copy of any order issued by it to each party to the proceeding in which the order was made, and to an officer or agent of the utility affected thereby. Notwithstanding any statute to the contrary, the commission may deliver its orders by means of electronic transmission rather than by United States mail in those proceedings where each party and each utility to be affected by the order has filed with the commission a written statement that it waives any right to service of commission orders by mail and that it, or its authorized agent, possesses the facilities to receive electronic transmissions. When service of a commission order is by electronic transmission, mailing shall be deemed to have occurred on the date the transmission of the order is completed.

Effective: July 15, 1998

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

278.390 Enforcement of orders.

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

Effective: July 15, 1982

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

278.400 Rehearing.

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

Effective: July 15, 1994

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

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

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

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

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

Effective: July 15, 1994

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

278.420 Designation and filing of record -- Cost.

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

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

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

Effective: July 13, 1990

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

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

278.430 Burden of proof.

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

Effective: July 15, 1982

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

278.440 Evidence to be heard by court -- Remand.

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

Effective: July 13, 1990

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

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

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

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

Effective: October 1, 1942

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

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

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

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

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

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

Effective: July 15, 1998

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

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

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

Effective: July 15, 2010

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

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

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

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

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

Effective: July 12, 2012

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

278.465 Definitions for KRS 278.465 to 278.468.

As used in KRS 278.465 to 278.468:

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

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

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

(b) Generates electricity using:

1. Solar energy;

2. Wind energy;

3. Biomass or biogas energy; or

4. Hydro energy; and

(c) Has a rated capacity of not greater than thirty (30) kilowatts.

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

(4) "Net metering" means measuring the difference between the electricity supplied by the electric grid and the electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period.

Effective: July 15, 2008

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

278.466 Availability of net metering -- Type, expense, and installation of meter -- Calculation of electricity billed -- Rules applicable to billing -- Safety and power quality standards -- Transferability of installation.

(1) Each retail electric supplier shall make net metering available to any eligible customer-generator that the supplier currently serves or solicits for service. If the cumulative generating capacity of net metering systems reaches one percent (1%) of a supplier's single hour peak load during the previous year, the obligation of the supplier to offer net metering to a new customer-generator may be limited by the commission.

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

(3) The amount of electricity billed to the eligible customer-generator using net metering shall be calculated by taking the difference between the electricity supplied by the retail electric supplier to the customer and the electricity generated and fed back by the customer. If time-of-day or time-of-use metering is used, the electricity fed back to the electric grid by the eligible customer-generator shall be net-metered and accounted for at the specific time it is fed back to the electric grid in accordance with the time-of-day or time-of-use billing agreement currently in place.

(4) Each net metering contract or tariff shall be identical, with respect to energy rates, rate structure, and monthly charges, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator.

(5) The following rules shall apply to the billing of net electricity:

(a) The net electricity produced or consumed during a billing period shall be read, recorded, and measured in accordance with metering practices prescribed by the commission;

(b) If the electricity supplied by the retail electric supplier exceeds the electricity generated and fed back to the supplier during the billing period, the customer-generator shall be billed for the net electricity supplied in accordance with subsections (3) and (4) of this section;

(c) If the electricity fed back to the retail electric supplier by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be credited for the excess kilowatt hours in accordance with subsections (3) and (4) of this section. This electricity credit shall appear on the customer-generator's next bill. Credits shall carry forward for the life of the customer-generator's account;

(d) If a customer-generator closes his account, no cash refund for residual generation-related credits shall be paid; and

(e) Excess electricity credits are not transferable between customers or locations.

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

(7) An eligible customer-generator installation is transferable to other persons or service locations upon notification to the retail electric supplier and verification that the installation is in compliance with the applicable safety and power quality standards in KRS 278.467 and in subsection (6) of this section.

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

Effective: July 15, 2008

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

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

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

(2) No later than one hundred eighty (180) days from July 15, 2008, the Public Service Commission shall develop interconnection and net metering guidelines for all retail electric suppliers operating in the Commonwealth. The guidelines shall meet the requirements of KRS 278.466(6).

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

Effective: July 15, 2008

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

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

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

Effective: July 13, 2004

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

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

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

Effective: October 1, 1942

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

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

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

Effective: October 1, 1942

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

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

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

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

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

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

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

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

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

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

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

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

Effective: July 14, 1992

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

278.490 Transportation of oil or gas received from connecting lines.

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

Effective: October 1, 1942

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

278.495 Authority to regulate safety aspects of natural gas facilities.

(1) As used in this section:

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

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

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

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

(b) Comprising a master meter system.

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

Effective: June 8, 2011

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

278.500 Repealed, 1948.

Catchline at repeal: Condemnation of property for pipe line.

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

278.501 Repealed, 1966.

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

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

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

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

Effective: July 14, 1992

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

278.504 Definitions for KRS 278.505 to 278.507.

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

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

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

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

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

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

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

Effective: July 13, 1984

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

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

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

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

(b) Natural gas produced by such person.

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

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

Effective: July 13, 1984

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

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

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

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

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

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

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

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

Effective: July 13, 1984

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

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

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

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

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

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

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

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

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

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

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

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

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

Effective: July 13, 1984

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

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

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

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

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

Effective: July 14, 1992

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

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

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

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

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

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

Effective: July 12, 2006

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

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

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

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

Effective: June 20, 2005

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

278.510 Consolidation of telephone lines.

(1) No telephone company doing an exchange business in a city shall consolidate with any other telephone company doing an exchange business in the same city, or purchase, lease or operate the plant or line of any such company, until the proper city authorities have found, after such investigation as they deem necessary, that no substantial public benefits result from the separate existence of the companies and that actual competitive conditions do not exist, and have stated their finding in a resolution consenting to such consolidation, lease, sale or operating arrangement.

(2) No telephone company doing a toll line business shall consolidate with any other company doing a like business whose lines serve the same communities or localities, or purchase, lease or operate the plant or lines of any such company until the Public Service Commission has found, after such investigation as it deems necessary, that no substantial public benefits result from the separate existence of the companies and that actual competitive conditions do not exist, and has stated its finding in a resolution consenting to such consolidation, lease, sale or operating arrangement. Whenever a joint application of two (2) or more such telephone companies requesting such finding and consent is filed with the Public Service Commission, the commission shall make such investigation, hold such hearings, examine such witnesses and require the production of such books, papers, and records as it deems pertinent to the determination of the application, and shall grant or withhold such consent as the facts warrant.

(3) The Public Service Commission shall have jurisdiction of those matters set out in Section 201 of the Constitution that relate to telephone companies, and shall enter in its minutes a record of its acts in relation thereto.

Effective: July 15, 1982

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

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

(1) The legislature finds and determines that:

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

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

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

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

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

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

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

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

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

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

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

jurisdiction of the commission to respond to competition;

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

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

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

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

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

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

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

Effective: July 14, 1992

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

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

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

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

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

Effective: July 14, 1992

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

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

(1) The legislature finds and determines that:

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

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

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

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

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

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

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

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

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

(f) "Access lines" mean the telephone lines provided by a local exchange carrier. In calculating the number of access lines provided by a local exchange carrier, the number of access lines provided by all telephone utilities under common ownership or control, as defined in KRS 278.020(6), with that telephone utility shall be counted;

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

(h) "Annual percent change in the GDP" means, for any given calendar year, the annul percentage change in the GDP as it is calculated by the Bureau of

Economic Analysis of the United States Department of Commerce;

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

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

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

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

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

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

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

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

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

(3) (a) If a small telephone utility elects to be regulated as provided in subsection (7) of this section, a small telephone utility once during any twenty-four (24) month period may adjust or implement each of the following rates or charges: basic business rate; basic residential rate; zone charges; or installation charges for basic business or basic residential services by an amount not to exceed the sum of the annual percentage changes in the GDP for the immediately preceding two (2) calendar years multiplied by the existing rate or charge to be

adjusted. However, in no event shall a small telephone utility so adjust:

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

(b) At least sixty (60) calendar days before the effective date of such an adjustment of its rates or charges, a small telephone utility shall file a copy of its revised rates and tariffs with the commission and shall mail notice of the proposed rate adjustment to each affected subscriber and the commission. The notice shall state:

1. The GDP for the preceding two (2) calendar years;
2. The amount by which any of the small telephone utility's rates or charges identified in subsection (3)(a) of this section will be adjusted; and
3. The right of subscribers to object to the adjustment and request commission review by filing a letter or petition with the commission.

(c) If by the forty-fifth calendar day following the date of the notice to subscribers of such a proposed adjustment to its rates or charges, the commission has received letters or petitions requesting commission review of the adjustment signed by at least five hundred (500) subscribers or five percent (5%) of subscribers, whichever is greater, the commission shall immediately notify the small telephone utility of this fact, and the proposed rate adjustment shall not become effective as scheduled. The small telephone utility may withdraw the proposed rate or charge adjustment, or if it decides to proceed, the commission shall review the proposed rate adjustment as though no election had been made pursuant to subsection (7) of this section.

(4) Any other provision of this chapter notwithstanding, a small telephone utility which has elected to be regulated pursuant to this section may adjust any of its rates, charges, or tariffs, except for:

(a) Its basic business rate;

(b) Its basic residential rate;

(c) Its zone charges;

(d) Its installation charges for basic business or basic residential services;

(e) Its access charges; or

(f) Its pic charges,

without regard to the effect on its revenues, by filing its proposed rates, charges, or

tariffs with the commission and by notifying its subscribers, both at least thirty (30) calendar days prior to the effective date of its proposed rates, charges, or tariffs.

(5) A small telephone utility which has elected to be regulated pursuant to this section shall not:

(a) Adjust its intrastate access charges if the adjustment requires the small telephone utility's access charge customers, including interexchange carriers, to pay intrastate access charges at levels exceeding the small telephone utility's interstate access charge levels; or

(b) Adjust its intrastate pic charges if the adjustment requires the small telephone utility's customers to pay intrastate pic charges at levels exceeding the small telephone utility's interstate pic charge levels.

The small telephone utility may decrease its intrastate access charges or intrastate pic charges to any level without restriction. Adjustments to intrastate access charge rates or intrastate pic charges shall be effective thirty (30) calendar days following the filing of access charge tariffs or pic charge tariffs with the commission.

(6) The rates, charges, earnings, or revenues of a small telephone utility which has elected to be regulated pursuant to this section and is in compliance with the provisions of this section shall be deemed by the commission to be in compliance with KRS 278.030(1).

(7) A small telephone utility may elect, at any time, to be regulated by the provisions, in their entirety only, of this section by filing a verified resolution of the utility's board of directors, or other governing body, so electing with the commission. An election shall be effective immediately upon filing with the commission and shall remain effective until withdrawn by the filing with the commission of a verified resolution of the small telephone utility's board of directors or other governing body; provided, however, that all resolutions of election or withdrawal shall remain in effect for at least one (1) year from the date of their filing with the commission. A resolution electing to be regulated by the provisions of this section shall mean that the small telephone utility so electing shall be regulated by this section and shall not be regulated by KRS 278.020(1) and 278.300. Nothing in this section, however, shall be construed to alter the applicability of KRS 278.020(4) or 278.030(2) to small telephone utilities electing to be regulated by the provisions of this section.

(8) A small telephone utility which has elected to be regulated pursuant to this section may file an application with the commission pursuant to KRS 278.020(1), and, if a utility does so, that application shall be deemed to have been granted unless within thirty (30) calendar days following the filing of the application, the commission denies the application. If the application is denied or none is filed, the small telephone utility electing to be regulated pursuant to this section may engage in the construction of the plant or facilities, or the purchase of equipment or properties, to provide the services described in KRS 278.010(3)(e). However, if the small telephone utility subsequently files a resolution of withdrawal under subsection (7) of this section, the increased value of property that resulted from any construction project denied approval by the commission or not submitted to the commission for approval may be excluded from the small utility's rate base for rate making purposes

if the cost of construction exceeded one million dollars ($1,000,000) or five percent (5%) of the value of the small telephone utility's property as reflected in the utility's most recent annual report filed with the commission.

Effective: July 13, 2004

History: Amended 2004 Ky. Acts ch. 75, sec. 2, effective July 13, 2004. -- Created 1996 Ky. Acts ch. 71, sec. 1, effective July 15, 1996.

278.520 Transmission of long distance messages from other telephone lines.

Telephone companies operating exchanges in different cities shall receive and transmit each other's messages without unreasonable delay or discrimination. The telephone exchange receiving any message from the exchange in which the message originated, and each other connecting exchange through which the message must be routed in order to reach its destination, shall switch the message through its exchange without unreasonable delay or discrimination and with the same promptness with which messages originating and ending on its own lines are handled, by causing the talking circuit to be connected over the toll line leading through or from the receiving exchange through any other connecting exchanges to the point of destination. It is the intention of this section to compel the connecting up and usage of toll wires through the various intervening exchanges between the exchange in which the messages originate and the point of destination, so that the party requesting service may be able to hold a conversation with the party called for at the point of destination.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4679f-1.

278.530 Procedure to compel connection with telephone exchange or line.

(1) Whenever any telephone company desires to connect its exchange or lines with the exchange or lines of another telephone company and the latter refuses to permit this to be done upon reasonable terms, rates and conditions, the company desiring the connection may proceed as provided in subsection (2) or as provided in subsection (3) of this section.

(2) The company desiring the connection may file a written statement with the Public Service Commission setting out the reasons why the connection is desired and the points at which the connection should be made, and giving the name and address of the owner or chief officer residing in this state of each company with which the connection is desired. The executive director of the commission shall thereupon cause a copy of the written statement to be served upon the companies owning or operating such lines or exchanges, by mailing a copy to the owner or chief officer residing in this state, and shall fix a date, not earlier than ten (10) days from the date of mailing the notice, for the hearing of the application. Upon the day so fixed for the hearing, the companies may respond in writing to the application, and either side may introduce such testimony as it desires and be heard by attorneys. After the hearing is completed the commission shall make its finding and enter it in a book to be kept for that purpose, and shall mail a copy thereof to each side; and if the commission directs the connection to be made it shall indicate the points where the connection is to be made, the number of wires to be connected, the terms and conditions and the rates to be charged, and the division of the rates charged between the companies handling the messages. The cost of making the connection shall be borne equally by the parties. If any company refuses to make a connection for a period of thirty (30) days after the finding of the commission directing the connection to be made, the company desiring the connection may make the connection and may recover one-half (1/2) of the cost thereof from the company so refusing.

(3) In lieu of the procedure provided in subsection (2) of this section, the company desiring the connection may compel the connection upon reasonable terms by suit in equity in the Franklin Circuit Court or in the Circuit Court of the county in which the company making the demand resides or has its chief office in this state, and the court shall, by mandatory injunction, compel the physical connection of the wires and interchange of messages, and enforce the same by contempt proceedings and in the same manner that other mandatory injunctions are enforced.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 166, sec. 4, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 49, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 53, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4679f-2, 4679f-3.

278.535 Switching of telecommunications provider -- Penalty -- Administrative regulations.

(1) As used in this section:

(a) "Telecommunications provider" or "provider" means a person that provides one (1) or more telecommunications services for compensation, and its successors in interest by way of acquisition or merger, and includes a provider of regulated and unregulated intrastate services offered to customers for the transmission of two-way, interactive communications. "Telecommunications provider" or "provider" does not include a provider of commercial mobile radio services as defined in 47 U.S.C. sec. 332(d)(1).

(b) "Letter of agency" means a written statement that authorizes a change of the customer's telecommunications provider and bears the customer's signature.

(2) A customer of a telecommunications provider shall not be switched to another provider without the customer's letter of agency or the electronically recorded authorization of the customer, indicating that the customer knowingly approved the specific details of the switch. The requirement of a written or electronically recorded authorization shall not apply if the customer initiates a call to the customer's local telephone service provider to request that his long-distance provider be changed. When a customer's service is changed, the new provider shall maintain for one (1) year a record of nonpublic customer-specific information that establishes that the customer authorized the change. In any dispute, the burden of proof to show that the customer knowingly authorized the change shall be on the provider that claims to have obtained customer authorization for the switch.

(3) If a letter of agency is combined with an inducement, or with information on a subject other than the change of a customer's telecommunications provider, whether or not the letter of agency can be easily severed from the rest of the document, then the language whereby a person authorizes service from the provider shall be printed in a type size as large or larger than the largest type used in the document that includes the letter of agency.

(4) If a telecommunications provider initiates a switch of provider that the customer has not authorized under this section, that provider, upon request by the customer, shall reverse the change within five (5) business days.

(5) The customer subjected to a change that is not verified consistent with this section or administrative regulations promulgated under this section is not responsible for any charges associated with the unauthorized change, including charges for usage subsequent to the change that are in excess of the amount the customer would have paid had the service not been changed, if the customer contacts the customer's local exchange carrier, the customer's previous provider of intrastate service, or the telecommunications provider that initiated an unauthorized change in service within one hundred eighty (180) days after receipt of the customer's first bill containing charges by the telecommunications provider that initiated the unauthorized change. A telecommunications provider that has initiated an unauthorized customer change shall:

(a) Pay all charges associated with returning the customer to the customer's original telecommunications provider;

(b) Return to the customer any amount paid to the provider by the customer or on the customer's behalf in excess of the amount the customer would have paid had the service not been changed; and

(c) Upon request, provide all billing records to the original provider from which the customer was changed to enable the original provider to comply with this section.

The telecommunications provider that initiated the unauthorized change is responsible for any payment to access providers or to an underlying carrier where applicable. Failure of the customer to provide timely notice will relieve the telecommunications provider that initiated the unauthorized change of any obligations under this subsection.

(6) If the commission finds that a provider has willfully or repeatedly violated this section or an administrative regulation promulgated under it, the commission shall order the provider to take corrective action as necessary. The commission may impose a penalty on the violator as specified in KRS 278.990(1), except that the maximum civil penalty to be assessed for each violation of this section shall be ten thousand dollars ($10,000). The commission also may, if consistent with the public interest, suspend, restrict, or revoke any certificate or registration of the telecommunications provider, thereby denying the provider the authorization to provide telecommunications service in the Commonwealth.

(7) The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the policies of this section.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 523, sec. 1, effective July 15, 1998.

278.540 Acquisition of right-of-way by telephone or telegraph company -- Condemnation.

(1) Any telephone company or telegraph company authorized to do business in this state shall, upon making just compensation, have the right to construct, maintain and operate its lines through any public lands of this state and on, across and along any public road, and across and under any navigable waters, but not in such a manner as to interfere with travel on the road or to obstruct the navigation of the waters.

(2) Any telephone company authorized to do business in this state may, by contract with any person, construct, maintain and operate telephone lines on and across the real property of that person, and if it cannot obtain the right-of-way by contract it may, except as provided in KRS 416.090, condemn the right-of-way in the manner provided in the Eminent Domain Act of Kentucky.

(3) Any telegraph company authorized to do business in this state that desires to construct, operate and maintain its lines on or along the right-of-way and structure of any railroad may, through an authorized agent, contract with the railroad company for that right.

(4) The parts of this section relating to the rights of telephone companies do not apply to any city.

Effective: June 19, 1976

History: Amended 1976 Ky. Acts ch. 140, sec. 113, effective June 19, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4679c-1, 4679c-2, 4679d-1, 4679d-2, 4679d-3.

278.541 Definitions for KRS 278.541 to 278.544.

In addition to the definitions set forth in KRS 278.010 and 278.516(2), the following definitions shall apply to KRS 278.541 to 278.544:

(1) "Basic local exchange service" means a retail telecommunications service consisting of a primary, single, voice-grade line provided to the premises of residential or business customers with the following features and functions only:

(a) Unlimited calls within the telephone utility's local exchange area;

(b) Dual-tone multifrequency dialing; and

(c) Access to the following:

1. Emergency 911 telephone service;

2. All locally available interexchange companies;

3. Directory assistance;

4. Operator services;

5. Relay services; and

6. A standard alphabetical directory listing that includes names, addresses, and telephone numbers at no additional charge.

With respect to local exchange carriers, basic local exchange service also shall include any mandatory extended area service routes accessible as a local call within that exchange area on or before July 12, 2006. Basic local exchange service does not include any features or functions other than those listed in this subsection, nor any other communications service, even if such service should include features and functions listed herein;

(2) "Electing utility" means a telephone utility that elects to operate under KRS 278.543;

(3) "Local exchange carrier" or "LEC" has the same meaning as defined in 47 U.S.C. sec. 153(26);

(4) "Incumbent local exchange carrier" or "ILEC" has the same meaning as defined in 47 U.S.C. sec. 251(h);

(5) "Nonbasic service" means all retail telecommunications services provided to a residential or business customer, all arrangements with respect to those services, and all packages of products or services; provided, however, nonbasic service includes basic local exchange service only if the customer chooses to purchase a package that includes basic local exchange service as a component of the package;

(6) "Optional telephone feature" means any of those central office-based features that were tariffed by a local exchange carrier on or before February 1, 2006, that, where available:

(a) Are available to a line-side connection in a telephone switch:

(b) Are available on a stand-alone basis separate from a bundled offering; and

(c) Enhance the utility of basic local exchange service.

The term includes but is not limited to call forwarding, call waiting, and caller ID;

(7) "Package" means combinations of retail products or services offered, whether at a single price or with the availability of the price for one (1) product or service contingent on the purchase of others; and

(8) "Telephone utility" includes local exchange carriers and telecommunications carriers as those terms are defined in 47 U.S.C. sec. 153 and any federal regulations implementing that section, except that the definition shall not include commercial mobile radio service providers as defined in 47 U.S.C. sec. 332 and the Federal Communications Commission's lawful regulations promulgated thereunder.

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 239, sec. 1, effective July 12, 2006.

278.542 Effect of KRS 278.541 to 278.544 on commission's jurisdiction -- Filing by telephone utilities required.

(1) Nothing in KRS 278.541 to 278.544 shall affect the commission's jurisdiction with respect to:

(a) Any agreement or arrangement between or among ILECs;

(b) Any agreement or arrangement between or among ILECs and other local exchange carriers;

(c) Consumer complaints as to compliance with basic local exchange service obligations, and the quality of basic voice-grade service transmission for basic and nonbasic services, consistent with accepted industry standards for telecommunications services;

(d) The emergency 911 telephone service as set forth in KRS 65.750 to 65.760 or wireless enhanced emergency 911 systems as set forth in KRS 65.7621 to 65.7643;

(e) Accuracy of billing for telecommunications services, in accordance with the truth-in-billing regulations prescribed by the Federal Communications Commission;

(f) Assessments as set forth in KRS 278.130, 278.140, and 278.150;

(g) Unauthorized change of telecommunications providers or "slamming" under KRS 278.535;

(h) Billing of telecommunications services not ordered by or on behalf of the consumer or "cramming" to the extent that such services do not comply with the truth-in-billing regulations prescribed by the Federal Communications Commission;

(i) The federal Universal Service Fund and Lifeline Services Program and any Kentucky state counterpart;

(j) Any special telephone service programs as set forth in KRS 278.547 to 278.5499;

(k) Tariffs, except as expressly provided for in KRS 278.541 to 278.544;

(l) Setting objectives for performance as to basic local exchange service; except that the objectives shall not exceed existing commission standards or associated penalties as of July 12, 2006;

(m) Prohibiting price differences among retail telecommunications customers to the extent that such differences are attributable to race, creed, color, religion, sex, or national origin; or

(n) Ensuring that a telephone utility furnishes safe, adequate, and reasonable basic local exchange service to customers within that utility’s service area.

(2) Telephone utilities operating pursuant to KRS 278.541 to 278.544 shall file with the commission a form containing:

(a) The complete name of the telephone utility;

(b) The physical address of its principal office; and

(c) The name, title, and telephone number of the person responsible for answering consumer complaints on behalf of the telephone utility.

(3) No telephone utility shall engage in predatory pricing as defined by the United States Supreme Court in Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209 (1993).

(4) Nothing in KRS 278.541 to 278.544 shall affect the alternative regulation process for small telephone utilities as set forth in KRS 278.516.

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 239, sec. 2, effective July 12, 2006.

278.543 Adoption of price regulation plan -- Rate caps and adjustments -- Jurisdiction of commission -- Exemptions -- Withdrawal from regulation under KRS 278.541 to 278.544.

Any telephone utility, at its discretion and without commission approval, may elect to adopt the price regulation plan set forth below.

(1) An election under this section shall be effective immediately upon written notification from the electing utility to the commission. The election shall remain effective until withdrawn by the electing utility.

(2) The rate for basic local exchange service for an electing utility, other than an electing small telephone utility as defined in KRS 278.516, shall be capped for a period of sixty (60) months from the date of the election. Subject to the limitations in KRS 278.541 to 278.544, an electing utility may seek a rate adjustment for basic local exchange services according to the terms of regulation applicable to the basic local exchange services of any ILEC on June 30, 2006, or a previously approved or new price regulation proposal for basic service pursuant to KRS 278.512. These rate adjustments may become effective on or after the day following the end of the sixty (60) months.

(3) Electing utilities shall retain on file with the commission tariffs for basic local exchange services and intrastate switched-access services. Tariffs filed in accordance with subsection (2) of this section shall be deemed valid and binding upon the effective date stated in the tariff.

(4) An electing utility's rates for intrastate switched-access service shall not exceed its rates for this service that were in effect on the day prior to the date the utility filed its notice of election.

(5) The commission shall have original jurisdiction over complaints as to basic local exchange service of any electing telephone utility, except that the commission shall not have jurisdiction to set, investigate, or determine rates as to any electing telephone utility other than as set forth in this section. Upon a complaint in writing made against any electing telephone utility by any person stating that basic local exchange service in which that complainant is directly interested is unreasonable, unsafe, insufficient, or unjustly discriminatory, or that basic local exchange service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion. No order concerning a complaint shall be entered by the commission without a formal public hearing. A person may intervene in accordance with commission administrative regulations. The commission shall fix the time and place for the hearing and shall provide notice to the electing telephone utility and the complainant not less than twenty (20) days in advance. The commission may dismiss any complaint without a hearing if it decides that a hearing is not necessary, in the public interest, or for the protection of substantial rights. The complainant and the electing telephone utility shall be entitled to be heard in person or by an attorney and to introduce evidence.

(6) An electing utility's rates, charges, earnings, and revenues shall be deemed to be just and reasonable under KRS 278.030 and administrative regulations promulgated

thereunder upon election. Except as set forth in KRS 278.542(1)(a) and (b), an electing telephone utility shall be exempt from KRS 278.190, 278.192, 278.200, 278.230(3), 278.255, 278.260, 278.270, 278.280, 278.290, and 278.300 and administrative regulations promulgated thereunder. The utility shall also be exempt from any rules, orders, or regulations of the commission requiring the retention or filing of financial reports, classifications, depreciation or other schedules, or any other information not required by the Federal Communications Commission.

(7) An electing small telephone utility, as defined in KRS 278.516, may withdraw from being so regulated by providing written notice of withdrawal to the commission.

(8) Under the following circumstances, any electing utility may withdraw from being so regulated by providing written notice to the commission:

(a) Upon the approval pursuant to KRS 278.512 of a company-specific alternative regulation plan; or

(b) Upon filing notice with the commission of its adoption of the applicable provisions of any alternative regulation plan previously approved by the commission. The adoption shall become effective upon filing of the notice.

(9) The rates for basic local exchange service for an electing small telephone utility as defined in KRS 278.516 shall be capped for a period of twelve (12) months from the date of the election. Annually thereafter, an electing small telephone utility may not increase rates for an individual basic local exchange service by more than the increase in the annual average of the Consumer Price Index for all urban consumers for the most recent calendar year as published by the United States Department of Labor, Bureau of Labor Statistics.

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 239, sec. 3, effective July 12, 2006.

278.544 Provisions applicable to all telephone utilities.

The following provisions of this section shall apply and be enforced equally to all telephone utilities, unless otherwise specifically stated in this section.

(1) Telephone utilities may file with the commission schedules or tariffs reflecting the rates, terms, and conditions for nonbasic services that are generally available to all subscribers qualifying for the rates, terms, and conditions. The rates, terms, and conditions for basic and nonbasic services shall be valid upon the effective date stated in the schedule. Tariffs for nonbasic services in effect on July 12, 2006, shall continue to be effective as binding rates, terms, and conditions until withdrawn or modified by the telephone utility.

(2) A telephone utility offering a package that includes any optional telephone features tariffed as of February 1, 2006, shall maintain schedules or tariffs on file with the commission for each such optional telephone feature available on a stand-alone basis to residential customers who purchase basic local exchange service from that telephone utility.

(3) Notwithstanding the terms of any adopted regulation plan or any provision of law to the contrary, telephone utilities may provide nonbasic services pursuant to terms and conditions provided to the customer. Telephone utilities shall not be required to file nonbasic contracts with the commission. Telephone utilities shall permit a residential customer with nonbasic service to purchase basic local exchange service and any optional telephone feature on file in a schedule or tariff at the commission at the current rates, terms, and conditions without incurring termination charges, unless the customer has entered into an agreement containing termination charges and the customer is given thirty (30) days from receipt of the terms and conditions to cancel the agreement. If a customer cancels the agreement within thirty (30) days from receipt of the terms and conditions, termination charges are limited to the price of unreturned equipment or services, including installation, received at that point. Telephone utilities that provide services pursuant to this subsection shall provide customers with notice, as part of the terms and conditions of such services, that basic local exchange service and any optional telephone feature on file in a schedule or tariff with the commission may be purchased separately at the price posted on the company's Web site or on file with the commission.

(4) Notwithstanding any provision of law to the contrary, nonbasic services offered pursuant to the provisions of this section shall be set by the marketplace and are not governed by KRS 278.030 and administrative regulations promulgated thereunder. The nonbasic services are exempt from action or review by the commission under KRS 278.160, 278.170, 278.180, 278.190, 278.192, 278.200, 278.230(3), 278.250, 278.255, 278.260, 278.270, 278.280, 278.290, and 278.300 and administrative regulations promulgated thereunder, except as specifically stated in KRS 278.541 to 278.544.

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 239, sec. 4, effective July 12, 2006.

278.545 Countywide service by major telephone company required, when.

(1) As used in this section:

(a) "Countywide local exchange telephone service" or "countywide service" means that no toll or distance charges are made for telephone calls which both originate and terminate within the geographical area of a county. A local exchange may embrace an area larger than a single county; and

(b) "Major telephone company" means a telephone company with annual gross operating revenues of one hundred million dollars ($100,000,000) or more.

(2) If a major telephone company serves all subscribers in a county but does not provide countywide service, and if at least two thousand (2,000) subscribers are not able to telephone the county seat of the county without paying toll charges, then the Public Service Commission shall by order require provision of countywide local exchange telephone service within the county no later than October 1, 1987.

Effective: July 15, 1986

History: Created 1986 Ky. Acts ch. 495, sec. 3, effective July 15, 1986.

278.546 Legislative findings and determinations relating to telecommunications.

Whereas, the General Assembly finds and determines that:

(1) State-of-the-art telecommunications is an essential element to the Commonwealth's initiatives to improve the lives of Kentucky citizens, to create investment, jobs, economic growth, and to support the Kentucky Innovation Act of 2000;

(2) Streamlined regulation in competitive markets encourages investment in the Commonwealth's telecommunications infrastructure;

(3) Consumers in the Commonwealth have many choices in telecommunications services because competition between various telecommunications technologies such as traditional telephony, cable television, Internet and other wireless technologies has become commonplace;

(4) Consumers benefit from market-based competition that offers consumers of telecommunications services the most innovative and economical services; and

(5) Consumer protections against fraud and abuse, for the provision of affordable basic service, and for access to emergency services including enhanced 911 must continue.

Effective: July 13, 2004

History: Created 2004 Ky. Acts ch. 167, sec. 1, effective July 13, 2004.

278.5461 Definitions for KRS 278.546 to 278.5462.

In addition to the definitions in KRS 278.010 and KRS 278.516(2), for KRS 278.546 to 278.5462, the following definitions shall apply:

(1) "Broadband" means any service that is used to deliver video or to provide access to the Internet and that consists of the offering of the capability to transmit information at a rate that is generally not less than two hundred (200) kilobits per second in at least one direction; or any service that combines computer processing, information storage, and protocol conversion to enable users to access Internet content and services. Nothing in this definition shall be construed to include any intrastate service, other than digital subscriber line service, tariffed at the commission as of July 15, 2004.

(2) "Local exchange carrier" means any company certified by the commission to provide local exchange telecommunications service in the Commonwealth on or before June 30, 1995.

Effective: July 13, 2004

History: Created 2004 Ky. Acts ch. 167, sec. 2, effective July 13, 2004.

278.54611 Commission's jurisdiction over commercial mobile radio service, interconnection agreements, customer complaints, telecommunications carriers, and cellular towers.

(1) The provision of commercial mobile radio services shall be market-based and not subject to Public Service Commission regulation. Notwithstanding any other provision of law to the contrary, except as provided in subsections (2) to (5) of this section, the commission shall not impose any requirement upon a commercial mobile radio services provider with respect to the following:

(a) The availability of facilities or equipment used to provide commercial mobile radio services; or

(b) The rates, terms, and conditions for, or entry into, the provision of commercial mobile radio service.

(2) The provisions of this section do not limit or modify the commission's authority to arbitrate and enforce interconnection agreements.

(3) The commission shall retain jurisdiction to assist in the resolution of consumer complaints.

(4) The commission may develop standards that are generally applicable to companies that are designated and operate as eligible telecommunications carriers, pursuant to 47 U.S.C. sec. 214(e), or as carriers of last resort. The commission may exercise its authority to ensure that these carriers, including commercial mobile radio service providers that receive eligible telecommunications carrier status, comply with those standards.

(5) The commission shall retain jurisdiction over cellular towers pursuant to KRS 278.665.

Effective: June 20, 2005

History: Created 2005 Ky. Acts ch. 109, sec. 1, effective June 20, 2005.

278.5462 Broadband services not subject to state regulation -- Application of requirements of federal statutes and regulations -- Consumer complaints -- Telephone utility provision of service to competing local exchange.

(1) The provision of broadband services shall be market-based and not subject to state administrative regulation. Notwithstanding any other provision of law to the contrary except as provided in subsections (3) and (4) of this section, no agency of the state shall impose or implement any requirement upon a broadband service provider with respect to the following:

(a) The availability of facilities or equipment used to provide broadband services; or

(b) The rates, terms or conditions for, or entry into, the provision of broadband service.

(2) Any requirement imposed upon broadband service in existence as of July 15, 2004, is hereby voided upon enactment of KRS 278.546 to 278.5462. The provisions of this section do not limit or modify the duties of a local exchange carrier or an affiliate of a local exchange carrier to provide unbundled access to network elements or the commission's authority to arbitrate and enforce interconnection agreements, including provisions related to remote terminals and central office facilities, to the extent required under 47 U.S.C. secs. 251 and 252, and any regulations issued by the Federal Communications Commission at rates determined in accordance with the standards established by the Federal Communications Commission pursuant to 47 C.F.R. secs. 51.503 to 51.513, inclusive of any successor regulations. Nothing contained in KRS 278.546 to 278.5462 shall be construed to preclude the application of access or other lawful rates and charges to broadband providers. Nothing contained in KRS 278.546 to 278.5462 shall preclude, with respect to broadband services, access for those service providers that use or make use of the publicly switched network.

(3) The commission shall have jurisdiction to investigate and resolve consumer service complaints.

(4) No telephone utility shall refuse to provide wholesale digital subscriber line service to competing local exchange carriers on the same terms and conditions, filed in tariff with the Federal Communications Commission, that it provides to Internet service providers.

Effective: July 13, 2004

History: Created 2004 Ky. Acts ch. 167, sec. 3, effective July 13, 2004.

278.547 Definitions for KRS 278.547 to 278.5499.

As used in KRS 278.547 to 278.5499, unless the context requires otherwise:

(1) "Specialized telecommunications equipment" means devices such as, but not limited to telecommunications devices for the deaf, amplified phones, loud ringers, visual alert signalers, tactile signalers, captioned telephones, and appropriate wireless devices.

(2) "Telecommunications relay service" means a procedure by which a deaf, hard-of-hearing, or speech-impaired user of specialized telecommunications equipment can communicate with an intermediary party, who then verbally relays the first party's message or request to a third party, or vice versa. The service includes, but is not limited to the switching, transmitting, and the voice and typed translation of calls.

(3) "Telecommunications Access Program" means the program to furnish specialized telecommunications equipment to deaf, hard-of-hearing, and speech-impaired persons in order that they may use the telecommunications relay service. The program shall include maintenance and repair of the equipment.

Effective: July 12, 2006

History: Amended 2006 Ky. Acts ch. 23, sec. 3, effective July 1, 2006. -- Amended 1994 Ky. Acts ch. 237, sec. 1, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 144, sec. 15, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 5, sec. 1, effective July 13, 1990.

278.548 Telecommunications relay service program.

The commission shall establish a program to make telecommunications relay services available not later than October 1, 1991, and shall make interstate telecommunications relay services available no later than July 1, 1992. The telecommunications relay service, whether intrastate or interstate, shall be operated seven (7) days a week for twenty-four (24) hours per day for all deaf, hard-of-hearing, or speech-impaired telephone subscribers within the Commonwealth. In order to determine the most cost effective method of providing telecommunications relay services that will meet the requirements of the deaf, hard of hearing, and speech-impaired, the commission shall initiate an investigation, conduct public hearings, and solicit the advice and counsel of the deaf, hard-of-hearing persons, and speech-impaired persons and the organizations serving them. The commission may assist the Commission on the Deaf and Hard of Hearing in the TDD distribution program established pursuant to KRS 163.525.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 237, sec. 2, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 93, sec. 1, effective March 24, 1992; and ch. 144, sec. 16, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 5, sec. 2, effective July 13, 1990.

278.549 Rates -- Funding mechanism.

Users of a telecommunications relay service shall pay rates no greater than the rates paid for functionally equivalent voice communication services provided without a telecommunications relay. The commission shall determine the appropriate funding mechanism for the telecommunications relay system. The telecommunications industry shall not be required to absorb the cost of funding the telecommunications relay service. The commission may use assistance from public agencies of the state or federal government or from private organizations to accomplish the purposes of KRS 278.547 to 278.549.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 237, sec. 3, effective July 15, 1994. -- Created 1990 Ky. Acts ch. 5, sec. 3, effective July 13, 1990.

278.5499 Funding mechanism for Telecommunications Access Program.

(1) The Public Service Commission shall determine the appropriate funding mechanism for the Telecommunications Access Program established pursuant to KRS 163.525. The funding mechanism shall be designed to collect reasonably necessary funds, not to exceed two cents ($0.02) per access line per month, from subscribers of telecommunication utilities. The telecommunications industry shall not be required to absorb the cost of funding the Telecommunications Access Program.

(2) The Public Service Commission shall distribute the funds collected from this funding mechanism to the Commission on the Deaf and Hard of Hearing for the purpose of implementing and operating the Telecommunications Access Program. The secretary of the cabinet to which the Commission on the Deaf and Hard of Hearing is attached by statute or executive order shall establish oversight conditions with the Commission on the Deaf and Hard of Hearing to ensure the funds are being used solely for the purposes consistent with this section and KRS 163.525.

(3) The Public Service Commission, with the advice of the Commission on the Deaf and Hard of Hearing, shall initiate an investigation, conduct public hearings, and determine the appropriate funding mechanism for the Telecommunications Access Program no later than January 1, 1995. As part of this determination, the commission may review the funding mechanism for the telecommunications relay service pursuant to KRS 278.549. The commission shall consider whether a telecommunications utility experiences a competitive disadvantage resulting from the funding mechanism when compared to other telecommunication utilities.

Effective: June 4, 2010

History: Amended 2010 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 10, effective June 4, 2010. -- Amended 2006 Ky. Acts ch. 23, sec. 4, effective July 1, 2006. -- Amended 2002 Ky. Acts ch. 36, sec. 1, effective July 15, 2002. -- Created 1994 Ky. Acts ch. 237, sec. 4, effective July 15, 1994.

278.550 Repealed, 1986.

Catchline at repeal: General powers and duties of interurban electric railway companies.

History: Repealed 1986 Ky. Acts ch. 300, sec. 5, effective July 15, 1986. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 842a-1, 842a-4.

278.560 Repealed, 1974.

Catchline at repeal: City passengers, when interurbans not to take.

History: Repealed 1974 Ky. Acts ch. 308, sec. 64. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 842a-2.

278.570 Repealed, 1974.

Catchline at repeal: Bundle racks.

History: Repealed 1974 Ky. Acts ch. 308, sec. 64. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 842b-1.

278.580 Repealed, 1974.

Catchline at repeal: Bell to be rung or whistle sounded at crossings.

History: Repealed 1974 Ky. Acts ch. 308, sec. 64. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 786.

278.600 Definitions.

As used in KRS 278.605 and 278.610, unless the context requires otherwise:

(1) "Nuclear power facility" or "nuclear facility" means a nuclear fission thermal power plant;

(2) "High level nuclear wastes" means the aqueous wastes resulting from the operation of the first cycle of the solvent extraction system or equivalent and the concentrated wastes of the subsequent extraction cycles or equivalent in a facility for reprocessing irradiated reactor fuel. High level nuclear wastes shall include spent fuel assemblies prior to fuel reprocessing;

(3) "Certify" means to issue a certificate of public convenience and necessity under KRS 278.020;

(4) "Technology or means for the disposal of high-level nuclear waste" means a method for the permanent and terminal disposal of high-level nuclear waste. Such disposition shall not necessarily preclude the possibility of an approved process for retrieval of such waste.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 15, sec. 1, effective July 13, 1984.

278.605 Construction prohibited until means for disposal of high-level nuclear waste approved by United States government -- Exceptions for nuclear-based technologies.

(1) No construction shall commence on a nuclear power facility in the Commonwealth until the Public Service Commission finds that the United States government, through its authorized agency, has identified and approved a demonstrable technology or means for the disposal of high-level nuclear waste.

(2) The provisions of this section shall not be construed as applying to or precluding the following nuclear-based technologies, provided that electricity is not the primary output of the processes:

(a) Enrichment of depleted uranium hexafluoride tails;

(b) Processing of metals contaminated with radioactive materials;

(c) Recycling or reprocessing of spent nuclear fuels; and

(d) Nuclear-assisted coal or gas conversion processes.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 120, sec. 1, effective July 12, 2012. -- Created 1984 Ky. Acts ch. 15, sec. 2, effective July 13, 1984.

278.610 Requirements for certification of nuclear power facility.

If the requirements of KRS 278.605 have been met, the Public Service Commission may certify a nuclear power facility if it finds that:

(1) Specific facilities with adequate capacity to contain high-level nuclear waste are in actual operation, or will be in operation at the time the nuclear power facility being certified requires the means for the disposal of high level nuclear waste;

(2) The plan for disposal of high level nuclear waste for the nuclear facility to be certified is in full conformity with the technology approved by the authorized agency of the United States government; and

(3) The cost of disposal of high level nuclear waste from the nuclear facility to be certified is known with reasonable certainty, such that an accurate economic assessment of the proposal can be completed.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 15, sec. 3, effective July 13, 1984.

278.650 Procedures for proposals to construct antenna towers in an area outside the jurisdiction of a planning commission -- Hearing -- Building permit fee.

If an applicant proposes construction of an antenna tower for cellular telecommunications services or personal communications services which is to be located in an area outside the jurisdiction of a planning commission, the applicant shall apply to the Public Service Commission for a certificate of public convenience and necessity pursuant to KRS 278.020(1), 278.665, and this section. The commission shall convene a local public hearing on the application upon the receipt of a request from the local governing body or from not less than three (3) interested persons that reside in a county or municipal corporation in which the tower is proposed to be constructed. In reviewing the application, the commission may take into account the character of the general area concerned and the likely effects of the installation on nearby land uses and values. A local government may charge a fee for a building permit, in connection with the construction or alteration of any structure for cellular telecommunications services or personal communication services, if the fee does not exceed that charged for any other commercial structure of comparable cost of construction.

Effective: April 23, 2002

History: Amended 2002 Ky. Acts ch. 343, sec. 6, effective April 23, 2002; and ch. 346, sec. 222, effective July 15, 2002. -- Created 1996 Ky. Acts ch. 383, sec. 2, effective July 15, 1996.

Legislative Research Commission Note (4/23/2002). This section was amended by 2002 Ky. Acts ch. 343, sec. 6, and ch. 346, sec. 222, which appear to be in conflict. The changes made by ch. 346 are revisory in nature, while the changes made by ch. 343 are substantive. The changes of ch. 343 have been allowed to prevail. Cf. KRS 7.123.

278.660 Repealed, 2002.

Catchline at repeal: Confidentiality of uniform application and updates -- Penalty for violation.

History: Repealed 2002 Ky. Acts ch. 343, sec. 8, effective April 23, 2002. -- Created 1998 Ky. Acts ch. 231, sec. 5, effective July 15, 1998.

278.665 Administrative regulations governing cellular antenna towers to be constructed outside the jurisdiction of a planning commission.

(1) The commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the minimum content of an application for a certificate of convenience and necessity to construct cellular antenna towers for areas outside the jurisdiction of a planning commission.

(2) The commission, in establishing the public notice requirements of an application as provided for in subsection (1) of this section, shall distinguish between areas of low and high population densities. At a minimum, when the site of the proposed cellular antenna tower is outside of an incorporated city, the commission shall require that every person who owns property contiguous to the property where the proposed cellular antenna tower will be located receives notice by certified mail, return receipt requested, of the proposed construction, given the commission docket number under which the application will be processed, and informed of the opportunity to intervene in the commission proceedings on the application.

Effective: April 23, 2002

History: Amended 2002 Ky. Acts ch. 343, sec. 7, effective April 23, 2002; and ch. 346, sec. 223, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 103, sec. 1, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 231, sec. 4, effective July 15, 1998.

Legislative Research Commission Note (4/23/2002). This section was amended by 2002 Ky. Acts ch. 343, sec. 7, and ch. 346, sec. 223, which appear to be in conflict. The changes made by ch. 346 are revisory in nature, while the changes made by ch. 343 are substantive. The changes of ch. 343 have been allowed to prevail. Cf. KRS 7.123.

278.700 Definitions for KRS 278.700 to 278.716.

As used in KRS 278.700 to 278.716, unless the context requires otherwise:

(1) "Board" means the Kentucky State Board on Electric Generation and Transmission Siting created in KRS 278.702;

(2) "Merchant electric generating facility" means, except for a qualifying facility as defined in subsection (7) of this section, an electricity generating plant, together with associated facilities, that:

(a) Is capable of operating at a capacity of ten megawatts (10MW) or more; and

(b) Sells the electricity it produces in the wholesale market, at rates and charges not regulated by the Public Service Commission;

(3) "Person" means any individual, corporation, public corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust, estate, two (2) or more persons having a joint or common interest, or any other entity, and no portion of KRS 224.10-280, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 shall apply to a utility owned by a municipality unless the utility is a merchant plant as defined in this section;

(4) "Commence to construct" means physical on-site placement, assembly, or installation of materials or equipment which will make up part of the ultimate structure of the facility. In order to qualify, these activities must take place at the site of the proposed facility or must be site-specific. Activities such as site clearing and excavation work will not satisfy the commence to construct requirements;

(5) "Nonregulated electric transmission line" means an electric transmission line and related appurtenances for which no certificate of public convenience and necessity is required; which is not operated as an activity regulated by the Public Service Commission; and which is capable of operating at or above sixty-nine thousand (69,000) volts;

(6) "Residential neighborhood" means a populated area of five (5) or more acres containing at least one (1) residential structure per acre;

(7) "Qualifying facility" means a cogeneration facility as defined in 16 U.S.C. sec. 796(18)(b) which does not exceed a capacity of one hundred fifty megawatts (150MW) that is located on site at a manufacturer's plant and that uses steam from the cogeneration facility in its manufacturing process, or an industrial energy facility as defined in KRS 224.01-010 that does not generate more than one hundred fifty megawatts (150MW) for sale and has received all local planning and zoning approvals; and

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

Effective: June 8, 2011

History: Amended 2011 Ky. Acts ch. 82, sec. 5, effective June 8, 2011. -- Amended 2007 Ky. Acts ch. 73, sec. 4, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 138, sec. 1, effective July 12, 2006. -- Created 2002 Ky. Acts ch. 365, sec. 1,

effective April 24, 2002.

278.702 Kentucky State Board on Electric Generation and Transmission Siting.

(1) There is hereby established the Kentucky State Board on Electric Generation and Transmission Siting. The board shall be composed of seven (7) members as follows:

(a) The three (3) members of the Kentucky Public Service Commission;

(b) The secretary of the Energy and Environment Cabinet or the secretary's designee;

(c) The secretary of the Cabinet for Economic Development or the secretary's designee;

(d) 1. If the facility subject to board approval is proposed to be located in one (1) county, two (2) ad hoc public members to be appointed by the Governor from a county where a facility subject to board approval is proposed to be located:

a. One (1) of the ad hoc public members shall be the chairman of the planning commission with jurisdiction over an area in which a facility subject to board approval is proposed to be located. If the proposed location is not within a jurisdiction with a planning commission, then the Governor shall appoint either the county judge/executive of a county that contains the proposed location of the facility or the mayor of a city, if the facility is proposed to be within a city; and

b. One (1) of the ad hoc public members shall be appointed by the Governor and shall be a resident of the county in which the facility is proposed to be located.

2. If the facility subject to board approval is proposed to be located in more than one (1) county, two (2) ad hoc public members to be chosen as follows:

a. One (1) ad hoc public member shall be the county judge/executive of a county in which the facility is proposed to be located, to be chosen by majority vote of the county judge/executives of the counties in which the facility is proposed to be located; and

b. One (1) ad hoc public member shall be a resident of a county in which the facility is proposed to be located, and shall be appointed by the Governor.

If a member has not been chosen by majority vote, as provided in subdivision a. of this subparagraph, by thirty (30) days after the filing of the application, the Governor shall directly appoint the member.

3. Ad hoc public members appointed to the board shall have no direct financial interest in the facility proposed to be constructed.

(2) The term of service for the ad hoc members of the board shall continue until the board issues a final determination in the proceeding for which they were appointed. The remaining members of the board shall be permanent members.

(3) The board shall be attached to the Public Service Commission for administrative purposes. The commission staff shall serve as permanent administrative staff for the board. The members of the board identified in subsection (1)(a) to (d) of this section shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement KRS 278.700 to 278.716.

(4) No member of the board shall receive any salary or fee for service on the board or shall have any financial interest in any facility the application for which comes before the board, but each member shall be reimbursed for actual travel and expenses directly related to service on the board.

(5) The chairman of the Public Service Commission shall be the chairman of the board. The chairman shall designate one (1) member of the board as vice chairman. A majority of the members of the board shall constitute a quorum for the transaction of business. No vacancy on the board shall impair the right of the remaining members to exercise all of the powers of the board. The board shall convene upon the call of the chairman.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 605, effective July 15, 2010. -- Created 2002 Ky. Acts ch. 365, sec. 2, effective April 24, 2002.

278.704 Merchant electric generating facility -- Construction certificate -- Location of exhaust stack -- Setback requirement.

(1) No person shall commence to construct a merchant electric generating facility until that person has applied for and obtained a construction certificate for the facility from the board. The construction certificate shall be valid for a period of two (2) years after the issuance date of the last permit required to be obtained from the Energy and Environment Cabinet after which the certificate shall be void. The certificate shall be conditioned upon the applicant obtaining necessary air, water, and waste permits. If an applicant has not obtained all necessary permits and has not commenced to construct prior to the expiration date of the certificate, the applicant shall be required to obtain a valid certificate from the board.

(2) Except as provided in subsections (3), (4), and (5) of this section, no person shall commence to construct a merchant electric generating facility unless the exhaust stack of the proposed facility is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility.

(3) If the merchant electric generating facility is proposed to be located in a county or a municipality with planning and zoning, then setback requirements from a residential neighborhood, school, hospital, or nursing home facility may be established by the planning and zoning commission. Any setback established by a planning and zoning commission for a facility in an area over which it has jurisdiction shall:

(a) Have primacy over the setback requirement in subsections (2) and (5) of this section; and

(b) Not be subject to modification or waiver by the board through a request for deviation by the applicant, as provided in subsection (4) of this section.

(4) The board may grant a deviation from the requirements of subsection (2) of this section on a finding that the proposed facility is designed and located to meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of this section.

(5) If the merchant electric generating facility is proposed to be located on a site of a former coal processing plant in the Commonwealth where the electric generating facility will utilize on-site waste coal as a fuel source, then the one thousand (1,000) foot property boundary requirement in subsection (2) of this section shall not be applicable; however, the applicant shall be required to meet any other setback requirements contained in subsection (2) of this section.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 606, effective July 15, 2010. -- Created 2002 Ky. Acts ch. 365, sec. 3, effective April 24, 2002.

278.706 Application for certificate to construct merchant electric generating facility -- Fees -- Replacement or repair does not constitute construction.

(1) Any person seeking to obtain a construction certificate from the board to construct a merchant electric generating facility shall file an application at the office of the Public Service Commission.

(2) A completed application shall include the following:

(a) The name, address, and telephone number of the person proposing to construct and own the merchant electric generating facility;

(b) A full description of the proposed site, including a map showing the distance of the proposed site from residential neighborhoods, the nearest residential structures, schools, and public and private parks that are located within a two (2) mile radius of the proposed facility;

(c) Evidence of public notice that shall include the location of the proposed site and a general description of the project, state that the proposed construction is subject to approval by the board, and provide the telephone number and address of the Public Service Commission. Public notice shall be given within thirty (30) days immediately preceding the application filing to:

1. Landowners whose property borders the proposed site; and

2. The general public in a newspaper of general circulation in the county or municipality in which the plant is proposed to be located;

(d) A statement certifying that the proposed plant will be in compliance with all local ordinances and regulations concerning noise control and with any local planning and zoning ordinances. The statement shall also disclose setback requirements established by the planning and zoning commission as provided under KRS 278.704(3);

(e) If the facility is not proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source or in an area where a planning and zoning commission has established a setback requirement pursuant to KRS 278.704(3), a statement that the proposed site is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility, unless facilities capable of generating ten megawatts (10MW) or more currently exist on the site. If the facility is proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, a statement that the proposed site is compatible with the setback requirements provided under KRS 278.704(5). If the facility is proposed to be located in a jurisdiction that has established setback requirements pursuant to KRS 278.704(3), a statement that the proposed site is compatible with those established setback requirements;

(f) A complete report of the applicant's public involvement program activities undertaken prior to the filing of the application, including any use of media coverage, direct mailing, fliers, newsletters, public meetings, establishment of

a community advisory group, and any other efforts to obtain local involvement in the siting process;

(g) A summary of the efforts made by the applicant to locate the proposed facility on a site where existing electric generating facilities are located;

(h) Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed facility is to be located, and upon the chief officer of each public agency charged with the duty of planning land use in the jurisdiction in which the facility is proposed to be located;

(i) An analysis of the proposed facility's projected effect on the electricity transmission system in Kentucky;

(j) An analysis of the proposed facility's economic impact on the affected region and the state;

(k) A detailed listing of all violations by it, or any person with an ownership interest, of federal or state environmental laws, rules, or administrative regulations, whether judicial or administrative, where violations have resulted in criminal convictions or civil or administrative fines exceeding five thousand dollars ($5,000). The status of any pending action, whether judicial or administrative, shall also be submitted; and

(l) A site assessment report as specified in KRS 278.708. The applicant may submit and the board may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report.

(3) Application fees for a construction certificate shall be set by the board and deposited into a trust and agency account to the credit of the commission.

(4) Replacement of a merchant electric generating facility with a like facility, or the repair, modification, retrofitting, enhancement, or reconfiguration of a merchant electric generating facility shall not, for the purposes of this section and KRS 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a merchant electric generating facility.

(5) The board shall promulgate administrative regulations prescribing fees to pay expenses associated with its review of applications filed with it pursuant to KRS 278.700 to 278.716. All application fees collected by the board shall be deposited in a trust and agency account to the credit of the Public Service Commission. If a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses associated with the application, including the board's expenses associated with legal review thereof, the board shall assess a supplemental application fee to cover the additional expenses. An applicant's failure to pay a fee assessed pursuant to this subsection shall be grounds for denial of the application.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 4, effective April 24, 2002.

278.708 Site assessment report -- Consultant -- Mitigation measures.

(1) Any person proposing to construct a merchant electric generating facility shall file a site assessment report with the board as required under KRS 278.706(2)(l).

(2) A site assessment report shall be prepared by the applicant or its designee.

(3) A completed site assessment report shall include:

(a) A description of the proposed facility that shall include a proposed site development plan that describes:

1. Surrounding land uses for residential, commercial, agricultural, and recreational purposes;
2. The legal boundaries of the proposed site;
3. Proposed access control to the site;
4. The location of facility buildings, transmission lines, and other structures;
5. Location and use of access ways, internal roads, and railways;
6. Existing or proposed utilities to service the facility;
7. Compliance with applicable setback requirements as provided under KRS 278.704(2), (3), or (5); and
8. Evaluation of the noise levels expected to be produced by the facility;

(b) An evaluation of the compatibility of the facility with scenic surroundings;

(c) The potential changes in property values resulting from the siting, construction, and operation of the proposed facility for property owners adjacent to the facility;

(d) Evaluation of anticipated peak and average noise levels associated with the facility's construction and operation at the property boundary; and

(e) The impact of the facility's operation on road and rail traffic to and within the facility, including anticipated levels of fugitive dust created by the traffic and any anticipated degradation of roads and lands in the vicinity of the facility.

(4) The site assessment report shall also suggest any mitigating measures to be implemented by the applicant including planting trees, changing outside lighting, erecting noise barriers, and suppressing fugitive dust.

(5) The board shall have the authority to hire a consultant to review the site assessment report and provide recommendations concerning the adequacy of the report and proposed mitigation measures. The board may direct the consultant to prepare a separate site assessment report. Any expenses or fees incurred by the board's hiring of a consultant shall be borne by the applicant.

(6) The applicant shall be given the opportunity to present evidence to the board regarding any mitigation measures. As a condition of approval for an application to obtain a construction certificate, the board may require the implementation of any mitigation measures that the board deems appropriate.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 5, effective April 24, 2002.

278.710 Granting or denial of construction certificate -- Policy of General Assembly -- Transfer of rights and obligation.

(1) Within ninety (90) days of receipt of an administratively complete application, or within one hundred twenty (120) days of receipt of an administratively complete application if a hearing is requested, the board shall, by majority vote, grant or deny a construction certificate, either in whole or in part, based upon the following criteria:

(a) Impact of the facility on scenic surroundings, property values, the pattern and type of development of adjacent property, and surrounding roads;

(b) Anticipated noise levels expected as a result of construction and operation of the proposed facility;

(c) The economic impact of the facility upon the affected region and the state;

(d) Whether the facility is proposed for a site upon which existing generating facilities, capable of generating ten megawatts (10MW) or more of electricity, are currently located;

(e) Whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed;

(f) Whether the additional load imposed upon the electricity transmission system by use of the merchant electric generating facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Public Service Commission;

(g) Except where the facility is subject to a statewide setback established by a planning and zoning commission as provided in KRS 278.704(3) and except for a facility proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, whether the exhaust stack of the proposed merchant electric generating facility is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility. If a planning and zoning commission has established setback requirements that differ from those under KRS 278.704(2), the applicant shall provide evidence of compliance. If the facility is proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, the applicant shall provide evidence of compliance with the setback requirements provided in KRS 278.704(5);

(h) The efficacy of any proposed measures to mitigate adverse impacts that are identified pursuant to paragraph (a), (b), (e), or (f) of this subsection from the construction or operation of the proposed facility; and

(i) Whether the applicant has a good environmental compliance history.

(2) When considering an application for a construction certificate for a merchant electric generating facility, the board may consider the policy of the General Assembly to encourage the use of coal as a principal fuel for electricity generation as set forth in KRS 152.210, provided that any facility, regardless of fuel choice,

shall comply fully with KRS 224.10-280, 278.212, 278.216, and 278.700 to 278.716.

(3) A person that has received a construction certificate for a merchant electric generating facility shall not transfer rights and obligation under the certificate without having first applied for and received a board determination that:

(a) The acquirer has a good environmental compliance history; and

(b) The acquirer has the financial, technical, and managerial capacity to meet the obligations imposed by the terms of the approval or has the ability to contract to meet these obligations.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 6, effective April 24, 2002.

278.712 Local public hearing -- Procedure -- Parties -- Action to vacate or set aside ruling.

(1) The board may convene a local public hearing upon receipt of a request by not less than three (3) interested persons that reside in a county or municipal corporation in which the facility is proposed to be constructed to consider the application for a construction certificate. The board shall convene a local public hearing in response to a request from the planning and zoning commission, mayor of a city, or county fiscal court of a jurisdiction where the facility is proposed to be located. If the facility is proposed to be located in more than one (1) county, the board may convene a local public hearing and the hearing shall be held in the county with the largest population not more than sixty (60) days after receipt of a completed application. Absent the minimum number of requests for a local public hearing, the board may conduct all evidentiary proceedings in Franklin County.

(2) In any hearing on an application for a construction certificate, the board shall not be bound by the technical rules of legal evidence. Any hearing shall be conducted pursuant to and in conformance with rules and requirements set forth by the board in administrative regulations promulgated pursuant to KRS 278.702(2).

(3) The parties to a proceeding before the board shall include:

(a) The applicant; and

(b) Any person having been granted the right of intervention pursuant to subsection (4) of this section.

(4) Any interested person, including a person residing in a county or municipal corporation in which the facility is proposed to be constructed may, upon motion to the board, be granted leave to intervene as a party to a proceeding held pursuant to this section.

(5) Any party to a proceeding held pursuant to this section or any final determination pursuant to KRS 278.710 may, within thirty (30) days after service of the board's final ruling, bring an action against the board in the Circuit Court of the county in which the facility is proposed to be constructed to vacate or set aside the ruling on grounds that the ruling is arbitrary, capricious, or otherwise unlawful or unreasonable. Any party instituting an action for review of the board's ruling in the Circuit Court of the county in which the facility is proposed to be constructed shall give notice to all parties of record in the board's proceeding.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 7, effective April 24, 2002.

278.714 Application for certificate to construct nonregulated electric transmission line or carbon dioxide transmission pipeline -- Granting or denial -- Public hearing -- Local public information meeting -- Fee.

(1) No person shall commence to construct a nonregulated electric transmission line or a carbon dioxide transmission pipeline without a construction certificate issued by the board. An application for a construction certificate shall be filed at the offices of the Public Service Commission along with an application fee as set forth in subsection (6) of this section. The board may hire a consultant to review the transmission line or carbon dioxide pipeline and provide recommendations concerning the adequacy of the application and proposed mitigation measures. The board may direct the consultant to prepare a report recommending changes in the route of the carbon dioxide pipeline or the route of the electric transmission line. Any consultant expenses or fees shall be borne by the applicant.

(2) A completed application shall include the following:

(a) The name, address, and telephone number of the person proposing construction of the nonregulated electric transmission line or the carbon dioxide transmission pipeline;

(b) A full description of the proposed route of the electric transmission line or the carbon dioxide transmission pipeline and its appurtenances. The description shall include a map or maps showing:

1. The location of the proposed line or pipeline and all proposed structures that will support it;

2. The proposed right-of-way limits;

3. Existing property lines and the names of persons who own the property over which the line or pipeline will cross; and

4. a. The distance of the proposed electric transmission line from residential neighborhoods, schools, and public and private parks within one (1) mile of the proposed facilities; or

b. The distance of the proposed carbon dioxide transmission pipeline from residential neighborhoods, schools, and parks, either private or public, within one thousand (1,000) feet of the proposed facilities;

(c) With respect to electric transmission lines, a full description of the proposed line and appurtenances, including the following:

1. Initial and design voltages and capacities;

2. Length of line;

3. Terminal points; and

4. Substation connections;

(d) A statement that the proposed electric transmission line and appurtenances will be constructed and maintained in accordance with accepted engineering practices and the National Electric Safety Code;

(e) With respect to both electric transmission lines and carbon dioxide

transmission pipelines, evidence that public notice has been given by publication in a newspaper of general circulation in the general area concerned. Public notice shall include the location of the proposed electric transmission line or carbon dioxide pipeline, shall state that the proposed line or pipeline is subject to approval by the board, and shall provide the telephone number and address of the Public Service Commission; and

(f) Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed electric transmission line or carbon dioxide transmission pipeline is to be located, and upon the chief officer of each public agency charged with the duty of planning land use in the general area in which the line or pipeline is proposed to be located.

(3) With respect to electric transmission lines, within ninety (90) days of receipt of the application, or one hundred twenty (120) days if a local public hearing is held, the board shall, by majority vote, grant or deny the construction certificate either in whole or in part. Action to grant the certificate shall be based on the board's determination that the proposed route of the line will minimize significant adverse impact on the scenic assets of Kentucky and that the applicant will construct and maintain the line according to all applicable legal requirements. In addition, the board may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric transmission facilities in the Commonwealth. If the board determines that locating the transmission line will result in significant degradation of scenic factors or if the board determines that the construction and maintenance of the line will be in violation of applicable legal requirements, the board may deny the application or condition the application's approval upon relocation of the route of the line, or changes in design or configuration of the line.

(4) A public hearing on an application to construct a nonregulated electric transmission line may be held in accordance with the provisions of KRS 278.712.

(5) The board shall convene a local public information meeting upon receipt of a request by not less than three (3) interested persons that reside in the county or counties in which the carbon dioxide pipeline is proposed to be constructed. If the board convenes the local public information meeting, the meeting will be in the county seat of one (1) of the counties, as determined by the board, in which the proposed carbon dioxide pipeline will be located. The meeting shall provide an opportunity for members of the public to be briefed and ask the party proposing the carbon dioxide pipeline questions about the pipeline.

(6) Pursuant to KRS 278.706(3) and (5), the board shall promulgate administrative regulations to establish an application fee for a construction certificate for:

(a) A nonregulated transmission line; and

(b) A carbon dioxide transmission pipeline.

(7) With respect to carbon dioxide transmission lines, within ninety (90) days of receipt of the application or one hundred twenty (120) days if a local public information meeting is held, the board shall, by majority vote, grant or deny the construction

certificate either in whole or in part. Action to grant the certificate shall be based on the board's determination that the proposed route of the pipeline will minimize significant adverse impact on the scenic assets of Kentucky and that the applicant will construct and maintain the line according to all applicable legal requirements. In addition, the board may consider the interstate benefits expected to be achieved by the proposed carbon dioxide transmission pipeline in the Commonwealth. If the board determines that locating the transmission line will result in significant degradation of scenic factors or if the board determines that locating the carbon dioxide transmission line will be in violation of applicable legal requirements, the board may deny the application or condition the application's approval upon relocation of the route of the pipeline.

Effective: June 8, 2011

History: Amended 2011 Ky. Acts ch. 82, sec. 6, effective June 8, 2011. -- Amended 2006 Ky. Acts ch. 137, sec. 2, effective July 12, 2006. -- Created 2002 Ky. Acts ch. 365, sec. 8, effective April 24, 2002.

Legislative Research Commission Note (10/25/2011). A reference to "subsection (5)" in subsection (1) of this statute has been changed to "subsection (6)" under KRS 7.136(1)(e) and (h). In 2011 Ky. Acts ch. 82, sec. 6, the existing subsection (5) was renumbered as subsection (6), but an internal reference to that subsection in the existing language of this statute was overlooked.

278.716 Siting fund.

(1) There is hereby created a trust and agency account in the Public Service Commission called the "siting fund."

(2) All fees received by the board for the purpose of administering KRS 278.700 to 278.716 shall be deposited into the siting fund. The fund shall not lapse and all expenditures from the fund shall be used to implement KRS 278.700 to 278.716.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 9, effective April 24, 2002.

278.990 Penalties.

(1) Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars ($2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars ($25) nor more than two thousand five hundred dollars ($2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.

(2) Actions to recover the principal amount due and penalties under this chapter shall be brought in the name of the Commonwealth in the Franklin Circuit Court. Whenever any utility is subject to a penalty under this chapter, the commission shall certify the facts to its counsel, who shall bring an action for recovery of the principal amount due and the penalty. The commission may compromise and dismiss the action on terms approved by the court. The principal amount due shall be paid into the State Treasury and credited to the account of the commission, and all penalties recovered in such actions shall be paid into the State Treasury and credited to the general fund.

(3) Any utility that fails to pay an assessment as provided for by KRS 278.130 to 278.150 shall forfeit and pay to the state one thousand dollars ($1,000), and twenty-five dollars ($25) for each day it fails to pay the assessment, and shall not be released thereby from its liability for the assessment.

(4) Any utility that issues any securities or evidences of indebtedness, or assumes any obligation or liability in respect to the securities or evidences of indebtedness of any other person, or makes any sale or other disposition of securities or evidences of indebtedness, or the proceeds thereof, for purposes other than the purposes specified in the order of the commission made with respect thereto under KRS 278.300, shall be fined not more than ten thousand dollars ($10,000).

(5) Any utility that violates any of the provisions of KRS 278.460 shall be fined not less than one hundred dollars ($100) for each offense.

(6) Any company that willfully fails to receive, transport, and deliver oil or gas as required by KRS 278.490 shall, in addition to being liable in damages to the injured person, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), and each day of willful failure shall constitute a separate offense.

(7) Any telephone company that refuses to make a connection with the exchange or lines of another company for a period of thirty (30) days after being ordered to do so by the commission under subsection (2) of KRS 278.530 shall be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), to be recovered by indictment in the Franklin Circuit Court or in the Circuit Court of the county where the company requesting the connection resides or has its chief office in this state. If the company desiring the connection proceeds to make the connection, as permitted by subsection (2) of KRS 278.530, and the company so connected with refuses to receive and transmit the toll messages offered to it by the company making the connection, or refuses to deliver messages from its own lines or exchanges to the lines or exchanges of the company making the connection, the company so refusing shall be fined one hundred dollars ($100) for each day it refuses, to be recovered by indictment in the courts mentioned in the first sentence of this subsection; if it continues so to refuse for a period of six (6) months it shall forfeit its right to do business in this state, and any of its officers, agents, or employees who does or attempts to do any business in this state for it after the expiration of the six (6) months' period shall be fined fifty dollars ($50) for each day he does or attempts to do such business.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 354, sec. 1, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 300, sec. 4, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 50, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 54, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 308, sec. 47. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 786, 842b-2, 2223-2, 3766b-le, 3952-24, 3952-59, 3952-61, 4679f-2, 4679f-4.

278.992 Penalty for certain pipeline violations.

(1) Any person who violates any minimum safety standard adopted by the United States Department of Transportation pursuant to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq., or any amendments thereto, or any regulation adopted and filed pursuant to KRS Chapter 13A by the Public Service Commission governing the safety of pipeline facilities or the transportation of gas as those terms are defined in the Natural Gas Pipeline Safety Act, shall be subject to a civil penalty to be assessed by the Public Service Commission not to exceed the maximum civil penalty as contained in 49 C.F.R. sec. 190.223, as of December 31, 2011, for a violation of any provision of 49 U.S.C. secs. 60101 et seq., or any regulation or order issued thereunder, for each violation for each day that the violation persists. Any civil penalty assessed for a violation may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the Commonwealth of Kentucky to the person charged or may be recovered in a civil action in the Franklin Circuit Court.

(2) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by the Natural Gas Pipeline Safety Act or any regulation or order issued pursuant to it shall, upon conviction, be subject for each offense to a fine of not more than five thousand dollars ($5,000), imprisonment for a term not to exceed one (1) year, or both.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 5, sec. 1, effective July 12, 2012. -- Amended 1998 Ky. Acts ch. 387, sec. 1, effective July 15, 1998. -- Amended 1990 Ky. Acts ch. 402, sec. 1, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 82, sec. 51, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 55, effective April 1, 1979. -- Created 1970 Ky. Acts ch. 289, sec. 1.

KRS CHAPTER 279

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Penalties

- .990 Penalties.

279.010 Definitions.

As used in this chapter, unless the context requires otherwise:

(1) "Acquire" means to construct, purchase, obtain by lease, devise, gift, or by eminent domain, or to obtain by any other lawful means;

(2) "Board" means the board of directors of a corporation formed under this chapter;

(3) "Business entity" means a domestic and foreign limited liability company, corporation, general partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association;

(4) "Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country;

(5) "Farm Credit Act" means Section 12 of the Federal Farm Credit Act of 1935 and the amendments thereto;

(6) "Federal agency" means and includes the United States, the President of the United States, and all federal authorities, instrumentalities and agencies in the ordinary sense;

(7) "Improve" means to construct, reconstruct, extend, enlarge, alter, better, or repair;

(8) "Member" means and includes each person signing the articles of incorporation of a corporation formed under this chapter, each person later admitted to membership according to law or according to the articles of incorporation or bylaws of the corporation, and each common stockholder in a corporation organized under this chapter that has capital stock;

(9) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity;

(10) "Obligations" means and includes negotiable bonds, notes, debentures, interim certificates or receipts and all other evidences of indebtedness either issued or the payment thereof assumed by a corporation organized under this chapter;

(11) "Real name" shall have the meaning set forth in KRS 365.015; and

(12) "System" means and includes any plant, works, facilities, and properties, and all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, or distribution of electric energy.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 131, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 131, effective June 26, 2007. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-2.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

Legislative Research Commission Note (6/26/2007). 2007 Ky. Acts ch. 137, sec. 131, subsection (11) cited "Section 164 of this Act." It is apparent from context that the section referred to should have been Section 163 of the Act, KRS 365.015. The

Reviser of Statutes has made this change under the authority of KRS 7.136.

279.020 Who may incorporate.

Any three (3) or more individuals, partnerships, associations or private corporations a majority of whom are citizens of Kentucky, may by executing, filing, and recording articles of incorporation as provided in KRS 279.030 and 279.040 organize to conduct a nonprofit cooperative corporation for the:

(1) Primary purpose of generating, purchasing, selling, transmitting, or distributing electric energy to any individual or entity, and providing any good or service related to generating, purchasing, selling, transmitting, or distributing electric energy to any individual or entity; and

(2) If the cooperative desires, for the secondary purpose of engaging in any other lawful business or activity, provided that any nonregulated business or activity is conducted through an affiliate except for any business or activity which does not involve the sale of a product that is conducted pursuant to a contract with a federal military installation or a contract for administrative services which does not involve the sale of a product requested by a local, state, or federal government.

Effective: July 12, 2006

History: Amended 2006 Ky. Acts ch. 114, sec. 1, effective July 12, 2006. -- Amended 1974 Ky. Acts ch. 38, sec. 1, effective June 21, 1974. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-3.

279.030 Articles of incorporation -- What to contain.

(1) The articles of incorporation shall set forth:

(a) The name of the corporation that satisfies the requirements of KRS 14A.3-010;

(b) The purpose for which it is formed;

(c) The place, including the county, where its principal office will be located;

(d) A reasonable description of the territory in which its operations are to be conducted;

(e) The number of directors;

(f) The names and post office addresses of the directors who are to manage the affairs of the corporation for the first year of its existence, or until the first meeting called to elect directors, or until the successors of the first directors are elected and have qualified;

(g) The period limited for the duration of the corporation, or that the corporation is to be perpetual;

(h) If the corporation is organized without capital stock, the terms upon which members may be admitted and the terms upon which their membership shall terminate;

(i) If the corporation is organized with capital stock, the amount of the stock, the number of shares into which it is divided and the par value; and

(j) If the capital stock is divided into common and preferred stock, as it may be, the number of shares to which preference is granted and the number of shares to which no preference is granted, and the nature and definite extent of the preference and privileges granted to each.

(2) The articles of incorporation may contain any other lawful provision that the incorporators choose to insert for the purpose of regulating the business and affairs of the corporation, for the purpose of creating, defining, limiting or regulating the rights, powers and duties of the corporation and its board of directors and members, and the exercise of any such powers, or for the purpose of creating or defining the rights and privileges of the members of the corporation among themselves, including separation of members into classes or districts and providing for representation of each class or district on the board of directors.

Effective: January 1, 2011

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 132, effective July 15, 2010; and amended ch. 151, sec. 80, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 132, effective June 26, 2007. -- Amended 1974 Ky. Acts ch. 38, sec. 2, effective June 21, 1974. -- Amended 1972 Ky. Acts ch. 11, sec. 1, effective June 16, 1972. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-4.

Legislative Research Commission Note (1/1/2011). This section was amended by 2010 Ky. Acts ch. 151, and repealed and reenacted by 2010 Ky. Acts ch. 51. Pursuant to Section 184 of Acts ch. 51, it was the intent of the General Assembly that the repeal and reenactment not serve to void the amendment, and these Acts do not appear to be in conflict, therefore, they have been codified together.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

279.040 Filing and approval of articles -- When corporation may begin business.

(1) The incorporators shall execute triplicate originals of the articles of incorporation that satisfy the requirements of KRS 14A.2-010 to 14A.2-150, and each incorporator shall acknowledge each triplicate original before an officer authorized to take acknowledgments of deeds. They shall then file the triplicate originals, together with the certificate of acknowledgment, in the office of the Secretary of State. If the Secretary of State finds the articles to be legal and valid, he shall immediately indorse his approval on each of the triplicate originals, retain, record and file one (1) triplicate original in his office, and deliver the other two (2) triplicate originals, with his approval indorsed thereon, to the incorporators. The incorporators shall then file one (1) approved triplicate original in the office of the county clerk of the county in which the principal office of the corporation is to be located.

(2) As soon as the Secretary of State has filed the articles of incorporation, the proposed corporation shall be a body politic and corporate and may transact business in its corporate name.

Effective: January 1, 2011

History: Amended 2010 Ky. Acts ch. 151, sec. 81, effective January 1, 2011. -- Amended 1974 Ky. Acts ch. 38, sec. 3, effective June 21, 1974. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-5.

279.050 Amendments to articles.

The articles of incorporation may be amended as provided in this section at any regular or special meeting of the members of the corporation duly called upon notice of the specific purpose. The amendment shall first be approved by two-thirds (2/3) of the directors and then adopted by a vote representing not less than a majority of the votes entitled to be cast by the members present in person, or by proxy (if permitted by the bylaws) and voting at such meeting. The president of the corporation shall make triplicate originals of the amendments so adopted, each satisfying the requirements of KRS 14A.2-010 to 14A.2-150 and the secretary of the corporation shall attest each triplicate original. Each triplicate original shall be acknowledged by the president and the secretary before an officer authorized to take acknowledgments of deeds, and the president shall then cause them to be filed, approved and recorded in the same manner as is provided by KRS 279.040 for original articles of incorporation, and the amendments shall take effect upon filing by the Secretary of State.

Effective: January 1, 2011

History: Amended 2010 Ky. Acts ch. 151, sec. 82, effective January 1, 2011. -- Amended 1974 Ky. Acts ch. 38, sec. 4, effective June 21, 1974. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-10.

279.060 Repealed, 2011.

Catchline at repeal: Use of "Rural Electric Cooperative" in name limited.

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 133, effective July 15, 2010; and repealed ch. 151, sec. 151, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 133, effective June 26, 2007. -- Amended 1974 Ky. Acts ch. 38, sec. 5, effective June 21, 1974. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 883j-6, 883j-9.

279.070 Bylaws -- Adoption and contents.

(1) The incorporators of each corporation organized under this chapter shall adopt for its management bylaws not inconsistent with the powers granted by this chapter. The written consent of a majority of the incorporators, evidenced by their signatures to the bylaws adopted, shall be necessary to the adoption of bylaws. The bylaws may be amended by a majority vote of the board of directors.

(2) The bylaws may provide for any or all of the following matters:

(a) The time, place and manner of calling and conducting meetings of the members.

(b) The number of members constituting a quorum.

(c) The right of members to vote by proxy or by mail, or both, and the conditions, manner, form and effect of such votes.

(d) The number of directors constituting a quorum.

(e) The qualifications, compensation, powers, duties and term of office of directors and officers, the time of their election and the manner of giving notice thereof.

(f) An executive committee and the allotment to that committee of any or all of the functions and powers of the board of directors, subject to the general direction and control of the board.

(g) The amount of entrance, organization and membership fees, if any, the manner of collecting them and the purposes for which they may be used.

(h) The qualifications of members of the corporation and the conditions precedent to membership; the time and manner of permitting members to withdraw; the manner of assignment or transfer of the interest of a member; the conditions upon which and the time when membership of any member shall cease; the suspension of the rights of a member when he ceases to be eligible to membership in the corporation; the manner and effect of the expulsion of a member; the manner of determining the value of a member's interest and provision for its purchase by the corporation upon the death or withdrawal of a member or upon his expulsion or forfeiture of membership or, at the option of the corporation, the purchase of the member's interest at a price fixed by appraisal by the board. The bylaws may provide that in case of the forced withdrawal or expulsion of a member the board shall equitably appraise his property interest in the corporation and shall at its option fix the amount thereof in money or other property, which shall be paid to him within one (1) year after his expulsion or withdrawal.

(i) Penalties for violation of the bylaws.

(j) Any other matter relating to the operation or management of the corporation and not inconsistent with law or with the articles of incorporation.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-11.

279.080 Board of directors and officers.

(1) Each corporation formed under this chapter shall have a board of directors of not less than five (5) members, which shall be the governing body of the corporation. Unless otherwise provided in the articles of incorporation, directors need not be members of the corporation. The directors, other than those named in the articles of incorporation, shall be elected annually or as provided for in the bylaws, but no director shall be elected for a longer term than four (4) years. The directors shall be elected in a manner to insure secrecy and anonymity of ballots cast, provided the result of such election is determined by ballot vote. The directors shall receive such compensation and reimbursement of expenses as the bylaws provide. When a vacancy on the board of directors occurs other than by expiration of a term, the remaining members of the board, by a majority vote, shall fill the vacancy for the remainder of the term by appointment, unless the bylaws otherwise provide.

(2) Subject to the provisions of the articles of incorporation and the bylaws, the board of directors may adopt rules and regulations governing the procedure of the board and the operations of the corporation, and shall manage and conduct the business and affairs of the corporation.

(3) The officers of a corporation shall consist of a president, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two (2) or more offices may be held by the same person, except that the offices of the president and secretary may not be held by the same person. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

(4) Every officer, employee, or agent handling funds, securities, or negotiable instruments of or for any corporation created under this chapter shall be required to execute an adequate bond for the faithful performance of his duties in an amount and with security approved by the board.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 130, sec. 1, effective June 24, 2003. -- Amended 1982 Ky. Acts ch. 140, sec. 1, effective July 15, 1982. -- Amended 1974 Ky. Acts ch. 38, sec. 6, effective June 21, 1974. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 883j-12, 883j-13, 883j-14.

279.090 Requirements for membership in corporation -- Rights and liabilities of members.

(1) No person may become or remain a member of any corporation formed under this chapter with capital stock except a farmer, a person engaged in the production of agricultural products or livestock, a cooperative association as defined in the Farm Credit Act, or a corporation organized under this chapter.

(2) No person other than the original incorporators may become or remain a member of any corporation formed under this chapter without capital stock unless, in addition to complying with all membership requirements in the articles of incorporation and bylaws of the corporation, such person uses electric energy supplied by the corporation or by a corporation that is a member of the corporation in question, or such person is a corporation formed under this chapter or is a corporation furnishing electric energy or is a cooperative association as defined in the Farm Credit Act.

(3) Any corporation formed under this chapter without capital stock may provide in its articles of incorporation that, in addition to the requirements for membership set forth in subsection (2) of this section, no person other than the original incorporators may become or remain a member unless that person is a farmer or is a cooperative association within the meaning of the Farm Credit Act, or that a stated percentage of its members must be and remain farmers or cooperative associations within the meaning of the Farm Credit Act.

(4) Any corporation formed under this chapter may become a member of any other corporation formed under this chapter and may fully avail itself of the facilities and services of that corporation.

(5) Each member of a corporation organized under this chapter with or without capital stock shall have only one (1) vote, and memberships shall not be transferable.

(6) Neither the incorporators nor any member of any corporation formed under this chapter shall be personally responsible for any debt, obligation or liability of the corporation, except for promissory notes given for the purchase of common stock in the corporation or except as the incorporator or member may become personally liable by reason of his or her own acts or conduct.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 133, sec. 47, effective July 15, 2010. -- Amended 1974 Ky. Acts ch. 38, sec. 7, effective June 21, 1974. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 883l-4, 883j-8, 883j-15, 883j-16.

279.095 Nonprofit operation.

A rural electric cooperative shall be operated on a nonprofit basis for the mutual benefit of its members and patrons. The bylaws of a cooperative or its contracts with members and patrons shall contain such provisions relative to the disposition of revenue and receipts as may be necessary and appropriate to establish and maintain its nonprofit and cooperative character. In the case of a cooperative authorized to issue shares of stock, such bylaws or contracts shall provide that no moneys shall be paid or credits given on the basis of patronage except after the declaration or payment of dividends on the outstanding shares of stock in accordance with the articles of incorporation of the cooperative, and such bylaws or contracts shall otherwise be consistent with the cooperative's obligations in respect of such shares of stock.

Effective: June 16, 1972

History: Created 1972 Ky. Acts ch. 11, sec. 2, effective June 16, 1972.

279.100 Common and preferred stock -- Ownership and transfer.

(1) Only a member of a corporation organized under this chapter may own its common stock, and neither the common stock in any such corporation nor any interest therein shall be transferable or assignable, either by act of the parties or by operation of law, to any person who is not eligible to be a member of the corporation.

(2) No corporation formed under this chapter shall issue common stock to a member until it has been fully paid for, but the promissory notes of a member may be accepted by the corporation as full or partial payment. The corporation shall hold the stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote.

(3) No person, other than a corporation formed under this chapter, shall at any one time own more than five percent (5%) of the outstanding common stock of any corporation formed under this chapter.

(4) Any such corporation may at any time, as specified in its bylaws, except when the debts of the corporation exceed fifty percent (50%) of its assets, buy in or purchase its common stock at the book value thereof, as conclusively determined by its board of directors, and pay for it in cash within one (1) year thereafter.

(5) Preferred stock may be owned by and transferred to any person, and may be made redeemable and retirable by the corporation on such terms and conditions as are provided for in the articles of incorporation and printed on the face of each certificate. Ownership of preferred stock shall not confer on the holder any right to vote.

Effective: July 15, 1986

History: Amended 1986 Ky. Acts ch. 111, sec. 1, effective July 15, 1986. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-8.

279.110 General powers of rural electric cooperative corporations.

Any corporation created under this chapter may:

(1) Acquire and hold any property necessary or incidental to the proper conduct of its business, including preferred stock and common stock or other corporations whether formed under this chapter or not, and the stock of any federal agency, and may pay for any such property in cash, property or on credit, or both, and secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as its board of directors determines;

(2) Acquire, own, operate, maintain and improve one (1) or more systems;

(3) Pledge all or part of its revenue or mortgage or encumber all or any part of its property for the purpose of securing the payment of the principal and interest of any of its obligations;

(4) Have and exercise the right of eminent domain in the manner provided in the Eminent Domain Act of Kentucky;

(5) Construct, own, lease, operate, and control any facilities across, along, or under any street or public highway, and over any lands belonging to this state or to any county, city, or political subdivision of this state, but shall restore any such street or highway to its former condition as nearly as possible and shall not use it in such a manner as to impair unnecessarily its usefulness;

(6) Accept gifts and grants of money or property from this state, any county, city, or political subdivision of this state, any federal agency, or any other person, and accept voluntary and uncompensated services;

(7) Make any contract necessary or convenient for the full exercise of the powers granted by this chapter, or for any other corporate purpose, subject to any limitations imposed by this chapter;

(8) Sell, lease, or dispose of all or any part of its property, subject to the provisions of KRS 279.140;

(9) Contract debts, borrow money without limitation as to the amount of corporate indebtedness or liability, and issue or assume obligations;

(10) Fix and collect reasonable rates and charges for services, subject to the provisions of KRS Chapter 278;

(11) Assist its members in wiring their premises for the use of electric energy and in purchasing electrical equipment, appliances, and supplies, and in financing such activities;

(12) (a) Establish affiliates to engage in nonregulated businesses or activities as provided for in KRS 279.020.

(b) A cooperative formed under this chapter shall annually report to its member-owners the nature of the nonregulated business or activity, its financial status and future expectations, as well as any other information deemed appropriate by its board of directors. The cooperative shall file with the Public Service Commission a balance sheet and income statement for each nonregulated business or activity, if the cooperative has established a separate affiliate to

engage in nonregulated business or activity.

(c) If the cooperative's nonregulated activities are conducted within the cooperative pursuant to a contract with a federal military installation or a local, state, or federal government as provided for in KRS 279.020, a balance sheet and statement of revenues and expenses for each nonregulated business or activity shall be filed with the Public Service Commission.

(d) The information to be filed with the Public Service Commission shall be filed simultaneously with the Public Service Commission annual report. The cooperative may request confidentiality for any information it provides as required in this subsection that it deems proprietary or competitive; and

(13) Do anything not specifically set forth in this section that is reasonably deemed necessary, proper, or convenient for the accomplishment of the purposes of the corporation and is not prohibited by law.

Effective: July 12, 2006

History: Amended 2006 Ky. Acts ch. 114, sec. 2, effective July 12, 2006. -- Amended 1976 Ky. Acts ch. 140, sec. 114, effective June 19, 1976. -- Amended 1972 Ky. Acts ch. 11, sec. 3, effective June 16, 1972. -- Amended 1962 Ky. Acts ch. 68, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-7, 883j-8.

279.120 Persons with whom corporation may do business -- Conditions for acquisition of new base load generating facility.

(1) Except as provided in subsections (2), (3), and (4) of this section, corporations formed under this chapter shall supply electric energy, furnish services, and sell personal property, except that transferred in part payment for other personal property, to their members only.

(2) Except as provided in subsections (3), (4), and (5) of this section and in KRS 279.125, any corporation formed under this chapter may supply electric energy, furnish services and sell property, to the extent of not more than forty-nine percent (49%) of its total business, to nonmembers of the corporation, including any federal agency, any state, and any county, city or political subdivision.

(3) A corporation formed under this chapter may sell and lease back any part or all of its property free of the restrictions contained in subsections (1) and (2) of this section, or any other section of the Kentucky Revised Statutes except that such sale shall be subject to KRS 279.140.

(4) A corporation formed under this chapter on or before December 31, 2005, may supply electric energy to a nonmember of the corporation free of the restrictions contained in subsections (1) and (2) of this section only if:

(a) The hourly amount of electric energy supplied is produced by a generator owned or leased by the corporation; and

(b) The hourly amount of electric energy supplied was previously used by a member of the corporation, which is also a corporation formed under this chapter on or before December 31, 2005, to provide electric service to a retail customer with an annual hourly peak electric energy requirement of more than two hundred (200) megawatts.

(5) A sale of electric energy authorized by subsection (4) of this section shall be considered member business for purposes of subsection (2) of this section.

(6) A corporation formed under this chapter that is supplying electric energy to a nonmember of the corporation under subsections (4) and (5) of this section may acquire a new base load generating facility for its system by purchase, lease, or construction only if, at the time the corporation enters into a binding commitment for the acquisition of the new base load generating facility, the number of megawatts the corporation is supplying to nonmembers of the corporation is forty-nine percent (49%) or less of the total number of megawatts that the corporation is supplying to all persons.

Effective: July 12, 2006

History: Amended 2006 Ky. Acts ch. 4, sec. 1, effective July 12, 2006. -- Amended 2004 Ky. Acts ch. 12, sec. 1, effective July 13, 2004. -- Amended 1984 Ky. Acts ch. 27, sec. 1, effective February 23, 1984. -- Amended 1974 Ky. Acts ch. 38, sec. 9, effective June 21, 1974. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 883j-8, 883j-16.

279.125 Transmission, distribution or sale of energy to municipally owned electric utility -- Exceptions.

Notwithstanding the provisions of any other section of the Kentucky Revised Statutes, unless specific authorization is granted by the Public Service Commission, no corporation formed under this chapter shall transmit, distribute or furnish electric energy for resale, either directly or indirectly, to any electric utility now or hereafter owned or controlled, in whole or in part, by any municipality or municipalities, or instrumentalities thereof, incorporated on June 21, 1974, except to any such electric utility to which such corporation's electric facilities are physically connected on June 21, 1974; and provided, further, that no provision herein shall prevent a corporation organized under this chapter from interconnecting for exchanges of energy with any such municipal utility which, on June 21, 1974, owns and operates electric generating facilities adequate to supply the electric requirements of the municipality. The required authorization as used in this section shall not be construed to extend the jurisdiction of the Public Service Commission over municipally owned electric systems.

Effective: July 13, 2004

History: Amended 2004 Ky. Acts ch. 12, sec. 2, effective July 13, 2004. -- Created 1974 Ky. Acts ch. 38, sec. 10, effective June 21, 1974.

279.130 Obligations, how issued, secured, purchased or redeemed.

Any corporation formed under this chapter may issue its obligations and pledge its future revenues for the payment thereof. The obligations may be in the form of bonds, notes, debentures, interim certificates or other evidences of indebtedness. The obligations shall be authorized by the board of directors by a resolution which shall fix the dates of issuance and maturity, the rate and time of payment of interest, and denominations, the form (either coupon or registered), the registration privileges, the manner of execution, the place and medium of payment, and the terms of redemption. Any limitation as to interest or term of maturity otherwise provided by law shall not be applicable to obligations issued by a corporation organized under this chapter.

Effective: June 16, 1972

History: Amended 1972 Ky. Acts ch. 11, sec. 4, effective June 16, 1972. -- Amended 1949 (1st Extra. Sess.) Ky. Acts ch. 9, sec. 1, effective March 30, 1949. -- Amended 1942 Ky. Acts ch. 7, secs. 1 and 2. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 883j-17, 883j-18, 883j-19.

279.140 Power of board of directors to encumber or dispose of property.

(1) Except as provided in KRS 279.090, 279.120 and 279.130, and in subsection (2) of this section, no corporation formed under this chapter may sell, lease or otherwise dispose of any of its property unless the board of directors is authorized so to do by a majority vote of the total membership. Due notice shall be given to all members of the proposed sale, lease or other disposition of such property. The board of directors, without authorization by the members, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging or encumbering of any or all of, the property, assets, rights, privileges, licenses, franchises, and permits of such a corporation, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, upon such terms and conditions as the board of directors shall determine, to secure any obligation of such corporation, any provision of the articles of incorporation or bylaws of such corporation to the contrary notwithstanding.

(2) The board may sell any of the following property without authority from the members:

(a) Property that is not necessary in operating and maintaining the system, but sales of such property shall not in any one year exceed ten percent (10%) in value of all the property of the corporation other than merchandise and property acquired for resale;

(b) Services and electric energy;

(c) Property acquired for resale; and

(d) Merchandise.

Effective: June 16, 1972

History: Amended 1972 Ky. Acts ch. 11, sec. 5, effective June 16, 1972. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-23.

279.150 Other electric companies required to sell electric energy to cooperatives.

No person engaged in the business of producing, selling or distributing electric energy for public use in this state shall refuse to furnish electric energy to any corporation organized under this chapter, if the corporation is able and willing to pay the same rates for such energy as are paid by other consumers in the same territory using a comparable amount of energy. This section does not forbid a discrimination based on the load factor or diversity factor.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-24.

279.160 Repealed, 1972.

Catchline at repeal: Rates, charges and prices, how to be fixed -- Disposition of surplus revenue.

History: Repealed 1972 Ky. Acts ch. 11, sec. 6, effective June 16, 1972. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-20.

279.170 Consolidation of cooperatives.

(1) Any two (2) or more corporations created under this chapter may enter into an agreement for their consolidation. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, which shall be not less than five (5), the time of the annual meetings of the consolidated corporation and the names of the directors who are to serve until the first annual meeting. If the agreement is approved by a majority vote of those members voting at each corporation, with the votes cast as authorized by KRS 279.070, the directors named in the agreement shall subscribe and acknowledge articles in triplicate originals conforming substantially to the original articles of incorporation, and entitled and indorsed "Articles of Consolidation of ....."

(2) The articles of consolidation shall state:

(a) The names of the corporations being consolidated.

(b) The name of the consolidated corporation.

(c) Such other items as are required or permitted to be set forth in the original articles of incorporation.

(3) The articles of consolidation shall be filed, recorded and approved in the same manner, and shall take effect upon approval, as is provided in KRS 279.040 for original articles of incorporation.

(4) The articles of consolidation may be amended in the same manner as articles of incorporation may be amended under KRS 279.050.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 165, sec. 1, effective July 15, 1998. -- Amended 1974 Ky. Acts ch. 38, sec. 8, effective June 21, 1974. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-21.

279.180 Dissolution.

(1) Any corporation formed under this chapter may be dissolved by filing articles of dissolution, which shall be entitled and indorsed "Articles of Dissolution of ...." and shall state:

(a) The name of the corporation and, if it is a consolidated corporation, the names of the original corporations;

(b) The date of filing of the articles of incorporation and, if the corporation is a consolidated corporation, the dates on which the articles of incorporation of the original corporations were filed;

(c) That the corporation elects to dissolve; and

(d) The name and post office address of each of its directors, and the name, title and post office address of each of its officers.

(2) The articles of dissolution shall be subscribed and acknowledged in the same manner as original articles of incorporation, by the president or a vice president and the secretary or an assistant secretary, who shall make and attach an affidavit stating that they have been authorized to execute and file the articles by a majority vote of all of the members.

(3) Articles of dissolution shall be filed, recorded and approved in the same manner, and shall take effect upon approval, as is provided in KRS 279.040 for articles of incorporation.

(4) The corporation filing articles of dissolution shall continue in existence for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs and may sue and be sued, contract and be contracted with in its corporate name. Any assets remaining after the liabilities and obligations of the corporation have been satisfied or discharged shall be ratably distributed to the members of the corporation.

Effective: July 15, 1986

History: Amended 1986 Ky. Acts ch. 44, sec. 1, effective July 15, 1986. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-22.

279.190 Fees for articles and amendments -- No recording taxes.

(1) For acting upon, filing and recording articles of incorporation, articles of consolidation, articles of dissolution, or amendments to articles of incorporation or consolidation, the corporation shall pay to the Secretary of State a sum not to exceed two dollars ($2) for which the Secretary of State shall give his receipt.

(2) For filing and recording articles of incorporation, articles of consolidation, articles of dissolution, or amendments to articles of incorporation or consolidation, the corporation shall pay to the county clerk a sum not to exceed three dollars ($3), for which the county clerk shall give his receipt.

(3) No fee shall be paid or received for affixing the state seal to any of the documents mentioned in this section or to any copy thereof.

(4) The recordation of the documents mentioned in this section shall be exempt from all recording taxes.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-30.

279.200 Taxes.

Corporations formed under this chapter shall be exempt from all profit taxes, gross and net taxes, sales taxes, occupation taxes, privilege taxes, income taxes, taxes on electric current consumed and from all excise taxes whatsoever, any statute now existing or hereafter passed to the contrary notwithstanding. In lieu of all other state, county, city and district taxes, except ad valorem and franchise taxes, corporations formed under this chapter shall pay to the State Treasurer an annual tax of ten dollars ($10).

History: Amended 1944 Ky. Acts ch. 173, sec. 19. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-28.

279.210 Jurisdiction of Public Service Commission -- Application of other laws.

(1) Every corporation formed under KRS 279.010 to 279.220 shall be subject to the general supervision of the Public Service Commission, and shall be subject to all the provisions of KRS 278.010 to 278.450 inclusive, and KRS 278.990.

(2) The provisions of the general corporation laws of this state and all rights and powers thereunder shall apply to corporations organized under KRS 279.010 to 279.220, except where such provisions are in conflict with or inconsistent with the express provisions of KRS 279.010 to 279.220.

Effective: June 15, 1950

History: Amended 1950 Ky. Acts ch. 129, sec. 1, effective June 15, 1950. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 883j-25, 883j-27.

279.220 Foreign cooperatives may extend lines into this state -- Conditions -- Limitation.

(1) Any rural electric cooperative corporation organized under a law of any state contiguous to this state, which law is substantially similar to the law under which such corporations may be organized in this state, may extend its operations into this state for a distance not exceeding three (3) miles from the boundary between that state and this state, and such extension shall not be considered doing business in this state within the meaning of the statutes regulating or taxing foreign corporations doing business in this state. Such corporation shall be entitled to the same exemptions granted to, and shall pay the same tax required of, domestic corporations under KRS 279.200.

(2) The operations of such corporation within this state shall be subject to the supervision of the Public Service Commission, and the commission may take the necessary action to require the corporation to furnish adequate service at reasonable rates. If the corporation fails to comply with the regulations and requirements of the commission it shall forfeit the privilege granted by this section.

(3) The privilege granted by this section shall be effective for a period of five (5) years from June 12, 1940, at which date it shall expire, unless the contiguous state grants a similar privilege to rural electric cooperative corporations incorporated in this state, in which case it shall continue so long as the contiguous state continues to grant the same privilege.

(4) A rural electric cooperative corporation organized under a law of any state other than Kentucky not satisfying the exemptions set forth in subsections (1), (2) and (3) of this section is subject to KRS 14A.9-010.

Effective: January 1, 2011

History: Amended 2010 Ky. Acts ch. 151, sec. 83, effective January 1, 2011. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952a-1, 3952a-2, 3952a-3.

279.310 Definitions for KRS 279.320 to 279.600.

As used in KRS 279.320 to 279.600, unless the context requires otherwise:

(1) "Cooperative" means any corporation organized under KRS 279.320 to 279.600 or which becomes subject to those sections in the manner provided therein;

(2) "Person" means any natural person, firm, association, corporation, business trust, or partnership;

(3) As used in this chapter, the term "telephone service" shall include in its meaning communications services of all kinds allowed to any other telephone utility, authorized by regulatory agency and with some unregulated, that being the transmission of voice, data, sounds, signals, pictures, writing, or signs of all kinds, by use of wire, radio, light, electromagnetic impulse, broadband (wideband) spectrum, or any other transmission mode and facility used in rendition of such services; but shall not include in their meaning message telegram service, or radio broadcasting services or facilities within the meaning of Section 153(O) of the Federal Communications Act of 1934, as amended;

(4) "Acquire" means to construct, purchase, obtain by lease, devise, gift, or eminent domain, or to obtain by any other lawful means;

(5) "Board" means the board of trustees of a corporation formed under KRS 279.320 to 279.600;

(6) "Federal agency" means and includes the United States, the President of the United States, and all federal authorities, instrumentalities, and agencies in the ordinary sense;

(7) "Improve" means to construct, reconstruct, extend, enlarge, alter, better, or repair;

(8) "Member" means and includes each person signing the articles of incorporation of a corporation formed under KRS 279.320 to 279.600, each person later admitted to membership according to law or according to the articles of incorporation or bylaws of the corporation, and each common stockholder in a corporation, having capital stock, organized under KRS 279.320 to 279.600;

(9) "Obligations" means and includes negotiable bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness either issued or the payment thereof assumed by a corporation organized under KRS 279.320 to 279.600;

(10) "System" means and includes any plant, works, facilities, and properties, and all parts thereof and appurtenances thereto, used or useful in the operation and maintenance of telephone communication service;

(11) "Rural area" shall be deemed to mean any area of this state not included within the boundaries of any incorporated or unincorporated city or of a consolidated local government, having a population in excess of fifteen hundred (1,500) inhabitants;

(12) "Telephone company" means any natural person, firm, association, corporation, or partnership owning, leasing, or operating any line, facility, or system used in the furnishing of telephone service within this state;

(13) "Business entity" means a domestic and foreign limited liability company,

corporation, general partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association;

(14) "Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country;

(15) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity; and

(16) "Real name" shall have the meaning set forth in KRS 365.015.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 134, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 134, effective June 26, 2007. -- Amended 2002 Ky. Acts ch. 346, sec. 224, effective July 15, 2002. -- Amended 1980 Ky. Acts ch. 175, sec. 1, effective July 15, 1980. -- Created 1950 Ky. Acts ch. 147, sec. 1, effective March 25, 1950.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

Legislative Research Commission Note (6/26/2007). 2007 Ky. Acts ch. 137, sec. 134, subsection (16) cited "Section 164 of this Act." It is apparent from context that the section referred to should have been Section 163 of the Act, KRS 365.015. The Reviser of Statutes has made this change under the authority of KRS 7.136.

279.320 Who may incorporate -- Purposes of incorporation.

Any five (5) or more natural persons, a majority of whom are citizens of Kentucky, may, by executing, filing and recording articles of incorporation as provided in KRS 279.330 and 279.350, form a nonprofit cooperative corporation to promote and encourage the fullest possible use of telephone service in this state by making facilities for such service available to persons in rural areas of the state at the lowest cost consistent with sound business methods and prudent management.

Effective: March 25, 1950.

History: Created 1950 Ky. Acts ch. 147, sec. 2, effective March 25, 1950.

279.330 Articles of incorporation.

(1) The articles of incorporation of a corporation formed under KRS 279.310 to 279.600 shall be entitled "Articles of Incorporation of .... Corporation" and the title may include the word "Cooperative." The articles shall satisfy the requirements of KRS 14A.2-010 to 14A.2-150, recite that they are executed pursuant to KRS 279.310 to 279.600 and shall state:

(a) The name of the corporation.

(b) The address of its principal office.

(c) The names and addresses of the incorporators.

(d) The names and addresses of its trustees.

(e) A general description of the territory in which it proposes to operate.

(2) If a cooperative desires to issue nonvoting shares of stock, its articles of incorporation, in addition to the provisions of subsection (1) of this section, shall state:

(a) The total number of such shares of stock which may be issued and the par value of each share;

(b) The fixed or maximum rate of dividends on the par value of such shares of stock, in either case not exceeding four percent (4%) per annum, and whether dividends shall be cumulative or noncumulative;

(c) Whether such shares of stock may be issued to members only or to members and nonmembers;

(d) The maximum number of such shares of stock which may be owned by any person;

(e) The terms and conditions on which such shares of stock may be transferred, redeemed or retired.

Effective: January 1, 2011

History: Amended 2010 Ky. Acts ch. 151, sec. 84, effective January 1, 2011. -- Amended 1972 Ky. Acts ch. 136, sec. 1, effective June 16, 1973. -- Created 1950 Ky. Acts ch. 147, sec. 3, effective March 25, 1950.

279.340 Name.

(1) The name of a cooperative shall satisfy the requirements of KRS 14A.3-010 unless, in an affidavit made by its president or vice president, and filed with the Secretary of State, or in an affidavit made by a person signing articles of incorporation, consolidation, merger or conversion, which relate to such cooperative, and filed, together with any such articles, with the Secretary of State, it shall appear that the cooperative desires to do business in another state and is or would be precluded therefrom by reason of the inclusion of such words or either thereof in its name.

(2) This section shall not apply to any corporation which becomes subject to KRS 279.310 to 279.600 by complying with the provisions of KRS 279.470, which does business in this state pursuant to KRS 279.570 and which elects to retain a corporate name which does not comply with this section.

Effective: January 1, 2011

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 135, effective July 15, 2010; and repealed, reenacted, and amended ch. 151, sec. 85, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 135, effective June 26, 2007. -- Amended 1972 Ky. Acts ch. 136, sec. 2, effective June 16, 1972. -- Amended 1964 Ky. Acts ch. 14, sec. 1. -- Created 1950 Ky. Acts ch. 147, sec. 4, effective March 25, 1950.

Legislative Research Commission Note (1/1/2011). This section was repealed, reenacted, and amended by 2010 Ky. Acts ch. 151, and repealed and reenacted by 2010 Ky. Acts ch. 51. Pursuant to Section 184 of Acts ch. 51, it was the intent of the General Assembly that the repeal and reenactment not serve to void the amendment, and these Acts do not appear to be in conflict, therefore, they have been codified together.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

279.350 Filing and approval of articles -- When corporation may begin business.

(1) The incorporators shall execute four (4) copies of the articles of incorporation that satisfy KRS 14A.2-010 to 14A.2-150, and each incorporator shall acknowledge each copy before an officer authorized to take acknowledgments of deeds. They shall then deliver for filing the four (4) copies, together with the certificate of acknowledgment, to the Secretary of State for filing.

(2) As soon as the Secretary of State has filed the articles of incorporation, the corporation shall be a body politic and corporate and may transact business in its corporate name.

Effective: January 1, 2011

History: Amended 2010 Ky. Acts ch. 151, sec. 86, effective January 1, 2011. -- Created 1950 Ky. Acts ch. 147, sec. 5, effective March 25, 1950.

279.360 General powers of rural telephone cooperative corporations.

Each corporation organized under the provisions of KRS 279.310 to 279.600 shall have power:

(1) To furnish, improve and expand telephone service in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten percent (10%) of the number of its members, provided, however, that, without regard to said ten percent (10%) limitation, telephone service may be made available by a cooperative through interconnection of facilities to any number of subscribers of other telephone systems, and through pay stations to any number of users; and provided, further, that a cooperative which acquires existing telephone facilities in rural areas may continue service to persons, not in excess of forty percent (40%) of the number of its members, who are already receiving service from such facilities, without requiring such persons to become members, but such persons may become members upon such terms as may be prescribed in the bylaws; and provided, further, that no cooperative shall (a) construct or operate any line, facility or system in any rural area being furnished telephone service by any telephone company or other cooperative unless the Public Service Commission shall determine, after hearing on reasonable notice to all interested parties, that any such telephone company or other cooperative is unwilling or unable to furnish reasonably adequate telephone service in such area, or (b) furnish any telephone service in any area proposed to be served by any telephone company, which may be found to be ready, willing and able to serve, within such period of time as may, after hearing, be determined to be reasonable by the Public Service Commission;

(2) To construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, telephone lines, facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized; provided, that no cooperative shall construct, purchase, lease as lessee, take, receive, or otherwise acquire, improve, expand, install, equip, maintain, or operate any telephone lines, facilities or system, lands, buildings, structures, plants and equipment, exchanges, or any other real or personal property, tangible or intangible, within the boundaries of any incorporated or unincorporated city, town, village, or borough within this state having a population in excess of one thousand five hundred (1,500) inhabitants, unless said procedures or any of them are determined by the administrator of the rural electrification administration to be necessary in order to furnish or improve telephone service in rural areas, and unless said determination by the administrator of the rural electrification administration, after proper hearing on reasonable notice to all interested parties, be approved by the Public Service Commission of the Commonwealth of Kentucky. In case of such a determination by the administrator of the rural electrification administration as aforesaid with approval by the Kentucky Public Service Commission, nothing contained in this section or

elsewhere provided in KRS 279.310 to 279.600 shall deprive any corporation organized under KRS 279.310 to 279.600 or foreign corporation doing business in this state pursuant to KRS 279.310 to 279.600, of the power to improve, expand, construct, acquire and operate telephone lines, facilities, or systems without regard to their geographical location;

(3) To connect and interconnect its telephone lines, facilities or systems with other telephone lines, facilities or systems;

(4) To make its facilities available to persons furnishing telephone service within or without this state;

(5) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;

(6) To issue membership certificates and nonvoting shares of stock as hereinafter provided;

(7) To borrow money and otherwise contract indebtedness, and to issue or guarantee notes, bonds, and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then owned or after-acquired real or personal property, assets, franchises, or revenues;

(8) To construct, maintain and operate telephone lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways;

(9) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of such power by other corporations constructing or operating telephone lines, facilities or systems;

(10) To become a member of other cooperatives or corporations or to own stock therein;

(11) To conduct its business and exercise its powers within or without this state;

(12) To adopt, amend and repeal bylaws;

(13) To make any and all contracts necessary, convenient or appropriate for the full exercise of the powers herein granted;

(14) To exercise all other powers authorized by KRS Chapter 271B; and

(15) To do and perform any other lawful acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

Effective: July 1, 1972

History: Amended 1972 Ky. Acts ch. 274, sec. 156, effective July 1, 1972. -- Created 1950 Ky. Acts ch. 147, sec. 6, effective March 25, 1950.

279.370 Bylaws -- Adoption and contents.

(1) The incorporators of each corporation organized under KRS 279.310 to 279.600 shall adopt for its management bylaws not inconsistent with the powers granted by KRS 279.310 to 279.600. The written consent of a majority of the incorporators, evidenced by their signatures to the bylaws adopted, shall be necessary to the adoption of bylaws. The bylaws may be amended by a majority vote of the board of trustees.

(2) The bylaws may provide for any or all of the following matters:

(a) The time, place and manner of calling and conducting meetings of the members.

(b) The number of members constituting a quorum.

(c) The right of members to vote by mail, and the conditions, manner, form and effect of such votes.

(d) The number of trustees constituting a quorum.

(e) The qualifications, compensation, powers, duties and terms of office of trustees and officers, the time of their election and the manner of giving notice thereof.

(f) An executive committee and the allotment to that committee of any or all of the functions and powers of the board of trustees, subject to the general direction and control of the board.

(g) The amount of entrance, organization and membership fees, if any, the manner of collecting them and the purposes for which they may be used.

(h) The qualifications of members of the corporation and the conditions precedent to membership; the time and manner of permitting members to withdraw; the manner of assignment or transfer of the interest of a member; the conditions upon which and the time when membership of any member shall cease; the suspension of the rights of a member when he ceases to be eligible to membership in the corporation; the manner and effect of the expulsion of a member; the manner of determining the value of a member's interest and provision for its purchase by the corporation upon the death or withdrawal of a member or upon his expulsion or forfeiture of membership, or, at the option of the corporation, the purchase of the member's interest at a price fixed by appraisal by the board. The bylaws may provide that in case of the forced withdrawal or expulsion of a member the board shall equitably appraise his property interest in the corporation and shall at its option fix the amount thereof in money or other property, which shall be paid to him within one (1) year after his expulsion or withdrawal.

(i) Penalties for violation of the bylaws.

(j) Any other matter relating to the operation or management of the corporation and not inconsistent with law or with the articles of incorporation.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 7, effective March 25, 1950.

279.380 Board of trustees -- Officers.

(1) The business of a cooperative shall be managed by a board of not less than five (5) trustees, each of whom shall be a member of the cooperative, or of another cooperative which is a member thereof. The bylaws shall prescribe the number of trustees, their qualifications, other than those prescribed in this section, the manner of holding meetings of the board of trustees and of electing successors to trustees who shall resign, die, or otherwise be incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors. Trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not receive any salaries for their services in any other capacity without the approval of the members. The bylaws may, however, prescribe a fixed fee for attendance at each meeting of the board of trustees and may provide for reimbursement of actual expenses of attendance.

(2) The trustees of a cooperative named in any articles of incorporation, consolidation, merger, conversion or combined consolidation and conversion shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees to hold office until the next annual meeting of the members, except as otherwise provided in KRS 279.310 to 279.600. The trustees so elected shall be elected in a manner to insure secrecy and anonymity of ballots cast provided the result of such election is determined by ballot vote. Each trustee shall hold office for the term for which he is elected and until his successor is elected and qualifies.

(3) Instead of electing all the trustees annually, the bylaws may provide that one-third (1/3) of them, or a number as near thereto as possible, shall be elected annually for a term of three (3) years.

(4) A majority of the board of trustees shall constitute a quorum.

(5) The board of trustees may exercise all of the powers of a cooperative not conferred upon the members by KRS 279.310 to 279.600, or its articles of incorporation or bylaws.

(6) The officers of a cooperative shall consist of a president, vice president, secretary and treasurer, who shall be elected annually by and from the board of trustees. When a person holding any such office ceases to be a trustee he shall cease to hold such office. The office of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents, or employees as it deems necessary or advisable and shall prescribe their powers and duties. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 140, sec. 2, effective July 15, 1982. -- Amended 1964 Ky. Acts ch. 14, sec. 2. -- Created 1950 Ky. Acts ch. 147, sec. 8, effective March 25, 1950.

279.390 Members and shareholders -- Requirements for membership.

(1) Each incorporator of a cooperative shall be a member thereof but no other person may become a member thereof unless such other person agrees to use telephone service furnished by the cooperative when it is made available through its facilities. Membership in a cooperative shall be evidenced by a certificate of membership which shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect of membership, provided that ownership of shares of stock, if any are authorized, shall not be a condition of membership in the cooperative.

(2) In case the issuance of shares of stock is provided for in the articles of incorporation, ownership thereof shall be evidenced by share certificates. No share of stock shall be issued except for cash, or for property at its fair value, in an amount equal to the par value of such share of stock.

(3) Membership and share certificates shall contain such provisions, consistent with KRS 279.310 to 279.600 and the articles of incorporation of the cooperative, as shall be prescribed by its bylaws.

(4) No member or shareholder shall be liable or responsible for any debts of the cooperative and the property of the members and shareholders shall not be subject to execution therefor except as the member or shareholder may become personally liable by reason of his or her own acts or conduct.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 133, sec. 48, effective July 15, 2010. -- Created 1950 Ky. Acts ch. 147, sec. 9, effective March 25, 1950.

279.400 Meeting of members -- Waiver of notice.

(1) An annual meeting of the members of a cooperative shall be held at such time and place as shall be provided in the bylaws.

(2) Special meetings of the members may be called by the president, by the board of trustees, by any three (3) trustees, or by not less than two hundred (200) members or ten percent (10%) of all members, whichever shall be the lesser.

(3) Except as otherwise provided in KRS 279.310 to 279.600, written or printed notice stating the time and place of each meeting of the members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail not less than ten (10) days nor more than twenty-five (25) days before the date of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail with postage prepaid addressed to the member at his address as it appears on the records of the cooperative.

(4) Unless the bylaws prescribe the presence of a greater percentage or number of the members for a quorum, a quorum for the transaction of business at all meetings of the members of a cooperative having not more than five hundred (500) members, shall be ten percentum (10%) of all members, present in person, and of a cooperative having more than five hundred (500) members, shall be fifty (50) members or one percentum (1%) of all members, whichever is greater, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(5) Each member shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of the members. Voting shall be in person, but, if the bylaws so provide, may also be by mail.

(6) Any person entitled to notice of a meeting may waive such notice in writing either before or after such meeting. If any such person shall attend such meeting, such attendance shall constitute a waiver of notice of such meeting, unless such person participates therein solely to object to the transaction of any business because the meeting has not been legally called or convened.

Effective: June 16, 1972

History: Amended 1972 Ky. Acts ch. 32, sec. 1, effective June 16, 1972. -- Created 1950 Ky. Acts ch. 147, sec. 10, effective March 25, 1950.

279.410 Amendment of articles of incorporation.

(1) A cooperative may amend its articles of incorporation by complying with the following requirements, provided, however, that a change of location of principal office may be effected in the manner set forth in KRS 279.420. The proposed amendment shall be presented to a meeting of the members, the notice of which shall set forth or have attached thereto the proposed amendment. If the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds (2/3) of those members voting thereon at such meeting, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice president and its seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite that they are executed pursuant to this section and shall state:

(a) The name of the cooperative;

(b) The address of its principal office; and

(c) The amendment to its articles of incorporation.

(2) The president or vice president executing such articles of amendment shall make and annex thereto an affidavit stating that the provisions of this section in respect of the amendment set forth in such articles were duly complied with.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 11, effective March 25, 1950.

279.420 Change of location of principal offices.

A cooperative may, upon authorization of its board of trustees or its members, change the location of its principal office by filing a statement of change in accordance with KRS 14A.5-010.

Effective: January 1, 2011

History: Amended 2010 Ky. Acts ch. 151, sec. 87, effective January 1, 2011. -- Created 1950 Ky. Acts ch. 147, sec. 12, effective March 25, 1950.

279.430 Common and preferred stock -- Ownership and transfer.

(1) Only a member of a corporation organized under KRS 279.310 to 279.600 may own its common stock, and neither the common stock in any such corporation or any interest therein shall be transferable or assignable, except as security for a loan from the federal government, either by act of the parties or by operation of law, to any person who is not eligible to be a member of the corporation.

(2) No corporation formed under KRS 279.310 to 279.600 shall issue common stock to a member until it has been fully paid for, but the promissory notes of a member may be accepted by the corporation as full or partial payment. The corporation shall hold the stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote.

(3) No person, other than a corporation formed under KRS 279.310 to 279.600, shall at any one (1) time own more than five percent (5%) of the outstanding common stock of any corporation formed under KRS 279.310 to 279.600.

(4) No corporation formed under KRS 279.310 to 279.600 shall pay dividends on either its common stock or its preferred stock in an amount greater than four percent (4%) per annum on each class of stock.

(5) Any such corporation may at any time, as specified in its bylaws, except when the debts of the corporation exceed fifty percent (50%) of its assets, buy in or purchase its common stock at the book value thereof, as conclusively determined by its board of directors, and pay for it in cash within one (1) year thereafter.

(6) Preferred stock may be owned by and transferred to any person, and may be made redeemable and retirable by the corporation on such terms and conditions as are provided for in the articles of incorporation and printed on the face of each certificate. Ownership of preferred stock shall not confer on the holder any right to vote.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 13, effective March 25, 1950.

279.440 Consolidation.

(1) Any two (2) or more cooperatives (each of which is hereinafter designated a "consolidating cooperative"), may consolidate into a new cooperative (hereinafter designated the "new cooperative"), by complying with the following requirements of this section.

(2) The proposition for the consolidation of the consolidating cooperative into the new cooperative and proposed articles of consolidation to give effect thereto shall be submitted to a meeting of the members of each consolidating cooperative, the notice of which shall have attached thereto a copy of the proposed articles of consolidation.

(3) If the proposed consolidation and the proposed articles of consolidation with any amendments are approved by the affirmative vote of not less than two-thirds (2/3) of those members of each consolidating cooperative voting thereon at each such meeting, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice president and its seal shall be affixed thereto and attested by its secretary. The articles of consolidation shall recite that they are executed pursuant to this section and shall state:

(a) The name of each consolidating cooperative and the address of its principal office;

(b) The name of the new cooperative and the address of its principal office;

(c) A statement that each consolidating cooperative agrees to the consolidation;

(d) The names and addresses of the trustees of the new cooperative; and

(e) The terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner in which members and shareholders, if any, of the consolidating cooperative may or shall become members and shareholders, respectively, of the new cooperative; and may contain any provisions not inconsistent with KRS 279.310 to 279.600 deemed necessary or advisable for the conduct of the business of the new cooperative.

(4) The president or vice president of each consolidating cooperative executing such articles of consolidation shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such cooperative.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 14, effective March 25, 1950.

279.450 Merger.

(1) Any one (1) or more cooperatives (each of which is hereinafter designated a "merging cooperative") may merge into another cooperative (hereinafter designated the "surviving cooperative"), by complying with the following requirements of this section.

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be submitted to a meeting of the members of each merging cooperative and of the surviving cooperative, the notice of which shall have attached thereto a copy of the proposed articles of merger.

(3) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds (2/3) of those members of each cooperative voting thereon at each such meeting, articles of merger in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice president and its seal shall be affixed thereto and attested by its secretary. The articles of merger shall recite that they are executed pursuant to this section and shall state:

(a) The name of each merging cooperative and the address of its principal office;

(b) The name of the surviving cooperative and the address of its principal office;

(c) A statement that each merging cooperative and the surviving cooperative agree to the merger;

(d) The names and addresses of the trustees of the surviving cooperative; and

(e) The terms and conditions of the merger and the mode of carrying the same into effect, including the manner in which members, if any, of the merging cooperative may or shall become members and shareholders, respectively, of the surviving cooperative, and may contain any provisions not inconsistent with KRS 279.310 to 279.600 deemed necessary or advisable for the conduct of the business of the surviving cooperative.

(4) The president or vice president of each cooperative executing such articles of merger shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such cooperative.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 15, effective March 25, 1950.

279.460 Effect of consolidation or merger.

(1) In the case of a consolidation the existence of the consolidating cooperatives shall cease and the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative; and in the case of a merger the separate existence of the merging cooperative shall cease and the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

(2) All the rights, privileges, immunities and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action, of each of the consolidating or merging cooperatives shall be deemed to be transferred to and vested in the new or surviving cooperative without further act or deed.

(3) The new or surviving cooperative shall be responsible and liable for all the liabilities and obligations of each of the consolidating or merging cooperatives and any claim existing or action or proceeding pending by or against any of the consolidating or merging cooperatives may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving cooperative may be substituted in its place.

(4) Neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by such consolidation or merger.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 16, effective March 25, 1950.

279.470 Conversion and combined consolidation and conversion of existing corporations.

(1) Any corporation organized under the laws of this state and furnishing or having the corporate power to furnish telephone service may be converted into a cooperative by complying with the following requirements and shall thereupon become subject to KRS 279.310 to 279.600 with the same effect as if originally organized under those sections:

(a) The proposition for the conversion of such corporation into a cooperative and proposed articles of conversion to give effect thereto shall be submitted to a meeting of the members or stockholders of such corporation, or in case of a corporation having no members or stockholders, to a meeting of the incorporators of such corporation, the notice of which shall have attached thereto a copy of the proposed articles of conversion.

(b) If the proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than two-thirds (2/3) of those members of such corporation voting thereon at such meeting, or, if such corporation is a stock corporation, by the affirmative vote of the holders of not less than two-thirds (2/3) of those shares of the capital stock of such corporation represented at such meeting and voting thereon, or, in the case of a corporation having no members and no shares of its capital stock outstanding, by the affirmative vote of not less than two-thirds (2/3) of its incorporators, articles of conversion in the form approved shall be executed and acknowledged on behalf of such corporation by its president or vice president and its seal shall be affixed thereto and attested by its secretary. The articles of conversion shall recite that they are executed pursuant to this section and shall state:

1. The name of the corporation and the address of its principal office prior to its conversion into a cooperative;
2. The statute or statutes under which it was organized;
3. A statement that such corporation elected to become a cooperative, nonprofit corporation subject to KRS 279.310 to 279.600;
4. Its name as a cooperative;
5. The address of the principal office of the cooperative;
6. The names and addresses of the trustees of the cooperative; and
7. The manner in which members, stockholders or incorporators of such corporation may or shall become members of the cooperative; and may contain any provisions not inconsistent with KRS 279.310 to 279.600 deemed necessary or advisable for the conduct of the business of the cooperative, including provisions for the issuance of nonvoting shares of stock as provided for in KRS 279.330. If the articles of conversion shall make provision for the issuance of such shares of stock, they shall also state the manner in which members, stockholders or incorporators of such corporation may or shall become shareholders of the cooperative.

The president or vice president executing such articles of conversion shall make and annex thereto an affidavit stating that the provisions of this section were duly complied with in respect of such articles. The articles of conversion shall be deemed to be the articles of incorporation of the cooperative.

(2) Any two (2) or more corporations organized under the laws of this state and furnishing or having the corporate power to furnish telephone service may, if otherwise permitted to consolidate by the laws of this state, consolidate into a cooperative subject to KRS 279.310 to 279.600, with the same effect as if originally organized under those sections, by complying with the following requirements:

(a) The proposition for the consolidation into a cooperative and the proposed articles of consolidation and conversion, with any amendments, shall be approved by each consolidating corporation in accordance with the statute or statutes under which it was organized and the provisions of subsection (1) of this section;

(b) The articles of consolidation and conversion in the form approved shall be executed, acknowledged and sealed in the manner prescribed in subsection (1) of this section and in the statute or statutes under which the consolidating corporations were organized. The articles of consolidation and conversion shall state that they are executed pursuant to this section and such statute or statutes, that each consolidating corporation elects that the new corporation shall be a cooperative, and in addition shall contain all other information required by such statute or statutes and by paragraph (b) of subsection (1) of this section; may contain any provisions not inconsistent with KRS 279.310 to 279.600 deemed necessary or advisable for the conduct of the business of the cooperative. The president or vice president executing such articles of consolidation and conversion shall make and annex thereto an affidavit stating that the provisions of this section and of the statute or statutes under which the consolidating corporations were organized were duly complied with in respect of such articles. The articles of consolidation and conversion shall be deemed to be the articles of incorporation of the cooperative and shall be filed both in accordance with the provisions of KRS 279.310 to 279.600 and of the statute or statutes under which the consolidating corporations were organized.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 17, effective March 25, 1950.

279.480 Dissolution.

(1) Any corporation formed under KRS 279.310 to 279.600 may be dissolved by filing articles of dissolution, which shall be entitled and indorsed "Articles of Dissolution of ...." and shall state:

(a) The name of the corporation and, if it is a consolidated corporation, the names of the original corporations.

(b) The date of filing of the articles of incorporation and, if the corporation is a consolidated corporation, the dates on which the articles of incorporation of the original corporations were filed.

(c) That the corporation elects to dissolve.

(d) The name and post office address of each of its directors, and the name, title and post office address of each of its officers.

(2) The articles of dissolution shall be subscribed and acknowledged in the same manner as original articles of incorporation, by the president or a vice president and the secretary or an assistant secretary, who shall make and attach an affidavit stating that they have been authorized to execute and file the articles by a majority vote of all the members, and shareholders.

(3) Articles of dissolution shall be filed, recorded and approved in the same manner, and shall take effect upon approval, as is provided in KRS 279.350 for articles of incorporation.

(4) The corporation filing articles of dissolution shall continue in existence for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued, contract and be contracted with in its corporate name. Any assets remaining after the liabilities and obligations of the corporation have been satisfied or discharged shall be ratably distributed to the shareholders, members and nonmember patrons of the corporation in accordance with the manner in which their respective rights may appear.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 18, effective March 25, 1950.

279.490 Fees for articles and amendments -- No recording taxes.

(1) For acting upon, filing and recording articles of incorporation, articles of consolidation, articles of dissolution, or amendments to articles of incorporation or consolidation, the corporation shall pay to the Secretary of State a sum not to exceed two dollars ($2), for which the Secretary of State shall give his receipt.

(2) For filing and recording articles of incorporation, articles of consolidation, articles of dissolution, or amendments to articles of incorporation or consolidation, the corporation shall pay to the county clerk a fee pursuant to KRS 64.012, for which the county clerk shall give his receipt.

(3) No fee shall be paid or received for affixing the state seal to any of the documents mentioned in this section or to any copy thereof.

(4) The recordation of the documents mentioned in this section shall be exempt from all recording taxes.

Effective: January 1, 2007

History: Amended 2006 Ky. Acts ch. 255, sec. 22, effective January 1, 2007. -- Created 1950 Ky. Acts ch. 147, sec. 22, effective March 25, 1950.

279.500 Nonprofit operation.

(1) A cooperative shall be operated on a nonprofit basis for the mutual benefit of its members and patrons. The bylaws of a cooperative or its contracts with members and patrons shall contain such provisions relative to the disposition of revenue and receipts as may be necessary and appropriate to establish and maintain its nonprofit and cooperative character. In the case of a cooperative authorized to issue shares of stock, such bylaws or contracts shall provide that no moneys shall be paid or credits given on the basis of patronage except after the declaration or payment of dividends on the outstanding shares of stock in accordance with the articles of incorporation of the cooperative, and such bylaws or contracts shall otherwise be consistent with the cooperative's obligations in respect of such shares of stock.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 19, effective March 25, 1950.

279.510 Obligations, how issued, secured, purchased or redeemed -- Power of board of trustees to encumber or dispose of property.

(1) The board of trustees of a cooperative shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust of, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated as well as the revenues therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative to the United States of America or any agency or instrumentality thereof. Any such mortgage or mortgages or deed or deeds of trust shall be exempt from mortgage recordation tax.

(2) A cooperative may not otherwise sell, mortgage, lease or otherwise dispose of or encumber all or a substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized by the affirmative vote of not less than two-thirds (2/3) of all the members of the cooperative; provided however, that notwithstanding any other provision of KRS 279.310 to 279.600, or any other provision of law, the board of trustees may, upon the authorization of a majority of those members of the cooperative present at a meeting of the members thereof, the notice of which shall have set forth the proposed action, sell, lease or otherwise dispose of all or a substantial portion of its property to another cooperative or a foreign corporation doing business in this state pursuant to KRS 279.310 to 279.600 or to the holder or holders of any notes, bonds or other evidences of indebtedness issued to the United States of America or any agency or instrumentality thereof.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 20, effective March 25, 1950.

279.520 Recordation of mortgages -- Effect thereof.

Any mortgage, deed of trust or other instrument executed by a cooperative or foreign corporation doing business in this state pursuant to KRS 279.310 to 279.600, which affects real and personal property and which is recorded in the real property records in any county in which such property is located or is to be located, shall have the same force and effect as if the mortgage, deed of trust or other instrument were also recorded, filed or indexed as provided by law in the proper office in such county as a mortgage of personal property. All after-acquired property of such cooperative or foreign corporation described or referred to as being mortgaged or pledged in any such mortgage, deed of trust or other instrument, shall become subject to the lien thereof immediately upon the acquisition of such property by such cooperative or foreign corporation, whether or not such property was in existence at the time of the execution of such mortgage, deed of trust or other instrument. Recordation of any such mortgage, deed of trust or other instrument shall constitute notice and otherwise have the same effect with respect to such after-acquired property as it has under the laws relating to recordation, with respect to property owned by such cooperative or foreign corporation at the time of the execution of such mortgage, deed of trust or other instrument and therein described or referred to as being mortgaged or pledged thereby. The lien upon personal property of any such mortgage, deed of trust or other instrument shall, after recordation thereof, continue in existence and of record for the period of time specified therein without the refiling thereof or the filing of any renewal certificate, affidavit or other supplemental information required by the laws relating to the renewal, maintenance or extension of liens upon personal property.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 21, effective March 25, 1950.

279.530 Taxes.

Corporations formed under KRS 279.310 to 279.600 shall be exempt from all profit taxes, gross and net taxes, sales taxes, occupation taxes, privilege taxes, income taxes, taxes on telephone service and from all excise taxes whatsoever, any statute now existing or hereafter passed to the contrary notwithstanding. In lieu of all other state, county, city and district taxes, except ad valorem and franchise taxes, corporations formed under KRS 279.310 to 279.600 shall pay to the State Treasurer an annual tax of ten dollars ($10).

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 23, effective March 25, 1950.

279.540 Jurisdiction of Public Service Commission -- Application of other laws.

(1) Every corporation formed under KRS 279.310 to 279.600 shall be subject to the general supervision of the Public Service Commission, and shall be subject to all the provisions of KRS 278.010 to 278.450 inclusive, and KRS 278.530 and 278.990.

(2) The provisions of the general corporation laws of this state and all rights and powers thereunder shall apply to corporations organized under KRS 279.310 to 279.600, except where such provisions are in conflict with or inconsistent with the express provisions of KRS 279.310 to 279.600.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 24, effective March 25, 1950.

279.550 Securities act exemption.

The provisions of KRS Chapter 292 shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative or foreign corporation doing business in this state pursuant to KRS 279.310 to 279.600 to the United States of America or any agency or instrumentality thereof, or to any mortgage, deed of trust or other instrument executed to secure the same. The provisions of said securities act shall not apply to the issuance of membership certificates, shares of stock or any other evidence of member, shareholder or patron interest by any cooperative or any such foreign corporation.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 25, effective March 25, 1950.

279.560 Districts.

The bylaws may provide for the division of the territory served or to be served by a cooperative into two (2) or more districts for any purpose, including without limitation, the nomination and election of trustees and the election and functioning of district delegates. Such delegates, who shall be members, may nominate and elect trustees. The bylaws shall prescribe the boundaries of the districts, or the manner of establishing such boundaries, and the manner of changing such boundaries, and the manner in which such districts shall function. No member at any district meeting and no district delegate at any meeting shall vote by proxy or by mail.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 26, effective March 25, 1950.

279.570 Foreign corporations.

Any foreign nonprofit or cooperative corporation furnishing or authorized to furnish telephone service and owning or operating telephone lines or facilities in an adjacent state may construct or acquire extensions of such lines in this state and operate such extensions without complying with any statute of this state pertaining to the qualifications of foreign corporations for the doing of business in this state. Any such corporation shall, before constructing or operating such extensions, by an instrument executed and acknowledged on its behalf by its president or vice president, under its seal attested by its secretary, and filed with the Secretary of State, designate the Secretary of State its agent to accept service of process on its behalf. Thereafter, with respect to its operations in this state, such corporation shall have only the rights, powers, privileges and immunities of, and shall be subject to all of the laws of this state relating to the jurisdiction and supervision of the Public Service Commission in the same manner and to the same extent as, a cooperative organized under KRS 279.310 to 279.600. In the event any process shall be served upon the Secretary of State, he shall forthwith forward the same by certified mail, return receipt requested to such corporation at the address thereof specified in the aforesaid instrument.

Effective: July 15, 1980

History: Amended 1980 Ky. Acts ch. 114, sec. 66, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 315, sec. 44. -- Created 1950 Ky. Acts ch. 147, sec. 27, effective March 25, 1950.

279.580 Construction standards -- Safety.

Construction of telephone lines and facilities by a cooperative shall, as a minimum requirement, comply with the standards of the National Electrical Safety Code in effect at the time of such construction.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 28, effective March 25, 1950.

279.590 Easements.

Two (2) years' continuous, uncontested maintenance of telephone lines on any real property by a cooperative or foreign corporation doing business in this state pursuant to KRS 279.310 to 279.600 shall ripen into legal title to such easement.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 29, effective March 25, 1950.

279.600 Effect and construction of KRS 279.310 to 279.590.

KRS 279.310 to 279.590 are complete in themselves and shall be controlling. They shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things.

Effective: March 25, 1950

History: Created 1950 Ky. Acts ch. 147, sec. 30, effective March 25, 1950.

279.990 Penalties.

Any person referred to in KRS 279.150, or any officer, agent or employee in an official capacity of such person, who knowingly or willfully violates any of the provisions of KRS 279.150 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or imprisoned for not more than two (2) years, or both, and each day that the violation continues shall constitute a separate offense.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 883j-24.

Kentucky Administrative Regulations

TITLE 807
ENERGY AND ENVIRONMENT CABINET PUBLIC SERVICE COMMISSION

Chapter 5 Utilities

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- 006 General rules
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807 KAR 5:001. Rules of procedure.

RELATES TO: KRS 61.870-884, 278.010, 278.020(3), 278.100, 278.180, 278.300, 365.015, 369.102, 424.300, 47 C.F.R. 36

STATUTORY AUTHORITY: KRS 278.040(3), 278.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310 requires that all hearings and investigations before the commission shall be governed by rules promulgated by the commission. This administrative regulation establishes requirements with respect to formal and informal proceedings before the commission.

Section 1. Definitions.(1) "Affiliate" means an entity:

(a) That is wholly owned by a utility;

(b) In which a utility has a controlling interest;

(c) That wholly owns a utility;

(d) That has a controlling interest in a utility; or

(e) That is under common control with the utility.

(2) "Case" means a matter coming formally before the commission.

(3) "Commission" is defined by KRS 278.010(15).

(4) "Controlling interest in" and "under common control with" mean a utility or other entity if the utility or entity:

(a) Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of another entity; and

(b) Exercises that power:

1. Through one (1) or more intermediary companies, or alone;

2. In conjunction with, or pursuant to an agreement;

3. Through ownership of ten (10) percent or more of the voting securities;

4. Through common directors, officers, stockholders, voting or holding trusts, associated companies;

5. By contract; or

6. Through direct or indirect means.

(5) "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages.

(6) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a reference to an Internet domain.

(7) "Executive director" means the person appointed to the position established in KRS 278.100 or a person that he or she has designated to perform a duty or duties assigned to that position.

(8) "Paper" means, regardless of the medium on which it is recorded, an application, petition, or other initiating document, motion, complaint, answer, response, reply, notice, request for information, or other document that this administrative regulation or the commission directs or permits a party to file in a case.

(9) "Party" means a person who:

(a) Initiates action through the filing of a formal complaint, application, or petition;

(b) Files a tariff or tariff sheet with the commission pursuant to KRS 278.180 and 807 KAR 5:011 that the commission has suspended and established a case to investigate or review;

(c) Is named as a defendant in a formal complaint filed pursuant to Section 19 of this administrative regulation;

(d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation; or

(e) Is joined as a party to a commission proceeding.

(10) "Person" is defined by KRS 278.010(2).

(11) "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).

(12) "Signature" means an original signature or an electronic signature as defined by KRS 369.102(8).

(13) "Utility" is defined by KRS 278.010(3).

Section 2. Hearings. The commission shall provide notice of hearing in a case by order except if a hearing is not concluded on the designated day and the presiding officer verbally announces the date for

continuation of the hearing. A verbal announcement made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Executive Director to Furnish Information. (1) Upon request, the executive director shall:

(a) Advise as to the form of a petition, complaint, answer, application, or other document desired to be filed;

(b) Provide general information regarding the commission's procedures and practices; and

(c) Make available from the commission's files, upon request, a document or record pertinent to a matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.

(2) The executive director shall reject for filing a document that on its face does not comply with 807 KAR Chapter 5.

Section 4. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40601.

(2) Case numbers and styles. Each case shall receive a number and a style descriptive of the subject matter. The number and style shall be placed on each subsequent document filed in the case.

(3) Signing of papers.

(a) A paper shall be signed by the submitting party or attorney and shall include the name, address, telephone number, facsimile number, and electronic mail address, if any, of the attorney of record or filing party.

(b) A paper shall be verified or under oath if required by statute, administrative regulation, or order of the commission.

(4) A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) if appearing before the commission.

(5) Amendments. Upon motion of a party and for good cause shown, the commission shall allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper.

(6) Witnesses and subpoenas.

(a) Upon the written request of a party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission or a commissioner, upon written request, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena with its written request as necessary.

(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on each party and any person whose information is being requested.

(e) Copies of all documents received in response to a subpoena shall be filed with the commission and furnished to all other parties to the case, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be made available for inspection by the commission and all other parties to the action.

(7) Computation of time.

(a) In computing a period of time prescribed or allowed by order of the commission or by 807 KAR Chapter 5 or KRS Chapter 74 or 278, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders otherwise, service shall be made upon the party's attorney if the party is represented by an attorney.

(b) Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it by United States mail or other recognized mail carrier to the attorney or party at the last known address or by sending it by electronic means to the electronic mail address listed on papers that the attorney or party has submitted in the case. Service shall be complete upon mailing or electronic transmission. If a serving party learns that the mailing or electronic transmission did not reach the person to be served, the serving party shall take reasonable steps to immediately re-serve the party to be served, unless service is refused, in which case the serving party shall not be required to take additional action.

(9) Filing.

(a) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a document shall not be deemed filed with the commission until it is physically received by the executive director at the commission's offices during the commission's official business hours.

(b) The executive director shall endorse upon each paper or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the paper or document.

(10) Privacy protection for filings.

(a) If a party files a document containing an individual's Social Security number, taxpayer identification number, birth date, or a financial account number, the party shall redact the document so the following information cannot be read:

1. The digits of the Social Security number or taxpayer identification number;
2. The month and day of an individual's birth; and
3. The digits of the financial account number.

(b) To redact the document, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(c) The executive director shall not be required to review documents for compliance with this section. The responsibility to redact a document shall rest with the party that files the document.

(11) Intervention and parties.

(a) In a formal proceeding, a person who wishes to become a party to a proceeding before the commission may, by timely motion, request that leave to intervene be granted. The motion shall include the movant's name and address and shall state his or her interest in the proceeding and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(b) The commission shall grant a person leave to intervene if the commission finds that a person has a special interest in the case that is not otherwise adequately represented or that intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a party shall serve a person granted leave to intervene with filed testimony, exhibits, papers, correspondence, and all other documents that the party submits in the case after the order granting intervention, but is not required to provide any documents submitted prior to the issuance of that order.

(d) A person who the commission has not granted leave to intervene in a case may file written comments regarding the subject matter of the case. These comments shall be filed in the case record. A person filing written comments shall not be deemed a party to the proceeding and need not be named as a party to an appeal.

Section 5. Motion Practice. (1) All requests for relief that are not required to be made in an application, petition, or written request shall be by motion. A motion shall state precisely the relief requested.

(2) Unless the commission orders otherwise, a party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion.

(3) Unless the commission orders otherwise, a party shall file a reply no later than five (5) days of the filing of the most recent response to the party's motion. The reply shall be confined to points raised in the responses to which they are addressed, and shall not reiterate an argument already presented.

Section 6. Certificate of Service. All documents served pursuant to 807 KAR Chapter 5 shall have a proof of service certification. Proof of service shall state the date and method of service and shall be signed by a person who can verify service.

Section 7. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures established in Section 8 of this administrative regulation are used, if a document in paper medium is filed with the commission, ten (10) additional copies in paper medium shall also be filed.

(2) All documents filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Each filing shall be in type no smaller than twelve (12) point, except footnotes, which may be in type no smaller than ten (10) point.

(d) Binding. A side-bound or top-bound filing shall also include an identical unbound copy.

(3) Except as provided for in Section 8 of this administrative regulation, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A document submitted by facsimile transmission shall not be accepted.

Section 8. Electronic Filing Procedures. (1) Upon an applicant's timely election of the use of electronic filing procedures or upon order of the commission in a case that the commission has initiated on its own motion, the procedures established in this section shall be used in lieu of other filing procedures established in this administrative regulation.

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of its election to use electronic filing procedures using the Notice of Election of Use of Electronic Filing Procedures form; and

(b) If it does not have an account for electronic filing with the commission, register for an account at http://psc.ky.gov/Account/Register.

(3) All papers, documents, and exhibits shall be filed with the commission by uploading an electronic version of the document using the commission's E-Filing System at http://psc.ky.gov. In addition, the filing party shall file one (1) original with the commission as required by subsection (12)(a)2. of this section.

(4)(a) Audio or video files.

1. A file containing audio material shall be submitted in MP3 format.

2. A file containing video material shall be submitted in MPEG-4 format.

(b) Except as established in paragraph (a) of this subsection, each file in an electronic submission shall be:

1. In portable document format;

2. Search-capable;

3. Optimized for viewing over the Internet;

4. Bookmarked to distinguish sections of the paper, except that documents filed in response to requests for information need not be individually bookmarked; and

5. If a scanned document, scanned at a resolution of no less than 300 dots per inch.

(5)(a) Each electronic submission shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;

2. A list of all material to be filed but not included in the electronic filing; and

3. A statement attesting that the electronically filed documents are a true representation of the original documents.

(b) The "Read1st" file and any other document that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper medium filing may be substituted for a general description.

(d) If the electronic submission does not include all documents contained in the paper medium version, the absence of these documents shall be noted in the "Read1st" document.

(6)(a) An electronic transmission or uploading session shall not exceed twenty (20) files.

(b) An individual file shall not exceed fifty (50) megabytes.

(c) If a filing party's submission exceeds the limitations established in paragraph (a) or (b) of this subsection, the filer shall make electronic submission in two (2) or more consecutive electronic transmission or uploading sessions.

(7) If filing a document with the commission, the filing party shall certify that:

(a) The electronic version of the filing is a true and accurate copy of each document filed in paper medium;

(b) The electronic version of the filing has been transmitted to the commission; and

(c) A copy of the filing in paper medium has been mailed to all parties that the commission has excused from participation by electronic means.

(8)(a) Upon completion of a party's uploading of an electronic submission, the commission shall cause an electronic mail message to be sent to all parties of record advising that an electronic submission has been made to the commission.

(b) Upon a party's receipt of this message, it shall be the receiving party's responsibility to access the commission's electronic file depository at http://psc.ky.gov and view or download the submission.

(9) Unless a party granted leave states its objection to the use of electronic filing procedures in a motion for intervention, a party granted leave to intervene shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting the intervention a written statement that:

1. The party waives any right to service of commission orders by United States mail; and

2. The party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) Unless a party to a case states an objection to the use of electronic filing procedures within seven (7) days of issuance of an order in which the commission orders the use of electronic filing procedures on its own motion, that party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all documents and papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that:

1. The party waives any right to service of commission orders by United States mail; and

2. The party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with Section 4(8) of this administrative regulation.

(12)(a) A document shall be considered timely filed with the commission if:

1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements established in this administrative regulation and an order of the commission; and

2. The original document, in paper medium, is filed at the commission's offices no later than the second business day following the electronic filing.

(b) Each party shall attach to the top of the paper submission a copy in paper medium of the electronic mail message from the commission confirming transmission and receipt of its electronic submission.

(13) Except as expressly provided in this section, a party making a filing in accordance with the procedures established in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) Unless required by statute, waived by the parties in the case, or if the commission finds that a hearing is not necessary in the public interest or for the protection of substantial rights, the commission shall grant a hearing in the following classes of cases:

(a) If an order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint to the satisfaction of the commission; or

(b) If an application has been made in a formal proceeding.

(2) Publication of notice.

(a) Upon the filing of an application, the commission may order an applicant to give notice on all other persons who may be affected by service of a copy of the application upon those persons or by publication. The applicant shall bear the expense of providing the notice. If the notice is given by publication, the commission may designate the length of time and the newspaper in which the notice shall appear. Proof of the publication shall be filed at or before the hearing.

(b) The commission may order an applicant to give notice to the public of any hearing on the applicant's application. If notice of a hearing pursuant to KRS 424.300 is published by the applicant in a newspaper, it shall be published in a newspaper of general circulation in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place, and date of hearing. The applicant shall bear the expense of providing the notice.

(3) Investigation on commission's own motion. The commission may, on its own motion, conduct investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission believes is in violation of an order of the commission or KRS Chapter 278 or 807 KAR Chapter 5. The commission may also, through its own experts or employees, or otherwise, obtain evidence the commission finds necessary or desirable in a formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a motion of a party, may convene a conference in a case for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case. Unless the commission directs otherwise or the parties otherwise agree, participation in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

(5) Conduct of hearings. Hearings shall be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to a proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission shall be given under oath or affirmation.

(8) Objections and exceptions. A party objecting to the admission or exclusion of evidence before the commission shall state the grounds for objection. Formal exceptions shall not be necessary and shall not be taken to rulings on objection.

(9) Record of evidence.

(a) The commission shall cause to be made a record of all hearings. Unless the commission orders otherwise, this record shall be a digital video recording.

1. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a commission-authorized reporter.

2. The commission shall grant the motion.

3. The requesting party shall bear the cost of the stenographic transcript and shall ensure that a copy of the transcript is filed with the commission within a reasonable time after completion of the hearing.

(b) The commission shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(c) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 10. Briefs. Each brief shall be filed within the time fixed. A request for extension of time to file a brief shall be made to the commission by written motion.

Section 11. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified, or otherwise authenticated, copies of the documents or portions of the same as may be relevant, or may require evidence to be entered as a part of the record.

(2) If relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so

offered. If immaterial matter unnecessarily encumbers the record, the book, paper, or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of the matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine the book, paper, or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) The sheets of each exhibit shall be numbered. If practical, the lines of each sheet shall also be numbered. If the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Rate comparisons and other evidence shall be condensed into tables.

(4) Except as expressly permitted in particular instances, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of a party to a proceeding, the record of a case in the commission's files or any document on file with the commission may be made a part of the record by "reference only."

(a) By reference only, the case or document made a part of the record shall not be physically incorporated into the record.

(b) Upon action in the Franklin Circuit Court, excerpts from the record of a case or part of a document may be made a part of the record before the court, at the request of a party.

Section 12. Financial Exhibit. If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed. The exhibit shall disclose the following information in the order indicated in subsections (1) through (9):

(1) Amount and kinds of stock authorized;

(2) Amount and kinds of stock issued and outstanding;

(3) Terms of preference of preferred stock, cumulative or participating, or on dividends or assets or otherwise;

(4) A brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with sinking fund provisions, if applicable;

(5) Amount of bonds authorized and amount issued, giving the name of the public utility that issued the same, describing each class separately and giving the date of issue, face value, rate of interest, date of maturity, and how secured, together with amount of interest paid during the last fiscal year;

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid during the last fiscal year;

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of a portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year.;

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year; and

(9) A detailed income statement and balance sheet.

Section 13. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential.

(2) Procedure for determining confidentiality of material submitted in a case.

(a) A person who requests confidential treatment of material shall file a motion that:

1. Establishes specific grounds pursuant to KRS 61.878, upon which the commission should classify that material as confidential;

2. States the time period in which the material should be treated as confidential and the reasons for this time period; and

3. Includes, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. If confidential

treatment is sought for an entire document, unambiguous written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The motion, one (1) copy of the material in paper medium which is identified by underscoring or highlighting, and ten (10) copies of the material in paper medium with those portions obscured for which confidentiality is sought, shall be filed with the commission. If confidential treatment is sought for an entire document, the filer may file a sheet noting that the entire document is confidential in lieu of redacting the document.

(c) The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought redacted, shall be served on all parties. The motion shall contain a certificate of service on all parties.

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.878 and to demonstrate the time period for which the material should be considered as confidential shall be upon the party requesting confidential treatment.

(e) A party may respond to a motion for confidential treatment within seven (7) days after it is filed with the commission.

(f) If the case is being conducted using electronic filing procedures established in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an unobscured copy of the material for which confidentiality is sought shall not be transmitted electronically.

(3) Procedure for determining confidentiality of material submitted outside of a case.

(a) A person who requests confidential treatment of material filed with the commission outside of a case shall submit a written request to the executive director that:

1. Establishes specific grounds upon which the material should be classified as confidential;

2. States the time period in which the material should be treated as confidential and the reasons for this time period; and

3. Includes, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. If confidential treatment is sought for an entire document, unambiguous written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The written request, one (1) copy of the material in paper medium which is identified by underscoring or highlighting, and one (1) copy of the material in paper medium with those portions redacted for which confidentiality is sought, shall be filed with the commission. If confidential treatment is sought for an entire document, the filer may file a sheet noting that the entire document is confidential in lieu of redacting the document.

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for which the material should be considered as confidential shall be upon the person requesting confidential treatment.

(d) The executive director, as official custodian of the commission's records, shall determine if the material falls within the exclusions from disclosure requirements established in KRS 61.878 and the time period for which the material should be considered as confidential and shall advise the requestor of the determination by letter.

(e) A person whose request for confidential treatment is denied, in whole or in part, by the executive director may petition the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section. The commission shall review the petition without regard to the executive director's determination.

(f) If the executive director denies a request for confidential treatment, the material for which confidential treatment was sought shall not be placed in the public record for twenty (20) days to allow the requesting party to petition the commission.

(4) Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment.

(5) If the petition or motion for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted pursuant to KRS 278.410 to bring an action for review.

(6) Procedure for a party to request access to confidential material filed in a proceeding.

(a) A party to a proceeding before the commission shall not fail to respond to discovery by the commission or its staff or another party to the proceeding on grounds of confidentiality.

1. If a party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, the party shall follow the procedures for petitioning for confidentiality established in this administrative regulation.

2. A party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought redacted.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then a party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding.

1. The petition shall include a description of efforts to enter into a protective agreement and unwillingness, if applicable, to enter into a protective agreement shall be fully explained.

2. A party may respond to the petition within seven (7) days after it is filed with the commission.

3. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(7) Requests for access to records pursuant to KRS 61.870 to 61.884. A time period prescribed in this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884. Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure established in KRS 61.880.

(8) Procedure for request for access to confidential material. A person denied access to records requested pursuant to KRS 61.870 to 61.884 or to material deemed confidential by the commission in accordance with the procedures established in this section, may obtain this information only pursuant to KRS 61.870 to 61.884 and other applicable law.

(9) Use of confidential material during formal proceedings.

(a) A party that files material that contains or reveals material that has previously been deemed confidential shall submit with the filed material:

1. A written notice identifying the date on which the confidentiality of the original material was determined and, if applicable, the case number in which the determination was made; and

2. One (1) copy of the filed material identified by underscoring or highlighting, and ten (10) copies of the material with those portions redacted for which confidentiality has previously been granted.

(b) Material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the procedure established in this paragraph.

1. The party seeking to address the confidential material shall advise the commission prior to the use of the material.

2. A person other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) Except as provided for in paragraphs (c) and (d) of this subsection, confidential treatment shall be afforded to material for the period specified in the commission’s order or executive director’s written decision. At the end of this period, the material shall be placed in the public record without notice to the person who originally requested confidential treatment. The person who sought confidential treatment for the material may request that the material continue to be treated as confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

(b) The petitioner who sought confidential protection shall inform the commission in writing if material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed or considered to be publicly available and shall not be placed in the public record.

(d) If a request to inspect material granted confidential treatment is made during the period specified in the commission's order or executive director's written decision, the commission shall notify in writing the person who originally sought confidential treatment for the material and direct him to demonstrate within twenty (20) days of his receipt of the notice that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If he is unable to make the demonstration, the commission shall make the requested materials available for public inspection. Otherwise, the commission shall deny the request for inspection.

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

Section 14. Applications. (1) Contents of application. Each application shall be by petition. The petition shall establish the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for same.

(2) Articles of incorporation.

(a) If the applicant is a corporation, a certified copy of its articles of incorporation and all amendments, if any, shall be annexed to the application, or a written statement attesting that its articles and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(b) If the applicant is a limited liability company, a certified copy of its articles of organization and all amendments, if any, shall be annexed to the application, or a written statement attesting that its articles and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(c) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall be annexed to the application, or a written statement attesting that its partnership agreement and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

Section 15. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by a governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation, partnership agreement, or articles of organization pursuant to Section 14(2) of this administrative regulation;

(b) The name of the governmental agency offering the franchise;

(c) The type of franchise offered; and

(d) A statement showing the need and demand for service. If the applicant is successful in acquiring the franchise, license, or permit, it shall file a copy with the commission.

(2) New construction or extension. Upon application by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit the following data, either in the application or as attached exhibits:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity;

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete;

(d) Maps to suitable scale showing the location or route of the proposed new construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities. The utility shall supply one (1) copy of each map in an electronic format and one (1) copy of each map in a paper format;

(e) The manner in detail in which it is proposed to finance the new construction or extension;
(f) An estimated annual cost of operation after the proposed facilities are placed into service; and
(g) All other information necessary to afford the commission a complete understanding of the situation.
(3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.
(4) Renewal applications. As procedure is concerned, an application for a renewal of a certificate of convenience and necessity shall be treated as an original application.

Section 16. Applications for General Adjustments in Existing Rates. (1) Each application requesting a general adjustment in existing rates shall:
(a) Be supported by:
1. A twelve (12) month historical test period that may include adjustments for known and measurable changes; or
2. A fully forecasted test period; and
(b) Include:
1. A statement of the reason the adjustment is required;
2. If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;
3. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;
4. New or revised tariff sheets, if applicable in a format that complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;
5. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by:
a. Providing the present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or
b. Providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and
6. A statement that customer notice has been given in compliance with subsections (3) and (4) of this section with a copy of the notice.
(2) Notice of intent. A utility with gross annual revenues greater than $5,000,000 shall notify the commission in writing of intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application.
(a) The notice of intent shall state if the rate application will be supported by a historical test period or a fully forecasted test period.
(b) Upon filing the notice of intent, an application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon that may be used to obtain a copy from the applicant of the full schedule of increases or rate changes.
(c) The applicant shall also transmit by electronic mail a copy of the notice in a portable document format to the Attorney General's Office of Rate Intervention at rateintervention@ag.ky.gov.
(3) Manner of notification.
(a) If the utility has twenty (20) or fewer customers or is a sewage utility, it shall:
1. Mail written notice to each customer no later than the date on which the application is filed with the commission. The notice shall meet the requirements established in subsection (4) of this section;
2. Post at its place of business no later than the filed date of the application a sheet containing the information provided in the written notice to its customers; and
3. Keep the notice posted until the commission has issued a final decision on the application.
(b) An applicant that has more than twenty (20) customers and is not a sewage utility shall post at its place of business a sheet containing the information required by subsection (4) of this section and shall:
1. Include notice with customer bills mailed by the date the application is filed;

2. Publish notice in a trade publication or newsletter going to all customers by the date the application is filed; or

3. Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made by the date the application is filed.

(c) Utilities providing service in multiple counties may use a combination of the notice methods listed in paragraph (b) of this subsection.

(d) Notice given pursuant to this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

(4) Notice Requirements. Each notice shall contain the following information:

(a) The present rates and proposed rates for each customer class to which the proposed rates will apply;

(b) The amount of the change requested in both dollar amounts and percentage change for customer classification to which the proposed rate change will apply;

(c) The amount of the average usage and the effect upon the average bill for each customer class to which the proposed rate change will apply, except for local exchange companies, which shall include the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(d) A statement that the rates contained in this notice are the rates proposed by (name of utility) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) A statement that a corporation, association, or person may within thirty (30) days after the initial publication or mailing of notice of the proposed rate changes, submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602 that establishes the grounds for the request including the status and interest of the party, and states that intervention may be granted beyond the thirty (30) day period for good cause shown;

(f) A statement that written comments regarding the proposed rate may be submitted to the Public Service Commission by mail or through the Public Service Commission's Web site;

(g) A statement that a person may examine this filing and any other documents the utility has filed with the Public Service Commission at the offices of (the name of the utility) located at (the utility's address) and on the utility's Web site at (the utility's Web site address), if the utility maintains a public Web site; and

(h) A statement that this filing and any other related documents can be found on the Public Service Commission's Web site at http://psc.ky.gov/.

(5) Proof of notice. An applicant shall file with the commission no later than forty-five (45) days from the date of the initial filing:

(a) If its notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

(b) If its notice is published in a trade publication or newsletter going to all customers, an affidavit from an authorized representative of the utility verifying the trade publication or newsletter was mailed; or

(c) If the notice is mailed, an affidavit from an authorized representative of the utility verifying the notice was mailed.

(6) Additional notice requirements. In addition to the notice requirements established in subsection (4) of this section:

(a) A utility shall post a sample copy of the required notification at its place of business no later than the date on which the application is filed and shall not remove the notification until issuance of a final order from the commission establishing the utility's approved rates; and

(b) A utility that maintains a public web site shall, within seven (7) days of filing an application, post a copy of the public notice as well as a hyperlink to its filed application on the commission's Web site and shall not remove the notification until issuance of a final order from the commission establishing the utility's approved rates.

(7) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates, provided the notice includes a coupon that may be used to obtain all of the required information.

(8) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.300.

(9) Each application supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for proposed changes in price or activity levels, if applicable, and other factors that may affect the adjustment;

(b) If the utility has gross annual revenues greater than $5,000,000, the prepared testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than $5,000,000, the prepared testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit prepared testimony;

(d) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water, or sewer service, the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is an incumbent local exchange company, the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) A detailed analysis of customers' bills whereby revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

(j) A current chart of accounts if more detailed than the Uniform System of Accounts prescribed by the commission;

(k) The independent auditor's annual opinion report, with written communication from the independent auditor to the utility, if applicable, which indicates the existence of a material weakness in the utility's internal controls;

(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(m) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;

(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; and the specifications for the computer hardware and the operating system required to run the program;

(p) Prospectuses of the most recent stock or bond offerings;

(q) Annual report to shareholders, or members, and statistical supplements covering the two (2) most recent years from the utility's application filing date;

(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

(s) A copy of the utility’s annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters updated as current information becomes available;

(t) If the utility had amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;

2. An explanation of how the allocator for the test period was determined; and

3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;

(u) If the utility provides gas, electric, water, or sewage utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(v) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000, except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(10) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just, and reasonable rates based on the historical test period. The following information shall be filed with each application requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions, provide the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost and the cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of differences, if applicable, in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments; and

(e) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(11) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the requirements established in this subsection.

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless the revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(12) Each application requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The prepared testimony of each witness the utility proposes to use to support its application, which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in prefiled testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period, and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations, which shall provide:

1. That the forecast is reasonable, reliable, made in good faith, and that all basic assumptions used in the forecast have been identified and justified;

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for differences that exist, if applicable; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project that constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast, the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects that constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. Sales volume forecasts – cubic feet (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of other information provided, if applicable;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;

(p) A copy of the utility’s annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;

(q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility that indicates the existence of a material weakness in the utility's internal controls;

(r) The quarterly reports to the stockholders for the most recent five (5) quarters;

(s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;

(t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(u) If the utility had amounts charged or allocated to it by an affiliate or a general or home office or paid monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the base period is reasonable;

(v) If the utility provides gas, electric, sewage utility, or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(13) Each application seeking a general adjustment in rates supported by a forecasted test period shall include the following data:

(a) A jurisdictional financial summary for both the base period and the forecasted period that details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules, which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules, which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(14) The commission shall notify the utility of deficiencies, if applicable, in the application within thirty (30) days of receiving it. For the application to be considered filed with the commission, the utility shall cure deficiencies within thirty (30) days of the commission giving notice of deficiencies.

(15) A request for waiver of provisions of these filing requirements shall establish the specific reasons for the request. The commission shall grant the request for waiver upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:

(a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and

(c) The expense to the utility in providing the information that is the subject of the waiver request.

Section 17. Application for Authority to Issue Securities, Notes, Bonds, Stocks, or Other Evidences of Indebtedness. (1) Upon application by the utility for an order authorizing the issuance of securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, pursuant to the provisions of KRS 278.300, the application, in addition to complying with the requirements of Section 14 of this administrative regulation, shall contain:

(a) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant. If it is impossible to state the original cost, the facts creating the impossibility shall be stated;

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds, or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest, and if and how to be secured;

(c) The use to be made of the proceeds of the issue of securities, notes, bonds, stocks, or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;

(d) The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the petition;

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the petition shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(f) Other facts pertinent to the application.

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if applicable, unless they have already been filed with the commission, in which case reference shall be made by case number to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the commission-prescribed uniform system of accounts for the various classes of utilities.

Section 18. Application for Declaratory Order. (1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

(a) Be in writing;

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(c) Fully disclose the applicant’s interest;

(d) Identify all statutes, administrative regulations, and orders to which the application relates; and

(e) State the applicant’s proposed resolution or conclusion.

(3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.

(4) Responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission and shall be served upon the applicant.

(5) A reply to a response shall be filed with the commission within fourteen (14) days after service.

(6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.

(7) The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials.

Section 19. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant; and

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation section and subsection, of which a violation is claimed, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall specifically establish the relief desired.

(2) Signature. The complaint shall be signed by the complainant or his or her attorney, if applicable, and if signed by an attorney, shall show the attorney's post office address. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by the entity's attorney.

(3) Number of copies required. When the complainant files his or her original complaint, the complainant shall also file two (2) more copies than the number of persons or corporations to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the same to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant or his or her attorney to that effect, and opportunity shall be given to amend the complaint within a specified time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may, in particular cases, require the answer to be filed within a shorter or longer period.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, further proceedings shall not be taken.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the person complained of shall file an answer to the complaint, with certificate of service on other endorsed parties, within the time specified in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of new matter constituting a defense.

(b) If the answering party does not have information sufficient to enable him or her to answer an allegation of the complaint, the answering party may so state in the answer and place the denial upon that ground.

Section 20. Informal Complaints. (1) An informal complaint shall be made to the commission's division of consumer services in a manner that specifically states the complainant's concerns and identifies the utility.

(2) The commission's division of consumer services shall address by correspondence or other means the complaint. If an informal complaint is referred to a utility, the utility shall acknowledge to the commission's division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period as commission staff may require. If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission's division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 21. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 22. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "FERC Form-1", Annual Report of Major Electric Utilities, Licensees and Others, March 2007;
(b) "FERC Form-2", Annual Report of Major Natural Gas Companies, December 2007;
(c) "Notice of Election of Use of Electronic Filing Procedures", July 2012;
(d) "PSC Form-T (telephone)", August 2005;
(e) "Form 8-K", January 2012;
(f) "Form 10-K", January 2012; and
(g) "Form 10-Q", January 2012.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov. (8 Ky.R. 786; eff. 4-7-82; Am. 10 Ky.R. 831; eff. 1-4-84; 11 Ky.R. 1301; 12 Ky.R. 127; eff. 7-9-85; 18 Ky.R. 191; 1025; eff. 9-24-91; 19 Ky.R. 1142; 1604; 2044; eff. 3-12-93; 39 Ky.R. 295; 995; 1117; eff. 1-4-13.)

807 KAR 5:006. General rules.

RELATES TO: KRS 65.810, 74, 96.934, 220.510, 278, 49 C.F.R. Part 192, 49 U.S.C. 60105
STATUTORY AUTHORITY: KRS 278.230, 278.280(2), 49 C.F.R. 192
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.230(3) requires every utility to file with the commission reports, schedules, and other information that the commission requires. KRS 278.280(2) requires the commission to promulgate an administrative regulation for the performance of a service or the furnishing of a commodity by a utility. This administrative regulation establishes requirements that apply to electric, gas, water, sewage, and telephone utilities.

Section 1. Definitions. (1) "Built-up community" means urban areas and those areas immediately adjacent.
(2) "Commission" is defined by KRS 278.010(15).
(3) "Corporation" is defined by KRS 278.010(1).
(4) "Customer" means a person, firm, corporation, or body politic applying for or receiving service from a utility.
(5) "Gross Annual Operating Revenue Reports" means reports that KRS 278.140 requires each utility to file with the commission.
(6) "Nonrecurring charge" means a charge or fee assessed to a customer to recover the specific cost of an activity, which:
(a) Is due to a specific request for a certain type of service activity for which, once the activity is completed, additional charges are not incurred; and
(b) Is limited to only recover the specific cost of the specific service.
(7) "Person" is defined by KRS 278.010(2).
(8) "Tariff" means a utility's schedule of all its rates, charges, tolls, maps, terms, and conditions of service over which the commission has jurisdiction.
(9) "Utility" is defined by KRS 278.010(3).
(10) "Water association" means a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of a public water supply.
(11) "Water District" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

Section 2. General Provisions. Reference to standards or codes in 807 KAR Chapter 5 shall not prohibit a utility from continuing or initiating experimental work and installations to improve, decrease the cost of, or increase the safety of its service.

Section 3. Utility Contact Information. (1) A utility shall notify the commission in writing of:
(a) The address of its main corporate and Kentucky offices, including street address and post office box, city, state, and zip code;
(b) The name, telephone number, facsimile number, and mailing address of the person who serves as its primary liaison with the commission regarding its operations; and
(c) Its electronic mail address.
(2) The electronic mail address required in subsection (1) of this section shall be to an electronic mail account that the utility accesses at least once weekly and that is capable of receiving electronic mail from external sources and with attachments up to five (5) megabytes in size. Unless a utility otherwise advises the commission in writing, all electronic mail transmissions from the commission to the utility shall be sent to this address.
(3) A utility shall notify the commission in writing of a change in the information required in subsection (1) of this section within ten (10) days of the date of the change.

Section 4. Reports. (1) Gross annual operating revenue reports.
(a) Each utility shall file with the commission its gross operating revenue report on or before March 31 of each year.
(b) An extension request shall not be permitted for a gross annual operating revenue report.
(c) A utility may file an amendment to its report. An amendment shall be filed with the commission on or before May 24 of the same year.

(d) The commission shall:

1. Not certify to the Department of Revenue the amounts of intrastate business established in an amendment filed with the commission after May 24 of that year; and

2. Report those amounts to the Department of Revenue for informational purposes.

(2) Financial and statistical reports.

(a) Every utility shall file annually using the commission's electronic filing system a financial and statistical report on or before March 31 of each year.

(b) This report shall be based upon utility type and the accounts established in conformity with the uniform system of accounts prescribed for that utility type.

(c) If documents are required to supplement or complete the report and cannot be submitted through the commission's electronic filing system, the utility shall file these documents in paper form with the commission no later than March 31.

(d) The commission shall make the reporting forms available on the commission's Web site at http://psc.ky.gov/.

(e) For good cause shown, the executive director of the commission shall, upon application in writing, allow an appropriate extension of time for the filing.

(3) Financial statement audit reports. A utility required to file a report in accordance with subsection (2) of this section shall file with the commission on or before September 30 each year, a copy of the audit report of the Kentucky regulated entity, from the audit performed the previous year, or a statement that no audit was performed of the Kentucky regulated entity the previous year. For good cause shown, the executive director of the commission shall, upon application in writing, allow an appropriate extension of time for the filing.

(4) Report of meters, customers, and refunds. Each gas, electric, or water utility shall file quarterly either a Quarterly Meter Report-Electric, Quarterly Meter Report, or a Quarterly Meter Report-Electric-Gas-Water, of meter tests, number of customers, and amount of refunds.

(5) Report of terminations for nonpayment of bills. Each water, electric, or gas utility shall file either the Water Utility Non-Payment Disconnection/Reconnection Report, Electric Utility Non-Payment Disconnection/Reconnection Report, or Gas Utility Non-Payment Disconnection/Reconnection Report, annually to report the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.

(6) Record and report retention. All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified.

(7) Transmittal letter. Each report shall be accompanied by a transmittal letter describing the report being furnished.

(8) Amending reports. Upon discovering a material error in a report filed with the commission, a utility shall file an amended report to correct the error.

Section 5. Service Information. (1)(a) A utility shall, on request, give its customers or prospective customers information that enables the customers to secure safe, efficient, and continuous service.

(b) A utility shall inform its customers of a change made or proposed in the character of its service that might affect the efficiency, safety, or continuity of operation.

(2) Prior to making a substantial change in the character of the service furnished that would affect the efficiency, adjustment, speed, or operation of the equipment or appliances of a customer, a utility shall apply for the commission's approval. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of each type, class, and character of service available at each location.

Section 6. Special Rules or Requirements. (1) A utility shall not establish a special rule or requirement without first obtaining the approval of the commission.

(2) Unless specifically authorized by this administrative regulation, a utility shall not deny or refuse service to a customer who has complied with all conditions of service established in the utility's tariff on file with the commission

(3)(a) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility.

(b) A utility shall not:

1. Require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service; or

2. Refuse to provide service to a prospective or existing customer on the basis of that customer's refusal to grant an easement for facilities that do not serve the customer.

(c) The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with 807 KAR 5:041, 5:061, or 5:066.

Section 7. Billings, Meter Readings, and Information. (1) Information on bills.

(a) Each bill for utility service issued periodically by a utility shall clearly show:

1. The date the bill was issued;
2. Class of service;
3. Present and last preceding meter readings;
4. Date of the present reading;
5. Number of units consumed;
6. Meter constant, if applicable;
7. Net amount for service rendered;
8. All taxes;
9. Adjustments, if applicable;
10. The gross amount of the bill;
11. The date after which a penalty may apply to the gross amount; and
12. If the bill is estimated or calculated.

(b) The rate schedule under which the bill is computed shall be posted on the utility's Web site, if it maintains a Web site, and shall also be furnished under one (1) of the following methods, by:

1. Printing it on the bill;
2. Publishing it in a newspaper of general circulation once each year;
3. Mailing it to each customer once each year; or
4. Providing a place on each bill for a customer to indicate the customer's desire for a copy of the applicable rates. The utility shall mail the customer a copy by return first class mail.

(2) Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. The rate schedule shall clearly establish the basis upon which consumption is estimated.

(3) Bill format. Each utility shall include the billing form; including an e-bill form, if applicable; to be used by it, or its contents, in its tariffed rules.

(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.

(5) Frequency of meter reading.

(a) Except as provided in paragraph (b) of this subsection, each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly;

(b) Each customer-read meter shall be read manually, at least once during each calendar year.

(c) Records shall be kept by the utility to insure that the information required by this subsection is available to the commission and any customer requesting this information.

(d) If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.

Section 8. Deposits. (1) Determination of deposits.

(a) A utility may require from a customer a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection pursuant to Section 16 of this administrative regulation.

(b) A utility shall not require a deposit based solely on the customer being a tenant or renter.

(c) The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class.

(d) The amount of a cash deposit shall be determined by one (1) of the methods established in this paragraph.

1. Calculated deposits.

a. If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period.

b. If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system.

c. Deposit amounts shall not exceed two-twelfths (2/12) of the customer's actual or estimated annual bill if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

2. Equal deposits.

a. A utility may establish an equal deposit amount for each class based on the average bill of customers in that class.

b. Deposit amounts shall not exceed two-twelfths (2/12) of the average bill of customers in the class if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

3. Recalculation of deposits.

a. If a utility retains either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit shall be recalculated every eighteen (18) months based on actual usage of the customer.

b. The notice of deposit recalculation shall be included:

(i) On the customer's application for service;

(ii) On the receipt of deposit; or

(iii) Annually with or on customer bills.

c. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, the utility shall refund any over-collection and may collect any underpayment.

d. A refund shall be made either by check, electronic funds transfer, or by credit to the customer's account, except that a utility shall not be required to refund an excess deposit if the customer's account is delinquent upon recalculation of the deposit.

(2) Waiver of deposits. Deposits may be waived in accordance with criteria established in its tariff.

(3) Additional deposit requirement.

(a) If a deposit has been waived as established in subsection (2) of this section or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility’s tariff, a utility may require a deposit.

(b) If substantial change in the customer’s usage has occurred, the utility may require an additional deposit.

(c) An additional or subsequent deposit shall not be required of a residential customer whose payment record is satisfactory, unless the customer's classification of service changes, except as established in subsection (1)(d)3 of this section.

(4) Receipt of deposit.

(a) A utility shall issue to every customer from whom a deposit is collected a receipt of deposit.

(b) The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit.

(c) If the notice of recalculation established in subsection (1)(d)3 of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification.

(d) If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.

(5) Deposits as a condition of service. Except as established in Section 16 of this administrative regulation, a utility may refuse or discontinue service to a customer pursuant to Section 15 of this administrative regulation if payment of requested deposits is not made.

(6) Interest on deposits.

(a) Interest shall accrue on all deposits at the rate prescribed by KRS 278.460, beginning on the date of deposit.

(b) Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis.

(c) If interest is paid or credited to the customer's bill prior to twelve (12) months from the date of deposit, or the last interest payment date, the payment or credit shall be on a prorated basis.

(d) Upon termination of service, the deposit; any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.

(7) Interest on deposits for water districts and associations.

(a) A water district or association that maintains a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for the customer deposit account.

(b) A water district or association that does not maintain a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers on the deposits held at a rate that is the weighted average rate of all of its interest bearing accounts as of December 31 of the previous year.

(c) If the water district or association does not have funds in an interest-bearing account, the water district or association shall pay interest to its customers on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for a basic savings account at the financial institution at which the water district or association maintains its operation and maintenance account.

(8) Tariff requirements. A utility that chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:

(a) The method by which deposit amounts will be determined for each customer class;

(b) Standard criteria for determining if a deposit will be required or waived;

(c) The deposit amount for each customer class if the method in subsection (1)(d)(2) of this section is used;

(d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable; and

(e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.

Section 9. Nonrecurring Charges. (1) A utility may make special nonrecurring charges to recover customer-specific costs incurred that would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. A utility desiring to establish or change a special nonrecurring charge shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

(2) A nonrecurring charge shall be included in a utility's tariff and applied uniformly throughout the area served by the utility. A charge shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3) A nonrecurring charge shall include the charges listed in this subsection and may include other customer specific costs in accordance with this section and 807 KAR 5:011, Section 10.

(a) Turn-on charge.

1. A turn-on charge may be assessed for a new service turn on, seasonal turn on, or temporary service.

2. A turn-on charge shall not be made for initial installation of service if a tap fee is applicable.

(b) Reconnect charge.

1. A reconnect charge may be assessed to reconnect a service that has been terminated for nonpayment of bills or violation of the utility's tariffed rules or 807 KAR Chapter 5.

2. A customer who qualifies for service reconnection pursuant to Section 16 of this administrative regulation shall be exempt from reconnect charges.

(c) Termination or field collection charge.

1. A charge may be assessed if a utility representative makes a trip to the premises of a customer for the purpose of terminating service.

2. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the utility representative agrees to delay termination based on the customer's payment or agreement to pay the delinquent bill by a specific date.

3. The utility shall not make a field collection charge more than once in a billing period.

(d) Special meter reading charge. This charge may be assessed if:

1. A customer requests that a meter be reread, and the second reading shows the original reading was correct. A charge shall not be assessed if the original reading was incorrect; or

2. A customer who reads his or her own meter fails to read the meter for three (3) consecutive months and it is necessary for a utility representative to make a trip to read the meter.

(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.

(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 19 of this administrative regulation and the tests show the as-found meter accuracy is within the limits established by 807 KAR 5:022, Section 8(3)(a)1. and 8(3)(b)1.; 5:041, Section 17(1); or 5:066, Section 15(2)(a).

(g) Returned payment charge. A returned payment charge may be assessed if payment of a utility bill is not honored by the customer's financial institution.

(h) Late payment charge. A late payment charge may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill.

1. The late payment charge may be assessed only once on a bill for rendered services.

2. A payment received shall first be applied to the bill for service rendered.

3. Additional late payment charges shall not be assessed on unpaid late payment charges.

Section 10. Customer Complaints to the Utility. (1) Upon complaint to a utility by a customer at the utility's office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the customer of the utility's findings.

(2) The utility shall keep a record of all written complaints concerning the utility's service. This record shall include:

(a) The customer's name and address;

(b) The date and nature of the complaint; and

(c) The disposition of the complaint.

(3) Records shall be maintained for two (2) years from the date of resolution of the complaint.

(4) If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the customer of his or her right to file a complaint with the commission and shall provide the customer with the mailing address, Web site address, and telephone number of the commission.

(5) If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the customer of his or her right to file a complaint with the commission and the mailing address, Web site address, and telephone number of the commission.

Section 11. Bill Adjustment for Gas, Electric, or Water Utilities. (1) If, upon periodic test, request test, or complaint test, a meter in service is found to be in error in excess of the limits established by 807 KAR 5:022, Section 8(3)(a)2.; 5:041, Section 17(1); or 5:066, Section 15(4), additional tests shall be made in accordance with those same administrative regulations applicable for the meter type involved to determine the average meter error.

(2)(a) If test results on a customer's meter show an average meter error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for another reason, except if a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall:

1. Immediately determine the period during which the error has existed;

2. Recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer; and

3. Readjust the account based upon the period during which the error is known to have existed.

(b)1. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using the data as elapsed time since the last meter test, if applicable, and historical usage data for the customer.

2. If that data is not available, the average usage of a similar class of customers shall be used for comparison purposes in calculating the time period.

(c) If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue based on this section.

(d) In an instance of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after the investigation is complete.

(e) A utility shall not require customer repayment of an underbilling to be made over a period shorter than a period coextensive with the underbilling.

(3) Monitoring usage.

(a) A utility shall monitor a customer's usage at least quarterly according to procedures that shall be included in its tariff.

(b) The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can determine the reasons for the unusual deviation.

(c) If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine if the meter shows an average meter error greater than two (2) percent fast or slow.

(4) Usage investigation.

(a) If a utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer in writing:

1. Within ten (10) days of removing the meter from service, that a usage investigation is being conducted and the reasons for the investigation; and

2. Within ten (10) days upon completion of the investigation of the findings of the investigation.

(b) If knowledge of a serious situation requires more expeditious notice, the utility shall notify the customer by the most expedient means available.

(c) If the meter shows an average meter error greater than two (2) percent fast or slow, the utility shall maintain the meter in question at a secure location under the utility's control, for a period of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the utility or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

(5) Customer notification. If a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On _____, (date)___, the meter bearing identification No. ____ installed in your building located at _____ (Street and Number) in _____ (city) was tested at _____ (on premises or elsewhere) and found to register _____ (percent fast or slow). The meter was tested on _____ (Periodic, Request, Complaint) test. Based upon these test results the utility will _____ (charge or credit) your account in the sum of $_____, which has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you shall notify this office in writing within seven (7) days of the date of this notice.

(6) A customer account shall be considered to be current while a dispute is pending pursuant to this section, if the customer:

(a) Continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads; and

(b) Stays current on subsequent bills.

Section 12. Status of Customer Accounts During Billing Dispute. With respect to a billing dispute to which Section 11 of this administrative regulation does not apply, a customer account shall be considered to be current while the dispute is pending if the customer continues to make undisputed payments and stays current on subsequent bills.

Section 13. Customer's Request for Termination of Service. (1)(a) A customer who requests that service be terminated or changed from one (1) address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, if the notice does not violate contractual obligations or tariff provisions.

(b) The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides access to the meter during the notice period in accordance with section 20 of this administrative regulation.

(c) If the customer notifies the utility of his request for termination by telephone, the burden of proof shall be on the customer to prove that service termination was requested if a dispute arises.

(2) Upon request that service be reconnected at a premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee established in its filed tariff.

(3) A utility desiring to establish a termination or reconnection charge pursuant to subsection (2) of this section shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

Section 14. Utility Customer Relations. (1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers and to respond to inquiries from the commission regarding customer complaints.

(a) Available telephone numbers. Each utility shall:

1. Maintain a telephone;

2. Publish the telephone number in all service areas; and

3. Permit all customers to contact the utility's designated representative without charge.

(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes, and negotiate partial payment plans at the utility's office. The designated representative shall be knowledgeable of this administrative regulation; 807 KAR 5:001, Section 20; KRS 278.160(2); and KRS 278.225 regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.

1. Each water, sewer, electric, or gas utility having annual operating revenues of $250,000 or more shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding legal holidays.

2. Each water, sewer, electric, or gas utility having annual operating revenues of less than $250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each utility providing gas or electric service shall make available the designated representative during the utility's established working hours not fewer than five (5) days per week, excluding legal holidays.

(c) Display of customer rights.

1. Each utility shall prominently display in each office open to the public for customer service, and shall post on its Web site, if it maintains a Web site, a summary, prepared and provided by the commission, of the customer's rights pursuant to this section and Section 16 of this administrative regulation.

2. If a customer indicates to any utility personnel that he or she is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for an explanation of his or her rights.

(d) Utility personnel training.

1. The chief operating officer of a utility that provides electric or gas service to residential customers shall certify under oath annually the training of utility personnel assigned to counsel persons presenting themselves for utility service pursuant to this section.

2. If the electric or gas utility is not incorporated in Kentucky and if the utility’s corporate headquarters is not located in Kentucky, then the utility’s highest ranking officer located in Kentucky shall make the required certification.

3. Training shall include an annual review of this administrative regulation and policies regarding winter hardship and disconnect, Cabinet for Health and Family Services (or its designee) policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and weather or health disconnect policies.

4. Certification shall include written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.

(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 15 of this administrative regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 15 of this administrative regulation. Partial payment plans that extend for a period longer than thirty (30) days shall

be in writing or electronically recorded, state the date and the amount of payment due. Written partial payment plans shall be dated and signed by both parties, and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

(a) Budget payment plans for water, gas, and electric utilities. A water, gas, and electric utility shall develop and offer to the utility's residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage.

1. Pursuant to this plan, a utility shall issue bills that adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end of the twelve (12) month period or through a series of levelized adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount.

2. Budget payment plans shall be offered to residential customers and may be offered to other classes of customers.

3. The provisions of the budget plan shall be included in the utility's tariffed rules.

4. The utility shall provide information to its customers regarding the availability of budget payment plans.

(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates pursuant to the provisions of Sections 15(3) and 16 of this administrative regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. The plans include, for example, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.

(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water, and sewer utility shall inspect the condition of its meter and service connections before making service connections to a new customer so that prior or fraudulent use of the facilities shall not be attributed to the new customer.

(a) The new customer shall be afforded the opportunity to be present at the inspections.

(b) The utility shall not be required to render service to a customer until all defects in the customer-owned portion of the service facilities have been corrected.

(4) Prompt connection of service. Except as provided in Section 16 of this administrative regulation, the utility shall reconnect existing service within twenty-four (24) hours or close of the next business day, whichever is later, and shall install and connect new service within seventy-two (72) hours or close of the next business day, whichever is later, if the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and 807 KAR Chapter 5 have been met.

(5) Advance termination notice. If advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the customer's last known address. The termination notice shall be in writing, distinguishable and separate from a bill.

(a) The termination notice shall plainly state the reason for termination, that the termination date shall not be affected by receipt of a subsequent bill, and that the customer has the right to dispute the reasons for termination.

(b) The termination notice shall also comply with the applicable requirements of Section 15 of this administrative regulation.

Section 15. Refusal or Termination of Service. (1) A utility may refuse or terminate service to a customer only pursuant to the following conditions, except as provided in subsections (2) and (3) of this section:

(a) For noncompliance with the utility's tariffed rules or the commission's administrative regulations.

1. A utility may terminate service for a customer's failure to comply with applicable tariffed rules or 807 KAR Chapter 5 pertaining to that service.

2. A utility shall not terminate or refuse service to a customer for noncompliance with the utility's tariffed rules or 807 KAR Chapter 5 without first having made a reasonable effort to obtain customer compliance.

3. After the effort by the utility, service may be terminated or refused only after the customer has been given at least ten (10) days written termination notice pursuant to Section 14(5) of this administrative regulation.

(b) For dangerous conditions. If a dangerous condition relating to a utility's service that could subject a person to imminent harm or result in substantial damage to the property of the utility or others is found to exist on the customer's premises, the service shall be refused or terminated without advance notice.

1. The utility shall notify the customer immediately in writing and, if possible, orally of the reasons for the termination or refusal.

2. The notice shall be recorded by the utility and shall include the corrective action to be taken by the customer or utility before service can be restored or provided.

3. If the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.

(c) For refusal of access. If a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance, or removal of utility property, the utility may terminate or refuse service. The action shall be taken only if corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 14(5) of this administrative regulation.

(d) For outstanding indebtedness. Except as provided in Section 16 of this administrative regulation, a utility shall not be required to furnish new service to a person contracting for service who is indebted to the utility for service furnished or other tariffed charges until that person contracting for service has paid his indebtedness.

(e) For noncompliance with state, local, or other codes. A utility may refuse or terminate service to a customer if the customer does not comply with state, municipal, or other codes. A utility may terminate service pursuant to this subsection only after ten (10) days' written notice is provided pursuant to Section 14(5) of this administrative regulation, unless ordered to terminate immediately by a governmental official.

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery. A utility shall not terminate service to any person contracting for service for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 14(5) of this administrative regulation.

1. Termination notice requirements for electric or gas service.

a. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer ten (10) days' written notice of intent to terminate.

b. Service shall not, for any reason, be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill.

c. The termination notice to residential customers shall include written notification to the customer of the existence of local, state, and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Cabinet for Health and Family Services (or its designee) to contact for possible assistance.

2 Termination notice requirements for water, sewer, or telephone service.

a. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate.

b. Service shall not, for any reason, be terminated before twenty (20) days after the mailing date of the original unpaid bill.

3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise dictated by the terms of a special contract between the utility and customer, which has been approved by the commission.

4. This subsection shall not prevent or restrict a utility from discontinuing service if a sewer service provider requests discontinuance of a customer's water service pursuant to KRS 74.408, 96.934, or 220.510, nor shall it restrict a water district from discontinuing water service to a customer who has failed to pay his bill for sewer service that the water district has provided.

(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft.

1.a. Within twenty-four (24) hours after termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission.

b. This right of termination is separate from and in addition to any other legal remedies that the utility may pursue for illegal use or theft of service.

2. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility, KRS Chapter 278, and 807 KAR Chapter 5.

(2) A utility shall not terminate service to a customer if:

(a) Payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination of service payment of the amount in arrears is received by the utility, service shall not be terminated;

(b) A payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 14 of this administrative regulation and the customer is meeting the requirements of the plan; or

(c) A medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if a physician, registered nurse, or public health officer certifies in writing that termination of service will aggravate a debilitating illness or infirmity currently suffered by a resident living at the affected premises.

1. A utility may refuse to grant consecutive extensions for medical certificates past the original thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 14 of this administrative regulation.

2. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents to the utility a medical certificate certified in writing by a physician, registered nurse, or public health officer.

(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Health and Family Services (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents the certificate to the utility.

(a) A customer eligible for certification from the Cabinet for Health and Family Services shall have been issued a termination notice between November 1 and March 31.

(b) Each certificate shall be presented to the utility during the initial ten (10) day termination notice period.

(c)1. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so.

2. In addition, the customer shall agree to a repayment plan in accordance with Section 14 of this administrative regulation, which shall permit the customer to become current in the payment of his bill as soon as possible but not later than October 15.

(d) A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents a certificate to the utility certified by the Cabinet for Health and Family Services (or its designee) that the customer is eligible for the cabinet's Energy Assistance Program or whose household income is at or below 130 percent of the poverty level.

Section 16. Winter Hardship Reconnection. (1) Notwithstanding the provisions of Section 14(4) of this administrative regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 15(1)(f) of this administrative regulation prior to application for reconnection, and who applies for reconnection during the months from November 1 through March 31 if the customer or his agent:

(a) Presents a certificate of need from the Cabinet for Health and Family Services (or its designee), including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;

(b) Pays one-third (1/3) of his outstanding bill or $200, whichever is less; and

(c) Agrees to a repayment schedule that would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15.

1. If the customer applies for reconnection and the customer has an outstanding bill in excess of $600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then the plan shall be accepted.

2. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.

(d) A utility shall not require a new deposit from a customer whose service is reconnected due to paragraphs (a), (b), or (c) of this subsection.

(2) Certificate of need for reconnection. A customer who is eligible for energy assistance under the Cabinet for Health and Family Services' guidelines or is certified as being in genuine financial need, which is defined as a household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the cabinet (or its designee) to be used in obtaining a service reconnection from the utility.

(3) Weatherization program. Customers obtaining a certificate of need pursuant to this administrative regulation shall agree to accept referral to and utilize weatherization services administered by the Cabinet for Health and Family Services. The provision and acceptance of weatherization services shall be contingent on the availability of funds and other program guidelines. Weatherization services include, for example, weather stripping, insulation, and caulking. A customer current with his or her payment plan pursuant to subsection 1(c) of this section shall not be disconnected.

Section 17. Meter Testing. (1) All electric, gas, and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically established in 807 KAR 5:022, 5:041, and 5:066. Before being installed for use by a customer, an electric, gas, and water meter shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically established in 807 KAR 5:022, Section 8(3)(a), 5:041, Section 17(1)(a)-(c), and 5:066, Section 15(2)(a)-(b).

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that purpose. Each utility having tests made by another agency or utility shall notify the commission of those arrangements in detail to include make, type, and serial number of standards used to make the tests.

(3) A utility shall not place in service a basic measurement standard required by 807 KAR Chapter 5 unless the calibration has been approved by the commission. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of a basic standard requiring commission approval of the calibration.

(4) An electric, gas, and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the commission. These certified meter testers shall perform tests as necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by 807 KAR Chapter 5.

(5) A utility or agency desiring to have an employee certified as meter tester shall submit the name of each applicant on an "Application for Appointment of Meter Tester." The applicant shall pass a written test administered by commission staff and have his competency in the testing of meters verified by commission staff, at which time the applicant shall be certified as a meter tester and furnished with a card authorizing him to perform meter tests.

(6) A utility or agency may employ apprentices in training for certification as meter testers.

(a) The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section.

(b) All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

Section 18. Meter Test Records. (1)(a) A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. The record shall include:

1. Information to identify the unit and its location;
2. Date of tests;
3. Reason for the tests;
4. Readings before and after test;
5. Statement of "as found" and "as left" accuracies sufficiently complete to permit checking of calculations employed;
6. Notations showing that all required checks have been made;
7. Statement of repairs made, if any;
8. Identifying number of the meter;
9. Type and capacity of the meter; and
10. The meter constant.

(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.

(2) Historical records. (a) A utility shall keep numerically arranged and properly classified records for each meter that it owns, uses, and inventories.

(b) These records shall include:

1. Identification number;
2. Date of purchase;
3. Name of manufacturer;
4. Serial number;
5. Type;
6. Rating; and
7. Name and address of each customer on whose premises the meter has been in service with date of installation and removal.

(c) These records shall also contain condensed information concerning all tests and adjustments including dates and general results of the adjustments. The records shall reflect the date of the last test and indicate the proper date for the next periodic test required by the applicable commission administrative regulation in 807 KAR Chapter 5.

(3) Sealing of meters. Upon completion of adjustment and test of a meter pursuant to 807 KAR Chapter 5, a utility shall affix to the meter a suitable seal in a manner that adjustments or registration of the meter cannot be altered without breaking the seal.

(4) A utility may store the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.

Section 19. Request Tests. (1) A utility shall make a test of a meter upon written request of a customer if the request is not made more frequently than once each twelve (12) months.

(a) The customer shall be given the opportunity to be present at the requested test.

(b) If the tests show the as-found meter accuracy is within the limits allowed by 807 KAR 5:022, Section 8(3)(a)1., 5:022, Section 8(3)(b)1., 5:041, Section 17(1), or 5:066, Section 15(4), the utility may make a reasonable charge for the test.

(c) The commission-approved amount of the charge shall be established in the utility's filed tariff.

(d) The utility shall maintain a meter removed from service for testing, in a secure location under the utility’s control, for a period of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the utility or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved, or the meter is picked up for testing by personnel from the commission’s Meter Standards Laboratory.

(2) After having first obtained a test from the utility, a customer of the utility may request a meter test by the commission upon written application.

(a) The request shall not be made more frequently on one (1) meter than once each twelve (12) months.

(b) Upon request, personnel from the commission’s Meter Standards Laboratory shall pick up the meter from the utility and maintain the meter for a minimum of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the commission’s Meter Standards Laboratory or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

Section 20. Access to Property. The utility shall at all reasonable hours have access to meters, service connections, and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement, or removal of its property. An employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, and show a badge or other identification that shall identify him as an employee of the utility.

Section 21. Pole Identification. (1) Each utility owning poles or other structures supporting its wires shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every structure can be readily determined.

(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.

(3) If a utility's structures are located outside of a built-up community, at least every tenth structure shall be marked as established in subsection (2) of this section.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) A utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.

Section 22. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.

(2) The tariffs of the utility shall establish the rates, terms, and conditions under which the utility's facilities may be used.

(3) With respect to a complaint before the commission in an individual matter concerning cable television pole attachments, final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

Section 23. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve. The map or maps should be available preferably in electronic format as a PDF file or as a digital geographic database. The following data shall be available on the map or maps:

(a) Operating districts;

(b) Rate districts;

(c) Communities served;

(d) Location and size of transmission lines, distribution lines and service connections;

(e) Location and layout of all principal items of plant; and

(f) Date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above construction information in (1)(f) on maps, a card record or suitable digital data may be used.

(a) The construction data about a plant feature, such as a pipeline, may be stored in a table and linked to the geographic plant feature by a unique identifier that is present in both the table and the geographic database.

(b) For all prospective construction the records shall also show the date of construction by month and year.

Section 24. Location of Records. All records required by 807 KAR Chapter 5 shall be kept in the office of the utility and shall be made available to representatives, agents, or staff of the commission upon reasonable notice at all reasonable hours.

Section 25. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:

(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees;

(2) Instruct employees in safe methods of performing their work. For electric utilities, this is to include the standards established in 807 KAR 5:041, Section 3; and

(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation, or drowning, in accepted methods of artificial respiration.

Section 26. Inspection of Systems. (1) A utility shall adopt inspection procedures to assure safe and adequate operation of the utility's facilities and compliance with KRS Chapter 278 and 807 KAR Chapter 5 and shall file these procedures with the commission for review.

(2) Upon receipt of a report of a potentially hazardous condition at a utility facility, the utility shall inspect all portions of the system that are the subject of the report.

(3) Appropriate records shall be kept by a utility to identify the inspection made, the date and time of inspection, the person conducting the inspection, deficiencies found, and action taken to correct the deficiencies.

(4) Electric utility inspection. An electric utility shall make systematic inspections of its system in the manner established in this subsection to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than established in this subsection for various classes of facilities and types of inspection.

(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.

(b) At intervals not to exceed six (6) months, the utility shall inspect:

1. Unmanned production facilities, including peaking units not on standby status, and all monitoring devices, for evidence of abnormality;

2. Transmission switching stations if the primary voltage is sixty-nine (69) KV or greater, for damage to or deterioration of components including structures, fences, gauges, and monitoring devices;

3. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, for leaks, condition of case, connections, temperature, and overloading; and

4. Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage, deterioration and vegetation management consistent with the utility's vegetation management practices.

(c) In addition to the requirements established in paragraph (b) of this subsection, all electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities shall be inspected from the ground for damage, deterioration, and vegetation management consistent with the utility's vegetation management practices at intervals not to exceed:

1. Six (6) years for each electric line supported by a wood pole or other wood support structure; or

2. Twelve (12) years for each electric line supported by a pole or other support structure constructed of steel or other nonwood material.

(d) At intervals not to exceed one (1) year, the utility shall inspect:

1. Production facilities maintained on a standby status. Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected; and

2. Distribution substations with primary voltage of fifteen (15) to sixty-nine (69) KV.

(e) At intervals not to exceed two (2) years, the utility shall inspect all electric facilities operating at voltages of less than sixty-nine (69) KV, to the point of service including insulators, conductors, meters, and supporting facilities from the ground for damage, deterioration, and vegetation management consistent with the utility's vegetation management practices.

(f) The utility shall inspect other facilities as follows:

1. Utility buildings shall be inspected for compliance with safety codes at least annually; and

2. Construction equipment shall be inspected for defects, wear, and operational hazards at least quarterly.

(g) Aerial inspections shall not be used as the basis for compliance with paragraphs (b)1. through 3., support facilities provisions in (b)4., (d)1., and (f) of this subsection.

(5) Gas utility inspection. A gas utility shall make systematic inspections of its system to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is prescribed or recommended by the Department of Transportation, 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities.

(a) The following maximum time intervals shall be established for certain inspections provided for in 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety

Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in the code.

1. At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine:

a. Production wells, storage wells, and well equipment, including their exterior components;

b. Pressure limiting stations, relief devices, pressure regulating stations, and vaults; and

c. Accessibility of the curb box and valve on a service line.

2. At intervals not to exceed three (3) years, gas meters shall be manually inspected and visually examined for proper working condition.

3. The utility shall inspect other facilities as follows:

a. Utility buildings shall be inspected for compliance with safety codes at least annually; and

b. Construction equipment under the control of the utility shall be inspected for defects, wear, and operational hazards at least quarterly.

(b) At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents, and relief valve vents shall be checked for operable condition.

(c) At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.

(d) Aerial inspections shall not be used as the basis for compliance with paragraphs (a) through (c) of this subsection.

(6) Water utility inspections. Each water utility shall make systematic inspections of its system as established in paragraphs (a) through (c) of this subsection to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than as established in paragraphs (a) through (c) of this subsection for various classes of facilities and types of inspection.

(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation;

(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity, and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; and hydrants, mains, meters, meter settings and valves; and

(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.

(7) Telephone utility inspection. Each telephone utility shall make systematic inspections of its system as established in paragraphs (a) through (f) of this subsection to insure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than as established in paragraphs (a) through (f) of this subsection for various classes of facilities and types of inspection.

(a) The utility shall inspect aerial plant for electrical hazards, proper clearance for electric clearances of facilities, vegetation management consistent with the utility’s vegetation management practices, and climbing safety every two (2) years;

(b) The utility shall inspect underground plant for presence of gas, proper clearance from electric facilities, and safe working conditions at least annually;

(c) The utility shall inspect utility-provided station equipment and connections for external electrical hazards, damaged instruments or wiring, and appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises;

(d) The utility shall inspect utility buildings for compliance with safety codes at least annually;

(e) The utility shall inspect construction equipment for defects, wear, and operational hazards at least quarterly; and

(f) Aerial inspections shall not be used as the basis for compliance with this subsection.

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner established in 807 KAR 5:071 to ensure that the commission’s safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than established in 807 KAR 5:071.

Section 27. Reporting of Accidents, Property Damage, or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of a utility related accident that results in:

(a) Death or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;

(b) Actual or potential property damage of $25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident. For good cause shown, the executive director of the commission, shall, upon application in writing, allow a reasonable extension of time for submission of this report.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

Section 28. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Annual Financial and Statistical Reports:

1. “FERC Form 1 – Annual Report of Major Electric Utilities, Licensees and Others”, March 2007;
2. “Annual Reporting Form for Rural Electric Cooperative Corporations”, July 2012;
3. “FERC Form 2 – Annual Report of Major Natural Gas Companies”, December 2007;
4. “Annual Reporting Form for Class C and D Gas Utilities”, August 2005;
5. “Annual Reporting Form for Local Exchange Carriers”, August 2005;
6. “Annual Reporting Form for Local Exchange Carriers – Kentucky Operations Only”, August 2004;
7. “Annual Reporting Form for Water Company – Class A & B”, July 2012;
8. “Annual Reporting Form for Water Company – Class C”, July 2012;
9. “Annual Reporting Form for Water Districts/Water Associations – Class A & B”, July 2012;
10. “Annual Reporting Form for Water Districts/Water Associations – Class C”, July 2012; and
11. “Annual Reporting Form for Sewer Utilities”, September 2005;

(b) Quarterly Meter Reports:

1. “Quarterly Meter Report-Electric”, August 2011;
2. “Quarterly Meter Report-Water”, July 2012; and
3. “Quarterly Meter Report-Gas”, July 2007;

(c) Non-payment Disconnection/Reconnection Reports:

1. “Water Utility-Non-Payment Disconnection/Reconnection Report”, February 2012;
2. “Electric Utility-Non-Payment Disconnection/Reconnection Report”, September 2000; and
3. “Gas Utility Non-Payment Disconnection/Reconnection Report” September 2000;

(d) “Application for Appointment of Meter Testers”, August 2012; and

(e) Gross Annual Operating Revenue Reports:

1. “Report of Gross Operating Revenues Derived from Intra-Kentucky Business”, December 2010;
2. “Report of Gross Operating Revenues Derived from Intra-Kentucky Business Electric Utilities”, October 2012;
3. “Report of Gross Operating Revenues Derived from Intra-Kentucky Business Long Distance Carriers and Operator Services”, September 2010;
4. “Report of Gross Operating Revenues Derived from Intra-Kentucky Business Paging and Cellular”, September 2010; and
5. “Report of Gross Operating Revenues Derived from Intra-Kentucky Business Local Exchange Carriers and Competitive Local Exchange Carriers”, September 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission’s offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at the commission’s Web site at http://psc.ky.gov. (8 Ky.R. 791; Am. 961; 1137; eff. 4-7-82; 9 Ky.R. 217; 473; eff. 8-25-82; 11 Ky.R. 790; 1048; eff. 1-7-85; 12 Ky.R. 967; 1343; 1510; eff. 2-4-86; 18 Ky.R. 1953; 2554; eff. 2-26-92; TAm eff. 8-9-2007; 295; 1015; 1136; eff. 1-4-2013; TAm 1-30-2013.)

807 KAR 5:007. Filing and notice requirements for a generation and transmission cooperative or a distribution cooperative to decrease rates or for a distribution cooperative to change rates to reflect a change in the rates of its wholesale supplier.

RELATES TO: KRS 278.180, 278.455
STATUTORY AUTHORITY: KRS 278.040(3), 278.180(1), 278.455(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.180(1) provides that, except upon application of a utility for a lesser time, a change shall not be made in a rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates shall go into effect. KRS 278.455(1) provides that a generation and transmission cooperative or a distribution cooperative may decrease regulated operating revenues if the decrease is allocated proportionately among customer classes so that a change will not result to the rate design currently in effect. KRS 278.455(2) provides that a distribution cooperative may change its rates to reflect a change in the rate of its wholesale supplier if the effects of an increase or decrease are allocated to each class and within each tariff on a proportional basis that will result in no change in the rate design currently in effect. KRS 278.455(4) requires the commission to promulgate administrative regulations establishing filing requirements and notice requirements to the commission, the Attorney General, and the public for rate changes made pursuant to KRS 278.455. This administrative regulation prescribes filing and notice requirements for a generation and transmission cooperative or a distribution cooperative to decrease rates and for a distribution cooperative to change rates to reflect a change in the rates of its wholesale supplier.

Section 1. Filing Requirements. To decrease rates, a generation and transmission cooperative or a distribution cooperative shall file with the commission an original and five (5) copies, and with the Attorney General's Office of Rate Intervention one (1) copy, of the following information:
(1) The tariff incorporating the reduced rates, specifying an effective date no sooner than thirty (30) days from the date filed;
(2) The name and address of the filing cooperative;
(3) A brief statement of the facts demonstrating that the filing is made pursuant to the authority of KRS 278.455;
(4) A comparison of the current and proposed rates;
(5) An analysis demonstrating that:
(a) The rate change does not change the rate design currently in effect; and
(b) The revenue change has been allocated to each class and within each tariff on a proportional basis;
(6) A certification that a complete copy of the materials filed with the commission has been sent to the Attorney General's Office of Rate Intervention;
(7) A statement that notice of the rate change pursuant to Section 3 of this administrative regulation has been given, not more than thirty (30) days prior to the date the application is filed, by one (1) of the following methods:
(a) By typewritten notice mailed to all customers;
(b) By publication in a newspaper of general circulation in the affected area; or
(c) By publication in a periodical distributed to all members of the cooperative; and
(8) A copy of the notice given pursuant to subsection (7) of this section.

Section 2. To change rates to reflect an increase or decrease in its wholesale supplier's rates, a distribution cooperative shall file with the commission an original and five (5) copies, and with the Attorney General's Office of Rate Intervention one (1) copy, of the following information:
(1) The tariff incorporating the new rates and specifying an effective date no sooner than the effective date of the wholesale supplier's rate change; and
(2) The information required by Section 1(2) through (8) of this administrative regulation.

Section 3. Contents of Notice. Notice given pursuant to Section 1(7) of this administrative regulation shall include the following information:
(1) The name, address, and phone number of the cooperative;

(2) The existing rates and the revised rates for each customer class;

(3) The effect of the rate change, stated both in dollars and as a percentage, upon the average bill for each customer class;

(4) A statement, as appropriate, that:

(a) The rate reduction is being made at the sole discretion of the utility, pursuant to KRS 278.455(1); or

(b) The rates are being revised to reflect a change in wholesale rates pursuant to KRS 278.455(2); and

(5) A statement that a person may examine the rate application at the main office of the utility or at the office of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky. (25 Ky.R. 2989; Am. 26 Ky.R. 385; eff. 8-20-99.)

807 KAR 5:011. Tariffs.

RELATES TO: KRS 278.010, 278.030, 278.160, 278.170, 278.180, 278.185, 278.190
STATUTORY AUTHORITY: KRS 278.160(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) requires the commission to promulgate an administrative regulation to establish requirements for each utility to file schedules showing all rates and conditions established by it and collected or enforced. This administrative regulation establishes requirements for utility tariffs.

Section 1. Definitions.
(1) "Commission" is defined by KRS 278.010(15).
(2) "Date of issue" means the date the tariff sheet is signed by the representative of the utility authorized to issue tariffs.
(3) "Electronic signature" is defined by KRS 369.102(8).
(4) "Nonrecurring charge" means a charge or fee assessed to a customer to recover the specific cost of an activity, which:
(a) Is due to a specific request for a service activity for which, once the activity is completed, additional charges are not incurred; and
(b) Is limited to recovery of an amount no greater than the cost of the specific service.
(5) "Person" is defined by KRS 278.010(2).
(6) "Rate" is defined by KRS 278.010(12).
(7) "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).
(8) "Signature" means any manual, facsimile, conformed, or electronic signatures.
(9) "Statutory notice" means notice made in accordance with KRS 278.180.
(10) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.
(11) "Tariff filing" means the revised or new tariff sheets and all supporting documents that a utility submits to revise its rate schedules.
(12) "Utility" is defined by KRS 278.010(3).
(13) "Utility's office or place of business" means a location at which the utility regularly employs and stations one (1) or more employees and is open to the public for customer service.
(14) "Water district" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.
(15) "Web site" means an identifiable site on the internet, including social media, which is accessible by the public.

Section 2. General. (1) Each tariff sheet and supporting document filed with the commission shall be electronically submitted to the commission using the commission's electronic Tariff Filing System located at https://psc.ky.gov/psc_portal.
(2) Each utility shall maintain a complete tariff with the commission.
(3) A utility furnishing more than one (1) type of service (water and electricity for example) shall file a separate tariff for each type of service.
(4) A utility shall make available a paper or electronic copy of the utility's current tariff for public inspection in the utility's office or place of business.
(5) A utility that maintains a Web site for its utility operations shall:
(a) Make available on that Web site for public viewing and downloading a copy of the utility's current tariff for each type of service that it provides; or
(b) Place on that Web site a hyperlink to the location on the commission's Web site where the tariff has been posted.

Section 3. Format. (1) A new tariff or revised sheet of an existing tariff filed with the commission shall be:
(a) Printed or typewritten;
(b) Eight and one-half (8 1/2) by eleven (11) inches in size; and
(c) In type no smaller than nine (9) point font, except headers and footers, which shall be in type no smaller than eight (8) point font.

(2) Tariff Form-1. The first sheet of a tariff shall be on Tariff Form-1, shall be used as the tariff's cover page, and shall contain:

(a) The utility's name, mailing address, street address of the utility's principal office if different from the mailing address, and Web site if applicable;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) A statement of the type of service offered;

(d) A statement of the area served;

(e) The date of issue and date on which the tariff is to become effective;

(f) The signature of the representative of the utility authorized to issue tariffs; and

(g) The signatory's title or position.

(3) Tariff Form-2. With the exception of the first sheet of the tariff, which shall be on Tariff Form-1, all other tariff sheets shall be on Tariff Form-2 and shall contain:

(a) The utility's name and territory served;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) In the upper right-hand corner, the tariff sheet number and, if applicable, the cancelled tariff sheet number (Example: First Revised Sheet No. 1, Cancelling Original Sheet No. 1);

(d) The date of issue and date on which the tariff is to become effective;

(e) The signature of the utility representative authorized to issue tariffs;

(f) The signatory's title or position; and

(g) If applicable, a statement that the tariff is "Issued by authority of an Order of the Public Service Commission in Case No. _____ Dated_____, 20____".

(4) Each tariff sheet shall contain a blank space at its bottom right corner that measures at least three and one-half (3.5) inches from the right of the tariff sheet by two and one-half (2.5) inches from the bottom of the tariff sheet to allow space for the commission to affix the commission's stamp.

Section 4. Contents of Schedules. (1) In addition to a clear statement of all rates, each rate schedule shall state the city, town, village, or district in which rates are applicable.

(a) If a schedule is applicable in a large number of communities, the schedule shall be accompanied by an accurate index so that each community in which the rates are applicable may be readily ascertained.

(b) If a utility indicates the applicability of a schedule by reference to the index sheet, the utility shall use language indicating "Applicable within the corporate limits of the City of _____," or "see Tariff Sheet No. ____ for applicability."

(2) The following information shall be shown in each rate schedule, if applicable, under the following captions in the order listed:

(a) Applicable: show the territory covered;

(b) Availability of service: show the classification of customers affected;

(c) Rates: list all rates offered;

(d) Minimum charge: state the amount of the minimum charge, the quantity allowed (if volumetrically based), and if it is subject to a late payment charge;

(e) Late payment charge: state the amount or reference the tariff section containing the amount;

(f) Term: if a tariff provision or a contract will be effective for a limited period, state the term; and

(g) Special rules: list special rules or requirements that are in effect covering this tariff.

(3) Each rate schedule shall state the type or classification of service available pursuant to the stated rates, by using language similar to "available for residential lighting" or "available for all purposes."

(4) For a tariff in which a number of rate schedules are shown available for various uses, each rate schedule shall be identified either by:

(a) A number in the format "Schedule No. ___"; or

(b) A group of letters, with a designation indicating the type or classification of service for which the rate schedule is available. (Example: Tariff R.S. for residential service rates.)

(5) A tariff may be further divided into sections.

Section 5. Filing Requirements. (1) Each tariff filing shall include a cover letter and conform to the requirements established in this subsection.

(a) With the exception of supporting documents, which may be submitted in an Excel spreadsheet in.xls format, each document shall be submitted in portable document format ("PDF") capable of being viewed with Adobe Acrobat Reader.

(b) Each document shall be search-capable and optimized for viewing over the internet.

(c) Each scanned document shall be scanned at a resolution of 300 dots per inch (dpi).

(d) A document may be bookmarked to distinguish different sections of the filing.

(2) A document shall be considered filed with the commission if it has:

(a) Been successfully transmitted using the commission's electronic tariff filing system; and

(b) Met all other requirements established in this administrative regulation.

Section 6. Tariff Addition, Revision, or Withdrawal. (1) A tariff, tariff sheet, or tariff provision shall not be changed, cancelled, or withdrawn except as established by this section and Section 9 of this administrative regulation.

(2) A new tariff or revised sheet of an existing tariff shall be issued and placed into effect by:

(a) Order of the commission; or

(b) Issuing and filing with the commission a new tariff or revised sheet of an existing tariff and providing notice to the public in accordance with Section 8 of this administrative regulation and statutory notice to the commission.

(3) The following symbols shall be placed in the margin to indicate a change:

(a) "(D)" to signify deletion;

(b) "(I)" to signify increase;

(c) "(N)" to signify a new rate or requirement;

(d) "(R)" to signify reduction; or

(e) "(T)" to signify a change in text.

Section 7. Tariff Filings Pursuant to Orders. If the commission has ordered a change in the rates or rules of a utility, the utility shall file a new tariff or revised sheet of an existing tariff establishing:

(1) The revised rate, classification, charge, or rule;

(2) The applicable case number;

(3) The date of the commission order; and

(4) The margin symbols required by Section 6(3) of this administrative regulation.

Section 8. Notice. A utility shall provide notice if a charge, fee, condition of service, or rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service.

(1) Public postings.

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

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

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the tariff filing is available.

(c) The information required in subsection (1)(a) and (b) of this section shall not be removed until the tariff filing has become effective or the commission issues a final decision on the tariff filing.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers or is a sewage utility, it shall mail a written notice to each customer no later than the date the tariff filing is submitted to the commission.

(b) If a utility has more than twenty (20) customers and is not a sewage utility, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the tariff filing is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the tariff filing is submitted to the commission;

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the tariff filing is submitted to the commission; or

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

(c) A utility that provides service in more than one (1) county and is not a sewage utility may use a combination of the notice methods established in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the tariff filing was initially submitted to the commission:

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

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

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

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

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

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

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

(e) A statement that a person may examine this tariff filing at the offices of (utility name) located at (utility address);

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

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

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of the initial publication or mailing of the notice, the commission may take final action on the tariff filing.

(5) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. Notice given pursuant to subsection (2)(a) or (b) of this section shall substitute for the notice required by 807 KAR 5:051, Section 2, if the notice contained a clear and concise explanation of the proposed change in the rate schedule applicable to each customer.

(6) Periodic recalculation of a formulaic rate that does not involve a revision of the rate and that is performed in accordance with provisions of an effective rate schedule, special contract, or administrative regulation does not require notice in accordance with this section.

Section 9. Statutory Notice to the Commission. (1) The proposed rates on a new tariff or revised sheet of an existing tariff shall become effective on the date stated on the tariff sheet if:

(a) Proper notice was provided to the public in accordance with Section 8 of this administrative regulation;

(b) Statutory notice was provided; and

(c) The commission does not suspend the proposed rates pursuant to KRS 278.190.

(2) All information and notices required by this administrative regulation shall be furnished to the commission at the time of the filing of the proposed rate. If a substantial omission occurs, which is

prejudicial to full consideration by the commission or to the public, the statutory notice period to the commission shall not commence until the omitted information and notice is filed.

Section 10. Nonrecurring Charges. A utility may revise a nonrecurring charge pursuant to this section and Sections 6 and 9 of this administrative regulation.

(1) Each request to revise a current nonrecurring charge or to implement a new nonrecurring charge shall be accompanied by:

(a) A specific cost justification for the proposed nonrecurring charge, including all supporting documentation necessary to determine the reasonableness of the proposed non-recurring charge;

(b) A copy of the public notice of each requested nonrecurring charge and verification that it has been made pursuant to Section 8 of this administrative regulation;

(c) A detailed statement explaining why the proposed revisions were not included in the utility's most recent general rate case and why current conditions prevent deferring the proposed revisions until the next general rate case;

(d) A statement identifying each classification of potential or existing customers affected by the rate revision;

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period or an affidavit from an authorized representative of the utility attesting that the utility's income statement and balance sheet are on file with the commission; and

(f) If the applicant is a water district and proposes to increase any of its nonrecurring charges or implement a new nonrecurring charge, a statement from an authorized official of the district indicating the date the proposed rate adjustment was reported to the governing body of the county in which the largest number of its customers reside and the date it presented testimony, or is scheduled to present testimony, to that governing body.

(2) The proposed rate shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3)(a) If the revenue to be generated from the proposed rate revision exceeds by five (5) percent the total revenues provided by all nonrecurring charges for a recent period of twelve (12) consecutive calendar months ending within ninety (90) days of submitting the tariff filing, the utility shall, in addition to the information established in subsection (1) of this section, file an absorption test.

(b) The absorption test shall show that the additional net income generated by the tariff filing shall not result in an increase in the rate of return (or other applicable valuation method) to a level greater than that allowed in the most recent general rate case.

(c) As part of the absorption test, a general rate increase received during the twelve (12) month period shall be annualized.

(4) Upon a utility submitting the tariff filing to the commission, the utility shall transmit by electronic mail a copy in PDF to rateintervention@ag.ky.gov or mail a paper copy to the Attorney General's Office of Rate Intervention, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

Section 11. Adoption Notice. (1) A utility shall file an adoption notice on Tariff Form-3 if:

(a) A change of ownership or control of a utility occurs;

(b) A utility or a part of its business is transferred from the operating control of one (1) company to that of another;

(c) A utility's name is changed; or

(d) A receiver or trustee assumes possession and operation of a utility.

(2) Unless otherwise authorized by the commission, the person operating the utility business going forward shall adopt, ratify, and make as its own the predecessor's rates, classifications, and requirements on file with the commission and effective at the time of the change of ownership or control.

(3) An adoption notice may be filed and made effective without previous notice.

(4) An adoption notice filed with the commission shall be in consecutive numerical order, beginning with Public Service Commission adoption notice No. 1.

(5) Within ten (10) days after the filing of an adoption notice by a utility that had no tariff on file with the commission, the utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or a tariff it proposes to place into effect in lieu thereof, in the form established in Sections 2 through 4 of this administrative regulation with proper identifying designation.

(6) Within ten (10) days after the filing of an adoption notice by a utility that had other tariffs on file with the commission, the utility shall issue and file one (1) of the following:

(a) A complete reissue of its existing tariff that establishes the rates and requirements:

1. Of the predecessor utility then in effect and adopted by the successor utility; or

2. The utility proposes to place into effect for the customers served by the predecessor utility; or

(b) New or revised tariff sheets that establish the rates and requirements:

1. Of the predecessor utility then in effect and adopted by the successor utility; or

2. The utility proposes to place into effect for the customers served by the predecessor utility.

(7)(a) If a new tariff or a revised sheet of an existing tariff states the rates and requirements of the predecessor utility without change, the successor utility shall not be required to provide notice of the filing.

(b) If a new tariff or a revised sheet of an existing tariff changes or amends the rates or requirements of the predecessor utility, the successor utility shall provide notice pursuant to KRS 278.180 and Section 8 of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations, and Statutes. (1) Each utility shall display a suitable placard, in large type, that states that the utility's tariff and the applicable administrative regulations and statutes are available for public inspection.

(2) Each utility shall provide a suitable table or desk in its office or place of business on which it shall make available for public viewing:

(a) A copy of all effective tariffs and supplements establishing its rates, classifications, charges, rules, and requirements, together with forms of contracts and applications applicable to the territory served from that office or place of business;

(b) A copy of all proposed tariff revisions that the utility has filed and are pending before the commission and all documents filed in a commission proceeding initiated to review the proposed tariff revisions;

(c) A copy of KRS Chapter 278; and

(d) A copy of 807 KAR Chapter 5.

(3) The information required in subsection (2) of this section shall be made available in an electronic or nonelectronic format.

Section 13. Special Contracts. Each utility shall file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff.

Section 14. Confidential Materials. A utility may request confidential treatment for materials filed pursuant to this administrative regulation. Requests for confidential treatment shall be made and reviewed in accordance with 807 KAR 5:001, Section 13(3).

Section 15. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Tariff Form-1", July 2013;

(b) "Tariff Form-2", July 2013; and

(c) "Tariff Form-3", Adoption Notice, July 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov. (8 Ky.R. 797; Am. 1148; eff. 6-2-82; 11 Ky.R. 69; eff. 8-4-84; 39 Ky.R. 312; 1032; 1152; eff. 1-4-13; 40 Ky.R. 447; 812; eff. 10-18-2013.)

807 KAR 5:013. Management and operation audits.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.040, 278.255
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.255(4) provides that the Public Service Commission (hereinafter referred to as "commission") shall adopt rules and administrative regulations setting forth the scope and application of audits, and procedures for conducting management and operations audits of regulated utilities.

Section 1. Definitions. (1) "Audit" means an examination, inspection, evaluation and investigation of records, administrative regulations, policies, objectives, goals, plans, practices, methods or other criteria utilized by management of a utility to conduct its business, and may include appropriate recommendations for improved management and operation techniques.

(2) "Bidders list" means a list of independent firms which have notified the commission of their interest in performing audits.

(3) "Staff" means commission staff.

(4) "Utility" means a utility as defined by KRS 278.010(3).

Section 2. Procedures for Audits Performed by an Independent Firm. (1) When the commission decides to employ an independent firm to audit a utility, the commission shall issue a request for proposal to all firms on the bidders list.

(2) The request for proposal shall include the objectives and scope of the audit, the proposed role of staff in the audit, proposed contractual arrangements, selection criteria, and items, including testimony, reports, and work papers, to be performed or supplied as part of the audit.

(3) The commission shall evaluate all proposals received. It may select one (1) bidder and enter a contract with the successful bidder and the utility, which shall govern performance of the audit, or it may reject all proposals and reissue the request for proposal.

(4) The auditing firm shall forward all invoices for payment to staff. After review and verification of the invoices, staff shall forward the invoices to the utility which shall pay the auditing firm directly.

Section 3. Minimum Requirements of Audits. The following materials shall be submitted to the utility and the staff when the audit is performed by an independent auditing firm and to the utility when the audit is performed by staff:

(1) Detailed work plans describing the technical procedures for performing the work.

(2) Initial draft report describing preliminary findings and conclusions.

(3) A final draft report including a management summary and recommendations.

(4) A final report including:

(a) A management summary.

(b) An action plan for each recommendation detailing the reason for each recommendation, a proposed improvement baseline, an estimate of monetary savings, or other benefits to be realized from implementing it, and an estimate of implementation costs.

(5) Work papers identifying the source of information upon which each finding is based and any other documentation the staff finds necessary shall be provided with the final report.

Section 4. Opportunity for Comment. The utility may comment in writing within the following times:

(1) Fifteen (15) working days from receipt of the draft request for proposal.

(2) Fifteen (15) working days from receipt of each bidder's proposal including the initial work plan.

(3) Twenty (20) working days from receipt of the preliminary draft report.

(4) Ten (10) working days from receipt of the final draft report.

Section 5. Implementation of Audit Recommendations. (1) The utility shall respond to all action plans and shall adopt, adopt with exception, or reject each recommendation. The response shall include detailed steps by which the utility proposes to implement each recommendation adopted or adopted with exception. The utility shall provide a detailed basis for rejecting any recommendation.

(2) Except for recommendations which staff has agreed are complete, the utility shall file progress reports for each open recommendation every six (6) months for the first two (2) years after the final audit report is issued, and annually thereafter.

Section 6. Deviations from Rules. For good cause shown, the commission may permit deviations from these rules. (22 Ky.R. 503; eff. 9-25-95.)

807 KAR 5:016. Advertising.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.040, 278.190(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.190(3) provides that at any hearing involving a rate or charge of a utility for which an increase is sought, the burden of proof shall be on the utility to show that the increased charge or rate is just and reasonable. This administrative regulation specifies what advertising expenses of a utility will be allowable as a cost to the utility for rate-making purposes.

Section 1. General. The purpose of this administrative regulation is to insure that no direct or indirect expenditures may be includable in a gas or electric utility's cost of service for rate-making purposes which are for promotional advertising, political advertising or institutional advertising. It is also the purpose of the administrative regulation to insure that no direct or indirect expenditures may be includable in a telephone, water, or sewage utility's cost of service for rate-making purposes which are for political advertising or institutional advertising. "Advertising" means the commercial use of any media, including newspaper, printed matter, radio and television, in order to transmit a message to a substantial number of members of the public or to utility consumers.

Section 2. Advertising Allowed. (1) No advertising expenditure of a utility shall be taken into consideration by the commission for the purpose of establishing rates unless such advertising will produce a material benefit for the ratepayers.
(2) As used in this administrative regulation, advertising expenditures shall include costs of advertising directly incurred by the public utility and those costs of advertising incurred by contribution to third parties, including parent and affiliated companies.

Section 3. Material Benefit. (1) Advertising expenditures by gas or electric utilities which produce a "material benefit" include, but are not limited to the following:
(a) Advertising limited exclusively to demonstration of means for ratepayers to reduce their bills or conserve energy;
(b) Advertising conveying safety information in the direct use of utility equipment;
(c) Advertising which furnishes factual and objective data programs to educational institutions on the subject of energy technology;
(d) Advertising providing information to the public regarding potential safety hazards associated with construction or a utility's maintenance program;
(e) Legal advertising notices to ratepayers required by statute, rule or order of the commission;
(f) Advertising which explains a utility's proposed or existing rate structure, its energy-related problems and its public programs and activities, provided such reference includes a description of how a consumer benefits from or is affected by same.
(2) Advertising expenditures by telephone, water, or sewage utilities which produce a "material benefit" include, but are not limited to the following:
(a) Advertising limited exclusively to demonstration of means for ratepayers to reduce their bills or conserve energy;
(b) Advertising promoting competitive or other services which would have the effect of holding down the cost of providing basic service;
(c) Advertising conveying safety information in the direct use of utility equipment;
(d) Advertising promoting off-peak usage of existing facilities;
(e) Advertising which explains the use, cost, applicability or availability of new or existing utility equipment and other utility services where energy consumption would either be reduced or not materially increased;
(f) Advertising which furnishes factual and objective data programs to educational institutions on the subject of water, sewer or communications technology;
(g) Advertising providing information to the public regarding potential safety hazards associated with construction or a utility's maintenance program;
(h) Legal advertising notices to ratepayers required by statute, rule or order of the commission.

Section 4. Advertising Disallowed. (1) Advertising expenditures for political, promotional, and institutional advertising by electric or gas utilities shall not be considered as producing a material benefit to the ratepayers and, as such, those expenditures are expressly disallowed for rate-making purposes.

(a) "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(b) "Promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an energy utility, or the selection or installation of any appliance or equipment designed to use such utility's service.

(c) "Institutional advertising" means advertising which has as its sole objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public, investors, and potential employees.

(d) The terms "political advertising," "promotional advertising," and "institutional advertising" do not include:

1. Advertising which informs utility customers how they can conserve energy;
2. Advertising required by law or administrative regulation;
3. Advertising regarding service interruption, safety measures, or emergency conditions;
4. Advertising concerning current employment opportunities;
5. Advertising which promotes the use of energy efficient appliances, equipment, or services.

(2) Advertising expenditures for political and institutional advertising by telephone, water, or sewage utilities shall not be considered as producing a material benefit to the ratepayers and, as such, these expenditures are expressly disallowed for rate-making purposes.

(a) "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(b) "Institutional advertising" means advertising which has as its primary objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public, investors, and potential employees.

(c) The terms "political advertising" and "institutional advertising" do not include:

1. Advertising which informs utility customers how they can conserve energy;
2. Advertising required by law or administrative regulation;
3. Advertising regarding service interruption, safety measures, or emergency conditions;
4. Advertising concerning current employment opportunities;
5. Advertising which promotes the use of energy efficient appliances, equipment, or services.

Section 5. Burden of Proof. The utility shall have the burden of proving that any advertising cost or expenditures proposed for inclusion in its operating expenses for rate-making purposes within a given test year fall within the categories enumerated in Section 3 of this administrative regulation or that such advertising is otherwise of material benefit to its ratepayers. (8 Ky.R. 802; eff. 4-7-82.)

807 KAR 5:022. Gas safety and service.

RELATES TO: KRS 278.485, 278.502
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation establishes general rules which apply to gas utilities.

Section 1. General. (1) Definitions. As used in this administrative regulation:
(a) "British thermal unit (BTU)" means quantity of heat that must be added to one (1) pound of pure water to raise its temperature from fifty-eight and one-half (58.5) degrees Fahrenheit to fifty-nine and one-half (59.5) degrees Fahrenheit at the absolute pressure of a column of pure mercury thirty (30) inches high at thirty-two (32) degrees Fahrenheit under standard gravity (32.174 ft. per sec-sec).
(b) "Commission" means the Public Service Commission.
(c) "Cubic foot of gas" means the following:
1. If gas is supplied and metered to customers at standard distribution pressure, a cubic foot of gas shall be defined as that volume of gas which, at the temperature and pressure existing in the meter, occupies one (1) cubic foot.
2. If gas is supplied to customers through turbine, orifice or positive displacement meters at other than standard distribution pressure, a cubic foot of gas shall be defined as that volume of gas which, at sixty (60) degrees Fahrenheit and at absolute pressure of 14.73 pounds per square inch, (thirty (30) inches of mercury), occupies one (1) cubic foot; except that in cases where different bases that are considered by the commission to be fair and reasonable are provided for in gas sales contracts or in rules or practices of a utility, such different bases shall be effective.
3. The standard cubic foot of gas for testing the gas itself for heating value shall be that volume of gas which, when saturated with water vapor and at temperature of sixty (60) degrees Fahrenheit, and under pressure equivalent to that of thirty (30) inches of mercury (mercury at thirty-two (32) degrees Fahrenheit and under standard gravity) occupies one (1) cubic foot.
(d) "Customer piping" means all approved equipment and material required for natural gas service downstream from the property line except for the service tap including saddle (tapping tee) and first service valve and meter (service regulator where required).
(e) "Distribution line" means a pipeline other than a gathering or transmission line.
(f) "Gathering line" means a pipeline that transports gas from a current production facility to a transmission line or main.
(g) "High pressure distribution system" means a distribution system in which gas pressure in the main is higher than pressure provided to the customer.
(h) "Listed specification" means a specification listed in Section 1 of Appendix B of this administrative regulation.
(i) "Low-pressure distribution system" means a distribution system in which gas pressure in the main is substantially the same as pressure provided to the customer.
(j) "Main" means a distribution line that serves as a common source of supply for more than one (1) service line.
(k) "Maximum actual operating pressure" means the maximum pressure that occurs during normal operations over a period of one (1) year.
(l) "Maximum allowable operating pressure (MAOP)" means the maximum pressure at which a pipeline or segment of a pipeline may be operated under this administrative regulation.
(m) "Meter" means any device used to measure the quantity of gas delivered by utility to a customer.
(n) "Operator" means a utility as defined in KRS 278.010.
(o) "Pipe" means any pipe or tubing used in transportation of gas, including pipe-type holders.
(p) "Pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.
(q) "Pipeline facility" means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.
(r) "Pressure, absolute" means total gas pressure, which is the sum of barometric pressure plus line gas pressure (gauge), abbreviated as psia.

(s) "Pressure, gauge" means pounds per square inch above atmospheric pressure, abbreviated as psig.

(t) "Secretary" means the Secretary of the U.S. Department of Transportation or any person to whom he has delegated authority.

(u) "Service line" means a distribution line that transports gas from a common source of supply to: customer meter or connection to a customer's piping, whichever is farther downstream; or connection to a customer's piping if there is no customer meter.

(v) "SMYS" means specified minimum yield strength and is defined as:

1. For steel pipe manufactured in accordance with a listed specification, the yield strength specified as a minimum in that specification; or

2. For steel pipe manufactured in accordance with an unknown or unlisted specification, the yield strength determined in accordance with Section 3(4)(b) of this administrative regulation.

(w) "State" means Commonwealth of Kentucky.

(x) "Therm" means the unit of heating value equivalent to 100,000 British thermal units.

(y) "Transmission line" means a pipeline, other than a gathering line that:

1. Transports gas from a gathering line or storage facility to a distribution center or storage facility;

2. Operates at a hoop stress of twenty (20) percent or more of SMYS; or

3. Transports gas within a storage field.

(2) Scope. This administrative regulation prescribes minimum safety and service standards for natural gas utilities operating under the jurisdiction of the commission.

(a) Utilities serving customers under KRS 278.485 or other retail customers, under the jurisdiction of the commission, directly from transmission or gathering lines are exempt from the following sections of this administrative regulation insofar as they apply to these customers:

1. Section 9, subsections (2)(b) through (f), (16) and (17);

2. Section 13, subsections (14), (15), and (16);

3. Section 14, subsection (22);

4. Section 15; and

5. Section 16.

(b) Each utility shall make all reasonable efforts to prevent interruptions of service and if interruptions occur, shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its consumers and the general public. Planned interruptions shall always be preceded by adequate notice to all affected customers.

(3) Class locations.

(a) Class location is determined by applying criteria set forth in this section: class location unit is an area that extends 220 yards on either side of the centerline of any continuous one (1) mile length of pipeline. Except as provided in paragraphs (d) and (f) of this section, class location is determined by buildings in the class location unit. For the purpose of this section, each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(b) A Class 1 location is any class location unit that has ten (10) or less buildings intended for human occupancy.

(c) A Class 2 location is any class location unit that has more than ten (10) but less than forty-six (46) buildings intended for human occupancy.

(d) A Class 3 location is any class location unit that has forty-six (46) or more buildings intended for human occupancy; or an area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area (such as playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by twenty (20) or more persons on at least five (5) days a week for ten (10) weeks in any twelve (12) month period. (The days and weeks need not be consecutive.)

(e) A Class 4 location is any class location unit where buildings with four (4) or more stories above ground are prevalent.

(f) Boundaries of class locations determined in accordance with paragraphs (a) through (e) of this section may be adjusted as follows:

1. Class 4 location ends 220 yards from the nearest building with four (4) or more stories above ground.

2. When a cluster of buildings intended for human occupancy requires a Class 3 location, Class 3 location ends 220 yards from the nearest building in the cluster.

3. When a cluster of buildings intended for human occupancy requires a Class 2 location, Class 2 location ends 220 yards from the nearest building in the cluster.

(4) Incorporation by reference.

(a) Any documents or parts thereof incorporated by reference in this section are a part of this administrative regulation as though set out in full.

(b) All incorporated documents are available for inspection in the offices of the Public Service Commission, Frankfort, Kentucky. These materials have been approved for incorporation by reference by the Legislative Research Commission. These documents are also available at the addresses provided in Appendix A to this administrative regulation.

(c) Full titles for publications incorporated by reference in this section are provided in Appendix A to this administrative regulation. Numbers in parenthesis indicate applicable editions.

(5) Gathering lines. Each gathering line must comply with requirements of this administrative regulation applicable to transmission lines except as exempted in Section 1(1)(a) of this administrative regulation.

(6) Petroleum gas systems.

(a) No utility shall transport petroleum gas in a system that serves ten (10) or more customers, or in a system, any portion of which is located in a public place (such as a highway), unless that system meets the requirements of this administrative regulation and of NFPA Standards No. 58 and 59. In the event of a conflict, the requirements of this administrative regulation prevail.

(b) Each petroleum gas system covered by paragraph (a) of this subsection shall comply with the following:

1. Aboveground structures shall have open vents near floor level.

2. Below-ground structures shall have forced ventilation that will prevent any accumulation of gas.

3. Relief valve discharge vents shall be located to prevent any accumulation of gas at or below ground level.

4. Special precautions shall be taken to provide adequate ventilation when excavations are made to repair an underground system.

(c) For the purpose of this subsection, petroleum gas means propane, butane, or mixtures of these gases, other than a gas mixture used to supplement supplies in a natural gas distribution system.

(7) General.

(a) No person may operate a pipeline segment readied for service after March 12, 1971, unless:

1. The pipeline has been designed, installed, constructed, initially inspected, and initially tested in accordance with this administrative regulation; and

2. The pipeline qualifies for use under this administrative regulation in accordance with Section 1(8) of this administrative regulation.

(b) No person may operate a pipeline segment replaced, relocated, or otherwise changed after November 12, 1970, unless that replacement, relocation, or change has been made in accordance with this administrative regulation.

(c) Each utility shall establish and then maintain plans, procedures and programs as required under this administrative regulation.

(8) Conversion to service subject to this administrative regulation. Steel pipeline previously used in service not subject to this administrative regulation qualifies for use under this administrative regulation if the utility prepares and follows a written procedure to carry out the following requirements:

1. The design, construction, operation, and maintenance history of the pipeline shall be reviewed and, where sufficient historical records are not available, appropriate tests shall be performed to determine if the pipeline is in a satisfactory condition for safe operation.

2. The pipeline right-of-way, all aboveground segments of pipeline, and appropriately selected underground segments must be visually inspected for physical defects and operating conditions which reasonably could be expected to impair the strength or tightness of the pipeline.

3. All known unsafe defects and conditions shall be corrected in accordance with this administrative regulation.

4. The pipeline must be tested in accordance with Section 11 of this administrative regulation to substantiate maximum allowable operating pressure permitted by Section 13 of this administrative regulation.

5. Each utility must keep for the life of the pipeline a record of investigations, tests, repairs, replacements, and alterations made under the requirements of paragraph (a) of this subsection.

Section 2. Materials. (1) Scope. This section prescribes minimum requirements for selection and qualification of pipe and components for use in pipelines.

(2) General. Materials for pipe and components shall be:

(a) Able to maintain the structural integrity of the pipeline under temperature and other anticipated environmental conditions;

(b) Chemically compatible with any gas that they transport and with any other material in the pipeline with which they are in contact; and

(c) Qualified in accordance with applicable requirements of this section.

(3) Steel pipe.

(a) New steel pipe is qualified for use under this administrative regulation if:

1. It was manufactured in accordance with a listed specification;

2. It meets the requirements of:

a. Section II of Appendix B to this administrative regulation; or

b. If it was manufactured before November 12, 1970, either Section II or III of Appendix B to this administrative regulation; or

3. It is used in accordance with paragraph (c) or (d) of this subsection.

(b) Used steel pipe is qualified for use under this administrative regulation if:

1. It was manufactured in accordance with a listed specification and it meets the requirements of Section II-C of Appendix B to this administrative regulation;

2. It meets the requirements of:

a. Section II of Appendix B to this administrative regulation;

b. If it was manufactured before November 12, 1970, either Section II or III of Appendix B to this administrative regulation;

3. It has been used in an existing line of same or higher pressure and meets the requirements of Section II-C of Appendix B to this administrative regulation; or

4. It is used in accordance with paragraph (c) of this subsection.

(c) New or used pipe may be used at a pressure resulting in a hoop stress of less than 6,000 psi where no close coiling of close bending is to be done, if visual examination indicates that the pipe is in good condition and is free of split seams and other defects that would cause leakage. If it is to be welded, steel pipe not manufactured to a listed specification shall also pass the weldability tests prescribed in Section II-B of Appendix B to this administrative regulation.

(d) Unused steel pipe manufactured before November 12, 1970, may be used as replacement pipe if it meets the same specifications as the pipe used in constructing that segment of pipeline.

(e) New steel pipe that has been cold expanded shall comply with the mandatory provisions of API Standard 5L.

(f) New or used pipe of unknown specifications and all used pipe, the strength of which is impaired by corrosion or other deterioration, shall be retested hydrostatically either length by length in a mill type test or in the field after installation before placed in service, and the test pressure used shall establish maximum allowable operating pressure.

(4) Plastic pipe.

(a) New plastic pipe is qualified for use under this administrative regulation if:

1. It is manufactured in accordance with a listed specification; and

2. It is resistant to chemicals with which contact may be anticipated.

(b) Used plastic pipe is qualified for use under this administrative regulation if:

1. It is manufactured in accordance with a listed specification;

2. It is resistant to chemicals with which contact may be anticipated;

3. It has been used only in natural gas service;

4. Its dimensions are still within the tolerance of the specification to which it was manufactured; and

5. It is free of visible defects.

(c) For the purpose of paragraphs (a)1 and (b)1 of this subsection, where pipe of a diameter included in a listed specification is impractical to use, pipe of a diameter between the sizes included in a listed specification may be used if it:

1. Meets strength and design criteria required of pipe included in that listed specification; and

2. Is manufactured from plastic compounds which meet criteria for material required of pipe included in that listed specification.

(5) Marking of materials.

(a) Except as provided in paragraph (d) of this subsection, each valve, fitting, length of pipe, and other components shall be marked as prescribed in:

1. The specification or standard to which it was manufactured; or

2. To indicate size, material, manufacturer, pressure rating, temperature rating and, as appropriate, type, grade and model.

(b) Surfaces of pipe and components that are subject to stress from internal pressure shall not be field die stamped.

(c) If any item is marked by die stamping, the die shall have blunt or rounded edges that will minimize stress concentrations.

(d) Paragraph (a) of this subsection does not apply to items manufactured before November 12, 1970, that meet all of the following:

1. Item is identifiable as to type, manufacturer, and model.

2. Specifications or standards giving pressure, temperature, and other appropriate criteria for use of items are readily available.

(6) Transportation of pipe. In a pipeline to be operated at a hoop stress of twenty (20) percent or more of SMYS, operator shall not use pipe having outer diameter to wall thickness ratio of seventy to one (70 to 1), or more, which is transported by railroad unless:

(a) Transportation is performed in accordance with the most recent edition of API RP5L1, except that before February 25, 1975, transportation may have been performed in accordance with the 1967 edition of API RP5L1.

(b) In the case of pipe transported before November 12, 1970, the pipe is tested in accordance with Section 11 of this administrative regulation to at least one and one-fourth (1.25) times maximum allowable operating pressure if it is to be installed in a Class 1 location, and to at least one and one-half (1.5) times maximum allowable operating pressure if it is to be installed in a Class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Section 11 of this administrative regulation, test pressure must be maintained for at least eight (8) hours.

Section 3. Pipe Design. (1) Scope. This section prescribes minimum requirements for design of pipe.

(2) General. Pipe shall be designed with sufficient wall thickness, or shall be installed with adequate protection, to withstand anticipated external pressures and loads that will be imposed on pipe after installation.

(3) Design formula for steel pipe.

(a) Design pressure for steel pipe is determined in accordance with the following formula:

$$P = (2St/D) \times F \times E \times T$$

P = Design pressure in pounds per square inch gauge.

S = Yield strength in pounds per square inch determined in accordance with subsection (4) of this section.

D = Nominal outside diameter of pipe in inches.

t = Nominal wall thickness of pipe in inches. If this is unknown, it is determined in accordance with subsection (5) of this section. Additional wall thickness required for concurrent external loads in accordance with subsection (2) of this section shall not be included in computing design pressure.

F = Design factor determined in accordance with subsection (6) of this section.

E = Longitudinal joint factor determined in accordance with subsection (7) of this section.

T = Temperature derating factor determined in accordance with subsection (8) of this section.

(b) If steel pipe that has been subjected to cold expansion to meet the SMYS is subsequently heated, other than by welding or stress relieving as part of welding design pressure is limited to seventy-five (75) percent of the pressure determined under paragraph (a) of this subsection if temperature of pipe exceeds 900°F (482°C) at any time or is held above 600°F (316°C) for more than one (1) hour.

(4) Yield strength (s) for steel pipe.

(a) For pipe manufactured in accordance with a specification listed in Section I of Appendix B of this administrative regulation, yield strength to be used in the design formula in subsection (3) of this section is the SMYS stated in the listed specification, if that value is known.

(b) For pipe manufactured in accordance with a specification not listed in Section I of Appendix B to this administrative regulation or whose specification or tensile properties are unknown, yield strength to be used in the design formula in subsection (3) of this section is one of the following:

1. If pipe is tensile tested in accordance with Section II-D of Appendix B to this administrative regulation, the lower of the following:

a. Eighty (80) percent of average yield strength determined by tensile tests; or

b. The lowest yield strength determined by tensile tests, but no more than 52,000 psig.

2. If pipe is not tensile tested as provided in paragraph (b)1 of this subsection, 24,000 psig.

(5) Nominal wall thickness (t) for steel pipe.

(a) If nominal wall thickness for steel pipe is not known, it is determined by measuring the thickness of each piece of pipe at quarter points on one (1) end.

(b) However, if pipe is of uniform grade, size and thickness and there are more than ten (10) lengths, only ten (10) percent of the individual lengths, but not less than ten (10) lengths, need be measured. Thickness of lengths not measured shall be verified by applying a gauge set to the minimum thickness found by measurement. Nominal wall thickness to be used in the design formula in subsection (3) of this section is the next wall thickness found in commercial specifications that is below the average of all measurements taken. However, nominal wall thickness used shall not be more than 1.14 times the smallest measurement taken on pipe less than twenty (20) inches in outside diameter, nor more than 1.11 times the smallest measurement taken on pipe twenty (20) inches or more in outside diameter.

(6) Design factor (F) for steel pipe.

(a) Except as otherwise provided in paragraphs (b), (c), and (d) of this subsection, the design factor to be used in the design formula in subsection (3) of this section is determined in accordance with the following table:

Class Location	Design Factor (F)
1	0.72
2	0.60
3	0.50
4	0.40

(b) A design factor of six-tenths (0.60) or less shall be used in the design formula in subsection (3) of this section, for steel pipe in Class 1 locations that:

1. Cross the right-of-way of an unimproved public road, without a casing;

2. Cross without a casing, or makes a parallel encroachment on, the right-of-way of either a hard surfaced road, highway, public street, or railroad;

3. Are supported by a vehicular, pedestrian, railroad, or pipeline bridge; or

4. Are used in a fabricated assembly (including separators, mainline valve assemblies, cross-connections, and river crossing headers) or are used within five (5) pipe diameters in any direction from the last fitting of a fabricated assembly, other than a transition piece of an elbow used in place of a pipe bend not associated with a fabricated assembly.

(c) For Class 2 locations, a design factor of five-tenths (0.50) or less shall be used in the design formula in subsection (3) of this section for uncased steel pipe that crosses the right-of-way of a hard surfaced road, highway, public street, or railroad.

(d) For Class 1 and Class 2 locations, a design factor of five-tenths (0.50) or less shall be used in the design formula in subsection (3) of this section for:

1. Steel pipe in a compressor station, regulating station, or measuring station; and

2. Steel pipe, including a pipe riser, on a platform located offshore or in inland navigable waters.

(7) Longitudinal joint factor (E) for steel pipe. Longitudinal joint factor to be used in the design formula in subsection (3) of this section is determined in accordance with the following table:

Specification	Pipe Class	Longitudinal Joint Factor (E)
ASTM A 53	Seamless	1.00
	Electric resistance welded	1.00
	Furnace butt welded	.60
ASTM A 106	Seamless	1.00
ASTM A 333	Seamless	1.00
	Electric resistance welded	1.00
ASTM A 381	Double submerged arc welded	1.00
ASTM A 671	Electric fusion welded	1.00
ASTM A 672	Electric fusion welded	1.00
ASTM A 691	Electric fusion welded	1.00
API 5L	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Submerged arc welded	1.00
Other	Pipe over 4 inches	.80
Other	Pipe 4 inches or less	.60

If the type of longitudinal joint cannot be determined, the joint factor to be used shall not exceed that designated for "Other."

(8) Temperature derating factor (T) for steel pipe. Temperature derating factor to be used in the design formula in subsection (3) of this section is determined as follows:

Gas temperature in degrees Fahrenheit	Temperature derating factor (T)
250 or less	1.000
300	0.967
350	0.933
400	0.900
450	0.867

For intermediate gas temperatures, derating factor is determined by interpolation.

(9) Design of plastic pipe. Design pressure for plastic pipe is determined in accordance with the following formula, subject to the limitations of subsection (10) of this section:

$$P = 2S\frac{t}{(D-t)} \times 0.92$$

P = Design pressure, gauge, kPa (psi).

S = For thermoplastic pipe the long-term hydrostatic strength determined in accordance with the listed specification at a temperature equal to twenty-three (23) degrees Centigrade (seventy-three (73) degrees Fahrenheit), thirty-eight (38) degrees Centigrade (100 degrees Fahrenheit), forty-nine (49) degrees Centigrade (120 degrees Fahrenheit), or sixty (60) degrees Centigrade (140 degrees Fahrenheit): for reinforced thermosetting plastic pipe, 75,800 kPa (11,000 psig).

t = Specified wall thickness, mm (in.).

D = Specified outside diameter, mm (in.).

(10) Design limitations for plastic pipe.

(a) Design pressure shall not exceed gauge pressure of 689 kPa (100 psig) for plastic pipe used in:

1. Distribution systems; or

2. Classes 3 and 4 locations.

(b) Plastic pipe shall not be used where operating temperature of pipe will be:

1. Below minus twenty-nine (29) degrees Centigrade (minus twenty (20) degrees Fahrenheit); or

2. In the case of thermoplastic pipe, above the temperature at which the long-term hydrostatic strength used in the design formula under subsection (9) of this section is determined, except that pipe manufactured before May 18, 1978, may be used at temperatures up to thirty-eight (38) degrees Centigrade (100°F); or in the case of reinforced thermosetting plastic pipe, above sixty-six (66) degrees Centigrade (150°F).

(c) Wall thickness for thermoplastic pipe shall not be less than 1.57 millimeters (0.062 in.).

(d) Wall thickness for reinforced thermosetting plastic pipe shall not be less than that listed in the following table:

Nominal size in inches:	Minimum wall thickness millimeters (inches)
2	1.52 (0.060)
3	1.52 (0.060)
4	1.78 (0.070)
5	2.54 (0.100)

(11) Design of copper pipe.

(a) Copper pipe used in mains shall have a minimum wall thickness of 0.065 inches and shall be hard drawn.

(b) Copper pipe used in service lines shall have a wall thickness not less than that indicated in the following table:

Standard size (inch)	Nominal O.D. (inch)	Wall thickness (inch)	
		Nominal	Tolerance
1/2	.625	.040	.0035
5/8	.750	.042	.0035
3/4	.875	.045	.004
1	1.125	.050	.004
1 1/4	1.375	.055	.0045
1 1/2	1.625	.060	.0045

(c) Copper pipe used in mains and service lines shall not be used at pressures in excess of 100 psig.

(d) Copper pipe that does not have an internal corrosion resistant lining shall not be used to carry gas that has an average hydrogen sulfide content of more than three-tenths (0.3) grains per 100 standard cubic feet of gas.

Section 4. Design of Pipeline Components. (1) Scope. This section prescribes minimum requirements for design and installation of pipeline components and facilities, and it prescribes requirements relating to protection against accidental overpressuring.

(2) General requirements. Each component of a pipeline shall withstand operating pressures and other anticipated loadings without impairment of serviceability with unit stresses equivalent to those allowed for comparable material in pipe in the same location and kind of service. However, if design based upon unit stress is impractical for a particular component, design may be based upon a pressure rating established by the manufacturer by pressure testing that component or a prototype of the component.

(3) Qualifying metallic components. Notwithstanding any requirement of this section which incorporates by reference an edition of a document listed in Appendix A of this administrative regulation, a metallic component manufactured in accordance with any other edition of that document is qualified for use under this administrative regulation if:

(a) It can be shown through visual inspection of the cleaned component that no defect exists which might impair the strength or tightness of the component; and

(b) The edition of the document under which the component was manufactured has equal or more stringent requirements for the following as an edition of that document currently or previously listed in Appendix A:

1. Pressure testing;
2. Materials; and
3. Pressure and temperature ratings.

(4) Valves.

(a) Except for cast iron and plastic valves, each valve shall meet the minimum requirements, or equivalent, of API 6D. A valve shall not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those requirements.

(b) Each cast iron and plastic valve shall comply with the following:

1. The valve shall have a maximum service pressure rating for temperatures that equal or exceed maximum service temperature.
2. The valve shall be tested as part of the manufacturing, as follows:

a. With the valve fully open, the shell shall be tested with no leakage to a pressure at least one and one-half (1.5) times the maximum service rating.

b. After the shell test, the seat shall be tested to a pressure not less than one and one-half (1.5) times the maximum service pressure rating. Except for swing check valves, test pressure during the seat test shall be applied successively on each side of the closed valve with the opposite side open. No visible leakage is permitted.

c. After the last pressure test is completed, the valve shall be operated through its full travel to demonstrate freedom from interference.

(c) Each valve shall be able to meet anticipated operating conditions.

(d) No valve having shell components made of ductile iron may be used at pressures exceeding eighty (80) percent of pressure ratings for comparable steel valves at their listed temperatures. However, a valve having shell components made of ductile iron may be used at pressures up to eighty (80) percent of pressure ratings for comparable steel valves at their listed temperatures, if:

1. Temperature-adjusted service pressure does not exceed 1,000 psig; and
2. Welding is not used on any ductile iron component in the fabrication of the valve shells or their assembly.

(e) No valve having pressure containing parts made of ductile iron may be used in gas pipe components of compressor stations.

(5) Flanges and flange accessories.

(a) Each flange or flange accessory (other than cast iron) shall meet the minimum requirements of ANSI B16.5, MSS SP-44, or equivalent.

(b) Each flange assembly shall withstand the maximum pressure at which the pipeline is to be operated and maintain its physical and chemical properties at any anticipated temperature.

(c) Each flange on a flanged joint in cast iron pipe must conform in dimensions, drilling, face and gasket design to ANSI B16.1 and be cast integrally with the pipe, valve or fitting.

(6) Standard fittings.

(a) Minimum metal thickness of threaded fittings shall not be less than specified for pressures and temperatures in applicable standards referenced in this administrative regulation, or their equivalent.

(b) Each steel butt-welding fitting shall have pressure and temperature ratings based on stresses for pipe of same or equivalent material. Actual bursting strength of the fitting must at least equal the computed bursting strength of pipe of the designated material and wall thickness, as determined by a prototype tested to at least the pressure required for the pipeline to which it is being added.

(7) Tapping.

(a) Each mechanical fitting used to make a hot tap shall be designed for at least operating pressure of the pipeline.

(b) Where ductile iron pipe is tapped, the extent of full-threaded engagement and need for use of outside-sealing service connections, tapping saddles, or other fixtures shall be determined by service conditions.

(c) Where a threaded tap is made in cast iron or ductile iron pipe, diameter of the tapped hole shall not be more than twenty-five (25) percent of the nominal diameter of the pipe unless the pipe is reinforced, except that:

1. Existing taps may be used for replacement service, if they are free of cracks and have good threads; and

2. A one and one-fourth (1 1/4) inch tap may be made in a four (4) inch cast iron or ductile iron pipe, without reinforcement.

However, in areas where climate, soil, and service conditions may create unusual external stresses on cast iron pipe, unreinforced taps may be used only on six (6) inch or larger pipes.

(8) Components fabricated by welding.

(a) Except for branch connections and assemblies of standard pipe and fittings joined by circumferential welds, design pressure of each component fabricated by welding, whose strength cannot be determined, shall be established in accordance with paragraph UG-101 of Section VIII of the ASME Boiler and Pressure Vessel Code.

(b) Each prefabricated unit that uses plate and longitudinal seams shall be designed, constructed, and tested in accordance with ASME Boiler and Pressure Vessel Code, except for the following:

1. Regularly manufactured butt-welding fittings.

2. Pipe produced and tested under a specification listed in Appendix B to this administrative regulation.

3. Partial assemblies such as split rings or collars.

4. Prefabricated units that the manufacturer certifies have been tested to at least twice the anticipated maximum pressure under operating conditions.

(c) Orange peel bull plugs and orange peel swages shall not be used on pipelines that are to operate at hoop stress of twenty (20) percent or more of SMYS of the pipe.

(d) Except for flat closures designed in accordance with section VIII of the ASME Boiler and Pressure Vessel Code, flat closures and fish tails shall not be used on pipe that either operates at 100 psig, or more, or is more than three (3) inches nominal diameter.

(9) Welded branch connections. Each welded branch connection made to pipe in the form of a single connection, or in a header or manifold as a series of connections, shall be designed to ensure that strength of the pipeline system is not reduced, taking into account stresses in the remaining pipe wall due to the opening in the pipe or header, shear stresses produced by pressure acting on the area of the branch opening, and any external loadings due to thermal movement, weight, and vibration.

(10) Extruded outlets. Each extruded outlet shall be suitable for anticipated service conditions and shall be at least equal to design strength of the pipe and other fittings in the pipeline to which it is attached.

(11) Flexibility. Each pipeline shall be designed with enough flexibility to prevent thermal expansion or contraction from causing excessive stresses in pipe or components, excessive bending or unusual loads at joints, or undesirable forces or moments at points of connection to equipment, or at anchorage or guide points.

(12) Supports and anchors.

(a) Each pipeline and its associated equipment shall have enough anchors or supports to:

1. Prevent undue strain on connected equipment;

2. Resist longitudinal forces caused by a bend or offset in the pipe; and

3. Prevent or damp out excessive vibration.

(b) Each exposed pipeline shall have enough supports or anchors to protect the exposed pipe joints from maximum end force caused by internal pressure and any additional forces caused by temperature expansion or contraction or by weight of the pipe and its contents.

(c) Each support or anchor on an exposed pipeline shall be made of durable, noncombustible material and shall be designed and installed as follows:

1. Free expansion and contraction of the pipeline between supports or anchors shall not be restricted.

2. Provision shall be made for service conditions involved.

3. Movement of the pipeline shall not cause disengagement of support equipment.

(d) Each support on an exposed pipeline operated at a stress level of fifty (50) percent of more of SMYS shall comply with the following:

1. A structural support shall not be welded directly to the pipe.

2. The support shall be provided by a member that completely encircles the pipe.

3. If an encircling member is welded to a pipe, the weld shall be continuous and cover the entire circumference.

(e) Each underground pipeline connected to a relatively unyielding line or other fixed object shall have enough flexibility to provide for possible movement, or it shall have an anchor that will limit movement of the pipeline.

(f) Except for offshore pipelines each underground pipeline being connected to new branches shall have firm foundation for both the header and branch to prevent detrimental lateral and vertical movement.

(13) Compressor stations: design and construction.

(a) Location of compressor building. Except for a compressor building on a platform in inland navigable waters, each main compressor building of a compressor station shall be located on property under the operator's control. It shall be far enough away from adjacent property, not under control of the operator, to minimize the possibility of fire being transferred to the compressor building from structures on adjacent property. There shall be enough open space around the main compressor building to allow free movement of firefighting equipment.

(b) Building construction. Each building on a compressor station site shall be made of noncombustible materials if it contains either:

1. Pipe that is more than two (2) inches in diameter and carrying gas under pressure; and

2. Gas handling equipment other than gas utilization equipment used for domestic purposes.

(c) Exits. Each operating floor of a main compressor building shall have at least two (2) separated and unobstructed exits located to provide a convenient possibility of escape and unobstructed passage to safety. Each exit door latch shall be of a type which can be readily opened from inside without a key. Each swinging door located in an exterior wall shall be mounted to swing outward.

(d) Fenced areas. Each fence around a compressor station shall have at least two (2) gates located to provide convenient opportunity for escape to safety, or have other facilities affording a similarly convenient exit from the area. Each gate located within 200 feet of any compressor plant building shall open outward and, when occupied, shall be of a type that can be readily opened from inside without a key.

(e) Electrical areas. Electrical equipment and wiring installed in compressor stations shall conform to the National Electrical Code, NFPA-70(ANSI), so far as that code is applicable.

(f) Air piping system.

1. All air piping within gas compressing stations shall be constructed in accordance with Section 2 of the USAS B31.1 Code for Pressure Piping.

2. Starting air pressure, storage volume and size of connection piping shall be adequate to rotate the engine at cranking speed and for the number of revolutions necessary to purge fuel gas from the power cylinder and muffler. Recommendations of the engine manufacturer may be used as a guide in determining these factors. Consideration should be given to the number of engines installed and to the possibility of starting several of these engines within a short period of time.

3. A check valve shall be installed in the starting air line near each engine to prevent backflow from the engine into the piping system. A check valve shall also be placed in the main air line on the immediate outlet side of the air tank or tanks. It is recommended that equipment for cooling air and removing moisture and entrained oil be installed between the starting air compressor and air storage tanks.

4. Suitable provision shall be made to prevent starting air from entering power cylinders of an engine and activating moving parts while work is in progress on the engine or on equipment driven by the engines. Acceptable means of accomplishing this are installation of a blind flange, removal of a portion of the air supply piping or locking closed a stop valve and locking open a vent downstream from it.

(g) Air receivers. Air receivers or air storage bottles, for use in compressor stations, shall be constructed and equipped in accordance with Section VII, Unfired Pressure Vessels, of the ASME Boiler and Pressure Vessel Code.

(h) Lubricating oil piping. All lubricating oil piping with gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B 31.3.

(i) Water and steam piping. All water and steam piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Power Piping, USAS B31.0.0.

(j) Hydraulic piping. All hydraulic power piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B31.3.

(14) Compressor stations; liquid removal.

(a) Where entrained vapors in gas may liquefy under anticipated pressure and temperature conditions, the compressor shall be protected against introduction of those liquids in damaging quantities.

(b) Each liquid separator used to remove entrained liquids at a compressor station shall:

1. Have a manually operable means of removing these liquids.

2. Where slugs of liquid could be carried into the compressors, have either automatic liquid removal facilities, automatic compressor shutdown device, or high liquid level alarm; and

3. Be manufactured in accordance with Section VIII of the ASME Boiler and Pressure Vessel Code, except that liquid separators constructed of pipe and fittings without internal welding shall be fabricated with a design factor of four-tenths (0.4) or less.

(15) Compressor stations: emergency shutdowns.

(a) Except for unattended field compressor stations of 1,000 horsepower or less, each compressor station shall have an emergency shutdown system that can do the following:

1. Block gas out of the station and blow down the station piping.

2. Discharge gas from the blowdown piping at a location where gas will not create a hazard.

3. Provide means for shutdown of gas compressing equipment, gas fires, and electrical facilities in the vicinity of gas headers and in the compressor building, except, that:

a. Electric circuits that supply emergency lighting required to assist station personnel in evacuating the compressor building and the area in the vicinity of the gas headers shall remain energized; and

b. Electrical circuits needed to protect equipment from damage may remain energized.

4. It shall be operable from at least two (2) locations, each of which is:

a. Outside the gas area of the station;

b. Near the exit gates, if station is fenced; or near emergency exits, if not fenced; and

c. Not more than 500 feet from the limits of the stations.

(b) If a compressor station supplies gas directly to a distribution system with no other adequate source of gas available, the emergency shutdown system shall be designed to prevent function at the wrong time and unintended outage on the distribution system.

(c) On a platform located in inland navigable waters, the emergency shutdown system shall be designed and installed to actuate automatically by each of the following events:

1. In the case of an unattended compressor station:

a. When gas pressure equals maximum allowable operating pressure plus fifteen (15) percent; or

b. When uncontrolled fire occurs on the platform; and

2. In the case of a compressor station in a building:

a. When uncontrolled fire occurs in the building; or

b. When the concentration of gas in air reaches fifty (50) percent or more of the lower explosive limit in a building which has a source of ignition.

For the purpose of paragraph (c)2 of this subsection, an electrical facility which conforms to Class 1, Group D of the National Electrical Code is not a source of ignition.

3. All emergency valves and controls shall be identified by signs. All important gas pressure piping shall be identified by signs or color codes as to their function.

(16) Compressor stations: pressure limiting devices.

(a) Each compressor station shall have pressure relief or other suitable protective devices of sufficient capacity and sensitivity to ensure that maximum allowable operating pressure of station piping and equipment is not exceeded by more than ten (10) percent.

(b) Each vent line that exhausts gas from the pressure relief valve of a compressor station shall extend to a location where gas may be discharged without hazard.

(17) Compressor stations: additional safety equipment.

(a) Each compressor station shall have adequate fire protection facilities. If fire pumps are a part of these facilities, their operation shall not be affected by the emergency shutdown system.

(b) Each compressor station prime mover, other than an electrical induction or synchronous motor, shall have an automatic device to shut down the unit before the speed of either the prime mover or driven unit exceeds maximum safe speed.

(c) Each compressor unit in a compressor station shall have a shutdown or alarm device that operates in the event of inadequate cooling or lubrication of the unit.

(d) Each compressor station gas engine that operates with pressure gas injection shall be equipped so that stoppage of the engine automatically shuts off fuel and vents the engine distribution manifold.

(e) Each muffler for a gas engine in a compressor station shall have vent slots or holes in the baffles of each compartment to prevent gas from being trapped in the muffler.

(f) Fuel gas lines within a compressor station, serving various buildings and residential areas, shall be provided with master shutoff valves located outside of any building or residential area.

(18) Compressor stations: ventilation. Each compressor station building shall be ventilated to ensure that employees are not endangered by accumulation of gas in rooms, sumps, attics, pits, or other enclosed places.

(19) Pipe-type and bottle-type holders.

(a) Each pipe-type and bottle-type holder shall be designed to prevent accumulation of liquids in the holder, connecting pipe, or auxiliary equipment, that might cause corrosion or interfere with safe operation of the holder.

(b) Each pipe-type or bottle-type holder shall have minimum clearance from other holders in accordance with the following formula:

$$C = (D \times P \times F)/1{,}000$$

in which:

C = Minimum clearance between pipe containers or bottles in inches.

D = Outside diameter of pipe containers or bottles in inches.

P = Maximum allowable operating pressure, psig.

F = Design factor as set forth in Section 3(6) of this administrative regulation.

(20) Additional provisions for bottle-type holders.

(a) Each bottle-type holder shall be:

1. Located on a site entirely surrounded by fencing that prevents access by unauthorized persons and with minimum clearance from fences as follows:

Maximum allowable operating pressure	Minimum clearance (feet)
Less than 1,000 psig	25
1,000 psig or more	100

2. Designed using the design factors set forth in Section 3(6) of this administrative regulation; and

3. Buried with minimum cover in accordance with Section 7(13) of this administrative regulation.

(b) Each bottle-type holder manufactured from steel not weldable under field conditions shall comply with the following:

1. A bottle-type holder made from alloy steel shall meet the chemical and tensile requirements for various grades of steel in ASTM A 372.

2. Actual yield-tensile ratio of steel shall not exceed 0.85.

3. Welding shall not be performed on the holder after it has been heat treated or stress relieved, except that copper wires may be attached to the small diameter portion of the bottle end closure for cathodic protection if a localized thermal welding process is used.

4. The holder shall be given a mill hydrostatic test at pressure that produces hoop stress at least equal to eighty-five (85) percent of SMYS.

5. The holder, connection pipe, and components shall be leak tested after installation as required by Section 11 of this administrative regulation.

(21) Transmission line valves.

(a) Each transmission line shall have sectionalizing block valves spaced as follows:

1. Each point on the pipeline in a Class 4 location shall be within two and one-half (2 1/2) miles of a valve.

2. Each point on the pipeline in a Class 3 location shall be within four (4) miles of a valve.

3. Each point on the pipeline in a Class 2 location shall be within seven and one-half (7 1/2) miles of a valve.

4. Each point on the pipeline in Class 1 location shall be within ten (10) miles of a valve.

(b) Each sectionalizing block valve on a transmission line shall comply with the following:

1. The valve and operating device to open or close the valve shall be readily accessible and protected from tampering and damage.

2. The valve shall be supported to prevent settling of valve or movement of the pipe to which it is attached.

(c) Each section of transmission line between main line valves shall have a blowdown valve with enough capacity to allow the transmission line to be blown down as rapidly as practicable. Each blowdown discharge must be located so gas can be blown to the atmosphere without hazard and, if the transmission line is adjacent to an overhead electric line, so that gas is directed away from the electrical conductors.

(22) Distribution line valves.

(a) Each high-pressure distribution system shall have valves spaced to reduce the time to shut down a section of main in an emergency. Valve spacing is determined by operating pressure, size of mains, and local physical conditions.

(b) Each valve on a main installed for operating or emergency purposes shall be placed in a readily accessible location to facilitate its operation in an emergency, and its operating stem or mechanism shall be readily accessible. If the valve is installed in a buried box or enclosure, the box or enclosure shall be installed to avoid transmitting external loads to the main.

(23) Valves at regulator stations.

(a) Each regulator station controlling flow or pressure of gas in a distribution system shall have a valve installed on the inlet piping at a distance from the regulator station sufficient to permit operation of the valve during an emergency that might preclude access to the station.

(b) Exterior shutoff valves shall be installed on all lines entering and leaving regulator stations for use in an emergency to stop gas flow. Such valves shall be installed at an accessible location where they can be operated in an emergency.

1. Exterior shutoff valves shall be located a minimum of forty (40) feet from the regulator station if inlet pressure to the station is 100 psig or less. Valves shall be located a minimum of 100 feet from the regulator station if inlet pressure is more than 100 psig.

2. A check valve may be used in lieu of an exterior shutoff valve on downstream piping if located a minimum of forty (40) feet from the regulator station.

3. The exterior shutoff valve may be a sectionalizing valve.

4. All exterior shutoff valves shall be inspected and partially operated at least once each calendar year at intervals not to exceed fifteen (15) months.

(24) Vaults: structural design requirements.

(a) Each underground vault or pit for valves, pressure relieving, pressure limiting, or pressure regulating stations shall meet the loads which may be imposed upon it, and to protect installed equipment.

(b) There shall be enough working space so that all equipment required in the vault or pit can be properly installed, operated, and maintained.

(c) Each pipe entering, or within, a regulator vault or pit shall be steel for sizes ten (10) inches, and less, except that control and gauge piping may be copper. Where pipe extends through the vault or pit structure, provision shall be made to prevent passage of gases or liquids through the opening and to avert strains in the pipe.

(d) Vault or pit openings shall be located to minimize hazards of tools or other objects falling upon the regulator, piping or other equipment. The control piping and operating parts of equipment installed shall not be located under a vault or pit opening where workmen can step on them when entering or leaving the vault or pit, unless such parts are suitably protected.

(e) Whenever a vault or pit opening is to be located above equipment which could be damaged by a falling cover, a circular cover shall be installed or other suitable precautions taken.

(25) Vaults: accessibility. Each vault shall be located in an accessible location, so far as practical, away from:

(a) Street intersections or points where traffic is heavy or dense;

(b) Points of minimum elevation, catch basins, or places where the access cover will be in the course of surface waters; and

(c) Water, electric, steam, or other facilities.

(26) Vaults: sealing, venting, and ventilation. Each underground vault or closed top pit containing either a pressure regulating or reducing station, or a pressure limiting or relieving station, shall be sealed, vented or ventilated, as follows:

(a) When internal volume exceeds 200 cubic feet:

1. The vault or pit shall be ventilated with two (2) ducts, each having at least the ventilating effect of a pipe four (4) inches in diameter;

2. Ventilation shall be enough to minimize formation of combustible atmosphere in the vault or pit; and

3. Ducts shall be high enough above grade to disperse any gas-air mixtures that might be discharged.

(b) When internal volume is more than seventy-five (75) cubic feet but less than 200 cubic feet:

1. If the vault or pit is sealed, each opening shall have a tight fitting cover without open holes through which an explosive mixture might be ignited, and there shall be a means for testing internal atmosphere before removing the cover.

2. If the vault or pit is vented, there shall be a means of preventing external sources of ignition from reaching the vault atmosphere; or

3. If the vault or pit is ventilated, paragraph (a) or (c) of this subsection applies.

(c) If a vault or pit covered by paragraph (b) of this subsection is ventilated by openings in covers or gratings, and the ratio of internal volume, in cubic feet, to effective ventilating area of the cover or grating, in square feet, is less than twenty (20) to one (1), no additional ventilation is required.

(27) Vaults: drainage and waterproofing.

(a) Each vault shall be designed to minimize entrance of water.

(b) A vault containing gas piping shall not be connected by means of a drain connection to any other underground structure.

(c) All electrical equipment in vaults shall conform to applicable requirements of Class 1, Group D, of the National Electrical Code, ANSI Standard C1.

(28) Design pressure of plastic fittings.

(a) Thermosetting fittings for plastic pipe shall conform to ASTM D 2517.

(b) Thermoplastic fittings for plastic pipe shall conform to ASTM D 2513.

(29) Valve installation in plastic pipe. Each valve installation in plastic pipe shall be designed to protect plastic material against excessive torsional or shearing loads when the valve or shutoff is operated, and from any other secondary stresses that might be exerted through the valve or its enclosures.

(30) Protection against accidental overpressuring:

(a) General requirements. Except as provided in subsection (31) of this section, each pipeline connected to a gas source so that maximum allowable operating pressure could be exceeded as the result of pressure control failure or of some other type of failure, shall have pressure relieving or pressure limiting devices that meet the requirements of subsections (32) and (33) of this section.

(b) Additional requirements for distribution systems. Each distribution system supplied from a source of gas at higher pressure than maximum allowable operating pressure for the system shall:

1. Have pressure regulation devices capable of meeting pressure, load, and other service conditions that will be experienced in normal operations of the system, and that could be activated in the event of failure of some portion of the system; and

2. Be designed to prevent accidental overpressuring.

(31) Control of pressure of gas delivered from high-pressure distribution systems.

(a) If maximum actual operating pressure of the distribution system is under 60 psig and a service regulator having all of the following characteristics is used, no other pressure limiting device is required:

1. A regulator capable of reducing distribution line pressure to pressures recommended for household appliances.

2. A single port valve with proper orifice for maximum gas pressure at the regulator inlet.

3. A valve seat made of resilient material designed to withstand abrasion of gas, impurities in gas, cutting by the valve, and permanent deformation when it is pressed against the valve port.

4. Pipe connections to the regulator not exceeding two (2) inches in diameter.

5. A regulator that, under normal operating conditions, is able to regulate downstream pressure within necessary limits of accuracy and to limit buildup of pressure under no-flow conditions to prevent a pressure that would cause unsafe operation of any connected and properly adjusted gas utilization equipment.

6. A self-contained service regulator with no external static or control lines.

(b) If maximum actual operating pressure of the distribution system is sixty (60) psig, or less, and a service regulator that does not have all of the characteristics listed in paragraph (a) of this subsection is used, or if the gas contains materials that seriously interfere with the operation of service regulators, there shall be suitable protective devices to prevent unsafe overpressuring of the customer's appliances if the service regulator fails.

(c) If maximum actual operating pressure of the distribution system exceeds sixty (60) psig, one (1) of the following methods shall be used to regulate and limit, to maximum safe value, the pressure of gas delivered to the customer:

1. A service regulator having the characteristics listed in paragraph (a) of this subsection, and another regulator located upstream from the service regulator. The upstream regulator shall not be set to maintain a pressure higher than sixty (60) psig. A device shall be installed between the upstream regulator and the service regulator to limit pressure on the inlet of the service regulator to sixty (60) psig or less in case the upstream regulator fails to function properly. This device may be either a relief valve or an automatic shutoff that shuts, if pressure on the inlet of the service regulator exceeds the set pressure (sixty (60) psig or less), and remains closed until manually reset.

2. A service regulator and a monitoring regulator set to limit, to a maximum safe value, pressure of gas delivered to the customer.

3. A service regulator with a relief valve vented to the outside atmosphere, with the relief valve set to open so that the pressure of gas going to the customer does not exceed a maximum safe value. The relief valve may either be built into the service regulator or it may either be built into the service regulator or it may be a separate unit installed downstream from the service regulator. This combination may be used alone only in those cases where inlet pressure on the service regulator does not exceed the manufacturer's safe working pressure rating of the service regulator, and shall not be used where inlet pressure on the service regulator exceeds 125 psig. For higher inlet pressure, the methods in paragraph (c)1 or 2 of this subsection shall be used.

4. A service regulator and an automatic shutoff device that closes upon a rise in pressure downstream from the regulator and remains closed until manually reset.

(32) Requirements for design of pressure relief and limiting devices. Except for rupture discs, each pressure relief or pressure limiting device shall:

(a) Be constructed of materials to prevent operation impairment by corrosion;

(b) Have valves and valve seats designed not to stick in a position that will make the device inoperative;

(c) Be designed and installed so that it can be readily operated to determine if the valve is free, can be tested to determine operational pressure and can be tested for leakage when closed;

(d) Have support made of noncombustible material;

(e) Have discharge stacks, vents, or outlet ports designed to prevent accumulation of water, ice, or snow, located where gas can be discharged into the atmosphere without undue hazard;

(f) Be designed and installed so that the size of openings, pipe, and fittings located between the system to be protected and the pressure relieving device, and the size of the vent line, are adequate to prevent hammering of the valve and to prevent impairment of relief capacity;

(g) Where installed at a district regulator station to protect a pipeline system from overpressuring, be designed and installed to prevent any single incident such as an explosion in a vault or damage by a vehicle from affecting operation of both the overpressure protective device and district regulator; and

(h) Except for a valve that will isolate the system under protection from its source of pressure, be designed to prevent unauthorized operation of any stop valve that will make the pressure relief valve or pressure limiting device inoperative.

(33) Required capacity of pressure relieving and limiting stations.

(a) Each pressure relief station or pressure limiting station or group of those stations installed to protect pipeline shall have enough capacity, and shall be set to operate, to insure the following:

1. In a low pressure distribution system, pressure shall not cause unsafe operation of any connected and properly adjusted gas utilization equipment.

2. In pipelines other than a low pressure distribution system:

a. If maximum allowable operating pressure is sixty (60) psig or more, pressure shall not exceed maximum allowable operating pressure plus ten (10) percent, or the pressure that produces hoop stress of seventy-five (75) percent of SMYS, whichever is lower.

b. If maximum allowable operating pressure is twelve (12) psig or more, but less than sixty (60) psig, pressure shall not exceed maximum allowable operating pressure plus six (6) psig; or

c. If maximum allowable pressure is less than twelve (12) psig, pressure shall not exceed maximum allowable operating pressure plus fifty (50) percent.

(b) When more than one (1) pressure regulating or compressor station feeds into a pipeline, relief valves or other protective devices shall be installed at each station to ensure that complete failure of the largest capacity regulator or compressor, or any single run of lesser capacity regulators or compressors in that station, will not impose pressure on any part of the pipeline or distribution system in excess of those for which it was designed, or against which it was protected, whichever is lower.

(c) Relief valves or other pressure limiting devices shall be installed at or near each regulator station in a low-pressure distribution system, with a capacity to limit maximum pressure in the main to a pressure that will not exceed safe operating pressure for any connected and properly adjusted gas utilization equipment.

(34) Instrument, control and sampling pipe and components.

(a) Applicability. This subsection applies to design of instrument, control, sampling pipe and components. It does not apply to permanently closed systems, such as fluid-filled temperature-responsive devices.

(b) Materials and design. All material employed for pipe and components shall be designed to meet particular conditions of service and the following:

1. Each takeoff connection and attaching boss, fitting, or adapter shall be made of suitable material, be able to withstand maximum service pressure and temperature of pipe or equipment to which it is attached, and be designed to satisfactorily withstand all stresses without failure by fatigue.

2. A shutoff valve shall be installed in each takeoff line as near as practicable to point of takeoff. Blowdown valves shall be installed where necessary.

3. Brass or copper material shall not be used for metal temperatures greater than 400 degrees Fahrenheit.

4. Pipe or components that may contain liquids shall be protected by heating or other means from damage due to freezing.

5. Pipe or components in which liquids may accumulate shall have drains or drips.

6. Pipe or components subject to clogging from solids or deposits shall have suitable connections for cleaning.

7. Arrangement of pipe, components, and supports shall provide safety under anticipated operating stresses.

8. Each joint between sections of pipe, and between pipe and valves or fittings, shall be made in a manner suitable for anticipated pressure and temperature condition. Slip type expansion joints shall not be used. Expansion shall be allowed by providing flexibility within the system itself.

9. Each control line shall be protected from anticipated causes of damage and shall be designed and installed to prevent damage to any one (1) control line from making both the regulator and overpressure protective device inoperative.

Section 5. Welding of Steel in Pipelines. (1) Scope.

(a) This subsection prescribes minimum requirements for welding steel materials in pipelines.

(b) This subsection does not apply to welding that occurs during the manufacture of steel pipe or steel pipeline components.

(2) Qualification of welding procedures.

(a) Welding shall be performed by a qualified welder in accordance with established, written, and tested welding procedures; and quality of test welds determined by destructive testing to meet acceptability standards of this section.

(b) Each welding procedure shall be recorded in detail, including results of qualifying tests. This record shall be retained and followed whenever the procedure is used.

(3) Qualification of welders.

(a) Except as provided in paragraph (b) of this subsection, each welder shall be qualified in accordance with Section 3 of the API Standard 1104 or Section IX of the ASME Boiler and Pressure Vessel Code. However, a welder qualified under an earlier edition than listed in Section II of Appendix A may weld but shall not requalify under that earlier edition.

(b) A welder may qualify to perform welding on pipe to be operated at pressure that produces hoop stress of less than twenty (20) percent of SMYS by performing an acceptable test weld for the process to be used, under the test set forth in Section 1 of Appendix C to this administrative regulation. A welder who makes welded service line connections to mains shall also perform an acceptable test weld under Section II of Appendix C to this administrative regulation as a part of his qualifying test. After initial qualification, a welder shall not perform welding unless:

1. Within the preceding fifteen (15) calendar months, the welder has requalified, except that the welder shall requalify at least once each calendar year; or

2. Within the preceding seven and one-half (7 1/2) calendar months, but at least twice each calendar year, the welder has had:

a. A production weld cut out, tested and found acceptable in accordance with the qualifying test; or

b. For welders who work only on service lines two (2) inches or smaller in diameter, two (2) sample welds tested and found acceptable in accordance with the test in Section III of Appendix C to this administrative regulation.

(4) Limitations on welders.

(a) No welder whose qualification is based on nondestructive testing shall weld compressor station pipe and components.

(b) No welder shall weld with a particular welding process unless, within the preceding six (6) calendar months, he has engaged in welding with that process.

(c) A welder qualified under subsection (3)(a) of this section shall not weld unless, within the preceding six (6) calendar months, the welder has had one (1) weld tested and found acceptable under Section 3 or 6 of API Standard 1104, except that a welder qualified under an earlier edition previously listed in Appendix A may weld but shall not requalify under that earlier edition.

(5) Protection from weather. The welding operation shall be protected from weather conditions that would impair the quality of the completed weld.

(6) Miter joints.

(a) A miter joint on steel pipe to be operated at pressure that produces hoop stress of thirty (30) percent or more of SMYS shall not deflect the pipe more than three (3) degrees.

(b) A miter joint on steel pipe to be operated at pressure that produces hoop stress of less than thirty (30) percent but more than ten (10) percent of SMYS shall not deflect the pipe more than twelve and one-half (12 1/2) degrees and shall be a distance to one (1) pipe diameter or more away from any other miter joint, as measured from the crotch of each joint.

(c) A miter joint on steel pipe to be operated at pressure that produces hoop stress of ten (10) percent or less of SMYS shall not deflect the pipe more than ninety (90) degrees.

(7) Preparation for welding. Before beginning any welding, welding surfaces shall be clean and free of any material that may be detrimental to the weld, and the pipe or component shall be aligned to provide the most favorable condition for depositing the root bead. This alignment shall be preserved while the root bead is being deposited.

(8) Inspection and test of welds.

(a) Visual inspection of welding shall be conducted to insure that:

1. Welding is performed in accordance with welding procedure; and

2. Weld is acceptable under paragraph (c) of this subsection.

(b) Welds on a pipeline to be operated at pressure that produces hoop stress of twenty (20) percent or more of SMYS shall be nondestructively tested in accordance with subsection (9) of this section, except that welds that are visually inspected and approved by a qualified welding inspector need not be nondestructively tested if:

1. The pipe has a nominal diameter of less than six (6) inches; or

2. The pipeline is to be operated at pressure that produces hoop stress of less than forty (40) percent of SMYS, and welds are so limited in number that nondestructive testing is impractical.

(c) Acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in Section 6 of API Standard 1104.

(9) Nondestructive testing.

(a) Nondestructive testing of welds shall be performed by any process, other than trepanning, that will clearly indicate defects that may affect the integrity of the weld.

(b) Nondestructive testing of welds shall be performed:

1. In accordance with written procedures; and

2. By persons trained and qualified in established procedures and with equipment employed in testing.

(c) Procedures shall be established for proper interpretation of each nondestructive test of a weld to ensure acceptability of the weld under subsection (8)(c) of this section.

(d) When nondestructive testing is required under subsection (8)(b) of this section, the following percentages of each day's field butt welds, selected at random by the operator, shall be nondestructively tested over their entire circumference:

1. In Class 1 locations, at least ten (10) percent.

2. In Class 2 locations, at least fifteen (15) percent.

3. In Class 3 and Class 4 locations, at crossings of major or navigable rivers, and offshore, and within railroad or public highway rights-of-way, including tunnels, bridges, and overhead road crossings, 100 percent unless impracticable, then at least ninety (90) percent. Nondestructive testing shall be impracticable for each girth weld not tested.

4. At pipeline tie-ins 100 percent.

(e) Except for a welder whose work is isolated from the principal welding activity, a sample of each welder's work for each day shall be nondestructively tested, when nondestructive testing is required under subsection (8)(b) of this section.

(f) When nondestructive testing is required under subsection (8)(b) of this section, each operator shall retain, for the life of the pipeline, a record showing by milepost, engineering station, or by geographic

feature, the number of girth welds made, number nondestructively tested, number rejected, and disposition of rejects.

(10) Repair or removal of defects.

(a) Each weld that is unacceptable under subsection (8)(c) of this section shall be removed or repaired. A weld shall be removed if it has a crack that is more than eight (8) percent of the weld length.

(b) Each weld that is repaired shall have the defect removed down to sound metal, and the segment to be repaired shall be preheated if conditions exist which would adversely affect quality of the weld repair. After repair, the segment of the weld that was repaired shall be inspected to ensure its acceptability.

(c) Repair of a crack or any defect in a previously repaired area shall be in accordance with written weld repair procedures qualified under subsection (2) of this section. Repair procedures shall provide that the minimum mechanical properties specified for the welding procedure used to make the original weld are met upon completion of the final weld repair.

Section 6. Joining of Materials other than by Welding. (1) Scope.

(a) This section prescribes minimum requirements for joining materials in pipelines, other than by welding.

(b) This section does not apply to joining during the manufacture of pipe or pipeline components.

(2) General.

(a) The pipeline shall be designed and installed so that each joint will sustain longitudinal pullout or thrust forces caused by contraction or expansion of piping or by anticipated external or internal loading.

(b) Each joint shall be made in accordance with written procedures proven by test or experience to produce strong gastight joints.

(c) Each joint shall be inspected to insure compliance with this subsection.

(3) Cast iron pipe.

(a) Each caulked bell and spigot joint in cast iron pipe shall be sealed with mechanical leak clamps.

(b) Each mechanical joint in cast iron pipe shall have a gasket made of resilient material as the sealing medium. Each gasket shall be suitably confined and retained under compression by a separate gland or follower ring.

(c) Cast iron pipe shall not be joined by threaded joints or by brazing.

(4) Ductile iron pipe. Ductile iron pipe shall not be jointed by threaded joints or by brazing.

(5) Copper pipe. Copper pipe shall not be threaded, except that copper pipe used for joining screw fittings or valves may be threaded if wall thickness is equivalent to the comparable size of Schedule 40 or heavier wall pipe listed in Table C1 of ANSI B16.5.

(6) Plastic pipe.

(a) General. A plastic pipe joint joined by solvent cement, adhesive, or heat fusion shall not be disturbed until it has properly set. Plastic pipe shall not be joined by a threaded joint or miter joint.

(b) Solvent cement joints. Each solvent cement joint on plastic pipe shall comply with the following:

1. Mating surfaces of the joint shall be clean, dry, and free of material which might be detrimental to the joint.

2. Solvent cement shall conform with ASTM Specification D 2513.

3. Joint shall not be heated to accelerate setting of the cement.

(c) Heat-fusion joints. Each heat-fusion joint on plastic pipe shall comply with the following:

1. A butt heat-fusion joint shall be joined by a device that holds the heater element square to the ends of the piping, compresses the heated ends together, and holds the pipe in proper alignment while the plastic hardens.

2. A socket heat-fusion joint shall be joined by a device that heats mating surfaces of the joint uniformly and simultaneously to essentially the same temperature.

3. Heat shall not be applied with a torch or other open flame.

(d) Adhesive joints. Each adhesive joint on plastic pipe shall comply with the following:

1. Adhesive shall conform to ASTM Specification D 2517.

2. Materials and adhesive shall be compatible with each other.

(e) Mechanical joints. Each compression type mechanical joint on plastic pipe shall comply with the following:

1. Gasket material in the coupling shall be compatible with the plastic.

2. A rigid internal tubular stiffener, other than a split tubular stiffener, shall be used in conjunction with the coupling.

(7) Plastic pipe; qualifying joining procedures.

(a) Heat fusion, solvent cement, and adhesive joints. Before any written procedure established under subsection (2)(b) of this section is used for making plastic pipe joints by a heat fusion, solvent cement, or adhesive method, that procedure shall be qualified by subjecting specimen joints made according to the procedure to the following tests:

1. Burst test requirements of:

a. If thermoplastic pipe, Paragraph 8.6 (Sustained Pressure Test) or Paragraph 8.7 (Minimum Hydrostatic Burst Pressure) of ASTM D 2513; or

b. If thermosetting plastic pipe, Paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or Paragraph 8.9 (Sustained Static Pressure Test) of ASTM D 2517;

2. For procedures intended for lateral pipe connections, subject a specimen joint made from pipe sections joined at right angles according to the procedure to a force on the lateral pipe until failure occurs in the specimen. If failure initiates outside the joint area, the procedure qualifies for use; and

3. For procedures intended for nonlateral pipe connections, follow the tensile test requirements of ASTM D 638, except that the test may be conducted at ambient temperature and humidity. If the specimen elongates no less than twenty-five (25) percent, or failure initiates outside the joint area, the procedure qualifies for use.

(b) Mechanical joints. Before any written procedure established under subsection (2)(b) of this section is used for making mechanical plastic pipe joints designed to withstand tensile forces, the procedure shall be qualified by subjecting five (5) specimen joints made according to the procedure to the following tensile test:

1. Use an apparatus for the test as specified in ASTM D 638-77a (except for conditioning).

2. Specimen shall be of such length that distance between the grips of the apparatus and the end of the stiffener does not affect joint strength.

3. Speed of testing is five (5) millimeters (two-tenths (.20) inches) per minute, plus or minus twenty-five (25) percent.

4. Pipe specimens less than 102 millimeters (four (4) inches) in diameter are qualified if pipe yields to an elongation of no less than twenty-five (25) percent or failure initiates outside the joint area.

5. Pipe specimens 102 millimeters (four (4) inches) and larger in diameter shall be pulled until the pipe is subjected to tensile stress equal to or greater than maximum thermal stress that would be produced by a temperature change of fifty-five (55) degrees Centigrade (100°F) or until the pipe is pulled from the fitting. If the pipe pulls from the fitting, the lowest value of the five (5) test results or the manufacturer's rating, whichever is lower, shall be used in design calculations for stress.

6. Each specimen that fails at the grips shall be retested using new pipe.

7. Results obtained pertain only to the specific outside diameter, and material of pipe tested, except that testing of heavier wall pipe may be used to qualify pipe of the same material but with lesser wall thickness.

(c) A copy of each written procedure being used for joining plastic pipe shall be available to persons making and inspecting joints.

(d) Pipe or fittings manufactured before July 1, 1980, may be used in accordance with procedures that the manufacturer certifies will produce a joint as strong as the pipe.

(8) Plastic pipe; qualifying persons to make joints.

(a) No person shall make a plastic pipe joint unless that person has been qualified under the applicable joining procedure by:

1. Appropriate training or experience in use of the procedure; and

2. Making a specimen joint from pipe sections joined according to the procedure that passes the inspection and testing set forth in paragraph (b) of this subsection.

(b) Specimen joint shall be:

1. Visually examined during and after assembly or joining and found to have the same appearance as a joint or photograph of a joint that is acceptable under the procedure; and

2. If a heat fusion, solvent cement, or adhesive joint:

a. Tested under any one (1) of the test methods listed in subsection (7)(a) of this section applicable to the type of joint and material being tested;

b. Examined by ultrasonic inspection and found not to contain flaws that would cause failure; or

c. Cut into at least three (3) longitudinal straps, each of which is:

(i) Visually examined and found not to contain voids or discontinuities on cut surface of the joint area; and

(ii) Deformed by bending, torque, or impact, and if failure occurs, it shall not initiate in the joint area.

(iii) A person shall be requalified under an applicable procedure, if during any twelve (12) month period that person:

A. Does not make any joints under that procedure; or

B. Has made three (3) joints or three (3) percent of the joints, whichever is greater, under that procedure, that are found unacceptable by testing under Section 11(7) of this administrative regulation.

(d) Each operator shall establish a method to determine that each person making joints in plastic pipelines in his system is qualified in accordance with this section.

(9) Plastic pipe; inspection of joints. No person shall carry out the inspection of joints in plastic pipes required by subsections (2)(c) and (8)(b) of this section unless that person has been qualified by appropriate training or experience in evaluating the acceptability of plastic pipe joints made under the applicable joining procedure.

Section 7. General Construction Requirements for Transmission Lines and Mains. (1) Scope. This section prescribes minimum requirements for constructing transmission lines and mains.

(2) Compliance with specifications or standards. Each transmission line or main shall be constructed in accordance with comprehensive written specifications or standards consistent with this section.

(3) Reports and records of proposed construction:

(a) At least thirty (30) days prior to construction or major reconstruction of any gas pipeline intended to be subjected to pressure in excess of 100 psig, or twenty (20) percent of minimum yield strength, whichever is lower, and after receipt from the commission of a certificate of public convenience and necessity for such construction if required, the utility shall file a report with the commission setting forth the specifications for such pipeline and the maximum allowable operating pressure.

(b) Before any gas pipeline or main is placed in operation intended to be subjected to pressures in excess of 100 psig, or twenty (20) percent of specified minimum yield strength, whichever is lower, a report shall be filed with the commission certifying the maximum pressure to which the line is intended to be subject and also certifying that the pipeline has been constructed and testing in accordance with the requirements of this administrative regulation. A further report shall be filed within sixty (60) days thereafter including the results of all tests made pursuant to this section. No gas pipeline or main shall be operated at pressures in excess of the pressure for which it was certified to the commission.

(d) Responsibility for maintenance of necessary records to establish that compliance with rules and administrative regulations has been accomplished rests with the utility. Such records shall be available for inspection at all times by commission staff.

(4) Inspection: general. Each transmission line or main shall be inspected to ensure that it is constructed in accordance with this section. The inspector shall have authority to order removal and replacement of any section of pipe and fittings that fail to meet the standards of this administrative regulation.

(5) Inspection of materials. Each length of pipe and each other component shall be visually inspected at site of installation to ensure that it has not sustained any visually determinable damage that could impair its serviceability. Plastic pipe and tubing shall be adequately supported during storage. Thermoplastic pipe, tubing and fittings shall be protected from exposure to direct sun rays if the pipe is to remain exposed for twelve (12) months or longer unless written warranty of the manufacturer states that such protection is not necessary. However, if the manufacturer specifies that the pipe has been manufactured with a minimum of two (2) percent or more carbon black content to prevent ultraviolet degradation, the pipe may be exposed to sun rays for up to thirty-six (36) months.

(6) Repair of steel pipe.

(a) Each imperfection or damage that impairs the serviceability of a length of steel pipe shall be repaired or removed. If repair is made by grinding, remaining wall thickness shall at least be equal to either:

1. Minimum thickness required by the tolerance in the specification to which the pipe was manufactured; or

2. Nominal wall thickness required for the design pressure of the pipeline.

(b) Each of the following dents shall be removed from steel pipe to be operated at pressure that produces hoop stress of twenty (20) percent, or more, of SMYS:

1. A dent that contains a stress concentrator such as a scratch, gouge, groove, or arc burn.

2. A dent that affects the longitudinal weld or a circumferential weld.

3. In pipe to be operated at pressure that produces hoop stress of forty (40) percent or more of SYMS, a dent that has a depth of:

a. More than one-quarter (1/4) inch in pipe twelve and three-fourths (12 3/4) inches or less in outer diameter; or

b. More than two (2) percent of the nominal pipe diameter in pipe over twelve and three-fourths (12 3/4) inches is outer diameter.

For purposes of this subsection a "dent" is a depression that produces gross disturbance in curvature of the pipe wall without reducing pipe-wall thickness. Depth of a dent is measured as the gap between the lowest point of the dent and a promulgation of the pipe's original contour.

(c) Each arc burn on steel pipe to be operated at pressure that produces hoop stress of forty (40) percent, or more, of SMYS shall be repaired or removed. If repair is made by grinding, the arc burn shall be completely removed, and remaining wall thickness shall be at least equal to either:

1. Minimum wall thickness required by the tolerances in the specification to which the pipe was manufactured; or

2. Nominal wall thickness required for the design pressure of the pipeline.

(d) A gouge, groove, arc burn, or dent shall not be repaired by insert patching or by pounding out.

(e) Each gouge, groove, arc burn, or dent removed from a length of pipe shall be removed by cutting out the damaged portion as a cylinder.

(7) Repair of plastic pipe. Each imperfection or damage that would impair serviceability of plastic pipe shall be repaired by a patching saddle or removed.

(8) Bends and elbows.

(a) Each field bend in steel pipe, other than a wrinkle bend made in accordance with subsection (9) of this section shall comply with the following:

1. A bend shall not impair serviceability of the pipe.

2. Each bend shall have a smooth contour and be free from buckling, cracks, or any other mechanical damage.

3. On pipe containing a longitudinal weld, the longitudinal weld shall be as near as practicable to the neutral axis of the bend unless:

a. The bend is made with an internal bending mandrel; or

b. The pipe is twelve (12) inches or less in outside diameter or has a diameter to wall thickness ratio less than seventy (70).

(b) Each circumferential weld of steel pipe located where stress during bending caused permanent deformation in the pipe shall be nondestructively tested either before or after the bending process.

(c) Wrought-steel welding elbows and transverse segments of these elbows shall not be used for changes in direction on steel pipe two (2) inches or more in diameter unless the arc length, as measured along the crotch, is at least one (1) inch.

(9) Wrinkle bends in steel pipe.

(a) A wrinkle bend shall not be made on steel pipe to be operated at pressure that produces hoop stress of thirty (30) percent, or more, of SYMS.

(b) Each wrinkle bend on steel pipe shall comply with the following:

1. The bend shall not have any sharp kinks.

2. When measured along the crotch of the bend, wrinkles shall be a distance of at least one (1) pipe diameter.

3. On pipe sixteen (16) inches or larger in diameter, the bend shall not have a deflection of more than one and one-half (1 1/2) degrees for each wrinkle.

4. On pipe containing a longitudinal weld, the longitudinal seam shall be as near as practicable to the neutral axis of the bend.

(10) Protection from hazards.

(a) Each transmission line or main shall be protected from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads.

(b) Each aboveground transmission line or main, not in inland navigable water areas, shall be protected from accidental damage by vehicular traffic or other similar causes, either by being placed at a safe distance from traffic or by installing barricades.

(c) Pipelines, including pipe risers, on each platform located in inland navigable waters shall be protected from accidental damage by vessels.

(11) Installation of pipe in a ditch.

(a) When installed in a ditch, each transmission line to be operated at pressure producing hoop stress of twenty (20) percent or more of SMYS shall be installed so that the pipe adequately fits the ditch to minimize stresses and protect pipe coating from damage.

(b) When a ditch for a transmission line or main is backfilled, it shall be backfilled in a manner that:

1. Provides firm support under the pipe; and

2. Prevents damage to pipe and pipe coating from equipment or backfill material.

(12) Installation of plastic main.

(a) Plastic pipe shall be installed below ground level and shall conform to applicable provisions of subsection (15) of this section except that plastic mains shall be installed with minimum cover of twenty-four (24) inches at all stress levels unless encased or otherwise protected.

(b) Plastic pipe installed in a vault or any other below grade enclosure shall be completely encased in gastight metal pipe and fittings adequately protected from corrosion.

(c) Plastic pipe shall be installed to minimize shear or tensile stresses.

(d) Thermoplastic pipe not encased shall have minimum wall thickness of 0.090 inches, except that pipe with an outside diameter of 0.875 inches or less may have minimum wall thickness of 0.062 inches.

(e) Plastic pipe not encased shall have an electrically conductive wire or other means of located the pipe while it is underground.

(f) Plastic pipe being encased shall be inserted into casing pipe in a manner that will protect the plastic. The leading end of the plastic shall be closed before insertion.

(13) Casing. Each casing used on a transmission line or main under a railroad or highway shall comply with the following:

(a) Casing shall be designed to withstand superimposed loads.

(b) If there is a possibility of water entering the casing, ends shall be sealed.

(c) If ends of an unvented casing are sealed, and the sealing is strong enough to retain maximum allowable operating pressure of the pipe, the casing shall be designed to hold this pressure at a stress level of not more than seventy-two (72) percent of SMYS.

(d) If vents are installed on a casing, vents shall be protected from weather to prevent water from entering the casing.

(14) Underground clearance.

(a) Each transmission line shall be installed with at least twelve (12) inches of clearance from any other underground structure not associated with the transmission line. If this clearance cannot be attained, The transmission line shall be protected from damage that might result from proximity to other structures.

(b) Each main shall be installed with enough clearance from any other underground structure to allow proper maintenance and to protect against damage that might result from proximity to other structures.

(c) In addition to meeting the requirements of paragraph (a) or (b) of this subsection, each plastic transmission line or main shall be installed with sufficient clearance, or shall be insulated, from any source of heat to prevent heat from impairing serviceability of the pipe.

(d) Each pipe-type or bottle type holder shall be installed with minimum clearance from any other holder as prescribed in Section 4(19)(b) of this administrative regulation.

(15) Cover.

(a) Except as provided in paragraphs (c) and (d) of this subsection, each buried transmission line shall be installed with minimum cover as follows:

Location	Normal Soil (inches)	Consolidated Rock (inches)
Class 1 locations	30	18
Class 2, 3 and 4 locations	36	24
Drainage ditches of public roads and railroad crossings	36	24

(b) Except as provided in paragraphs (c) and (d) of this subsection, each buried main shall be installed with at least twenty-four (24) inches of cover.

(c) Where an underground structure prevents installation of a transmission line or main with minimum cover, the transmission line or main may be installed with less cover if it is provided with additional protection to withstand anticipated external loads.

(d) All pipe installed in a navigable river or stream shall have minimum cover of forty-eight (48) inches in soil or twenty-four (24) inches in consolidated rock. However, less than minimum cover is permitted in accordance with paragraph (c) of this subsection.

Section 8. Gas Measurement. (1) Scope. This section prescribes minimum requirements for measurement of gas, accuracy of measuring instruments (meters), meter testing facilities and periodic testing of meters.

(2) Method of measuring service.

(a) All gas sold by a utility and all gas consumed by a utility in the State of Kentucky shall be metered through approved type meters except in cases of emergency or when otherwise authorized by the commission. Each meter shall bear an identifying number. When gas is sold at high pressures or large volumes, the contract or rate schedule shall specify standards used to calculate gas volume. Prepayment meters shall not be used unless there is no other satisfactory method of collecting payment for services rendered.

(b) All gas delivered as compensation for leases, rights-of-way, or for other reasons, not charged at the utility's regular schedule of charges, shall be metered and a record kept of each transaction. All meters and regulators installed to measure gas and to regulate pressure of gas shall be under the control of the utility and subject to the rules of the utility and of the commission.

(c) The utility shall make no charge for furnishing and installing any meter or appurtenance necessary to measure gas furnished, except by mutual agreement as approved by the commission in special cases or except where duplicate or check meters are requested by the customer.

(d) Each gas utility shall adopt a standard method of meter and service line installation insofar as practicable. These methods shall be set out with a written description and with drawings as necessary for clear understanding of the requirements, all of which shall be filed with the commission. Copies of these standard methods shall be made available to prospective customers, contractors or others engaged in installing pipe for gas utilization. All meters shall be set in place by the utility.

(e) Each customer shall be metered separately except in cases of multioccupants under the same roof sharing a common entrance or an enclosure where it is unreasonable or uneconomical to measure each unit separately.

(f) The utility may render temporary service to a customer and may require the customer to bear all costs of installing and removing service in excess of any salvage realized. In this respect, temporary service shall be considered to be service that is not required or used for more than one (1) year.

(3) Accuracy requirements for meters. All tests to determine accuracy of registration of any gas meters shall be made by a qualified meter tester and with suitable facilities.

(a) Diaphragm displacement meters:

1. Before being installed for use by any customer, every diaphragm displacement gas meter, whether new, repaired or removed from service for any cause shall be in good working condition and shall be adjusted to be correct to within one-half (1/2) of one (1) percent, plus or minus when passing gas at approximately twenty (20) percent and 100 percent of the rated capacity of the meter as specified by the manufacturer based on five-tenths (0.5) inch water column differential. A pilot test or quartering test to determine that the meter will register at one-half (1/2) of one (1) percent of the rated capacity shall be made before placing meters in service.

2. Meters removed from service for periodic testing shall be tested for accuracy as soon as practical after removal. An "as found" test shall be made at a flow-rate of approximately twenty (20) percent and 100 percent of the rated capacity of the meter based on five-tenths (0.5) inch water column differential and results of these tests algebraically averaged to determine accuracy. If error is less than two (2) percent this shall be reported as the "as found" test. If error is more than two (2) percent, two (2) additional tests shall be made at twenty (20) percent and 100 percent, and the average of these three (3) tests shall be reported as the "as found" test. The three (3) test procedures shall apply to any customer request test, complaint test, or bill adjustment made on the basis of the meter.

3. Meters of good working condition that are removed from service for reasons other than periodic, customer or commission request tests shall be tested as soon as practicable after removal if elapsed time since the last test exceeds fifty (50) percent of the periodic test period for those meters.

(b) Other than diaphragm displacement meters.

1. All meters other than diaphragm displacement meters shall be tested at approved intervals by the utility meter tester using flow provers or other approved methods either in the shop or at the location of use at the utility's option and with the commission's approval of facilities and methods used. Accuracy of these meters shall be maintained as near 100 percent as possible. Test ranges and procedures shall be as prescribed in adopted standards or approved by the commission.

2. All meter installations shall be inspected for proper design and construction and all instruments, regulators and valves used in conjunction with installation shall be tested for desired operation and accuracy before being placed in service. This inspection shall be made by a qualified person. Test data as to conditions found, corrected if in error, and conditions as left shall be made available for inspection by commission staff. Subsequent test results shall be a portion of regular meter test reports submitted to the commission by the utility.

(4) Meter testing facilities and equipment.

(a) Meter shop.

1. Each utility, unless specifically excepted by the commission, shall maintain a meter shop to inspect, test and repair meters. The shop shall be open for inspection by commission staff at all reasonable times. Facilities and equipment, as well as methods of measurement and testing employed, shall be subject to approval of the commission.

2. The meter shop shall consist of a repair room or shop proper and a proving room. The proving room shall be designed so that meters and meter testing apparatus are protected from excessive changes in temperature and other disturbing factors. The proving room or the entire meter shop shall be air conditioned if necessary to achieve satisfactory temperature control.

3. The proving room shall be well lighted and preferably not on an outside wall of the building. Temperatures within the proving room shall not vary more than two (2) degrees Fahrenheit per hour nor more than five (5) degrees Fahrenheit over a twenty-four (24) hour period.

(b) Working standards.

1. Each utility, unless specifically excepted by the commission, shall own and make proper provision to operate at least one (1) approved belltype meter prover, preferably of ten (10) cubic feet capacity, but in no case of less than five (5) cubic feet capacity. The prover shall be equipped with suitable thermometers and other necessary accessories. This equipment shall be maintained in proper condition and adjustment so that it shall be capable of determining the accuracy of any service meter, practical to test by it, to within one-half (1/2) of one (1) percent plus or minus.

2. The prover shall be accurate to within three-tenths (0.3) of one (1) percent at each point used in testing meters.

3. The prover shall not be located near any radiator, heater, steam pipe, or hot or cold air duct. Direct sunlight shall not be allowed to fall on the prover or the meters under test.

4. During conditions of satisfactory operation air temperature in the prover shall be within one (1) degree Fahrenheit of the ambient temperature, and oil temperature in the prover shall not differ from the temperature of ambient air by more than one (1) degree Fahrenheit.

5. Meters to be tested shall be stored in such manner that temperature of the meters is substantially the same as temperature of the prover. To achieve this, meters shall be placed in the environment of the prover for a minimum of five (5) hours.

(c) All testing instruments and other equipment certified by the commission shall be accompanied at all times by a certificate showing the date when it was last tested and adjusted. The certificate must be signed by a proper authority designated by the commission. A tag referring to such certificate may be attached to the instruments when practicable. These certificates, when superseded, shall be kept on file by the utility.

(d) Sixty (60) days after the effective date of a commission order granting convenience and necessity for a new utility, that utility shall advise the commission in writing as to kind and amount of testing equipment available.

(5) Periodic tests.

(a) Periodic tests of all meters shall be made according to the following schedule based on rated capacities. Rated meter capacity is defined as the capacity of the meter at five-tenths (0.5) of one (1) inch water column differential for diaphragm meters and as specified by the manufacturer for all other meters.

1. Positive-displacement meters, with rated capacity up to and including 500 cubic feet per hour, shall be tested at least once every ten (10) years.

2. Positive-displacement meters, with rated capacity above 500 cubic feet per hour, up to and including 1,500 cubic feet per hour, shall be tested at least once every five (5) years.

3. Positive-displacement meters above 1,500 cubic feet per hour shall be tested at least once every year.

4. Orifice meters shall have their recording gauges tested at least once every six (6) months. Orifice size and condition shall be checked at the required meter test interval.

5. Auxiliary measurement devices such as pressure, temperature, volume, load demand and remote reading devices shall be tested at the required meter test interval.

(b) Whenever the number of meters of any type which register in error beyond the limits specified in these rules is deemed excessive, this type shall be tested with such additional frequency as the commission may direct.

(c) A utility desiring to adopt a scientific sample meter test plan for positive displacement meters in accordance with parameters established by the commission shall submit its application to the commission for approval. Upon approval, the sample testing plan may be followed in lieu of tests prescribed in subsections (3) and (5) of this section and 807 KAR 5:006, Section 17(1).

(6) Measuring production and shipment into and out of the state.

(a) The utility shall measure and record the quantity of all gas produced and purchased by it in Kentucky.

(b) The utility shall measure and record the quantity of all gas piped out of or brought into the state of Kentucky.

Section 9. Customer Meters, Service Regulators, and Service Lines. (1) Scope. This section prescribes minimum requirements for installing customer meters, service regulators, service lines, service line valves, and service line connections to mains.

(2) Customer meters and regulators: location.

(a) Each meter and service regulator, whether inside or outside of a building, shall be installed in a readily accessible location and protected from corrosion and other damage.

(b) Meters shall be easily accessible for reading, testing and making necessary adjustments and repairs, and where indoor type meters are necessary they shall be installed in a clean, dry, safe, convenient place. Unless absolutely unavoidable, meters shall not be installed in any location where visits of the meter reader or tester will cause annoyance to the customer or severe inconvenience to the utility. Existing meters located in places not permitted by rule shall be relocated by the customer or owner to an approved position.

(c) Proper provision shall be made by the customer for installation of the utility's meter. At least six (6) inches clear space shall be available, if possible, on all sides of the meter and not less than thirty (30) inches in front of it. When installed within a building, a meter shall be located in a ventilated place and not less than three (3) feet from any source of ignition or any source of heat which might damage the meter.

(d) When a number of meters are placed in the same location, each meter shall be tagged or marked to indicate the customer served by it and such identification shall be preserved and maintained by the owner of the premises served.

(e) When the distance between the utility's main and nearest point of consumption is more than 150 feet, the meter shall be located as near to the utility's main as may be practicable. This provision shall apply when any part of the service line has been constructed by either the customer or utility.

(f) When a customer is served from a pipeline operating in excess of sixty (60) psig the meters, regulators and safety devices shall be located as near to the utility's pipeline as practicable.

(g) Each service regulator installed within a building shall be located as near as practical to point of service line entrance.

(h) Where feasible, the upstream regulator in a series shall be located outside the building unless it is located in a separate metering or regulating building.

(3) Customer meters and regulators: protection from damage.

(a) Protection from vacuum or back pressure. If the customer's equipment might create either a vacuum or a back pressure, a device shall be installed to protect the system.

(b) Service regulator vents and relief vents. Service regulator vents and relief vents shall terminate outdoors, and the outdoor terminal shall be:

1. Rain and insect resistant;

2. Located at a place where gas from the vent can escape freely into the atmosphere and away from any opening into the building; and

3. Protected from damage caused by submergence in areas where flooding may occur.

(c) Pits and vaults. Each pit or vault that houses a customer meter or regulator at a place where vehicular traffic is anticipated shall be able to support that traffic.

(4) Customer meter and regulators: installation.

(a) Each meter and each regulator shall be installed to minimize anticipated stresses upon the connecting piping and the meter.

(b) Use of all thread (close) nipples is prohibited.

(c) Connections made of lead or other easily damaged material shall not be used in installation of meters or regulators.

(d) Each regulator that might release gas in its operation shall be vented to the outside atmosphere and shall have a vent pipe sized no smaller than the manufacturer's vent connection built into the regulator.

(5) Customer meter installation: operation pressure.

(a) A meter shall not be used at pressure more than sixty-seven (67) percent of the manufacturer's shell test pressure.

(b) Each newly installed meter manufactured after November 12, 1970, shall have been tested to a minimum of ten (10) psig.

(c) A rebuilt or repaired tinned steel case meter shall not be used at pressure more than fifty (50) percent of the pressure used to test the meter after rebuilding or repairing.

(6) Service lines: installation.

(a) Depth. Each buried service line shall be installed with at least twelve (12) inches of cover in private property and at least eighteen (18) inches of cover in streets and roads. However, where an underground structure prevents installation at those depths, the service line shall be able to withstand any anticipated external load.

(b) Support and backfill. Each service line shall be properly supported on undisturbed or well-compacted soil, and material used for backfill shall be free of materials that could damage the pipe or its coating.

(c) Grading for drainage. Where condensation in the gas might cause interruption in gas supply to the customer, the service line shall be graded to drain into the main or into drips at low points in the service line.

(d) Protection against piping strain and external loading. Each service line shall be installed to minimize anticipated piping strain and external loading.

(e) Installation of service lines into buildings. Each underground service line installed below grade through the outer foundation wall of a building shall:

1. If a metal service line, be protected against corrosion;

2. If a plastic service line, be protected from shearing action and backfill settlement; and

3. Be sealed at the foundation wall to prevent leakage into the building.

(f) Installation of service lines under buildings. Where an underground service line is installed under a building:

1. It shall be encased in a gastight conduit;

2. The conduit and the service line shall, if the service line supplies the building it underlies, extend into a normally usable and accessible part of the building; and

3. The space between the conduit and service line shall be sealed to prevent gas leakage into the building. If the conduit is sealed at both ends, a vent line from the annular space shall extend to a point where gas would not be a hazard and extend above grade, terminating in a rain and insect resistant fitting.

(g) Joining of service lines. All underground steel service lines shall be joined by threaded and coupled joints, compression type fittings, or by qualified welding procedures and operators.

(h) When coated steel pipe is to be installed as a service line in a bore, care shall be exercised to prevent damage to the coating during installation. For all installations to be made by boring, driving or similar methods or in a rocky type soil, the following practices or their equivalents are recommended:

1. Coated pipe should not be used as the bore pipe or drive pipe and left in the ground as part of the service line. It is preferable to make such installations by first making an average bore, removing the pipe used for boring and then inserting the coated pipe.

2. Coated steel pipe preferably should not be inserted through a bore in exceptionally rocky soil when there is a likelihood of damage to the coating resulting from insertion.

3. Recommendations in subparagraphs 1 and 2 of this subsection do not apply where coated pipe is installed under conditions where the coating is not likely to be damaged, such as in sandy soil.

(7) Service line: valve requirements.

(a) Each service line shall have a service-line valve that meets applicable requirements of Sections 2 and 4 of this administrative regulation. A valve incorporated in a meter bar, that allows the meter to be bypassed, shall not be used as a service-line valve.

(b) A soft seal service-line valve shall not be used if its ability to control flow of gas could be adversely affected by exposure to anticipated heat.

(c) Each service-line valve on a high-pressure service line, installed above ground or in an area where blowing gas would be hazardous, shall be designed and constructed to minimize the possibility of removal of the valve core with other than specialized tools.

(8) Service lines: location of valves.

(a) Relation to regulator or meter. Each service-line valve shall be installed upstream of the regulator or, if there is not regulator, upstream of the meter.

(b) Outside valves. Each service line shall have a shutoff valve in a readily accessible location that, if feasible, is outside of the building.

(c) Underground valves. Each underground service-line valve shall be located in a covered, durable curb box or standpipe that allows ready operation of the valve. The curb box shall be supported independently of the service lines.

(9) Service lines general requirements for connections to main piping.

(a) Location. Each service-line connection to a main shall be located at the top of the main, or, if not practical, at the side of the main, unless a suitable protective device is installed to minimize possibility of dust and moisture being carried from the main into the service line.

(b) Compression-type connection to main. Each compression-type service line to main connection shall:

1. Be designed and installed to effectively sustain longitudinal pullout or thrust forces caused by contraction or expansion of piping, or by anticipated external or internal loading; and

2. If gaskets are used in connecting the service line to the main connection fitting, gaskets shall be compatible with the kind of gas in the system.

(10) Service lines: connection to cast iron or ductile iron mains.

(a) Each service line connected to a cast iron or ductile iron main shall be connected by a mechanical clamp, by drilling and tapping the main, or by another method meeting requirements of Section 6(2) of this administrative regulation.

(b) If a threaded tap is being inserted, the requirements of Section 4(6)(b) and (c) of this administrative regulation shall also be met.

(11) Service lines: steel. Each steel service line to be operated at less than 100 psig shall be constructed of pipe designed for a minimum of 100 psig.

(12) Service lines: cast iron and ductile iron. Cast or ductile iron pipe shall not be installed for service lines.

(13) Service lines: plastic.

(a) Each plastic service line outside a building shall be installed below ground level, except that it may terminate above ground and outside the building, if:

1. The above ground part of the plastic service line is protected against deterioration and external damage; and

2. The plastic service line is not used to support external loads.

(b) Each plastic service line inside a building shall be protected against external damage.

(14) Service lines: copper. Each copper service line installed within a building shall be protected against external damage.

(15) New service lines not in use. Each service line not placed in service upon completion of installation shall comply with one (1) of the following until the customer is supplied with gas:

(a) The valve that is closed to prevent flow of gas to the customer shall be provided with a locking device or other means designed to prevent opening of the valve by persons other than those authorized by the operator.

(b) A mechanical device or fitting that will prevent flow of gas shall be installed in the service line or in the meter assembly.

(c) The customer's piping shall be physically disconnected from the gas supply, and the open pipe ends sealed.

(16) Extension of services.

(a) Normal extension. An extension of 100 feet or less shall be made by a utility to an existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more and provides guarantee for such service.

(b) Other extensions.

1. When an extension of the utility's main to serve an applicant or group of applicants amounts to more than 100 feet per customer, the utility shall, if not inconsistent with its filed tariff, require the total cost of the excessive footage over 100 feet per customer to be deposited with the utility by the applicant(s), based on average estimated cost per foot of the total extension.

2. Each customer receiving service under such extension will be reimbursed under the following plan: each year for a refund period of not less than ten (10) years, the utility shall refund to the customer(s) who paid for the excessive footage, the cost of 100 feet of extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. After the end of the refund period, no refund shall be required.

(c) An applicant desiring an extension to a proposed real estate subdivision may be required to pay all costs of the extension. Each year for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 100 feet of extension installed for each additional customer connected during the year. Total amount refunded shall not exceed the amount paid to the utility. After the end of the refund period from the completion of the extension, no refund shall be required.

(d) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

(e) Nothing contained herein shall be construed to prohibit a utility from making, at its expense, greater extensions than herein prescribed, provided the same free extensions are made to other customers under similar conditions.

(f) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 100 feet upon a finding by the commission that such extension is reasonable.

(17) Service connections.

(a) Ownership of service lines.

1. Utility's responsibility. In urban areas with well defined streets, the utility shall furnish and install at its own expense, for the purpose of connecting its distribution system to customer premises, that portion of service pipe from its main to the property line or to and including the curb stop and curb box if used. The curb stop may be installed at a convenient place between property line and curb. If meters are located outdoors, the curb box and curb stop may be omitted if meter installation is provided with a stopcock and connection to the distribution main is made with a service tee that incorporates a positive shutoff device that can be operated with ordinary, readily available tools and the service tee is not located under pavement.

2. Customer's responsibility. The customer, or the company at its option and with commission approval, shall furnish and lay necessary pipe to make the connection from curb stop to place of consumption and shall keep the service line in good repair and in accordance with reasonable requirements of the utility's rules and the commission's administrative regulations.

3. Inspection. In the installation of a service line, the customer shall not install any tees or branch connections and shall leave the trench open and pipe uncovered until it is examined by an inspector of the utility and shown to be free from any irregularity or defect. The utility shall test all piping downstream from the meter for gas leaks, each time gas is turned on by the utility, by observing that no gas passes through the meter when all appliances are turned off. The utility shall refuse to serve until all gas leaks so disclosed have been properly repaired.

4. Location of service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.

(b) All services shall be equipped with a stopcock near the meter. If the service is not equipped with an outside shutoff, the inside shutoff shall be of a type which can be sealed in the off position.

Section 10. Requirements for Corrosion Control. (1) Scope. This subsection prescribes minimum requirements for protection of metallic pipelines from external, internal, and atmospheric corrosion.

(2) Applicability to converted pipelines. Notwithstanding the date the pipeline was installed or any earlier deadlines for compliance, each pipeline which qualifies for use under this administrative regulation in accordance with Section 1(7) of this administrative regulation shall meet the requirements of this subsection specifically applicable to pipelines installed before August 1, 1971, and all other applicable requirements within one (1) year after the pipeline is readied for service. However, the requirements of this section specifically applicable to pipelines installed after July 31, 1971, apply if the pipeline substantially meets those requirements before it is readied for service or it is a segment which is replaced, relocated, or substantially altered.

(3) General. Each operator shall establish procedures to implement the requirements of this section. These procedures, including those for design, installation, operation and maintenance of cathodic protection systems, shall be carried out by, or under the direction of a person qualified by experience and training in pipeline corrosion control methods.

(4) External corrosion control: buried or submerged pipelines installed after July 31, 1971.

(a) Except as provided in paragraphs (b), (c), and (f) of this subsection, each buried or submerged pipeline installed after July 31, 1971, shall be protected against external corrosion, including the following:

1. It shall have an external protective coating meeting the requirements of subsection (7) of this section.

2. It shall have a cathodic protection system designed to protect the pipeline in its entirety in accordance with this subsection, installed and placed in operation within one (1) year after completion of construction.

(b) An operator need not comply with paragraph (a) of this subsection if the operator can demonstrate by tests, investigation, or experience in the area of application, including, as a minimum, soil resistivity measurements and tests for corrosion accelerating bacteria, that a corrosive environment does not exist. However, within six (6) months after an installation made pursuant to the preceding sentence, the operator shall conduct tests, including pipe-to-soil potential measurements with respect to either a continuous reference electrode or an electrode using close spacing, not to exceed twenty (20) feet, and soil resistivity measurements at potential profile peak locations, to adequately evaluate the potential profile along the entire pipeline. If the tests indicate that a corrosive condition exists, the pipeline shall be cathodically protected in accordance with paragraph (a)2 of this subsection.

(c) An operator need not comply with paragraph (a) of this subsection, if the operator can demonstrate by tests, investigation, or experience that:

1. For a copper pipeline, a corrosive environment does not exist; or

2. For a temporary pipeline with an operating period of service not to exceed five (5) years beyond installation, corrosion during the five (5) year period of service of the pipeline will not be detrimental to public safety.

(d) Notwithstanding the provisions of paragraphs (b) or (c) of this subsection, if a pipeline is externally coated, it shall be cathodically protected in accordance with paragraph (a)2 of this subsection.

(e) Aluminum shall not be installed in buried or submerged pipeline if that aluminum is exposed to an environment with a natural pH in excess of eight (8), unless tests or experience indicate its suitability in the particular environment involved.

(f) This subsection does not apply to electrically isolated, metal alloy fittings in plastic pipelines if:

1. For the size fitting used, an operator can show by tests, investigation, or experience in the area of application that adequate corrosion control is provided by alloyage; and

2. The fitting is designed to prevent leakage caused by localized corrosion pitting.

(5) External corrosion control: buried or submerged pipelines installed before August 1, 1971.

(a) Except for buried piping at compressor, regulator, and measuring stations, each buried or submerged transmission line installed before August 1, 1971, that has an effective external coating shall be cathodically protected along the entire area that is effectively coated, in accordance with this section. For the purposes of this section, pipeline does not have effective external coating if its cathodic protection current requirements are substantially the same as if it were bare. The operator shall make tests to determine cathodic protection current requirements.

(b) Except for cast iron or ductile iron, each of the following buried or submerged pipelines installed before August 1, 1971, shall be cathodically protected in accordance with this section in areas in which active corrosion is found:

1. Bare or ineffectively coated transmission lines.

2. Bare or coated pipes at compressor, regulator, and measuring stations.

3. Bare or coated distribution lines. The operator shall determine areas of active corrosion by electrical survey, or where electrical survey is impractical, by study of corrosion and leak history records, leak detection survey, or other means.

(c) For the purpose of this section, active corrosion means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety.

(6) External corrosion control: examination of buried pipeline when exposed. Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion shall be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion is found, remedial action shall be taken to the extent required by subsection (18) of this section and applicable paragraphs of subsections (19), (20) or (21) of this section.

(7) External corrosion control: protective coating.

(a) Each external protective coating, whether conductive or insulating, applied for external corrosion control shall:

1. Be applied on a properly prepared surface;
2. Have sufficient adhesion to the metal surface to effectively resist underfilm migration of moisture;
3. Be sufficiently ductile to resist cracking;
4. Have sufficient strength to resist damage due to handling and soil stress; and
5. Have properties compatible with any supplemental cathodic protection.

(b) Each external protective coating which is an electrically insulating type shall also have low moisture absorption and high electrical resistance.

(c) Each external protective coating shall be inspected just prior to lowering the pipe into the ditch and backfilling, and any damage to effective corrosion control shall be repaired.

(d) Each external protective coating shall be protected from damage resulting from adverse ditch conditions or supporting blocks.

(e) If coated pipe is installed by boring, driving, or other similar method, precautions shall be taken to minimize damage to the coating during installation.

(8) External corrosion control: cathodic protection.

(a) Each cathodic protection system required by this subsection shall provide a level of cathodic protection that complies with one (1) or more of the applicable criteria contained in Appendix D of this administrative regulation. If none of these criteria is applicable, the cathodic protection system shall provide a level of cathodic protection at least equal to that provided by compliance with one (1) or more of these criteria.

(b) If amphoteric metals are included in a buried or submerged pipeline containing a metal of different anodic potential:

1. Amphoteric metals shall be electrically isolated from the remaining pipeline and cathodically protected; or
2. The entire buried or submerged pipeline shall be cathodically protected at a cathodic potential that meets the requirements of Appendix D of this administrative regulation for amphoteric metals.

(c) The amount of cathodic protection shall be controlled to prevent damage to protective coating or pipe.

(9) External corrosion control: monitoring.

(a) Each pipeline that is under cathodic protection shall be tested at least once each calendar year but with intervals not exceeding fifteen (15) months to determine whether the cathodic protection meets the requirements of subsection (8) of this section. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission lines, not in excess of 100 feet, or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least ten (10) percent of these protected structures, distributed over the entire system shall be surveyed each calendar year, with a different ten (10) percent checked each subsequent year, so that the entire system is tested in each ten (10) year period.

(b) Each cathodic protection rectifier or other impressed current power source shall be inspected six (6) times each calendar year, but with intervals not exceeding two and one-half (2 1/2) months, to insure that it is operating.

(c) Each reverse current switch, diode, and interference bond whose failure would jeopardize structure protection shall be electrically checked for proper performance six (6) times each calendar year, but with intervals not exceeding two and one-half (2 1/2) months. Each other interference bond shall be checked at least once each calendar year, but with intervals not exceeding fifteen (15) months.

(d) Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.

(e) After the initial evaluation required by subsection (4)(b) and (c) and subsection (5)(b) of this section, each operator shall, at intervals not exceeding three (3) years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subsection in areas in which active corrosion is found. The operator shall determine areas of active corrosion by electrical survey, or where electrical survey is impractical, by study of corrosion and leak history records, leak detection survey, or other means.

(10) External corrosion control: electrical isolation.

(a) Each buried or submerged pipeline shall be electrically isolated from other underground metallic structures, unless the pipeline and other structures are electrically interconnected and cathodically protected as a single unit.

(b) One (1) or more insulating devices shall be installed where electrical isolation of a portion of a pipeline is necessary to facilitate application of corrosion control.

(c) Except for unprotected copper inserted in ferrous pipe, each pipeline shall be electrically isolated from metallic casings that are part of the underground system. However, if isolation is not achieved because it is impractical, other measures shall be taken to minimize corrosion of the pipeline inside the casing.

(d) Inspection and electrical tests shall be made to assure that electrical isolation is adequate.

(e) An insulating device shall not be installed in an area where a combustible atmosphere is anticipated unless precautions are taken to prevent arcing.

(f) Where a pipeline is located close to electrical transmission tower footings, ground cables or counterpoise, or in other areas where fault currents or unusual risk of lightning may be anticipated, it shall be protected against damage due to fault currents or lightning, and protective measures shall be taken at insulating devices. A study shall be made in collaboration with the electric company on common problems of corrosion and electrolysis and taking the following factors into consideration:

1. Possibility of the pipeline carrying either unbalanced line currents or fault currents.
2. Possibility of lightning or fault currents inducing voltages sufficient to puncture pipe coatings or pipe.
3. Cathodic protection of the pipeline, including location of ground beds, especially if the electric line is carried on steel towers.
4. Bonding connections between the pipeline and either the steel tower footings or buried ground facilities or groundwire of the overhead electric system.

(11) External corrosion control: test stations. Each pipeline under cathodic protection required by this subsection shall have sufficient test stations or other contact points for electrical measurement to determine the adequacy of cathodic protection.

(12) External corrosion control: test leads.

(a) Each test lead wire shall be connected to the pipeline to remain mechanically secure and electrically conductive.

(b) Each test lead wire shall be attached to the pipeline to minimize stress concentration on the pipe.

(c) Each bared test lead wire and bared metallic area at point of connection to the pipeline shall be coated with electrical insulating material compatible with the pipe coating and insulation on the wire.

(13) External corrosion control: interference currents.

(a) Each operator whose pipeline system is subjected to stray currents shall have in effect a continuing program to minimize detrimental effects of such currents.

(b) Each impressed current type cathodic protection system or galvanic anode system shall be designed and installed to minimize any adverse effects on existing adjacent underground metallic structures.

(14) Internal corrosion control: general.

(a) Corrosive gas shall not be transported by pipeline, unless the corrosive effect of the gas on the pipeline has been investigated and steps have been taken to minimize internal corrosion.

(b) Whenever any pipe is removed from a pipeline for any reason, the internal surface shall be inspected for evidence of corrosion. If internal corrosion is found:

1. Adjacent pipe shall be investigated to determine the extent of internal corrosion;
2. Replacement shall be made to the extent required by applicable paragraphs of subsections (19), (20) and (21) of this section; and
3. Steps shall be taken to minimize the internal corrosion.

(c) Gas containing more than one-tenth (0.1) grain of hydrogen sulfide per 100 standard cubic feet shall not be stored in pipe-type or bottle-type holders.

(15) Internal corrosion control: monitoring. If corrosive gas is being transported, coupons or other suitable means shall be used to determine effectiveness of steps taken to minimize internal corrosion. Each coupon or other means of monitoring internal corrosion shall be checked two (2) times each calendar year, but with intervals not exceeding seven and one-half (7 1/2) months.

(16) Atmospheric corrosion control: general.

(a) Pipelines installed after July 31, 1971. Each aboveground pipeline or portion of pipeline installed after July 31, 1971, exposed to the atmosphere shall be cleaned and either coated or jacketed with material suitable for prevention of atmospheric corrosion. An operator need not comply with this paragraph, if the operator can demonstrate by test, investigation, or experience in the area of application, that a corrosive atmosphere does not exist.

(b) Pipelines installed before August 1, 1971. Each operator having an aboveground pipeline or portion of pipeline installed before August 1, 1971, exposed to the atmosphere, shall:

1. Determine areas of atmospheric corrosion on the pipeline;

2. If atmospheric corrosion is found, take remedial measures to the extent required by applicable paragraphs of subsections (19), (20), or (21) of this section; and

3. Clean and either coat or jacket areas of atmospheric corrosion on the pipeline with material suitable for prevention of atmospheric corrosion.

(17) Atmospheric corrosion control: monitoring. After meeting the requirements of subsection (16)(a) and (b) of this section, each operator shall, at intervals not exceeding three (3) years, reevaluate each pipeline exposed to the atmosphere and take protective action whenever necessary against atmospheric corrosion.

(18) Remedial measures: general.

(a) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion shall have a properly prepared surface and shall be provided with an external protective coating that meets the requirements of subsection (7) of this section.

(b) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion shall be cathodically protected in accordance with this section.

(c) Except for cast iron or ductile iron pipe, each segment of buried or submerged pipe required to be repaired because of external corrosion shall be cathodically protected in accordance with this section.

(19) Remedial measures: transmission lines.

(a) General corrosion. Each segment of transmission line with general corrosion and with a remaining wall thickness less than that required for maximum allowable operating pressure of the pipeline shall be replaced or operating pressure reduced commensurate with the strength of the pipe based on actual remaining wall thickness. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so closely grouped as to affect overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

(b) Localized corrosion pitting. Each segment of transmission line pipe with localized corrosion pitting to a degree where leakage might result shall be replaced or repaired, or operating pressure shall be reduced commensurate with the strength of the pipe, based on actual remaining wall thickness in the pits.

(20) Remedial measures: distribution lines other than cast iron or ductile iron lines.

(a) General corrosion. Except for cast iron or ductile iron pipe, each segment of generally corroded distribution line pipe with remaining wall thickness less than that required for maximum allowable operating pressure of the pipeline, or remaining wall thickness less than thirty (30) percent of the nominal wall thickness, shall be replaced. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so closely grouped so as to affect overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

(b) Localized corrosion pitting. Except for cast iron or ductile iron pipe, each segment of distribution line pipe with localized corrosion pitting to a degree where leakage might result shall be replaced or repaired.

(21) Remedial measures: cast iron and ductile iron pipelines.

(a) General graphitization. Each segment of cast iron or ductile iron pipe on which general graphitization is found to a degree where fracture or leakage might result shall be replaced.

(b) Localized graphitization. Each segment of cast iron or ductile iron pipe on which localized graphitization is found to a degree where leakage might result, shall be replaced or repaired, or sealed by internal sealing methods adequate to prevent or arrest leakage.

(22) Corrosion control records.

(a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, other than unrecorded galvanic anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system.

(b) Each of the following records shall be retained for as long as the pipeline remains in service:

1. Each record or map required by paragraph (a) of this subsection.

2. Records of each test, survey, or inspection required by this subsection, in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist.

Section 11. Test Requirements. (1) Scope. This section prescribes minimum leak-test and strength-test requirements for pipelines.

(2) General requirements.

(a) No person shall operate a new segment of pipeline, or return to service a segment of pipeline that has been relocated or replaced, until:

1. It has been tested in accordance with this section and Section 13(11) of this administrative regulation to substantiate maximum allowable operating pressure; and

2. Each potentially hazardous leak has been located and eliminated.

(b) The test medium shall be liquid, air, natural gas or inert gas that is:

1. Compatible with the material of which the pipeline is constructed;

2. Relatively free of sedimentary materials; and

3. Except for natural gas, nonflammable.

(c) Except as provided in subsection (3)(a) of this section, if air, natural gas or inert gas is used as the test medium, the following maximum hoop stress limitations apply:

Maximum Hoop Stress Permissible During Test				
	% of Specified Minimum Yield			
Class Location	1	2	3	4
Test Medium Air or Inert Gas	80	75	50	40
Natural Gas	80	30	30	30

(d) Each joint used to tie-in a test segment of pipeline is excepted from specific test requirements of this section, but it must be leak tested at not less than its operating pressure.

(3) Strength test requirements for steel pipeline to operate at hoop stress of thirty (30) percent or more of SMYS:

(a) Except for service lines, each segment of steel pipeline that is to operate at hoop stress of thirty (30) percent or more of SMYS shall be strength tested in accordance with this section to substantiate the proposed maximum allowable operating pressure. In addition, in a Class 1 or Class 2 location, if there is a building intended for human occupancy within 300 feet of a pipeline, a hydrostatic test shall be conducted to a test pressure of at least 125 percent of maximum operating pressure on that segment of pipeline within 300 feet of that building, but in no event may the test section be less than 600 feet unless the length of the newly installed or relocated pipe is less than 600 feet. However, if the buildings are evacuated while hoop stress exceeds fifty (50) percent of SMYS, air or inert gas may be used as the test medium.

(b) In a Class 1 or Class 2 location, each compressor station, regulator station and measuring station shall be tested to Class 3 location test requirements.

(c) Except as provided in paragraph (e) of this subsection, strength test shall be conducted by maintaining pressure at or above the test pressure for at least eight (8) hours.

(d) If a component other than pipe is the only item being replaced or added to pipeline, a strength test after installation is not required, if the manufacturer of the component certifies that:

1. The component was tested to at least the pressure required for the pipeline to which it is being added; or

2. The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and that the prototype was tested to at least the pressure required for the pipeline to which it is being added.

(e) For fabricated units and short sections of pipe, for which a postinstallation test is impractical, a preinstallation strength test shall be conducted by maintaining pressure at or above test pressure for at least four (4) hours.

(4) Test requirements for pipelines to operate at hoop stress less than thirty (30) percent of SMYS and at or above 100 psig. Except for service lines and plastic pipelines, each segment of pipeline to be operated at hoop stress less than thirty (30) percent of SMYS and at or above 100 psig shall be tested in accordance with the following:

(a) The pipeline operator shall use a test procedure that will insure discovery of all potentially hazardous leaks in the segment being tested.

(b) If, during the test, the segment is to be stressed to twenty (20) percent or more of SMYS, and natural gas, air or inert gas is the test medium:

1. A leak test shall be made at pressure between 100 psig and the pressure required to produce hoop stress of twenty (20) percent of SMYS; or

2. The line shall be walked to check for leaks while hoop stress is held at approximately twenty (20) percent of SMYS.

(c) Pressure shall be maintained at or above test pressure for at least one (1) hour.

(5) Test requirements for pipelines to operate below 100 psig. Except for service lines and plastic pipelines, each segment of pipeline to be operated below 100 psig shall be leak tested in accordance with the following:

(a) The test procedure used shall ensure discovery of all potentially hazardous leaks in the segment being tested.

(b) Each main to be operated at less than one (1) psig shall be tested to at least ten (10) psig and each main to be operated at or above one (1) psig shall be tested to at least ninety (90) psig.

(6) Test requirements for service lines.

(a) Each segment of service line (other than plastic) shall be leak tested in accordance with this section before being placed in service. If feasible, the service-line connection to the main shall be included in the test; if not feasible, it shall be given a leakage test at the operating pressure when placed in service.

(b) Each segment of service line (other than plastic) intended to be operated at a pressure of at least one (1) psig but not more than forty (40) psig shall be given a leak test at pressure of not less than fifty (50) psig.

(c) Each segment of service line (other than plastic) to be operated at pressures of more than forty (40) psig shall be tested to the maximum operating pressure or ninety (90) psig, whichever is greater, except that each segment of steel service line stressed to twenty (20) percent or more of SMYS shall be tested in accordance with subsection (4) of this section.

(7) Test requirements for plastic pipelines.

(a) Each segment of plastic pipeline shall be tested in accordance with this subsection.

(b) The test procedure shall insure discovery of all potentially hazardous leaks in the segment being tested.

(c) The test pressure shall be at least 150 percent of maximum operating pressure or fifty (50) psig, whichever is greater. However, maximum test pressure shall not be more than three (3) times the design pressure of the pipe.

(d) Temperature of thermoplastic material shall be no more than 100 degrees Fahrenheit during the test.

(8) Environmental protection and safety requirements.

(a) In conducting tests under this subsection, each operator shall insure that every reasonable precaution is taken to protect its employees and the general public during testing. Whenever hoop stress of the segment of pipeline being tested will exceed fifty (50) percent of SMYS, the operator shall take all practicable steps to keep persons not working on the testing operation outside the testing area until pressure is reduced to or below the proposed maximum allowable operating pressure.

(b) The operator shall insure that the test medium is disposed of in a manner that will minimize damage to the environment.

(9) Records. Each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under subsections (3) and (4) of this section. The record shall contain at least the following information:

(a) Operator's name, name of operator's employee responsible for making the test, and name of any test company used.

(b) Test medium used.

(c) Test pressure.
(d) Test duration.
(e) Pressure recording charts, or other record of pressure readings.
(f) Elevation variations, whenever significant for the particular test.
(g) Leaks and failures noted and their disposition.

Section 12. Uprating. (1) Scope. This subsection prescribes minimum requirements for increasing maximum allowable operation pressures (uprating) for pipelines.

(2) General requirements.

(a) Pressure increases. Whenever provisions of this subsection require that an increase in operating pressure be made in increments, pressure shall be increased gradually, at a rate that can be controlled, and in accordance with the following:

1. At the end of each incremental increase, pressure shall be held constant while the entire segment of pipeline affected is checked for leaks.

2. Each leak detected shall be repaired before a further pressure increase is made, except that a leak deemed nonhazardous need not be repaired, if it is monitored during pressure increase and it does not become hazardous.

(b) Records. Each operator who uprates a segment of pipeline shall retain for the life of the segment a record of each investigation required by this subsection, all work performed, and each pressure test conducted, in connection with the uprating.

(c) Written plan. Each operator who uprates a segment of pipeline shall establish a written procedure that will ensure compliance with each applicable requirement of this subsection.

(d) Limitation on increase in maximum allowable operating pressure. Except as provided in subsection (3) of this section, a new maximum allowable operating pressure established under this subsection shall not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location.

(3) Uprating to a pressure that will produce hoop stress of thirty (30) percent or more of SMYS in steel pipeline.

(a) Unless the requirements of this section have been met, no person shall subject any segment of steel pipeline to operating pressure that will produce hoop stress of thirty (30) percent or more of SMYS and that is above the established maximum allowable operating pressure.

(b) Before increasing operating pressure above previously established maximum allowable operating pressure the operator shall:

1. Review the design, operation, and maintenance history, and previous testing of the segment of pipeline to determine if the proposed increase is safe and consistent with the requirements of this part; and

2. Make any repairs, replacements, or alterations in the segment of pipeline that are necessary for safe operation at the increased pressure.

(c) After complying with paragraph (b) of this subsection, an operator may increase maximum allowable operating pressure of a segment of pipeline constructed before September 12, 1970, to the highest pressure that is permitted under Section 13(11) of this administrative regulation, using as test pressure the highest pressure subjected (either in a strength test or in actual operation).

(d) After complying with paragraph (b) of this subsection, an operator that does not qualify under paragraph (c) of this subsection may increase the previously established maximum allowable operating pressure if at least one (1) of the following requirements is met:

1. The segment of pipeline is successfully tested in accordance with the requirements of this part for a new line of the same material in the same location.

2. An increased maximum allowable operating pressure may be established for a segment of pipeline in a Class 1 location if the line has not previously been tested; and if:

a. It is impractical to test it in accordance with the requirements of this part;

b. The new maximum operating pressure does not exceed eighty (80) percent of that allowed for a new line of the same design in the same location; and

c. The operator determines that the new maximum allowable operating pressure is consistent with the condition of the segment of pipeline and the design requirements of this administrative regulation.

(e) Where a segment of pipeline is uprated in accordance with paragraph (c) or (d) of this subsection, the increase in pressure shall be made in increments that are equal to:

1. Ten (10) percent of the pressure before the uprating; or

2. Twenty-five (25) percent of total pressure increase, whichever produces the fewer number of increments.

(4) Uprating: Steel pipelines to a pressure that will produce hoop stress less than thirty (30) percent of SMYS; plastic, cast iron, and ductile iron pipelines.

(a) Unless requirements of this subsection have been met, no person shall subject:

1. A segment of steel pipeline to operating pressure that will produce hoop stress less than thirty (30) percent of SMYS and is above the previously established maximum allowable operating pressure; or

2. A plastic, cast iron, or ductile iron pipeline segment to an operating pressure above the previously established maximum allowable operating pressure.

(b) Before increasing operation pressure above the previously established maximum allowable operating pressure, the operator shall:

1. Review the design, operation, and maintenance history of the segment of pipeline;

2. Make a leakage survey (if it has been more than one (1) year since the last survey) and repair any leaks that are found, except that a leak deemed nonhazardous need not be repaired, if it is monitored during the pressure increase and it does not become hazardous;

3. Make any repairs, replacements, or alterations in the segment of pipeline that are necessary for safe operation at the increased pressure;

4. Reinforce or anchor offsets, bends and dead ends in pipe joined by compression couplings or bell and spigot joints to prevent failure of the pipe joint, if the offset, bend or dead end is exposed in an excavation;

5. Isolate the segment of pipeline in which pressure is to be increased from any adjacent segment that will continue to be operated at lower pressure; and

6. If the pressure in mains or service lines, or both, is to be higher than the pressure delivered to the customer, install a service regulator on each service line and test each regulator to determine that it is functioning. Pressure may be increased as necessary to test each regulator, after a regulator has been installed on each pipeline subject to the increased pressure.

(c) After complying with paragraph (b) of this subsection, the increase in maximum allowable operating pressure shall be made in increments equal to ten (10) psig or twenty-five (25) percent of total pressure increase, whichever produces the fewer number of increments. Whenever the requirements of paragraph (b)6 of this subsection apply, there shall be at least two (2) approximately equal incremental increases.

(d) If records for cast iron or ductile iron pipeline facilities are not complete enough to determine stresses produced by internal pressure, trench loading, rolling loads, beam stresses, and other bending loads, in evaluating the level of safety of the pipeline when operating at the proposed increased pressure, the following procedures shall be followed:

1. In estimating the stresses, if original laying conditions cannot be ascertained, the operator shall assume that cast iron pipe was supported on blocks with tamped backfill and that ductile iron pipe was laid without blocks with tamped backfill.

2. Unless actual maximum cover depth is known, the operator shall measure the actual cover in at least three (3) places where the cover is most likely to be greatest and shall use the greatest cover measured.

3. Unless actual nominal wall thickness is known, the operator shall determine the wall thickness by cutting and measuring coupons from at least three (3) separate pipe lengths. The coupons shall be cut from pipe lengths in areas where the cover depth is most likely to be greatest. The average of all measurements taken must be increased by the allowance indicated in the following table:

	Allowance (inches)		
	Cast iron pipe		
Pipe size (inches)	Pit cast pipe	Centrifugally cast pipe	Ductile iron pipe
3-8	0.075	0.065	0.065
10-12	0.08	0.07	0.07
14-24	0.08	0.08	0.075
30-42	0.09	0.09	0.075
48	0.09	0.09	0.08
54-60	0.09		

4. For cast iron pipe, unless the pipe manufacturing process is known, the operator shall assume that the pipe is pit cast pipe with bursting tensile strength of 11,000 psig and modulus of rupture of 31,000 psig.

Section 13. Operations. (1) Scope. This section prescribes minimum requirements for operation of pipeline facilities.

(2) General provisions.

(a) No person shall operate a segment of pipeline unless it is operated in accordance with this section.

(b) Each operator shall establish a written operating and maintenance plan meeting the requirements of this administrative regulation and keep records necessary to administer the plan.

(3) Essentials of operating and maintenance plan. Each operator shall include the following in its operating and maintenance plan:

(a) Instructions for employees covering operating and maintenance procedures during normal operations and repairs.

(b) Items required to be included by the provisions of Section 14 of this administrative regulation.

(c) Specific programs relating to facilities presenting the greatest hazard to public safety either in an emergency or because of extraordinary construction or maintenance requirements.

(d) A program for conversion procedures, if conversion of a low-pressure distribution system to higher pressure is contemplated.

(e) Provision for periodic inspections to ensure that operating pressures are appropriate for class location.

(f) Instructions enabling personnel who perform operation and maintenance activities to recognize conditions that are potentially safety-related conditions subject to reporting requirements of 807 KAR 5:027, Section 12.

(4) Initial determination of class location and confirmation or establishment of maximum allowable operating pressure.

(a) Before April 15, 1971, each operator shall complete a study to determine for each segment of pipeline with maximum allowable operating pressure that will produce hoop stress that is more than forty (40) percent of SMYS:

1. The present class location of all such pipelines in its system; and

2. Whether hoop stress corresponding to maximum allowable operating pressure for each segment of pipeline is commensurate with the present class location.

(b) Each segment of pipeline that has been determined under paragraph (a) of this subsection to have an established maximum allowable operating pressure producing hoop stress not commensurate with the class location of the segment of pipeline and that is found in satisfactory condition, shall have the maximum allowable operating pressure confirmed or revised in accordance with subsection (6) of this section. Confirmation or revision shall be completed not later than December 31, 1974.

(c) Each operator required to confirm or revise an established maximum allowable operating pressure under paragraph (b) of this subsection shall, not later than December 31, 1971, prepare a comprehensive plan, including a schedule, for carrying out the confirmations or revisions. The comprehensive plan must also provide for confirmations or revisions determined to be necessary under subsection (5) of this section, to the extent that they are caused by changes in class locations taking place before July 1, 1973.

(5) Change in class location: required study. Whenever increase in population density indicates a change in class location for a segment of existing steel pipeline operating at hoop stress that is more than forty (40) percent of SMYS, or indicates that hoop stress corresponding to the established maximum allowable operating pressure for a segment of existing pipeline is not commensurate with the present class location, the operator shall immediately make a study to determine:

(a) Present class location for the segment involved;

(b) Design, construction, and testing procedures followed in original construction, and a comparison of these procedures with those required for the present class location by applicable provisions of this part;

(c) Physical condition of the segment to the extent it can be ascertained from available records;

(d) Operating and maintenance history of the segment;

(e) Maximum actual operating pressure and the corresponding operating hoop stress, taking pressure gradient into account, for the segment of pipeline involved; and

(f) Actual area affected by the population density increase, and physical barriers or other factors which may limit further expansion of the more densely populated area.

(6) Change in class location: confirmation or revision of maximum allowable operating pressure. If hoop stress corresponding to the established maximum allowable operating pressure of a segment of pipeline is not commensurate with present class location, and the segment is in satisfactory physical condition, the maximum allowable operating pressure of that segment of pipeline shall be confirmed or revised according to one (1) of the following requirements:

(a) If the segment involved has been previously tested in place for a period of not less than eight (8) hours, the maximum allowable operating pressure is eight-tenths (0.8) times the test pressure in Class 2 locations, 0.667 times the test pressure in Class 3 locations, or 0.555 times the test pressure in Class 4 locations. The corresponding hoop stress will not exceed seventy-two (72) percent of SMYS of the pipe in Class 2 locations, sixty (60) percent of SMYS in Class 3 locations, or fifty (50) percent of SMYS in Class 4 locations.

(b) The maximum allowable operating pressure shall be reduced so that corresponding hoop stress is not more than that allowed by this part for new segments of pipelines in the existing class location.

(c) The segment involved shall be tested in accordance with applicable requirements of Section 11 of this administrative regulation, and its maximum allowable operating pressure shall then be established according to the following criteria:

1. Maximum allowable operating pressure after the requalification test is eight-tenths (0.8) times the test pressure for Class 2 locations, 0.667 times the test pressure for Class 3 locations, and 0.555 times the test pressure for Class 4 locations.

2. Maximum allowable operating pressure confirmed or revised in accordance with this subsection, shall not exceed maximum allowable operating pressure established before confirmation or revision.

3. Corresponding hoop stress shall not exceed seventy-two (72) percent of SMYS of the pipe in Class 2 locations, sixty (60) percent of SMYS in Class 3 locations, or fifty (50) percent of the SMYS in Class 4 locations.

(d) Confirmation or revision of the maximum allowable operating pressure of a segment of pipeline in accordance with this section does not preclude the application of Section 12(2) and (3) of this administrative regulation.

(e) Confirmation or revision of maximum allowable operating pressure that is required as a result of subsection (5) of this section shall be completed within eighteen (18) months of the change in class location. Pressure reduction under paragraphs (a) and (b) of this subsection within the eighteen (18) month period does not preclude establishing a maximum allowable operating pressure under paragraph (c) of this subsection at a later date.

(7) Continuing surveillance.

(a) Each operator shall have a procedure to monitor its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.

(b) If a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with subsection (11)(a) and (b) of this section.

(8) Damage prevention program.

(a) Except for pipelines listed in paragraph (c) of this subsection, each operator of a buried pipeline shall carry out in accordance with this subsection a written program to prevent damage to that pipeline by excavation activities. For the purpose of this subsection, "excavating activities" include excavation, blasting, boring, tunneling, backfilling, removal of aboveground structures by either explosive or mechanical means, and other earth moving operations. An operator may perform any duties required by paragraph (b) of this subsection through participation in a public service program, such as a "one-call" system, but such participation does not relieve the operator of responsibility for compliance with this subsection.

(b) The damage prevention program required by paragraph (a) of this subsection shall, at a minimum:

1. Include the identity, on a current basis, of persons who normally engage in excavation activities in the vicinity of the pipeline.

2. Provide for notification to the public in the vicinity of the pipeline and actual notification to persons identified in paragraph (b)1 of this subsection as often as needed to make them aware of the existence and purpose of the damage prevention program and how to learn the location of underground pipelines prior to excavation activities.

3. Provide a means of receiving and recording notification of planned excavation activities.

4. If the operator has buried pipelines in the area of excavation activity, provide for actual notification to persons who give notice of their intent to excavate of temporary marking to be provided and how to identify the markings.

5. Provide for temporary marking of buried pipelines near excavation activity before, as far as practical, activity begins.

6. Provide for frequent inspection of pipeline an operator has reason to believe could be damaged by excavation activities to verify the integrity of the pipeline; and in the case of blasting, any inspection shall include leakage surveys.

(c) A damage prevention program under this subsection is not required for the following pipelines:

1. Pipelines in a Class 1 or 2 location.

2. Pipelines in a Class 3 location defined by Section 1(3)(d)2 of this administrative regulation that are marked in accordance with Section 14(5) of this administrative regulation.

3. Pipelines to which access is physically controlled by the operator.

4. Pipelines that are part of a petroleum gas system subject to Section 1(6) of this administrative regulation or part of a distribution system operated by a person in connection with that person's leasing of real property or by a condominium or cooperative association.

(9) Emergency plans.

(a) Each operator shall establish written procedures to minimize hazard resulting from a gas pipeline emergency. At a minimum, procedures shall provide for the following:

1. Receiving, identifying, and classifying notices of events which require immediate response by the operator.

2. Establishing and maintaining adequate means of communication with appropriate fire, police, and other public officials.

3. Prompt and effective response to a notice of each type of emergency, including gas, fire, explosion or natural disaster near or involving a building with gas pipeline or pipeline facility.

4. Availability of personnel, equipment, tools, and materials, as needed at the scene of emergency.

5. Actions directed toward protecting people first and then property.

6. Emergency shutdown and pressure reduction in any section of the operator's pipeline system necessary to minimize hazards to life or property.

7. Making safe any actual or potential hazard to life or property.

8. Notifying appropriate fire, police and other public officials of gas pipeline emergencies and coordinating with them, both planned responses and actual responses during an emergency.

9. Safely restoring any service outage.

10. Beginning action under subsection (10) of this section, if applicable, as soon after the end of the emergency as possible.

(b) Each operator shall:

1. Furnish its supervisors who are responsible for emergency action a copy of that portion of the latest edition of emergency procedures established under paragraph (a) of this subsection as necessary for compliance with those procedures.

2. Train appropriate operating personnel in emergency procedures and verify that training is effective.

3. Review employee activities to determine whether procedures were effectively followed in each emergency.

(c) Each operator shall establish and maintain liaison with appropriate fire, police, and other public officials to:

1. Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;

2. Acquaint officials with the operator's ability to respond to a gas pipeline emergency;

3. Identify types of gas pipeline emergencies of which the operator notifies officials; and

4. Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

(d) Each operator shall establish a continuing educational program to enable customers, the public, appropriate governmental organizations, and person engaged in excavation-related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator or appropriate public officials. The program and media used shall be as comprehensive as necessary to reach all areas in which the operator transports gas. The program shall be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

(10) Investigation of failures. Each operator shall establish procedures for analyzing accidents and failure, including selection of samples of the failed facility or equipment for laboratory examination, where appropriate, to determine the causes of the failure and to minimize the possibility of recurrence.

(11) Maximum allowable operating pressure: steel or plastic pipelines.

(a) Except as provided in paragraph (c) of this subsection, no person shall operate a segment of steel or plastic pipeline at a pressure that exceeds the lowest of the following:

1. Design pressure of the weakest element in the segment, determined in accordance with Sections 3 and 4 of this administrative regulation.

2. Pressure obtained by dividing the pressure to which the segment was tested after construction as follows:

a. For plastic pipe in all locations, test pressure is divided by a factor of one and five-tenths (1.5).

b. For steel pipe operated at 100 psig or more, test pressure is divided by a factor determined in accordance with the following table:

Class Location	Segment Installed Before 11/12/70	Segment Installed After 11/11/70	Converted under Section 1(8)
1	1.10	1.10	1.25
2	1.25	1.25	1.25
3	1.40	1.50	1.50
4	1.40	1.50	1.50

3. Highest actual operating pressure to which the segment was subjected during the five (5) years preceding July 1, 1970, unless the segment was tested in accordance with paragraph (a)2 of this subsection after July 1, 1965, or the segment was uprated in accordance with Section 12 of this administrative regulation.

4. For furnace butt welded steel pipe, pressure equal to sixty (60) percent of the mill test pressure to which the pipe was subjected.

5. For steel pipe other than furnace butt welded pipe, pressure equal to eighty-five (85) percent of the highest test pressure to which the pipe has been subjected, whether by mill test or by post installation test.

6. Pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and actual operating pressure.

(b) No person shall operate a segment to which paragraph (a)6 of this subsection is applicable, unless overpressure protective devices are installed on the segment to prevent maximum allowable operating pressure from being exceeded, in accordance with Section 4(30) of this administrative regulation.

(c) Notwithstanding other requirements of this subsection, an operator may operate a segment of pipeline found to be in satisfactory condition, considering its operating and maintenance history, at the highest actual operating pressure to which the segment was subjected during the five (5) years preceding July 1, 1970.

(12) Maximum allowable operating pressure: high-pressure distribution systems.

(a) No person shall operate a segment of high-pressure distribution system at a pressure that exceeds the lowest of the following pressures, as applicable:

1. Design pressure of the weakest element in the segment, determined in accordance with Sections 3 and 4 of this administrative regulation.

2. Sixty (60) psig, for a segment of a distribution system otherwise designed to operate at over sixty (60) psig, unless service lines in the segment are equipped with service regulators or other pressure limited devices in series that meet the requirements of Section 4(31)(c) of this administrative regulation.

3. Twenty-five (25) psig, in segments of cast iron pipe in which there are unreinforced bell and spigot joints.

4. Pressure limits to which a joint could be subjected without parting.

5. Pressure determined by the operator to be maximum safe pressure after considering the history of the segment, particularly known corrosion and actual operating pressures.

(b) No person shall operate a segment of pipeline to which paragraph (a)5 of this subsection applies, unless overpressure protective devices are installed on the segment to prevent the maximum allowable operating pressure from being exceeded, in accordance with Section 4(30) of this administrative regulation.

(13) Maximum and minimum allowable operating pressure: low-pressure distribution systems.

(a) No person shall operate a low-pressure distribution system at a pressure high enough to make unsafe the operation of any connected and properly adjusted low-pressure gas burning equipment.

(b) No person shall operate a low-pressure distribution system at a pressure lower than the minimum pressure at which the safe and continuing operation of any connected and properly adjusted low-pressure gas burning equipment can be assured.

(14) Standard pressure.

(a) All utilities supplying gas for light, heat, power or other purposes shall, subject to approval of the commission, adopt and maintain a standard pressure as measured at the customer's meter outlet. In adopting such standard pressure the utility may divide its distribution system into districts and establish a separate standard pressure for each district, or the utility may establish a single standard pressure for its distribution system as a whole.

(b) The standard pressure to be adopted as provided in this section shall be a part of the utility's schedule of rates and general rules and administrative regulations.

(c) No change shall be made by a utility in standard pressure or pressure adopted except in case of emergency.

(15) Allowable variations of standard service pressure.

(a) Variations of standard pressure as established under the preceding rule shall not exceed the adopted pressure by more than fifty (50) percent plus or minus.

(b) A utility supplying gas shall not be deemed to have violated paragraph (a) of this subsection, if it can be shown that variations from said pressure are due to:

1. Use of gas by the customer in violation of contract under the rules of the utility.

2. Infrequent fluctuations of short duration due to unavoidable conditions of operation.

(c) Allowable variations in standard pressure other than those covered by paragraph (a) of this subsection shall be established by the commission when application is made and good cause shown for allowance.

(d) The gas pressures required above shall be maintained at the outlet of the meter to provide safe and efficient utilization of gas in properly adjusted appliances supplied through adequately sized customer's facilities.

(16) Continuity of service.

(a) The utility shall keep a complete record of all interruptions on its entire system or on major divisions of its system. The record shall show the cause of interruption, date, time, duration, remedy and steps taken to prevent recurrence. The commission shall be notified of major interruptions as soon as they come to the attention of the utility and a complete report made after restoration of service.

(b) Interruption of service, as used here, shall also mean the interval of time during which pressure drops below fifty (50) percent of such adopted standard pressure on the entire system, or on one (1) or more entire major division or divisions for which an average standard pressure has been adopted.

(17) Odorization of gas.

(a) Combustible gas in a distribution line shall contain a natural odorant or be odorized so that at a concentration in air of one-fifth (1/5) of the lower explosive limit (approximately one (1) percent by volume), gas is readily detectable by a person with a normal sense of smell.

(b) Combustible gas in a transmission line in a Class 3 or Class 4 location shall comply with the requirements of paragraph (a) of this subsection unless:

1. At least fifty (50) percent of the length of the line downstream from that location is in a Class 1 or Class 2 location;

2. The line transports gas to any of the following facilities which received gas without an odorant from that line before May 5, 1975:

a. Underground storage field;

b. Gas processing plant;

c. Gas dehydration plant; or

d. Industrial plant using gas in a process where presence of an odorant makes the end product unfit for the purpose for which it is intended; reduces the activity of a catalyst; or reduces the percentage completion of a chemical reaction.

3. When lateral line transports gas to a distribution center, at least fifty (50) percent of the length of that line is in a Class 1 or Class 2 location.

(c) Odorant shall not be harmful to persons, materials, or pipe.

(d) Products of combustion from the odorant shall not be toxic when breathed nor shall they be corrosive or harmful to those materials to which the products of combustion will be exposed.

(e) Odorant shall not be soluble in water to an extent greater than two and one-half (2.5) parts to 100 parts by weight.

(f) Equipment for odorization shall introduce odorant without wide variations in the level of odorant.

(g) Each utility shall conduct sampling of combustible gases to assure proper concentration of odorant in accordance with this section unless otherwise approved by the commission.

1. The utility shall sample gases in each separately odorized system at approximate furthest point from injection of odorant.

2. Sampling shall be conducted with equipment designed to detect and verify proper level of odorant.

3. Separately odorized systems with ten (10) or fewer customers shall be sampled for proper odorant level at least once each ninety-five (95) days.

4. Separately odorized systems with more than ten (10) customers shall be sampled for proper odorant level at least once each week.

(18) Tapping pipelines under pressure. Each tap made on a pipeline under pressure shall be performed by a crew qualified to make hot taps.

(19) Purging of pipelines.

(a) When pipeline is being purged of air by use of gas, the gas shall be released into one (1) end of the line in a moderately rapid and continuous flow. If gas cannot be supplied in sufficient quantity to prevent the formation of a hazardous mixture of gas and air, a slug of inert gas shall be released into the line before the gas.

(b) When pipeline is being purged of gas by use of air, the air shall be released into one (1) end of the line in a moderately rapid and continuous flow. If air cannot be supplied in sufficient quantity to prevent the formation of a hazardous mixture of gas and air, a slug of inert gas shall be released into the line before the air.

Section 14. Maintenance. (1) Scope. This section prescribes minimum requirements for maintenance of pipeline facilities.

(2) General.

(a) No person shall operate a segment of pipeline, unless it is maintained in accordance with this section.

(b) Each segment of pipeline that becomes unsafe shall be replaced, repaired, or removed from service.

(c) Hazardous leaks must be repaired promptly.

(3) Transmission lines: patrolling.

(a) Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation.

(b) Frequency of patrols is determined by size of line, operating pressures, class location, terrain, weather, and other relevant factors, but intervals between patrols shall not be longer than prescribed in the following table:

Class Location of Line	Maximum Interval Between Periods	
	At Highway and Railroad Crossings	At All Other Places
1 & 2	7 1/2 months; but at least twice each calendar year	15 months; but at least once each calendar year
3	4 1/2 months; but at least four times each calendar year	7 1/2 months; but at least twice each calendar year
4	4 1/2 months; but at least four times each calendar year	4 1/2 months; but at least four times each calendar year

(4) Transmission lines: leakage surveys.

(a) Each operator of a transmission line shall provide for periodic leakage surveys of line in its operating and maintenance plan.

(b) Leakage surveys of a transmission line shall be conducted at intervals not exceeding fifteen (15) months; but at least once each calendar year. However, if a transmission line transports gas in conformity with Section 13(17) of this administrative regulation without an odor or odorant, leakage surveys using leak detector equipment shall be conducted;

1. In Class 3 locations, at intervals not exceeding seven and one-half (7 1/2) months; but at least twice each calendar year; and

2. In Class 4 locations, at intervals not exceeding four and one-half (4 1/2) months; but at least four (4) times each calendar year.

(5) Line markers for mains and transmission lines.

(a) Buried pipelines. Except as provided in paragraph (b) of this subsection, a line marker shall be placed and maintained as close as practical over each buried main and transmission line:

1. At each crossing of a public road or railroad; and

2. Wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.

(b) Exceptions for buried pipelines. Line markers are not required for buried mains and transmission lines:

1. Located under inland navigable waters;

2. In Class 3 or Class 4 locations:

a. Where placement of a marker is impractical; or

b. Where a damage prevention program is in effect under Section 13(8) of this administrative regulation; or

3. In the case of navigable waterway crossings, within 100 feet of a line marker placed and maintained at that waterway in accordance with this section.

(c) Pipelines above ground. Line markers shall be placed and maintained along each section of a main and transmission line located above ground in an area accessible to the public.

(d) Markers other than at navigable waterways. The following shall be written legibly on a background of sharply contrasting color on each line marker not placed at a navigable waterway:

1. The word "Warning," "Caution," or "Danger," followed by the words "Gas (or name of gas transported) Pipeline," all of which, except for markers in heavily developed urban areas, shall be in letters at least one (1) inch high with one-quarter (1/4) inch stroke.

2. The name of the operator and telephone number (including area code) where the operator can be reached at all times.

(e) Markers at navigable waterways. Each line marker at a navigable waterway shall have the following characteristics:

1. A rectangular sign with a narrow strip along each edge, colored international orange, and the area between lettering on the sign and boundary strips colored white.

2. Written on the sign in block style, black letters:

a. The word "Warning," "Caution," or "Danger," followed by the words, "Do Not Anchor or Dredge" and the words, "Gas (or name of gas transported Pipeline Crossing;" and

b. The name of the operator and telephone number (including area code) where the operator can be reached at all times.

3. In overcast daylight, the sign is visible and the writing required by paragraph (e)2a of this subsection is legible, from approaching or passing vessels that may damage or interfere with the pipeline.

(6) Transmission lines: recordkeeping. Each utility shall keep records covering each leak discovered, repair made, transmission line break, leakage survey, line patrol, and inspection, for as long as the segment of transmission line involved remains in service.

(7) Transmission lines: general requirements for repair procedures.

(a) Each utility shall take immediate temporary measures to protect the public whenever:

1. A leak, imperfection, or damage that impairs its serviceability is found in a segment of steel transmission line operating at or above forty (40) percent of SMYS; and

2. It is not feasible to make a permanent repair at the time of discovery. As soon as feasible, the utility shall make permanent repairs. Except as provided in subsection (10)(a)3 of this section, no utility shall use a welded patch as a means of repair.

(8) Transmission lines: permanent field repair of imperfections and damages.

(a) Except as provided in paragraph (b) of this subsection, each imperfection or damage that impairs serviceability of a segment of steel transmission line operating at or above forty (40) percent of SMYS must be repaired as follows:

1. If it is feasible to take the segment out of service, the imperfection or damage must be removed by cutting out a cylindrical piece of pipe and replacing it with pipe of similar or greater design strength.

2. If it is not feasible to take the segment out of service, a full encirclement welded split sleeve of appropriate design shall be applied over the imperfection or damage.

3. If the segment is not taken out of service, operating pressure shall be reduced to a safe level during repairs.

(b) Submerged pipelines in inland navigable waters may be repaired by mechanically applying a full encirclement split sleeve of appropriate design over the imperfection or damage.

(9) Transmission lines: permanent field repair of welds. Each weld that is unacceptable under Section 5(11)(c) of this administrative regulation shall be repaired as follows:

(a) If it is feasible to take the segment of transmission line out of service, the weld shall be repaired in accordance with applicable requirements of Section 5(13) of this administrative regulation.

(b) A weld may be repaired in accordance with Section 5(13) of this administrative regulation while the segment of transmission line is in service if:

1. The weld is not leaking;

2. Pressure in the segment is reduced so that it does not produce a stress more than twenty (20) percent of SMYS of the pipe; and

3. Grinding of the defective area can be limited so that at least one-eighth (1/8) inch thickness in the pipe weld remains.

(c) A defective weld which cannot be repaired in accordance with paragraph (a) or (b) of this subsection shall be repaired by installing a full encirclement welded split sleeve of appropriate design.

(10) Transmission lines: permanent field repair of leaks.

(a) Except as provided in paragraph (b) of this subsection, each permanent field repair of a leak on a transmission line shall be made as follows:

1. If feasible, the segment of transmission line shall be taken out of service and repaired by cutting out a cylindrical piece of pipe and replacing it with pipe of similar or greater design strength.

2. If it is not feasible to take the segment of transmission line out of service, repairs shall be made by installing a full encirclement welded split sleeve of appropriate design, unless the transmission line:

a. Is joined by mechanical couplings; and

b. Operates at less than forty (40) percent of SMYS.

3. If the leak is due to a corrosion pit, repair may be made by installing properly designed bolt-on leak clamp. If the leak is due to a corrosion pit and on pipe of not more than 40,000 psi SMYS, repair may be made by fillet welding over the pitted area a steel plate patch with rounded corners, of the same or greater thickness than the pipe, and not more than one-half (1/2) of the diameter of the pipe in size.

(b) Submerged pipelines in inland navigable waters may be repaired by mechanically applying a full encirclement split sleeve of appropriate design over the leak.

(11) Transmission lines: testing of repairs.

(a) Testing of replacement pipe. If a segment of transmission line is repaired by cutting out the damaged portion of pipe as a cylinder, replacement pipe shall be tested to the pressure required for a new line installed in the same location. This test may be made on pipe before it is installed.

(b) Testing of repairs made by welding. Each repair made by welding in accordance with subsections (8), (9) and (10) of this section shall be examined in accordance with Section 5(11) of this administrative regulation.

(12) Distribution systems: patrolling.

(a) The frequency of patrolling mains shall be determined by the severity of conditions which could cause failure or leakage, and the consequent hazards to public safety.

(b) Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage shall be patrolled at intervals not exceeding four and one-half (4 1/2) months, but at least four (4) times each calendar year.

(13) Distribution systems: leakage surveys and procedures.

(a) Each utility shall provide for periodic leakage surveys in its operating and maintenance plan.

(b) The type and scope of the leakage control program shall be determined by the nature of the operations and local conditions; but it shall meet the following minimum requirements:

1. At least once each calendar year, but at intervals not exceeding fifteen (15) months, a gas detector survey shall be conducted in business districts, involving tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, and where access is not denied at inside basement walls of public and commercial buildings located adjacent to gas mains and service lines, at cracks in pavement and sidewalks and at other locations providing an opportunity for finding gas leaks.

2. Leakage surveys of the distribution system outside of principal business areas shall be made as frequently as necessary, but at intervals not exceeding five (5) years.

(c) Each gas utility shall maintain a record for five (5) years of gas leaks reported by the public, utility employees, or detected by leak surveys.

(d) Each leak detected shall be graded according to the following standard:

1. Grade 1 - hazardous leaks. A leak that represents an existing or probable hazard to persons or property and requires immediate repair or continuous action until conditions are no longer hazardous.

2. Grade 2 - nonhazardous leaks. A leak that is recognized as being nonhazardous at time of detection but justifies scheduled repair based on probable future hazard.

3. Grade 3 - nuisance leaks. A leak that is nonhazardous at time of detection and can be reasonably expected to remain nonhazardous. Grade 3 leaks shall be monitored and reevaluated until the leak is regraded or no longer results in a reading.

(14) Test requirements for reinstating service lines.

(a) Except as provided in paragraph (b) of this subsection, each disconnected service line shall be tested in the same manner as a new service line, before being reinstated.

(b) Each service line temporarily disconnected from the main shall be tested from point of disconnection to the service line valve in the same manner as a new service line, before reconnecting. However, if provisions are made to maintain continuous service, such as by installation of a bypass, any part of the original service line used to maintain continuous service need not be tested.

(15) Abandonment or inactivation of facilities.

(a) Each utility shall provide in its operating and maintenance plan for abandonment or deactivation of pipelines, including provisions for meeting each requirement of this subsection.

(b) Each pipeline abandoned in place shall be disconnected from all sources and supplies of gas, purged of gas, and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is not potential hazard.

(c) Except for service lines, each inactive pipeline not being maintained under this section shall be disconnected from all sources and supplies of gas, purged of gas, and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is not potential hazard.

(d) Whenever service to a customer is discontinued, one (1) of the following steps shall be taken:

1. The valve that is closed to prevent flow of gas to the customer shall be provided with a locking device or other means designed to prevent opening of the valve by persons other than those authorized by the utility.

2. A mechanical device or fitting that will prevent flow of gas shall be installed in the service line or in the meter assembly.

3. The customer's piping shall be physically disconnected from the gas supply and the open pipe ends sealed.

(e) If air is used for purging, the utility shall insure that a combustible mixture is not present after purging.

(f) Each abandoned vault shall be filled with suitable compacted material.

(16) Compressor stations: procedures for gas compressor units. Each utility shall establish starting, operating, and shutdown procedures for gas compressor units.

(17) Compressor stations: inspection and testing of relief devices.

(a) Except for rupture discs, each pressure relieving device in a compressor station shall be inspected and tested in accordance with subsections (21) and (23) of this section, and shall be operated periodically to determine that it opens at the correct set pressure.

(b) Any defective or inadequate equipment found shall be promptly repaired or replaced.

(c) Each remote control shutdown device shall be inspected and tested at intervals not to exceed fifteen (15) months, but at least once each calendar year to determine that it functions properly.

(18) Compressor stations: isolation of equipment for maintenance or alterations. Each utility shall establish procedures for maintaining compressor stations, including provisions for isolating units or sections of pipe and for purging before returning to service.

(19) Compressor stations: storage of combustible materials.

(a) Flammable or combustible materials in quantities beyond those required for everyday use, or other than those normally used in compressor buildings, shall be stored a safe distance from the compressor building.

(b) Above ground oil or gasoline storage tanks shall be protected in accordance with National Fire Protection Association Standard No. 30.

(20) Pipe-type and bottle-type holders: plan for inspection and testing. Each utility having a pipe-type or bottle-type holder shall establish a plan for systematic, routine inspection and testing of these facilities, including the following:

(a) Provision shall be made for detecting external corrosion before strength of the container has been impaired.

(b) Periodic sampling and testing of gas in storage shall be made to determine the dew point of vapors contained in stored gas, that if condensed, might cause internal corrosion or interfere with safe operation of the storage plant.

(c) Pressure control and pressure limiting equipment shall be inspected and tested periodically to determine that it is in a safe operating condition and has adequate capacity.

(21) Pressure limiting and regulating stations: inspection and testing. Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment shall be subjected, at intervals not exceeding fifteen (15) months, but at least once each calendar year, to inspections and tests to determine that it is:

(a) In good mechanical condition;

(b) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;

(c) Set to function at the correct pressure; and

(d) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

(22) Pressure limiting and regulating stations: telemetering or recording gauges.

(a) Each utility shall keep in continual use one (1) or more accurate recording pressure gauges on its distribution systems. These gauges shall be located at such points and in such manner sufficient to reflect a continuous record of gas pressure and character of service being furnished throughout the entire system.

(b) In addition to the recording pressure gauges required in paragraph (a) of this subsection, all utilities distributing gas shall maintain one (1) or more portable recording pressure gauges with which pressure surveys shall be made in sufficient number to indicate the service furnished and to satisfy the commission of the utility's compliance with pressure requirements.

(c) All recording pressure charts or records shall be preserved and filed in a systematic manner and each chart shall show date and location when the record was made. All charts or records shall be kept on file by the utility for at least two (2) years.

(d) If there are indications of abnormally high or low-pressure, the regulator and auxiliary equipment shall be inspected and necessary measures employed to correct any satisfactory operating conditions.

(23) Pressure limiting and regulating stations: testing of relief devices.

(a) If feasible, pressure relief devices (except rupture discs) shall be tested in place, at intervals not exceeding fifteen (15) months, but at least once each calendar year, to determine that they have enough capacity to limit the pressure on the facilities to which they are connected to desired maximum pressure.

(b) If a test is not feasible, review and calculation of the required capacity of the relieving device at each station shall be made, at intervals not exceeding fifteen (15) months, but at least once each calendar year. These required capacities shall be compared with the rated or experimentally determined relieving capacity of the device for operating conditions under which it works. After initial calculations, subsequent calculations are not required if review documents show that parameters have not changed to cause capacity to be less than required.

(c) If the relieving device is of insufficient capacity, a new or additional device shall be installed to provide the additional capacity required.

(24) Valve maintenance: transmission lines. Each transmission line valve that might be required during any emergency shall be inspected and partially operated, at intervals not exceeding fifteen (15) months, but at least once each calendar year.

(25) Valve maintenance: distribution systems. Each valve, the use of which may be necessary for safe operation of a distribution system, shall be checked and serviced, at intervals not exceeding fifteen (15) months, but at least once each calendar year.

(26) Vault maintenance.

(a) Each vault housing pressure regulating and pressure limiting equipment, and having volumetric internal content of 200 cubic feet or more, shall be inspected at intervals not exceeding fifteen (15) months, but at least once each calendar year to determine that it is in good physical condition and adequately ventilated.

(b) Inspection of each vault, its cover, and equipment shall include checks for proper ventilation, function, and safety. Any leaks shall be corrected immediately.

(27) Prevention of accidental ignition. Each utility shall take steps to minimize the danger of accidental gas ignition in any structure or area where presence of gas constitutes a hazard of fire or explosion, including the following:

(a) When a hazardous amount of gas is being vented into open air, each potential source of ignition shall be removed from the area and a fire extinguisher shall be provided.

(b) Gas or electric welding or cutting shall not be performed on pipe or on pipe components that contain a combustible mixture of gas and air in the area of work.

(c) Post warning signs, where appropriate.

(d) No welding or acetylene cutting shall be done on a pipeline, main or auxiliary apparatus that contains air if it is connected to a source of gas, unless a suitable means has been provided to prevent leakage of gas into the pipeline or main.

(e) In situations where welding or cutting must be done on facilities which are filled with air and connected to a source of gas and precautions recommended above cannot be taken, one (1) or more of the following precautions, depending upon circumstances at the job, are required:

1. Purging pipe or equipment upon which welding or cutting is to be done, with combustible gas or inert gas.

2. Testing of the atmosphere in the vicinity of the zone to be heated before work is started and at intervals as the work progresses, with a combustible gas indicator or by other suitable means.

3. Careful verification before work starts that valves that isolate the work from a source of gas do not leak.

(f) When the main is to be separated a bonding conductor shall be installed across the point of separation and maintained while the pipeline is separated. If overhead electric transmission lines parallel the pipeline right-of-way, the current carrying capacity of the bonding conductor should be at least one-half (1/2) of the capacity of the overhead line conductors.

(g) For additional purging procedures see A.G.A. publication "Purging Principals and Practices" (1975 Edition.)

(28) Caulked bell and spigot joints.

(a) Each cast iron caulked bell and spigot joint subject to pressures of twenty-five (25) psig or more shall be sealed with:

1. A mechanical leak clamp; or
2. A material or device which:
a. Does not reduce flexibility of the joint;
b. Permanently bonds, either chemically or mechanically, or both, with the bell and spigot metal surfaces or adjacent pipe metal surfaces; and
c. Seals and bonds in a manner that meets the strength, environmental, and chemical compatibility requirements of Section 2(2)(a) and (b) and Section 4(2) of this administrative regulation.
(b) Each cast iron caulked bell and spigot joint subject to pressures of less than twenty-five (25) psig and exposed for any reason, shall be sealed by means other than caulking.
(29) Protecting cast iron pipelines. When a utility has knowledge that the support for a segment of a buried cast iron pipeline is disturbed:
(a) That segment of pipeline shall be protected against damage during the disturbance by:
1. Vibrations from heavy construction equipment, trains, trucks, buses, or blasting;
2. Impact forces by vehicles;
3. Earth movement;
4. Apparent future excavations near the pipeline; or
5. Other foreseeable outside forces which may subject that segment of pipeline to bending stress.
(b) As soon as feasible, permanent protection shall be provided for the disturbed segment from damage that might result from external loads, including compliance with applicable requirements of subsections (10)(a) and (11) of Section 7 and subsection (6)(b) through (d) of Section 9 of this administrative regulation.

Section 15. Purity of Gas. (1) All gas supplied to customers shall contain no more than: a trace of hydrogen sulfide, thirty (30) grains of total sulphur per 100 cubic feet; or five (5) grains of ammonia per 100 cubic feet. No gas shall contain impurities which may cause excessive corrosion of mains or piping or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.
(2) When necessary, tests for the presence of hydrogen sulfide shall be made at least once each day, except Sundays and holidays, with the standard lead acetate paper method. Results of these test papers shall be properly recorded and filed, as specified by the commission.
(3) Manufactured and mixed gas shall be tested at least once each month for the presence of total sulphur and ammonia, except that any gas containing no coal gas need not be tested for ammonia. Approved methods of testing shall be used. Records of all tests shall be preserved as specified by the commission.

Section 16. Heating Value of Gas. (1) Definitions of heating value. The heating value of gas is the number of British Thermal Units (BTUs) produced by the combustion at constant pressure, of that amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit, if saturated with water vapor and under pressure equivalent to thirty (30) inches of mercury at a temperature of thirty-two (32) degrees Fahrenheit and under gravity, with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air, and when the water formed by combustion is condensed to liquid stage.
(2) Each utility shall establish and maintain a standard heating value for its gas. The heating value standard adopted shall comply with the following:
(a) It shall be consistent with good service.
(b) It shall be that value which the utility determines is most practical and economical to supply to its customers.
(3) Each utility shall file with the commission its standard heating value as part of its schedule of Rates, Rules and Regulations.
(4) The utility shall maintain the heating value of the gas with as little variation as practicable, but this variation shall not be more than five (5) percent above or below the established standard heating value.
(5) The heating value standard shall be the monthly average heating value of gas delivered to customers at any point within one (1) mile of the center of distribution, and shall be obtained in the following manner: results of all tests for heating value made on any day during the calendar month shall be averaged, and the average of all such daily averages shall be used in computing the monthly average.
(6) Each utility, selling more than 300,000,000 cubic feet of gas annually, shall maintain a calorimeter, gas chromatograph, or other equipment for testing the hearing value of gas or shall retain the services of a competent testing laboratory approved by the commission. This testing equipment owned by the utility shall

be subject to approval of the commission and be made available for testing certification. Utilities served directly from a transmission line shall be exempt from this rule if there is approved equipment for measuring the heating value of gas maintained by the transmission company and if such equipment is available for testing and certification by the commission.

(7) Each utility shall conduct test and maintain necessary records to document that the requirements of this section are being met. Those utilities which bill on the basis of heating value shall, as part of its schedule of Rates, Rules and Regulations, file with the commission the schedule of tests and test procedure(s) it will conduct to determine the heating value of its gas.

(8) Any change in heating value greater than that allowed in subsection (4) of this section shall not be made without approval of the commission and without adequate notice to affected customers. In such event, the utility shall make any adjustments to the customer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customer.

Section 17. Waste. All practices in the production, distribution, consumption, or use of natural gas which are wasteful are hereby expressly prohibited.

Section 18. Deviations from Rules. In special cases for good cause shown the commission may permit deviations from these rules. (10 Ky.R. 1029; eff. 3-31-1984; Am. 16 Ky.R. 1994; eff. 5-13-1990; TAm 1-30-2013.)

APPENDIX A INCORPORATED BY REFERENCE
I. List of Organizations and Addresses.
A. American National Standards Institute (ANSI), 1430 Broadway, New York, N.Y. 10018.
B. American Petroleum Institute (API), 1801 K Street N.W., Washington, D.C. 20006 or 300 Corrigan Tower Building, Dallas, Texas 75201.
C. American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.
D. American Society for Testing and Material (ASTM), 1916 Race Street, Philadelphia, Pa. 19103.
E. Manufacturers Standardization Society of the Valve and Fittings Industry (MSS), 5203 Leesburg Pike, Suite 502, Falls Church, Va. 22041.
F. National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts 02269.
II. Documents incorporated by reference. Numbers in parenthesis indicate applicable editions.
A. American Petroleum Institute:
(1) API Specification 6D "API Specification for Pipeline Valves" (1977).
(2) API Specification 5L "API Specification for Line Pipe" (1980).
(3) API Recommended Practice 5L1 "API Recommended Practice for Railroad Transportation of Line Pipe" (1972).
(4) API Standard 1104 "Standard for Welding Pipelines and Related Facilities" (17th Edition, 1988).
B. American Society for Testing and Materials:
(1) ASTM Specification A53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A53-79).
(2) ASTM Specification A106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106-79b).
(3) ASTM Specification A671 "Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A671-77).
(4) ASTM Specification A672 "Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A672-79).
(5) ASTM Specification A691 "Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A169-79).
(6) ASTM Specification A333 "Standard Specification for Seamless and Welded Steel Pipe for Low Temperature Service" (A333-79).
(7) ASTM Specification A372 "Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (A372-78).
(8) ASTM Specification A381 "Standard Specification for Metal-Arc- Welded Steel Pipe for Use with High-Pressure Transmission Systems" (A381-79).
(9) ASTM Specification D638 "Standard Test Method for Tensile Properties of Plastic" (D368-77a).
(10) ASTM Specification D900 "Standard Method Test for Caloric Value of Gaseous Fuels by the Water Flow Calorimeter" (D900-55-1974 Edition).
(11) ASTM Specification D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings" (D2513-87).
(12) ASTM Specification D2517 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings" (D2517-73) (Reapproved 1979).
C. American National Standards Institute, Inc.:
(1) ANSI B16.1 "Cast Iron Pipe Flanges and Flanged Fittings" (1975).
(2) ANSI B16.5 "Steel Pipe Flanges and Flanged Fittings" (1977).
D. American Society of Mechanical Engineers:

(1) ASME Boiler and Pressure Code, Section VIII "Pressure Vessels Division I" (1977).
(2) ASME Boiler and Pressure Vessel Code, Section IX "Welding Qualifications" (1977).
E. Manufacturer's Standardization Society of the Valve and Fittings Industry:
(1) MSS SP-44 "Steel Pipe Line Flanges" (1975).
F. National Fire Protection Association:
(1) NFPA Standard 30 "Flammable and Combustible Liquids Code" (1977).
(2) NFPA Standard 54 "National Fuel Gas Code" (1980).
(3) NFPA Standard 58 "Standard for the Storage and Handling of Liquefied Petroleum Gases" (1979).
(4) NFPA Standard 59 "Standards for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants" (1979).
(5) NFPA Standard 59A "Storage and Handling Liquefied Natural Gas" (1979).
(6) "National Electrical Code" NFPA-70 (ANSI) (1978).
G. National Bureau of Standards:
(1) Circular No. 48 "Standard Methods of Gas Testing" (1916).
(2) Research Paper No. 1741 "Testing Large Capacity Rotary Gas Meters," National Bureau of Standards Journal of Research, September, 1946.

APPENDIX B
QUALIFICATION OF PIPE

I. Listed Pipe Specifications. Numbers in parentheses indicate applicable editions.

API 5L - Steel Pipe (1980).

ASTM A53 - Steel Pipe (1979).

ASTM A106 - Steel Pipe (1979).

ASTM A333 - Steel Pipe (1979).

ASTM A381 - Steel Pipe (1979).

ASTM Specification A671 - Steel Pipe (1977).

ASTM Specification A672 - Steel Pipe (1979).

ASTM D2513 - Thermoplastic Pipe and Tubing (1987).

ASTM D2517 - Thermoplastic Plastic Pipe and Tubing (1973).

II. Steel pipe of unknown or unlisted specification.

A. Bending Properties. For pipe two (2) inches or less in diameter, a length of pipe shall be cold bent through at least ninety (90) degrees around a cylindrical mandrel that has a diameter twelve (12) times the diameter of the pipe, without developing cracks at any portion and without opening the longitudinal weld.

Pipe more than two (2) inches in diameter shall meet the requirements of the flattening test set forth in ASTM A53, except that the number of tests shall be at least equal to the minimum required in paragraph 11-D of this appendix to determine yield strength.

B. Weldability. A girth weld shall be made in pipe by a welder who is qualified under Subpart E of this part. The weld shall be made under the most severe conditions under which welding will be allowed in the field and by the same procedure that will be used in the field. On pipe more than four (4) inches in diameter, at least one (1) test weld shall be made for each 100 lengths of pipe. On pipe four (4) inches or less in diameter, at least one (1) test weld shall be made for each 400 lengths of pipe. The weld shall be tested in accordance with API Standard 1104. If requirements of API Standard 1104 cannot be met, weldability may be established by making chemical test for carbon and manganese, and proceeding in accordance with Section IX of the ASME Boiler and Pressure Vessel Code. The same number of chemical tests shall be made as are required for testing a girth weld.

C. Inspection. Pipe shall be clean enough to permit adequate inspection. It shall be visually inspected to ensure that it is reasonably round and straight and there are no defects which might impair strength or tightness of the pipe.

D. Tensile Properties. If the pipe's tensile properties are not known, minimum yield strength may be taken as 24,000 psig or less, or tensile properties may be established by performing tensile tests as set forth in API Standard 5LX. All test specimens shall be selected at random and the following number of tests must be performed:

NUMBER OF TENSILE TEST - ALL SIZES	
10 lengths or less ____	1 set of tests for each length.
11 lengths to 100 lengths ____	1 set of tests for each 5 lengths, but not less than 10 tests.
Over 100 lengths ____	1 set of tests for each 10 lengths, but not less than 10 tests.

If the yield-tensile ratio, based on properties determined by those tests, exceeds 0.85, pipe may be used only as provided in 192.55(c).

III. Steel pipe manufactured before November 12, 1970, to earlier editions of listed specifications. Steel pipe manufactured before November 12, 1970, in accordance with a specification of which a later edition is listed in Section 1 of this appendix, is qualified for use under this part if the following requirements are met:

A. Inspection. Pipe shall be clean enough for inspection to ensure that it is reasonably round and straight and that there are no defects which might impair strength or tightness of the pipe.
B. Similarity of specification requirements. The edition of the listed specification under which pipe was manufactured shall have substantially the same requirements with respect to the following properties as a later edition of that specification listed in Section I of this appendix:
(1) Physical (mechanical) properties of pipe, including yield and tensile strength, elongation, and yield to tensile ratio, and testing requirements to verify those properties.
(2) Chemical properties of pipe and testing requirements to verify those properties.
C. Inspection or test of welded pipe. On pipe with welded seams, one (1) of the following requirements shall be met:
(1) The edition of the listed specification to which the pipe was manufactured shall have substantially the same requirements with respect to nondestructive inspection of welded seams and the standards for acceptance or rejection and repair as a later edition of the specification listed in Section I of this appendix.
(2) Pipe shall be tested in accordance with Subpart J of this part to at least 1.25 times maximum allowable operating pressure if it is to be installed in a Class 1 location and to at least 1.5 times maximum allowable operating pressure if it is to be installed in a Class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Subpart J of this part, test pressure shall be maintained for at least eight (8) hours.

APPENDIX C QUALIFICATION OF WELDERS FOR LOW STRESS LEVEL PIPE
I. Basic test. Test shall be made on pipe twelve (12) inches or less in diameter. The test weld shall be made with pipe in horizontal fixed position so that test weld includes at least one (1) section of overhead position welding. Beveling, root opening, and other details shall conform to the specification of the procedure under which the welder is being qualified. Upon completion, test weld shall be cut into four (4) coupons and subjected to a root bend test. If two (2) or more of the four (4) coupons then develop a crack more than 1/8 inch long in any direction in the weld material, or between weld material and base metal, the weld shall be unacceptable. Cracks that occur on the specimen corner during testing are not considered.
II. Additional tests for welders of service line connections to mains. A service line connection fitting shall be welded to a pipe section with the same diameter as a typical main. The weld shall be made in the same position as it is made in the field. The weld shall be unacceptable if it shows a serious undercutting or if it has rolled edges. The weld shall be tested by attempting to break the fitting off the run pipe. The weld shall be unacceptable if it breaks and shows incomplete fusion, overlap, or poor penetration at junction of the fitting and run pipe.
III. Periodic tests for welders of small service lines. Two (2) samples of the welder's work, each about eight (8) inches long with the weld approximately centered, shall be cut from steel service line and tested as follows:
(1) One (1) sample shall be centered in a guilded bend testing machine and bent to the die contour for two (2) inches on each side of the weld. If the sample shows any break or cracks after removal from the bending machine, it shall be unacceptable.
(2) The ends of the second sample shall be flattened and the entire joint subjected to a tensile strength test. If failure occurs adjacent to or in the weld metal, the weld shall be unacceptable. If a tensile strength testing machine is not available, this sample shall also pass the bending test prescribed in subparagraph (1) of this paragraph.

APPENDIX D CRITERIA FOR CATHODIC PROTECTION AND DETERMINATION OF MEASUREMENTS
I. Criteria for cathodic protection:
A. Steel, cast iron, and ductile iron structures.
(1) Negative (cathodic) voltage of at least 0.85 volt, with reference to a saturated copper-copper sulfate half cell. Determination of this voltage shall be made with the protective current applied, and in accordance with Sections II and IV of this appendix.
(2) Negative (cathodic) voltage shift of at least 300 millivolts. Determination of this voltage shift shall be made with the protective current applied, and in accordance with Sections II and IV of this appendix. This criterion of voltage shift applies to structures not in contact with metal of different anodic potentials.
(3) Minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall be determined in accordance with Sections III and IV of this appendix.
(4) Net protective current from the electrolyte into the structure surface as measured by an earth current technique applied at predetermined current discharge (anodic) points of the structure.
B. Aluminum structures.
(1) Except as provided in paragraphs (3) and (4) of this paragraph, a minimum negative (cathodic) voltage shift of 150 millivolts, produced by the application of protective current. The voltage shift shall be determined in accordance with Sections II and IV of this appendix.
(2) Except as provided in paragraphs (3) and (4) of this paragraph, a minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall be determined in accordance with Sections III and IV of this appendix.
(3) Notwithstanding the alternative minimum criteria in paragraphs (1) and (2) of this paragraph, aluminum, if cathodically protected at voltages in excess of 1.20 volts as measured with reference to a copper-copper sulfate half cell, in accordance with Section IV of this appendix, and compensated for the voltage (IR) drops other than those across the structure-electrolyte boundary may suffer corrosion resulting from the buildup of alkali on the metal surface. A voltage in excess of 1.20 volts shall not be used unless previous test results indicate no appreciable corrosion will occur in the particular environment.
(4) Since aluminum may suffer from corrosion under high pH conditions, and since application of cathodic protection tends to increase the pH at the metal surface, careful investigation or testing shall be made before applying cathodic protection to stop pitting attach on aluminum structures in environments with a natural pH in excess of eight (8).
C. Copper structures. Minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall be determined in accordance with Sections III and IV of this appendix.
D. Metal of different anodic potentials. Negative (cathodic) voltage, measured in accordance with Section IV of this appendix, equal to that required for the most anodic metal in the system shall be maintained. If amphoteric structures are involved that could be damaged by high alkalinity covered by paragraphs (3) and (4) of paragraph B of this section, they shall be electrically isolated with insulating flanges or their equivalent.
II. Interpretation of voltage measurement. Voltage (IR) drops other than those across the structure-electrolyte boundary shall be considered for valid interpretation of the voltage measurement in paragraphs A(1) and (2) and paragraph B(1) of Section I of this appendix.

III. Determination of polarization voltage shift. Polarization voltage shift shall be determined by interrupting the protective current and measuring polarization decay. When the current is initially interrupted, an immediate voltage shift occurs. The voltage reading after the immediate shift shall be used as the base reading from which to measure polarization decay in paragraphs A(3), B(2), and C of Section I of this appendix.
IV. Reference half cells.
A. Except as provided in paragraphs B and C of this section, negative (cathodic) voltage shall be measured between the structive surface and a saturated copper-copper sulfate half cell contacting the electrolyte.
B. Other standard reference half cells may be substituted for the saturated copper-copper sulfate half cell. Two (2) commonly used reference half cells are listed below along with their voltage equivalent to -0.85 volt as referred to a saturated copper-copper sulfate half cell:
(1) Saturated KCI calomel half cell: -0.78 volt.
(2) Silver-silver chloride half cell used in sea water: -0.80 volt.
C. In addition to the standard reference half cell, an alternate metallic material or structure may be used in place of the saturated copper-copper sulfate half cell if its potential stability is assured and if its voltage equivalent referred to a saturated copper-copper sulfate half cell is established.

807 KAR 5:023. Control of drug use in gas operations.

RELATES TO: KRS Chapter 278, 49 C.F.R. Part 199, 49 U.S.C. 1674
STATUTORY AUTHORITY: KRS 278.280(2), 49 C.F.R. Part 199, 49 U.S.C. 1674
NECESSITY, FUNCTION, AND CONFORMITY: Section 5 of the Natural Gas Pipeline Safety Act of 1978 (49 USC 1674) requires each state participating in the federal/state pipeline safety program to certify that it has adopted each federal safety standard established under the Act that is applicable to interstate pipeline transportation under its jurisdiction. Pursuant to that requirement, this administrative regulation adopts the standards set out in 49 CFR Part 199 for drug testing of employees of operators of natural gas pipeline facilities which are subject to 807 KAR 5:022.

Section 1. Definitions. (1) "Accident" means an incident reportable under 807 KAR 5:027, Section 3(1)(a) through (f) involving gas pipeline facilities or any incident that is significant in the judgment of the operator even though it did not meet the reporting requirements of 807 KAR 5:027.
(2) "Administrator" means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.
(3) "DOT procedures" means the "Procedures for Transportation Workplace Drug Testing Programs" published by the Office of the U.S. Secretary of Transportation in 49 CFR Part 40.
(4) "Employee" means a person who performs on a pipeline an operating, maintenance, or emergency-response function regulated by 807 KAR 5:022. This does not include clerical, truck driving, accounting, or other functions not subject to 807 KAR 5:022. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.
(5) "Fail a drug test" means that the confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug in an employee's system.
(6) "Operator" means a person who owns or operates pipeline facilities subject to 807 KAR 5:022.
(7) "Pass a drug test" means that initial testing or confirmation testing under DOT procedures does not show evidence of the presence of a prohibited drug in a person's system.
(8) "Prohibited drug" means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 USC 801.812 (1981 & 1987 Cum.P.P.): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). In addition, for the purpose of reasonable cause testing, "prohibited drug" includes any substance in Schedule I or II if an operator has obtained prior approval from RSPA, pursuant to the "DOT procedures" in 49 CFR Part 40, to test for such substance, and if the U.S. Department of Health and Human Services has established an approved testing protocol and positive threshold for such substance.
(9) "Commission" means the Kentucky Public Service Commission.

Section 2. DOT Procedures. The antidrug program required by this administrative regulation shall be conducted according to the requirements of this administrative regulation and the DOT procedures. In the event of conflict, the provisions of this administrative regulation prevail. Terms and concepts used in this administrative regulation have the same meaning as in the DOT procedures.

Section 3. Antidrug Plan. Each operator shall maintain and follow a written antidrug plan that conforms to the requirements of this administrative regulation and the DOT procedures. The plan shall contain:
(1) Methods and procedures for compliance with all the requirements of this administrative regulation, including the employee assistance program;
(2) The name and address of each laboratory that analyzes the specimens collected for drug testing; and
(3) The name and address of the operator's medical review officer; and
(4) Procedures for notifying employees of the coverage and provisions of the plan.

Section 4. Use of Persons Who Fail or Refuse a Drug Test. (1) An operator shall not knowingly use as an employee any person who:
(a) Fails a drug test required by this administrative regulation and the medical review officer makes a determination under Section 7(4)(b) of this administrative regulation; or
(b) Refuses to take a drug test required by this administrative regulation.
(2) Subsection (1)(a) of this section does not apply to a person who has:
(a) Passed a drug test under DOT procedures;
(b) Been recommended by the medical review officer for return to duty in accordance with Section 7(3) of this

administrative regulation; and

(c) Not failed a drug test required by this administrative regulation after returning to duty.

Section 5. Drug Tests Required. Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(1) Preemployment testing. No operator shall hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an antidrug program that conforms to the requirements of this administrative regulation.

(2) Postaccident testing. As soon as possible but no later than thirty-two (32) hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. If an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test, all reasonable steps shall be taken to obtain a urine sample. An operator may decide not to test under this subsection but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

(3) Random testing. Each operator shall administer, every twelve (12) months, a number of random drug tests at a rate equal to fifty (50) percent of its employees. Each operator shall select employees for testing by using a random number table or a computer-based random number generator that is matched with an employee's social security number, payroll identification number, or other appropriate identification number. However, during the first twelve (12) months following the institution of random drug testing under this administrative regulation, each operator shall meet the following conditions:

(a) The random drug testing is spread reasonably through the twelve (12) month period;

(b) The last test collection during the year is conducted at an annualized rate of fifty (50) percent; and

(c) The total number of tests conducted during the twelve (12) months is equal to at least twenty-five (25) percent of the covered population.

(4) Testing based on reasonable cause. Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test shall be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two (2) of the employee's supervisors, one (1) of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two (2) supervisors may be by telephone. However, in the case of operators with fifty (50) or fewer employees subject to testing under this administrative regulation, only one (1) supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

(5) Return to duty testing. An employee who refuses to take or does not pass a drug test shall not return to duty until the employee passes a drug test administered under this administrative regulation and the medical review officer has determined that the employee may return to duty. An employee who returns to duty shall be subject to a reasonable program of follow-up drug testing without prior notice for not more than sixty (60) months after his return to duty.

Section 6. Drug Testing Laboratory. (1) Each operator shall use for the drug testing required by this administrative regulation only drug testing laboratories certified by the U.S. Department of Health and Human Services under the DOT procedures.

(2) The drug testing laboratory must permit:

(a) Inspections by the operator before the laboratory is awarded a testing contract; and

(b) Unannounced inspections, including examination of records, at any time, by the operator, the administrator or a commission representative.

Section 7. Review of Drug Testing Results. (1) MRO appointment. Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its antidrug program.

(2) MRO qualifications. The MRO shall be a licensed physician with knowledge of drug abuse disorders.

(3) MRO duties. The MRO shall perform the following functions for the operator:

(a) Review the results of drug testing before they are reported to the operator.

(b) Review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:

1. Conduct a medical interview with the individual tested.

2. Review the individual's medical history and any relevant biomedical factors.

3. Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.

4. If necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.

5. Verify that the laboratory report and assessment are correct.

(c) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT procedures may be returned to duty.

(d) Determine a schedule or unannounced testing, in consultation with the operator, for an employee who has returned to duty.

(e) Ensure that an employee has been drug tested in accordance with the DOT procedures before the employee returns to duty.

(4) MRO determinations. The following rules govern MRO determinations:

(a) If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO is not required to take further action.

(b) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer the individual tested to an employee assistance program, or to a personnel or administrative officer for further proceedings in accordance with the operator's antidrug program.

(c) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO should conclude that the test is negative for the presence of a prohibited drug or drug metabolite in an individual's system.

Section 8. Retention of Samples and Retesting. (1) Samples that yield positive results on confirmation shall be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT procedures. Within this 365-day period, the employee or his representative, the operator, the administrator, or a commission representative may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(2) If the medical review officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the original sample shall be retested if the employee makes a written request for retesting within sixty (60) days of receipt of the final test result from the MRO. The employee may specify retesting by the original laboratory or by a second laboratory that is certified by the U.S. Department of Health and Human Services. The operator may require the employee to pay in advance the cost of shipment (if any) and reanalysis of the sample, but the employee shall be reimbursed for such expense if the retest is negative.

(3) If the employee specifies retesting by a second laboratory, the original laboratory shall follow approved chain-of-custody procedures in transferring a portion of the sample.

(4) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT procedures, but equal to or greater than the established sensitivity of the assay, shall, as technically appropriate, be reported and considered corroborative of the original positive results.

Section 9. Employee Assistance Program. (1) Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP shall include education and training on drug use. At the discretion of the operator, the EAP may include an opportunity for employee rehabilitation.

(2) Education under each EAP shall include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs.

(3) Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause shall include one (1) sixty (60) minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.

Section 10. Contractor Employees. With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this administrative regulation be carried out by the contractor provided:

(1) The operator remains responsible for ensuring that the requirements of this administrative regulation are complied with; and

(2) The contractor allows access to property and records by the operator, the administrator, and a commission representative for the purpose of monitoring the operator's compliance with the requirements of this administrative regulation.

Section 11. Recordkeeping. (1) Each operator shall keep the following records for the periods specified and permit access to the records as provided by subsection (2) of this section:

(a) Records that demonstrate the collection process conforms to this administrative regulation shall be kept for at least three (3) years.

(b) Records of employee drug test results that show employees failed a drug test, and the type of test failed (e.g., postaccident), and records that demonstrate rehabilitation, if any, shall be kept for at least five (5) years, and include the following information:

1. The functions performed by employees who failed a drug test.
2. The prohibited drugs which were used by employees who failed a drug test.
3. The disposition of employees who failed a drug test (e.g., termination, rehabilitation, leave without pay).
4. The age of each employee who failed a drug test.

(c) Records of employee drug test results that show employees passed a drug test shall be kept for at least one (1) year.

(d) A record of the number of employees tested, by type of test (e.g., postaccident), shall be kept for at least five (5) years.

(e) Records confirming that supervisors and employees have been trained as required by this administrative regulation shall be kept for at least three (3) years.

(2) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, except that such information shall be released regardless of consent to the administrator or a commission representative upon request as part of an accident investigation. Statistical data related to drug testing and rehabilitation that is not name-specific and training records shall be made available to the administrator or a commission representative upon request. (18 Ky.R. 1259; Am. 1897; eff. 1-10-92.)

807 KAR 5:026. Gas service; gathering systems.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.040(3), 278.485
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt, in keeping with KRS Chapter 13A, reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.485(1) provides that gas service shall be furnished at rates and charges determined by the commission. KRS 278.485(3) provides that safety standards for installation of service lines may be prescribed by the commission. This administrative regulation applies to service from natural gas gathering pipeline systems.

Section 1. Definitions. For purposes of this administrative regulation:
(1) "Average volumetric rate" means the rate of a local gas distribution utility subject to rate regulation by the commission which is an average of the utility's volumetric retail gas sales rates for residential customers as authorized by the commission.
(2) "Customer meter" means the device that measures the transfer of gas from the pipeline company to the consumer.
(3) "Customer line" means all equipment and material required to transfer natural gas from the tap on the gathering line to the customer's premises and includes the saddle or tapping tee, the first service shutoff valve, the meter, and the service regulator, if one is required.
(4) "Gas company" means the owner of any producing gas well or gathering line.
(5) "Gathering line" means any pipe which carries uncompressed gas and which is used to gather gas from a producing gas well.
(6) "Interior line" means pipe used to transfer natural gas from the point of entry into a building to the point or points of use.
(7) "Price index" means the average of the producer price index-utility natural gas (PPI 05-5) for the most recent twelve (12) month period as published monthly by the United States Department of Labor, Bureau of Labor Statistics.

Section 2. Construction Standards. Construction not specifically addressed by this administrative regulation shall meet applicable requirements of the "American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ASME B31.8)" 1992 edition as published by the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N. Y. 10017, which is incorporated by this reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8 a.m. to 4:30 p.m., at the commission office, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.

Section 3. Requirements for Service. (1) Persons desiring gas service under KRS 278.485 shall apply at the local gas company office. Applications shall contain:
(a) The name and address of the applicant.
(b) The purpose for which gas is requested.
(c) The name and address of the contractor who will install the customer line.
(d) The name and address of the gas company from which service is requested.
(2) The gas company shall furnish the applicant with construction drawings specifying the installation methods and the materials approved by the commission for service installation.
(3) Prior to providing service, the gas company shall furnish a copy of the application to the commission.
(4) Upon receipt of a copy of the application, the commission shall cause the customer line to be inspected for compliance with commission specifications. Service shall not commence until commission specifications have been met.
(5) The commission shall notify the applicant by mail if the customer line does not comply with commission specifications. If subsequent inspection reveals that defects have not been corrected, the commission shall notify the gas company, and the gas company shall take no further action on the application until the defects have been corrected.
(6) The gas company shall furnish, install, and maintain the meter and the service tap, including saddle and first service shutoff valve, which shall remain its property. The gas company shall ensure that its name appears on each of its meters.
(7) All other approved equipment and material required for the service shall be furnished, installed, and

maintained by the customer at his expense and shall remain his property.

(8) If leaks or other hazardous conditions are detected in the customer line, the gas company shall discontinue service until the hazardous conditions have been remedied.

Section 4. Connections to High Pressure Gathering Lines. (1) Connections shall be smaller than the diameter of the gathering line.

(2) Connections shall be on the upper one-half (1/2) of the gathering line surface, and at a forty-five (45) degree angle where practicable.

(3) Connections shall be at right angles to the center line of the gathering line.

(4) A service shutoff valve shall immediately follow the connection to the gathering line.

(5) A drip tank shall be installed preceding regulating equipment, but may be omitted upon prior approval of the commission.

Section 5. Control and Limitation of Gas Pressure. (1) If maximum gas pressure on the gathering line may exceed sixty (60) psig, a service regulator shall be installed between the service shutoff valve and the customer meter, and a secondary regulator shall be installed between the service regulator and the customer meter. Regulators shall be spring type, and the secondary regulator shall not be set to maintain pressure higher than sixty (60) psig. A spring type relief valve shall be installed to limit pressure on the inlet of the service regulator to sixty (60) psig or less.

(2) Every customer line shall be equipped with an adequate spring type relief valve. The valve may be part of the final stage regulator.

(3) Regulators shall not be bypassed.

(4) Each relief valve shall be vented into outside air, and all vents shall be covered to prevent water and insects from entering.

(5) All metering and regulating equipment shall be as near to the gathering line as practicable, in accordance with safe and accepted operating practices.

(6) Regulating equipment shall be properly protected by the customer.

Section 6. Customer Lines and Metering Facilities. (1) The customer shall furnish and install the customer line from the tap to the point of use. The customer shall secure all rights-of-way and railroad, highway, and other crossing permits. The customer line shall be laid on undisturbed or well compacted soil in a separate trench, avoiding all structures and hazardous locations. No structure shall be erected over the line.

(2) No branch tee or other connection shall be installed on the line to serve any user other than the customer without prior written consent of the gas company and the customer. If consent is given, service to each user shall have an automatic shutoff valve with manual reset located on the riser in a horizontal position. The shutoff valve shall have maximum operating pressure of eight (8) ounces PSIG with a shutoff pressure setting of not less than two (2) ounces.

(3) Customer lines shall not be constructed nearer than thirty-six (36) inches to any subsurface structure.

(4) Customer lines, including the connection to the main, where feasible, shall be checked for leaks by the gas company prior to first use. If it is not feasible to test the connection to the main before first use, it shall be tested for leaks at the operating pressure when placed into service. Customer lines shall be tested by the gas company with air, natural gas, or inert gas at fifty (50) psig for at least thirty (30) continuous minutes.

(5) Customer lines shall be purged after testing to remove any accumulated air.

(6) Metering pressure shall not exceed eight (8) ounces or .5 psig, unless otherwise approved in advance by the commission.

(7) Steel customer lines shall be constructed of black finish steel pipe, at least one and one quarter (1 1/4) inches in diameter or larger, that conforms to standards in the Standard Specification for Pipe, Steel, Black, and Hot-dipped, Zinc Coated, Welded and Seamless (A53-95a) 1995, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428 which is incorporated by reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8:30 a.m. to 4:30 p.m., at the commission's offices, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky, 40602. All joints and fittings shall be coated or taped, in accordance with manufacturer's recommendations, from the gas meter to the outlet side of the stopcock located on the riser entering the building. Steel customer lines shall be installed with at least twelve (12) inches of cover on private property and at least eighteen (18) inches of cover on streets and roads. If the steel customer line passes through tillable land, the trench shall be of sufficient depth to permit twenty-four (24) inches of backfill above the service line.

807 KAR 5:027. Gas pipeline safety; reports of leaks.

RELATES TO: KRS Chapter 278, 49 C.F.R. Part 191, 49 U.S.C. 1671
STATUTORY AUTHORITY: KRS 278.040(3), 278.230(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278 and to investigate methods and practices of utilities subject to commission jurisdiction. KRS 278.230(3) provides that utilities shall file any reports reasonably required by the commission. This administrative regulation establishes rules which apply to reports of leaks by natural gas utilities.

Section 1. Definitions. (1) "Incident" means a gas leak, accident, or other event on a pipeline which requires the utility to notify United States Department of Transportation (USDOT) or the commission.
(2) "Pipeline facilities" includes, without limitation, new and existing pipe, right-of-way, and any equipment, facility, or building used in transportation of gas or treatment of gas during the course of transportation.
(3) "System" means all pipeline facilities used by a utility in transportation of gas, including but not limited to, line pipe, valves and other appurtenances connected to line pipe, compressor units, fabricated assemblies associated with compressor units, metering (including customers' meters) and delivery stations, and fabricated assemblies in metering and delivery stations.
(4) "Test failure" means a break or rupture that occurs during strength-proof testing of transmission or gathering lines that is of such magnitude as to require repair before continuation of the test.
(5) "Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline, or storage of gas in or effecting interstate, intrastate or foreign commerce.

Section 2. Scope. (1) This administrative regulation prescribes requirements for reporting gas leaks that are not intended by the utility and that require immediate or scheduled repair and of test failures as defined in Section 1(4) of this administrative regulation.
(2) This administrative regulation applies to leaks and test failures that occur in the gathering of gas located in the following areas:
(a) An area within the limits of any incorporated or unincorporated city, town, or village; or
(b) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development.
(c) The right-of-way of a state highway, county road or railroad on property of a school, church, hospital, park or similar public place.

Section 3. Telephonic Notice of Certain Incidents. (1) At the earliest practicable moment but no later than two (2) hours following discovery, each utility shall give notice to the commission in accordance with subsection (3) of this section of any incident that:
(a) Is reported to USDOT pursuant to 49 CFR Part 191, Federal Pipeline Safety Regulations.
(b) Requires taking any segment of pipeline or mains out of service.
(c) Results in gas ignition.
(d) Causes estimated damage to property of the utility, or others, or both, of $25,000 or more.
(e) Results in the loss of service to forty (40) or more customers for four (4) or more hours.
(f) Causes the loss of a sizable amount of gas.
(g) Received extensive news coverage, or in the judgment of the utility is significant, even though it does not meet the criteria of paragraphs (a) through (g) of this subsection.
(2) A utility need not give notice of an incident that meets only criteria of subsections (1)(b) and (c) of this section if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.
(3) Each notice required by subsection (1) of this section shall be made by telephone to the commission's chief engineer, gas pipeline safety branch, or designated staff; and shall include the following numbers:
(a) Names of operator and person making report and their telephone numbers.
(b) Location of incident.
(c) Time of incident.
(d) Number of fatalities.
(e) All other significant facts known by the operator that are relevant to the cause of the incident or extent of damage.
(4) If designated staff cannot be contacted, required information shall be reported by telephone to the nearest

post of Kentucky State Police, followed by confirmation via electronic mail addressed to the commission.

(5) Each notice made in accordance with this section shall be supplemented by a written report within thirty (30) days giving full details such as cause; extent of injuries or damage; and steps, if any, taken to prevent reoccurrence. If additional information is received by the utility subsequent to the initial report indicating a different cause, more serious injury, or more serious property damage than was initially reported, a supplemental telephone call shall be made to the commission's chief engineer, gas pipeline safety branch, as soon as practicable.

Section 4. Addressee for Written Report. (1) Each written report required by this administrative regulation shall be transmitted to the Gas Pipeline Safety Branch, Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602.

(2) Each written report required by Sections 3 and 12 of this administrative regulation shall be transmitted to the Gas Pipeline Safety Branch, Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; and one (1) copy shall be transmitted to the Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 8417, 400 Seventh Street, SW, Washington, D.C. 20590.

Section 5. Distribution System: Annual Report. (1) Any utility operating a distribution system and submitting an annual report to USDOT pursuant to 49 CFR Part 191 on USDOT Form DOT F-7100.1-1 shall concurrently file the annual report with the commission.

(2) The annual report required by subsection (1) of this section need not be submitted with respect to petroleum gas systems which serve less than 100 customers from a single source.

Section 6. Distribution Systems Reporting Transmission Pipelines; Transmission or Gathering Systems Reporting Distribution Pipelines. Any utility primarily engaged in gas distribution which also operates gas transmission or gathering pipelines and submits an incident report or annual report to USDOT pursuant to 49 CFR Part 191.15 or 191.17 shall concurrently file a copy of the report with the commission. Any utility primarily engaged in gas transmission or gathering which also operates gas distribution pipelines and submits an incident report or annual report to USDOT pursuant to 49 CFR Part 191.9 or 191.11 shall concurrently file a copy of the report with the commission.

Section 7. Transmission and Gathering Systems: Incident Report. (1) A utility operating a transmission or gathering system and submitting USDOT Form RSPA F7100.2 pursuant to 49 CFR 191.15 shall concurrently file a copy of the report with the commission.

(2) When additional relevant information is obtained after a report is submitted in accordance with subsection (1) of this section, the utility shall make a supplemental report as soon as practicable with clear reference by date and subject to the original report.

Section 8. Transmission and Gathering Systems: Annual Report. A utility operating a transmission or gathering system and submitting USDOT Form DOT-F-7100.2-1 pursuant to 49 CFR Part 191.17 shall concurrently file a copy of the report with the commission.

Section 9. Report Forms. Copies of prescribed report forms are available without charge upon request from the USDOT Office of Pipeline Safety or from the commission. Additional copies in this prescribed format may be reproduced and used if of same size and kind of paper.

Section 10. Reporting Safety-Related Conditions. (1) Except as provided in subsection (2) of this section, each utility shall report in accordance with Section 11 of this administrative regulation the existence of any of the following safety-related conditions involving facilities in service:

(a) In the case of a pipeline that operates at a hoop stress of twenty (20) percent or more of its specified minimum yield strength, general corrosion that has reduced wall thickness to less than that required for the maximum allowable operating pressure, and localized corrosion pitting to a degree where leakage might result.

(b) Unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability of a pipeline.

(c) Any material defect or physical damage that impairs serviceability of a pipeline that operates at a hoop stress of twenty (20) percent or more of its specified minimum yield strength.

(d) Any malfunction or operating error that causes the pressure of a pipeline to rise above its maximum

allowable operating pressure plus the buildup allowed for operation of pressure limiting or control devices.

(e) A leak in a pipeline that constitutes an emergency.

(f) Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a twenty (20) percent or more reduction in operating pressure or shutdown of operation of a pipeline.

(2) A report is not required for any safety-related condition that:

(a) Exists on a master meter system or a customer-owned service line;

(b) Is an incident or results in an incident before the deadline for filing the safety-related condition report;

(c) Exists on a pipeline that is more than 220 yards from any building intended for human occupancy or outdoor place of assembly, except that reports are required for conditions within the right-of-way of an active railroad, paved road, street, or highway; or

(d) Is corrected by repair or replacement in accordance with applicable safety standards pursuant to 807 KAR 5:022 before the deadline for filing the safety-related condition report, except that reports are required for conditions under subsection (1)(a) of this section other than localized corrosion pitting on an effectively coated and cathodically protected pipeline.

Section 11. Filing Safety-related Condition Reports. (1) Each report of a safety-related condition under Section 10 of this administrative regulation shall be filed (received by the commission) in writing within five (5) working days (not including Saturday, Sunday, or federal holidays) after the day a representative of the utility first determines that the condition exists, but not later than ten (10) working days after the day a representative of the utility discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by telefacsimile (fax) dial 502-564-7279.

(2) The report shall be headed "Safety-related Condition Report" and provide the following information:

(a) Name and principal address of utility.

(b) Date of report.

(c) Name, job title, and business telephone number of person submitting the report.

(d) Name, job title, and business telephone number of person who determined that the condition exists.

(e) Date condition was discovered and date condition was first determined to exist.

(f) Location of condition, with reference to the town, city or county, and as appropriate nearest street address, survey station number, milepost, landmark, or name of pipeline.

(g) Description of the condition, including circumstances leading to its discovery, any significant effects of the condition on safety, and name of commodity transported or stored.

(h) Corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned follow-up future corrective action, including anticipated schedule for starting and concluding such action. (9 Ky.R. 755; Am. 920; eff. 1-6-83; 16 Ky.R. 2042; eff. 5-13-90.)

807 KAR 5:031. Gas well determinations.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.010(4)(b), 278.040(3), 278.110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.010(4)(b) and 278.040 subject the production of natural or manufactured gas, or a mixture of the two (2), to or for the public for compensation, for heat or other uses, to jurisdiction and administrative regulation of the Public Service Commission. The federal Natural Gas Policy Act of 1978, effective December 1, 1978, sets forth and defines certain classifications of natural gas to which are assigned maximum lawful prices that may be obtained by gas producers. The Act further provides that the appropriate state regulatory agency shall make determinations as to the applicability of statutorily defined classifications to particular gas wells within that state. These determinations shall be forwarded to the Federal Energy Regulatory Commission for final determination.

Section 1. Definitions. "FERC" means the Federal Energy Regulatory Commission.

Section 2. Applications for Determinations. (1) Any owner or operator of a well producing natural gas within this state may obtain a determination as to whether such well qualifies for one or more of the classifications set forth in sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978 by making application to the Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.
(2) Each application shall be on forms prescribed by the commission, filed in duplicate and include the following:
(a) A completed Federal Energy Regulatory Commission (FERC) Form Number 121;
(b) All information, records, documents, notices and affirmations required by 18 Code of Federal Regulations (C.F.R.) Part 274, subpart B;
(c) Any other information, record, document, or affirmation necessary to substantiate and support the determination sought;
(d) Nonrefundable cash, a check or a United States Postal Money Order in the amount of fifty (50) dollars made payable to the Treasurer, Commonwealth of Kentucky.
(3) Application forms shall be available upon request to the commission.

Section 3. General Requirements. (1) An applicant shall not be limited to one (1) determination per well, but may obtain all determinations to which a given well is entitled pursuant to the Natural Gas Policy Act of 1978.
(2) A separate application shall be completed for each determination sought.
(3) If an application is filed by an individual, the application shall be signed by that person, or in the case of a minor or other legally disabled person, his qualified legal representative. If the application is filed by a corporation, partnership or trust, the application shall be signed by a responsible official or legal representative of the corporation, a general partner of the partnership or the trustee of the trust. When application is made by any other legal entity, the operator of the well may sign the application.
(4) An operator under a joint operating agreement may sign an application for a well covered by the operating agreement if notice of application is given by the operator to all other parties to the joint operation agreement and that fact is certified in the application.
(5) Where an application for a determination is sought for natural gas for which the applicant has an identified purchaser, the application shall include a statement that the applicant has delivered or mailed a copy of completed FERC Form No. 121 to the purchaser.
(6) The applicant may request confidentiality of any information, record or document submitted by the applicant pursuant to 807 KAR 5:001, Section 13.

Section 4. Processing of Applications. (1) Upon receipt of each application submitted in accordance with this administrative regulation, the commission will date-stamp the application and analyze the data submitted to determine whether applicant is entitled to the determination sought pursuant to the Natural Gas Policy Act of 1978 and 18 C.F.R. Parts 271 and 274, subpart B.
(2) Based upon its review of the application, the commission will make an initial written determination if the application is acceptable as prescribed in 18 C.F.R. Parts 271 and 274, subpart B. The commission

shall publish notice of the initial determination in the legal notice section of a newspaper of statewide circulation.

(3) Any interested person may request a hearing on any application or initial determination by written notification to the commission specifically stating the grounds for such request. The request shall be made within ten (10) working days of the public notice.

(4) Upon receipt of a written request for hearing, the commission shall schedule a public hearing pursuant to 807 KAR 5:001, Section 9.

(5) On the basis of evidence presented at this hearing, or if no hearing is requested as prescribed, the commission shall issue a final order affirming or reversing the initial determination.

(6) Provisions of subsection (5) of this section notwithstanding, the commission may at any time prior to issuing the final order reevaluate any application or initial determination if the commission discovers additional pertinent information beyond the scope of the original application.

(7) Within fifteen (15) days after issuing a final order pursuant to this administrative regulation, the commission shall forward the order and the entire record upon which it was made to the Federal Energy Regulatory Commission in the manner prescribed by 18 C.F.R. 274.104. (8 Ky.R. 813; eff. 4-7-1982; Am. 16 Ky.R. 1467; eff. 3-8-1990; TAm 1-30-2013.)

807 KAR 5:041. Electric.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by the utility. This administrative regulation establishes general rules which apply to electric utilities.

Section 1. Definitions. For purposes of this administrative regulation:
(1) "Applicant" means for purposes of Section 21 of this administrative regulation the developer, builder or other person, partnership, association, corporation or governmental agency applying for the installation of an underground electric supply system.
(2) "Building" means a structure enclosed within exterior walls or fire walls, built, erected and framed of component structural parts and designed for less than five (5) family occupancy.
(3) "Customer" means for purposes of Section 21 of this administrative regulation the developer, builder or other person, partnership, association, corporation or governmental agency applying for installation of an underground electric supply system.
(4) "Customer premises" means the building for which service is intended or in use.
(5) "Distribution system" means electric service facilities consisting of primary and secondary conductors, transformers, and necessary accessories and appurtenances for furnishing electric power at utilization voltage.
(6) "Multiple-occupancy building" means a structure enclosed within exterior walls or fire walls, built, erected and framed of component structural parts and designed to contain five (5) or more individual dwelling units.
(7) "Subdivision" means a tract of land which is divided into ten (10) or more lots for the construction of new residential buildings, or for construction of two (2) or more new multiple occupancy buildings.

Section 2. General Requirements. Every utility shall furnish adequate service and facilities at rates filed with the commission, and in accordance with administrative regulations of the commission and applicable rules of the utility. Energy shall be generated, transmitted, converted and distributed by the utility, and utilized, whether by the utility or the customer, in such manner as to obviate undesirable effects upon the operation of standard services or equipment on the utility, its customers and other utilities.

Section 3. Acceptable Standards. A utility shall construct and maintain its plant and facilities in accordance with good accepted engineering practices. Unless otherwise specified by the commission, the utility shall use applicable provisions in the following publications as standards of accepted good engineering practice for construction and maintenance of plant and facilities, herein incorporated by reference:
(1) National Electrical Safety Code; ANSI C-2. 1990 Edition, available by contacting the IEEE Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855-1331. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.
(2) National Electrical Code; ANSI-NFPA 70. 1990 Edition, available by contacting the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02169. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.
(3) American National Standard Code for Electricity Metering; ANSI C-12.1. 1982 Edition, available by contacting the Institute of Electrical and Electronics Engineers, Inc., 345 E. 47th Street, New York, New York 10017;
(4) USA Standard Requirements, for Instrument Transformers; ANSI Standard C57.13, 1978 Edition, available by contacting the IEEE Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855-1331. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.

(5) The adoption and applicability of the National Electrical Code as a standard of utility construction is limited to electric utility auxiliary buildings which are not an integral part of a generating plant, substation, or control center. Integral part is defined as essential to the operation or necessary to make complete.

(6) All materials incorporated by reference above are available for public inspection and copying at the Public Service Commission of Kentucky, 211 Sower Boulevard, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m.

Section 4. Generating Station Meter Records. Every utility shall install such watt-hour meters as necessary to obtain a record of output of its generating station or stations. Every utility purchasing electrical energy shall install such meters as necessary to furnish a proper record of its purchases, unless such instruments are installed by the selling company.

Section 5. Maintenance or Continuity of Service. (1) Each utility shall make all reasonable efforts to prevent interruptions of service, and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay. Whenever service is necessarily interrupted or curtailed for the purpose of working on equipment, it shall be done at a time if practicable, that will cause least inconvenience to customers, and those customers which may be seriously affected shall be notified in advance, except in cases of emergency.

(2) Each utility shall keep a record of: time of starting and shutting down the principal units of its power station equipment and feeders for major divisions; indications of sufficient switchboard instruments to show voltage and quantity of the load; all interruptions to service affecting the entire distribution system of any single community or important division of a community; and date and time of interruption, date and time of restoring service, and when known, cause of each interruption.

(3) When complete distribution systems or portions of communities have service furnished from unattended stations, the utility shall keep these records to the extent practicable. The records of unattended stations shall show interruptions which require attention to restore service, with estimated time of interruption. Breaker or fuse operations affecting service shall also be indicated even though duration of interruption may not be known.

Section 6. Voltage and Frequency. (1) Each utility shall adopt a standard nominal voltage or standard nominal voltages, as required by its distribution system for its entire constant-voltage service, or for each of several districts into which the systems may be divided, which standard voltages shall be stated in every schedule of rates of each utility or in its terms and conditions of service.

(2) Voltage at the customer's service entrance or connection shall be maintained as follows:

(a) For service rendered primarily for lighting purposes, variation in voltage between 5 p.m. and 11 p.m. shall not be more than five (5) percent plus or minus the nominal voltage adopted, and total variation of voltage from minimum to maximum shall not exceed six (6) percent of the nominal voltage.

(b) 1. For service rendered primarily for power purposes, voltage variation shall not at any time exceed ten (10) percent above or ten (10) percent below standard nominal voltage.

2. Where a limited amount of lighting is permitted under these contracts, the entire load shall be considered power as far as voltage variation is concerned.

(c) Where utility distribution facilities supplying customers are reasonably adequate and of sufficient capacity to carry actual loads normally imposed, the utility may require that starting and operating characteristics of equipment on customer premises shall not cause an instantaneous voltage drop of more than four (4) percent of standard voltage nor cause objectionable flicker in other customer's lights.

(d) Equipment supplying constant current circuits shall be adjusted to furnish as nearly as practicable the rated current of the circuit supplied, and in no case shall the current vary more than four (4) percent above or below the circuit rating.

(3) Each utility supplying alternating current shall adopt a standard frequency of sixty (60) hertz which shall be stated in the schedule of rates of each utility.

(4) A frequency meter monitor shall be maintained for each system frequency. Accuracy of the frequency meter shall be checked each day and frequency shall be governed within limits as set forth in this section so that the frequency meters on the system are correct once daily.

(5) The following shall not be considered a violation of this section: Voltage variations in excess of those caused by operation of power apparatus on customer premises which require large starting currents and

affect only the user of such apparatus, by action of the elements and infrequent and unavoidable fluctuations of short duration due to system operation.

(6) Greater variation of voltage than specified under this section may be allowed if service is supplied directly from a transmission line, if emergency service, or if in a limited or extended area in which customers are widely scattered or business done does not justify close voltage administrative regulation. In such cases the best voltage administrative regulation shall be provided that is practicable under the circumstances.

Section 7. Voltage Surveys and Records. (1) Every utility shall have two (2) or more portable indicating voltmeters and two (2) or more recording or graphic voltmeters of type and capacity suited to the voltage supplied. Every utility shall make a sufficient number of voltage surveys to indicate the service furnished from each center of distribution. To satisfy the commission of its compliance with voltage requirements, each utility shall keep at least one (1) of these instruments in continuous service at some representative point on its system. All records of the most recent voltage surveys taken within the last three (3) calendar years shall be available for inspection by the utility's customers and commission staff.

(2) Each graphic recording voltmeter shall be checked with a working standard indicating voltmeter when it is placed in operation and when it is removed, or periodically if the instrument is in a permanent location. Notations on each chart shall indicate beginning time and date of registration and when the chart was removed, as well as the point where voltage was taken, and results of the check with indicating voltmeter.

Section 8. Servicing Utilization Control Equipment. (1) Utilities shall service and maintain any equipment they use on customer's premises and shall adjust thermostats, clocks, relays, or time switches, if such devices must be so adjusted to provide service in accordance with their rate provisions.

(2) Time switches used by the utility for controlling equipment such as water heaters and street lights shall be of such quality that the timing mechanism may be adjusted to be accurate within ten (10) minutes per month. Time switches used by the utility for controlling street lighting or display lighting shall be inspected or monitored at least once a month and, if in error, adjusted. Time switches shall also be adjusted upon complaint if found in error or when service interruptions cause them to be in error by one-half (1/2) hour or more.

(3) Time switches and control devices used by the utility for controlling off-peak appliances shall be inspected or monitored periodically and adjusted if in error, and also adjusted upon complaint if found in error or whenever service interruptions result in error of two (2) hours or more or in supplying service to off-peak appliances during peak periods.

Section 9. Measuring Customer Service. (1) All energy sold within the State of Kentucky shall be measured by commercially acceptable measuring devices owned and maintained by the utility, except where it is impracticable to meter loads, such as multiple street lighting, temporary or special installations, in which case consumption may be calculated. The utility shall meter its own electrical energy use except when such service is for emergency or incidental lighting such as outdoor substations, or at remote points on its transmission or distribution lines. All other electrical quantities which the utility's tariff indicates are to be metered shall be metered by commercially acceptable instruments owned and maintained by the utility.

(2) The utility shall regard each point of delivery as an independent customer and meter the power delivered at each point. Combined meter readings shall not be taken at separate points, nor shall energy used by more than one (1) residence or place of business on one (1) meter be measured to obtain a lower rate.

(3) Metering facilities located at any point where energy may flow in either direction and where the quantities measured are used for billing purposes shall consist of meters equipped with ratchets or other devices to prevent reverse registration and be so connected as to separately meter energy flow in each direction.

(4) Whenever possible reactive meters required to meet the conditions of a given rate schedule shall be either all ratcheted or none shall be ratcheted. Reactive metering shall not be employed for determining average power factor for billing purposes where energy may flow in either direction or where a customer may generate an appreciable amount of his own requirements.

(5) Meters which are not direct reading and those operating from instrument transformers shall have the multiplier plainly marked on the dial of the instrument or otherwise suitably marked and all charts taken from recording meters shall be marked with the record date, meter number, customer and chart multiplier.

(6) The register ratio shall be marked on all electro-mechanical meter registers. Meters already in service may be so marked when they are tested.

(7) The watt-hour constant for the meter itself shall be placed on all watt-hour meters. Meters already in service shall be so marked when they come to the meter shop.

Section 10. Service Connections. (1) The utility shall pay all costs of a service drop or an initial connection to its line with the customer's service outlet, except the attachment of the wire support to customer premises. When the customer's outlet is inaccessible to the utility, or the customer desires that the service outlet on any building be at a location other than that closest to the utility's line, cost of such special construction as necessary shall be borne by the customer. The utility shall furnish at its expense an amount of wire, labor and material equivalent to that furnished for a like service connection not requiring such special construction.

(2) Underground service requirements and administrative regulations shall be established by each utility and be on file with the commission.

(3) All equipment and material furnished by the utility at its own expense shall remain the property of the utility and may be removed by it at any reasonable time after discontinuance of service.

Section 11. Distribution Line Extensions. (1) Normal extensions. An extension of 1,000 feet or less of single phase line shall be made by a utility to its existing distribution line without charge for a prospective customer who shall apply for and contract to use the service for one (1) year or more and provides guarantee for such service. The "service drop" to customer premises from the distribution line at the last pole shall not be included in the foregoing measurements. This distribution line extension shall be limited to service where installed transformer capacity does not exceed 25 KVA. Any utility which extends service to a customer who may require polyphase service or whose installed transformer capacity will exceed 25 KVA may require the customer to pay in advance additional cost of construction which exceeds that for a single phase line where the installed transformer capacity does not exceed 25 KVA.

(2) Other extensions.

(a) When an extension of the utility's line to serve an applicant or group of applicants amounts to more than 1,000 feet per customer, the utility may, if not inconsistent with its filed tariff, require total cost of the excessive footage over 1,000 feet per customer to be deposited with the utility by the applicant or applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: Each year, for a refund period of not less than ten (10) years, the utility shall refund to the customer(s) who paid for the excessive footage the cost of 1,000 feet of extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid the utility. No refund shall be made after the refund period ends.

(c) For additional customers connected to an extension or lateral from the distribution line, the utility shall refund to any customer who paid for excessive footage the cost of 1,000 feet of line less the length of the lateral or extension.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 1,000 feet of the extension installed for each additional customer connected during the year. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends.

(4) Nothing contained herein shall be construed as to prohibit the utility from making extensions under different arrangements if such arrangements have been approved by the commission.

(5) Nothing contained herein shall be construed to prohibit a utility from making at its expense greater extensions than herein prescribed, if similar free extensions are made to other customers under similar conditions.

(6) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 1,000 feet upon a finding by the commission that such extension is reasonable.

Section 12. Distribution Line Extensions to Mobile Homes. (1) All extensions of up to 150 feet from the nearest distribution line shall be made without charge.

(2) Extensions greater than 150 feet from the nearest distribution line and up to 300 feet shall be made if the customer pays the utility a "customer advance for construction" of fifty (50) dollars in addition to any other charges required by the utility for all customers. This advance shall be refunded at the end of one (1) year if service to the mobile home continues for that length of time.

(3) For extensions greater than 300 feet and less than 1,000 feet from the nearest distribution line, the utility may charge an advance equal to reasonable costs incurred by it for that portion of service beyond 300 feet plus fifty (50) dollars. Beyond 1,000 feet the extension policies set forth in Section 11 of this administrative regulation shall apply.

(a) This advance shall be refunded to the customer over a four (4) year period in equal amounts for each year service is continued. The customer advance for construction of fifty (50) dollars shall be added to the first of four (4) refunds.

(b) If service is discontinued for a period of sixty (60) days, or the mobile home is removed and another does not take its place within sixty (60) days, or is not replaced by a permanent structure, the remainder of the advance shall be forfeited.

(c) No refunds shall be made to any customer who did not make the advance originally.

(4) If a utility implements specific requirements pertaining to mobile homes, such requirements shall be subject to approval by the commission and comply with the provisions of this administrative regulation.

Section 13. Testing Equipment and Standards. (1) Each utility shall maintain sufficient laboratories, meter testing shops, standards, instruments and facilities to determine accuracy of all types of meters and measuring devices used by the utility except as provided in 807 KAR 5:006, Section 17.

(2) The following testing equipment shall be available as minimum requirements for each utility or agency making tests or checks for a utility pursuant to 807 KAR 5:006, Section 17(2):

(a) One (1) or more working watt-hour standards and associated devices of capacity and voltage range adequate to test all watt-hour meters used by the utility.

(b) One (1) or more watt-hour standards, which shall be the utility's master watt-hour standards, used for testing the working watt-hour standards of the utility. These standards shall be of an approved type, shall be well compensated for both classes of temperature errors, practically free from errors due to ordinary voltage variations, and free from erratic registration. These master watt-hour standards shall be of capacity and voltage range adequate to test all working watt-hour standards at all loads and voltages at which they are used. These standards shall be kept permanently at one place and not used for routine testing.

(c) Working indicating instruments, such as ammeters, voltmeters and watt-meters, of such various types required to determine the quality of service to customers.

(d) A voltmeter and ammeter, which shall be master indicating instruments, and which shall be used for testing of working indicating and recording instruments. These instruments shall be of an approved type and of accuracy class and range sufficient to determine accuracy of working instruments to within five-tenths (0.5) percent of all ranges and scale deflections at which working instruments are used. They shall be kept permanently at one place and not used for routine testing.

(3) The utility's master watt-hour standards shall not be in error by more than plus or minus three-tenths (0.3) percent at 100 percent power factor, nor more than plus or minus five-tenths (0.5) percent at fifty (50) percent power factor at loads and voltages at which they are used, and shall not be used to check or calibrate working standards unless the master standard has been certified as to accuracy by the commission within the preceding twelve (12) months. Each master watt-hour standard shall have a history card and calibration data available, and when used to calibrate working standards, correction for any error of the master standard shall be applied.

(4) All working watt-hour standards when regularly used shall be compared with a master standard at least once in every four (4) weeks. Working watt-hour standards infrequently used shall be compared with a master standard before they are used.

(5) Working watt-hour standards shall be adjusted, if necessary, so that their accuracy will be within plus or minus three-tenths (0.3) percent at 100 percent power factor and within plus or minus five-tenths (0.5) percent at fifty (50) percent lagging power factor at all voltages and loads at which the standard may be used. A history and calibration record shall be kept for each working watt-hour standard showing all pertinent data and name of person performing tests.

(6) After having adjusted working watt-hour standards to the accuracy specified above, service measuring equipment shall be adjusted to within the accuracies required, assuming working watt-hour standards to be 100 percent accurate.

(7) If calibration charts are attached to working watt-hour standards and the error indicated is applied to all tests run and the accuracy on any range has not varied more than two-tenths (0.2) percent during the past twelve (12) regular test periods, accuracy limits may be extended to plus or minus five-tenths (0.5) percent at 100 percent power factor and plus or minus seven-tenths (0.7) percent at fifty (50) percent lagging power factor at all voltages and loads at which the standard may be used.

(8) The utility's master indicating instruments shall not be in error by more than plus or minus five-tenths (0.5) percent of indication at commonly used scale deflections and shall not be used to check or calibrate working indicating instruments unless the master instrument has been checked and adjusted, if necessary, and certified as to accuracy by the commission within the preceding twenty-four (24) months. A calibration record shall be maintained for each instrument.

(9) All working indicating instruments shall be checked against master indicating instruments at least once in each six (6) months. If the working instrument is found appreciably in error at zero or in error by more than one (1) percent of indication at commonly used scale deflections, it shall be adjusted. A calibration record shall be maintained for each instrument showing all pertinent data and name of person performing tests.

Section 14. Check of Standards by Commission. (1) Each utility, and/or agency making tests or checks for a utility, shall submit to the commission Meter Standards Laboratory, its master watt-hour standard once in each year, and its master indicating voltmeter and ammeter once in each two (2) years.

(2) At the discretion of the commission any or all of these required tests may be made at the utility's or agency's testing facility by means of portable transfer standards. If the standards satisfy the requirements of the commission a Certificate of Accuracy shall be issued by the commission's Division of Engineering.

(3) Each utility which normally checks its own master watt-hour standards and master indicating instruments against primary standards such as precision watt-meters, volt boxes, resistances, standard cells, potentiometers, and timing devices, shall calibrate the master watt-hour standards and indicating instruments before they are submitted to the commission for test, and attach to them a record of such calibration.

Section 15. Testing of Metering Equipment. (1) Testing of any unit of metering equipment shall consist of a comparison of its accuracy with a standard of known accuracy. All metering equipment shall be in good order, and shall be adjusted to as close to zero error as possible.

(2) No meter or measuring device shall be deliberately set in error by any amount. Because of unavoidable irregularities of work done on a commercial scale, some accuracy tolerance shall be allowed. Meters shall be set as near as practicable to 100 percent accuracy but in no case shall the inaccuracy exceed one (1) percent. Further, meters with defective parts shall be repaired regardless of their accuracy.

(3) Metering equipment, including instrument transformers and demand meters, shall be tested for accuracy prior to being placed in service, periodically in accordance with the schedule below, upon complaint, when suspected of being in error, or when removed from service for any cause.

Period Test Schedule		
	Self-Contained Meters	
	Single phase	8 years
	3 wire network	8 years
	Polyphase	6 years
Meters used with instrument transformers		
	Single phase	6 years
	Polyphase	4 years
Demand Meters		
	Indicating block-interval and lagged-demand meters	same as associated watt-hour meter
	Graphic and pulse operated recording demand meters	2 years
Instrument Transformers		
	Current: high burden test	same as associated watt-hour meter
	Potential: secondary voltage test	same as associated watt-hour meter
	Var-hour Meters	same as associated watt-hour meter
Direct Current Watt-hour Meters:		
	Up to and including 6 KW	4 years
	Over 6 KW through 100 KW	2 years
	Over 100 KW	1 year

(4) Tests may be made at a meter shop, on the customer's premises, or in a mobile shop.

Section 16. Sample Testing of Single Phase Meters. A utility desiring to adopt a scientific sample meter testing plan for single phase meters shall submit its application to the commission for approval. Upon approval the sample testing plan may be followed in lieu of the periodic test prescribed in Section 15(3) of this administrative regulation. The plan shall include the following:

(1) Meters shall be divided into separate groups to recognize differences in operating characteristics due to changes in design, taking into consideration date of manufacture and serial number.

(2) The sampling procedure shall be based upon accepted statistical principles.

(3) The same sampling procedure shall be applied to each group.

(4) Each utility authorized to test meters by sample meter testing plan shall comply with the following conditions:

(a) The number of meters in addition to the sample shall be taken from those meters in each group longest in service since last test unless a particular meter type is known to be increasing the percentage of meters requiring test for the sample group. In such a case where a particular meter type is increasing the percentage of meters requiring test in any group, these meters may be selected first regardless of test date with any additional tests as required for that group coming from those in that group longest in service since last test. Each year the utility shall use the following table to determine the percentage of the total meters in each group to be tested.

Percentage of Meters Within Limits of 2% Fast or Slow (Indicated by Sample)		Percentage of Meters to be Tested the Next Year
99.0	100.0	2
98.0	98.9	4
97.0	97.9	6
96.0	96.9	8
95.0	95.9	10
93.0	94.9	12
91.0	92.9	14
Less than	91.0	16

(b) Provided, however, that no meter shall remain in service without periodic test for a period longer than twenty-five (25) years.

(5) Whenever a meter is found to be more than two (2) percent fast or slow, refunds or back billing shall be made for the period during which the meter error is known to have existed or if not known for one-half (1/2) the elapsed time since the last test but in no case to exceed three (3) years. This provision shall apply only when sample testing of single phase meters has been approved by the commission and utilized by the utility.

Section 17. Test Procedures and Accuracy Requirements. (1) Meters and associated devices shall be tested at the loads indicated below and adjusted as close as practicable to zero error when found to exceed the tolerance prescribed below.

AC Watt-hour Meters		
% of Test Current	Power Factor	Allowable Tolerance
100	1.0	+ or - 1.0%
10	1.0	+ or - 1.0%
100	0.5	+ or - 1.0%
DC Watt-hour Meters		
% of Test Current		Allowable Tolerance
100	1.0%	
10	1.0%	

(a) Only one (1) test run shall normally be required at each test configuration. However if the test indicates the meter is more than two (2) percent in error fast or slow, additional tests shall be made to verify accuracy prior to refunding or back billing the customer.

(b) When a meter is tested on complaint or request, additional test runs shall be made and care exercised to insure that any trouble with the meter will be detected.

(c) For refund and back billing purposes, accuracy of the meter shall be determined by adding the average registration at light load (ten (10) percent of test current) and the average registration at full load (100 percent of test current) and dividing by two (2).

(2) Demand meters. A demand meter, demand register, or demand attachment used to measure customer's service shall:

(a) Be in good mechanical and electrical condition.

(b) Have proper constants, indicating scale, contact device, and resetting device.

(c) Not register at no load.

(d) Be accurate to the following degrees:

1. Graphic meters which record quantity-time curves and integrated-demand meters shall be accurate to within plus or minus two (2) percent of full scale throughout their working range. Timing elements measuring specific demand intervals shall be accurate to within plus or minus two (2) percent and the timing element

which serves to provide a record of the time of day when demand occurs shall be accurate to within plus or minus four (4) minutes in twenty-four (24) hours.

2. Lagged-demand meters shall be accurate to within plus or minus two (2) percent at final indication.

(3) Instrument transformers.

(a) Instrument transformers used in conjunction with metering equipment to measure customer's service shall:

1. Be in proper mechanical condition and have electrical insulation satisfactory for the service on which used.

2. Have characteristics such that the combined inaccuracies of all transformers supplying one (1) or more meters in a given installation shall not exceed the following:

	100% Power Factor		50% Power Factor	
	10% Current	100% Current	10% Current	100% Current
Purchased after Jan. 1, 1942	1%	.75%	3%	2%
Purchased prior to Jan. 1, 1942	2%	1.50%	5%	3%

(b) Meters used in conjunction with instrument transformers shall be adjusted so that verall accuracies will come within the limits specified in this administrative regulation.

(c) Instrument transformers shall be tested with the meter with which they are associated by making an overall test, or may be checked separately. If transformers are tested separately, meters shall also be checked to see that overall accuracy of installation is within the prescribed accuracy requirements.

(d) Results of tests of instrument transformers shall be kept on record and be available for use during the life of the transformer.

(e) Phase shifting transformers shall have secondary voltages under balanced line voltage conditions within one (1) percent plus or minus of the voltage impressed on the primary.

Section 18. Location of Meters. (1) Meters shall be installed in a clean, dry, safe, convenient place as free as possible from vibration. Meters shall be easily accessible for reading, testing, and making necessary adjustments and repairs, and where indoor type meters are necessary they shall not be placed in coal or wood bins or on partitions forming bins, nor on any unstable supports. Unless absolutely unavoidable, meters shall not be installed in attics, sitting rooms, bathrooms, bedrooms, restaurant kitchens, over doors, over windows, or in any location where visits of the meter reader or tester will cause annoyance to the customer or a severe inconvenience to the utility.

(2) Districts subject to flood are excepted from this rule as far as it applies to the location of meters.

(3) Proper provision shall be made by the customer for installation of the utility's meter. Unless the meter is to be mounted upon a panel or installed within a cabinet, such provision shall consist of a board not less than three-quarters (3/4) of an inch in thickness which shall be mounted not less than five (5) or not more than seven (7) feet from the floor, and in general as near as possible to point of entrance of service. At least six (6) inches clear space shall be available, on all sides of the meter board and not less than thirty (30) inches in front of it. The above provisions as to method of mounting and height from floor do not apply to the installation of weatherproof outdoor meters. Electric meters shall not be installed close to either water or gas meters or anything liable to damage the meter, thereby constituting a hazard to customer's safety and continuous service.

(4) When more than one (1) meter is installed without a meter cabinet in the same building, proper space shall be allotted and provision made by the customer for locating the meters at one (1) place. When a number of meters are placed in the same cabinet or upon the same board, each meter shall be tagged or marked to indicate the circuit metered by it.

Section 19. Overhead and Underground Wire Entrances. (1) The overhead wire entrance shall be located on the exterior of the building nearest the utility's lines at a point not less than twelve (12) nor more than thirty (30) feet above the ground. When proper ground clearance cannot be obtained due to height of building, a proper supporting structure shall be provided by the customer unless arrangements can be made with the utility whereby their overhead service wires can be carried to the building in such a manner that these wires will not constitute an obstruction to free passage of vehicles or fire fighting apparatus.

(2) Approval shall be obtained from the utility as to the proper location for a service entrance.

(3) New service drops, both overhead and underground, shall be installed in accordance with the National Electrical Safety Code.

Section 20. Operation of Illegal Gambling Devices. (1) When an electric utility, subject to the jurisdiction of this commission, is notified in writing by a federal or state law enforcement agency, the Attorney General of Kentucky, a Commonwealth's Attorney or a County Attorney acting in his official capacity, that electric energy furnished by it is being used or will be used for operating an illegal gambling device, it shall discontinue rendering electric service to such customer, after reasonable notice to the customer. No damages, penalty or forfeiture, civil or criminal, shall be found against any electric utility for any act done in compliance with any such notice received from the law enforcement agency or officer. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate judicial determination that such service should not be discontinued, or should be restored.

(2) As provided by KRS 278.230, any electric utility subject to commission jurisdiction shall furnish to the commission upon request any records or information in the possession of such electric utility that may assist in the enforcement of this rule.

Section 21. Underground Electric Distribution Systems for New Residential Customers. (1) Purpose of rules. To formulate requirements for underground electric distribution systems for all new customers of those systems which will insure safe and adequate service and which will be uniformly applicable within a utility's service area.

(2) Applicability. New residential customers and subdivisions as defined below after the effective date of this rule.

(3) Rights of way and easements.

(a) The utility shall construct, own, operate and maintain distribution lines only along easements, public streets, roads and highways which are by legal right accessible to the utility's equipment and which the utility has legal right to occupy, and on public lands and private property across which rights of way and easements satisfactory to the utility may be obtained without cost or condemnation by the utility.

(b) Rights of way and easements suitable to the utility for underground distribution facilities shall be furnished by the applicant in reasonable time to meet service requirements. The utility may require that the applicant make the area in which underground distribution facilities are to be located accessible to the company's equipment, remove all obstructions from such area, stake to show property lines and final grade, perform rough grading to reasonable approximation of final grade, and maintain clearing and grading during construction by the utility. The utility may require that suitable land rights be granted to it, obligating the applicant and subsequent property owners to provide continuing access to the utility for operation, maintenance or replacement of its facilities, and to prevent any encroachment in the utility's easement or substantial changes in grade or elevation.

(4) Installation of underground distribution system within new subdivision.

(a) Where appropriate contractual arrangements have been made, the utility shall install within the subdivision an underground electric distribution system of sufficient capacity and suitable materials which, in its judgment, will assure that the property owners will receive safe and adequate electric service for the foreseeable future.

(b) Facilities required to be underground:

1. All single phase conductors installed by the utility shall be underground. Appurtenances such as transformers, pedestal-mounted terminals, switching equipment and meter cabinets may be placed above ground.

2. Three (3) phase primary mains or feeders required within a subdivision to supply local distribution or to serve individual three (3) phase loads may be overhead unless underground is required by governmental

authority or chosen by the applicant, in either of which case the differential cost of underground shall be borne by the applicant.

(c) If the applicant has complied with the requirements herein and with the utility's specifications on file with the commission, and has given the utility not less than 120 days written notice prior to anticipated date of completion (i.e., ready for occupancy) of the first building in the subdivision, the utility shall complete installation thirty (30) days prior to estimated completion date. (Subject to weather and ground conditions and availability of materials and barring extraordinary or emergency circumstances beyond reasonable control of the utility.) However, nothing in these administrative regulations shall be interpreted to require the utility to extend service to portions of subdivisions not under active development.

(5) Schedule of charges.

(a) Within sixty (60) days after the effective date of these rules, each utility shall file with the commission a statement setting forth the utility's policy with respect to electric underground extensions. Such policy shall provide for payment by the applicant for the difference between the cost of providing underground facilities and that of providing overhead facilities. The payment made by applicant shall be expressed in terms of an amount per foot of conductor or other appropriate measure.

(b) The utility's policy as filed with the commission shall set forth an "estimated average cost differential," if any, between the average or representative cost of underground distribution systems and of equivalent overhead distribution systems within the utility's service areas. The payment made by applicant as provided for in paragraph (a) of this subsection shall not be more than the estimated average cost differential and shall be nonrefundable.

(c) Detailed supporting data used to determine estimated average cost differential shall be concurrently filed by the utility with the commission and shall be updated annually.

(d) Applicant may be required to deposit the entire estimated cost of the extension. If this is done, the amount deposited in excess of the normal charge for underground extensions, as provided in paragraph (a) of this subsection, shall be refunded to the applicant over a ten (10) year period as provided in Section 11 of this administrative regulation.

(e) Upon agreement by both parties, if the applicant chooses to perform all necessary trenching and backfilling in accordance with utility specifications, the utility shall credit applicant's cost in an amount equal to the utility's cost for trenching and backfilling.

(f) Utility extension from the property or boundary of the subdivision to its existing supply facilities shall normally be made overhead, and any deposit required for that extension is subject to refund under Section 11 of this administrative regulation. Upon request, such extension may be made underground, if the applicant agrees to pay the excess cost for the underground extension, which excess cost shall be nonrefundable.

(g)1. Point of service shall be that point where utility facilities join customer facilities, irrespective of the location of the meter. Such point of service shall normally be either at the property line or at the corner of the building nearest the point at which underground systems enter the property to be served, depending upon whether the utility or the customer owns the underground service lateral.

2. If established utility practice dictates service termination at the customer's property line, the utility shall credit the applicant fifty (50) dollars or the equivalent cost of an overhead service line to the applicant's meter base, whichever is greater.

3. Where established utility practice does not dictate service termination at the customer property line, the utility shall include in its underground plan the furnishing, installation, ownership, and maintenance of the service lateral to the meter base providing the applicant installs in the building adequate electric service entrance capacity to the satisfaction of the utility to assure that the underground service conductors will be adequate to handle present and future load requirements of the building. In this instance the utility will determine the size and type of service lateral conductors and appurtenances to be used in any installation.

4. If, by mutual agreement of the parties, service terminates at some other point on the building or property, the applicant shall pay the full cost of any additional extension required in excess of that provided for in paragraph (g)1, 2 and 3 of this subsection.

(h) When an existing utility-owned supply circuit or service lateral requires replacement or reinforcement due to added loads, etc., the utility at its expense will replace or reinforce it.

(i) Nothing in this administrative regulation shall be construed to prevent any utility from assuming any part of the cost differential of providing underground distribution systems within subdivisions, provided the utility demonstrates to the commission that such practice will not result in increased rates to the general body of rate payers.

(j) The utility shall not be obligated to install any facility within a subdivision until satisfactory arrangements for payment of charges have been completed by the applicant.

(6) Cooperation by applicant. Charges specified in these rules are based on the premise that each applicant will cooperate with the utility in an effort to keep the cost of construction and installation of the underground electric distribution system as low as possible and make satisfactory arrangements for payment of the above charges prior to installation of the facilities.

(7) Construction. All electrical facilities shall be installed and constructed to comply with applicable codes, rules and administrative regulations of the commission.

Section 22. Deviations from Rules. In special cases for good cause shown the commission may permit deviations from these rules. (8 Ky.R. 814; eff. 4-7-1982; Am. 16 Ky.R. 2046; 2430; eff. 6-10-1990; 17 Ky.R. 2507; eff. 4-4-1991; TAm 1-30-2013.)

807 KAR 5:046. Prohibition of master metering.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.010(4)(a), 278.040(3), 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service by any utility. This administrative regulation requires electric utilities to meter new buildings individually pursuant to the federal standard established by Section 113(b)(1) of the Public Utility Regulatory Policies Act of 1978.

Section 1. Definitions. (1) "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or a sleeping place by one (1) or more persons maintaining a common household.
(2) "Multidwelling unit building" means a structure with two (2) or more dwelling units.
(3) "High rise building" means a building with more than four (4) stories.

Section 2. Individual Meters Required. An individual electric meter to record the retail sales of electricity shall be installed for each newly constructed dwelling unit in a nontransient multidwelling unit residential building, a mobile home park, or a commercial building for which the building permit application is made after May 31, 1981.

Section 3. Exclusions. Individual unit metering will not be required for:
(1) Transient multidwelling buildings including, but not limited to hotels, motels, campgrounds, hospitals, nursing homes, convalescent homes, college dormitories, fraternities, sororities, boatdocks, and mobile homes without a permanent foundation and which is not connected to sanitation facilities.
(2) Commercial unit spaces where the commercial unit space requirements are subject to alteration with a change in tenants as evidenced by temporary versus permanent type of wall construction.
(3) Electricity used in central heating, ventilating, and air conditioning systems.
(4) Electricity used in high rise buildings.

Section 4. Complaints. Applicants for electric service who desire master metering of electricity in a building for which master metering is prohibited may make a formal complaint to the commission as provided in 807 KAR 5:001, Section 19. The applicant shall have the burden of proving that the costs of purchasing and installing separate meters in the building are greater than the long-run benefits of individual metering to the consumers of the electricity at the building. (8 Ky.R. 821; eff. 4-7-1982; TAm 1-30-2013.)

807 KAR 5:051. Electric consumer information.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.040, 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the Commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation requires electric utilities to provide certain information to their consumers pursuant to the federal standard established by Section 113(b)(3) of the Public Utility Regulatory Policies Act of 1978.

Section 1. General. The purpose of this administrative regulation is to require retail electric utilities to provide their consumers with information concerning changes in rate schedules.

Section 2. Rate Schedule Information. Each electric utility shall transmit to each of its consumers a clear and concise explanation of any proposed change in the rate schedule applicable to the consumer.

(1) When an electric utility proposes a change in a rate schedule, the statement explaining it shall be transmitted to each consumer to which the change applies within thirty (30) days after the utility applies for that change or within sixty (60) days in the case of an electric utility which uses a bimonthly billing system.

(2) The statement explaining a proposed rate change may be included with the regular bill. (8 Ky.R. 822; eff. 4-7-82.)

807 KAR 5:054. Small power production and cogeneration.

RELATES TO: KRS Chapter 278, 18 C.F.R. 292.203, 292.204, 292.205, 292.206
STATUTORY AUTHORITY: KRS 278.040(3), 18 C.F.R. 292.203, 292.204, 292.205, 292.206
NECESSITY, FUNCTION, AND CONFORMITY: Under Title II of the Public Utility Regulatory Policies Act of 1978, the Federal Energy Regulatory Commission (FERC) was required to adopt rules to encourage cogeneration and small power production by requiring electric utilities to sell electricity to qualifying cogeneration and small power production facilities and purchase electricity from such facilities. Section 210(f) of this Act requires the state regulatory authority with jurisdiction over electric utilities to implement the FERC rules. As the state regulatory authority for Kentucky, the Public Service Commission proposes to implement those rules.

Section 1. Definitions. (1) "Avoided costs" means incremental costs to an electric utility of electric energy or capacity or both which, if not for the purchase from the qualifying facility, the utility would generate itself or purchase from another source.

(2) "Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

(3) "Cogeneration facility" means equipment used to produce electricity and another form of useful energy which is used for industrial purposes or commercial heating or cooling purposes through sequential use of input energy and which facility meets criteria at 18 C.F.R. Part 292.203(b) and 292.205, as published in the Federal Register on March 20, 1980 (45 F.R. 17959).

(4) "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to installation and maintenance of physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent those costs are in excess of corresponding costs which the utility would have incurred if it had not engaged in interconnected operations but instead had generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity or both from other sources. Interconnection costs do not include any costs included in calculation of avoided costs.

(5) "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

(6) "Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

(7) "Purchase" means purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

(8) "Qualifying facility" means a cogeneration facility as defined in this administrative regulation, construction of which was commenced on or after November 9, 1978, or a small power production facility as defined in this administrative regulation, construction or substantial renovation of which was begun on or after November 9, 1978, neither of which is owned in equity interest greater than fifty (50) percent by a person primarily engaged in generation of electric power other than as described in these rules.

(9) "Sale" means sale of electric energy or capacity or both by an electric utility to a qualifying facility.

(10) "Small power production facility" means an arrangement of equipment for the production of electricity with capacity no greater than eighty (80) megawatts, which equipment is located within a one (1) mile radius or, if hydroelectric facilities, on the same impoundment of water, and which equipment is powered at least seventy-five (75) percent by biomass, waste, renewable resources, or any combination thereof and not more than twenty-five (25) percent by coal or oil or natural gas or any combination thereof and which meets criteria at 18 C.F.R. Part 292.204 as published in the Federal Register on March 20, 1980 (45 F.R. 17959).

(11) "Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

(12) "System emergency" means a condition on a utility's system which may result in imminent significant disruption of service to customers or may imminently endanger life or property.

Section 2. General. This administrative regulation sets forth the manner in which the Public Service Commission will discharge duties conferred upon it by Title II of the Public Utility Regulatory Policies Act of 1978.

Section 3. Applicability. This administrative regulation shall apply to any electric utility, subject to the jurisdiction of the commission, which purchases from or sells to any qualifying facility.

Section 4. Criteria for Qualifying Facility. (1) Criteria for qualification of small power production facilities and cogeneration facilities constructed on or after November 9, 1978, are the same as those adopted by the Federal Energy Regulatory Commission including 18 C.F.R. Parts 292.203, 292.204, 292.205, and 292.206 as published in the Federal Register March 20, 1980 (45 F.R. 17959).

(2) The qualifying status of small power production facilities and cogeneration facilities, the construction of which was commenced prior to November 9, 1978, but which were not selling power to the interconnected utility under an existing contract as of November 9, 1978, will be determined under this administrative regulation on a case-by-case basis.

(3) Small power production facilities and cogeneration facilities constructed prior to November 9, 1978, but which were selling power to their interconnected utility under an existing contract on that date will not be considered qualifying facilities. Upon expiration of the power sales contract between a small power production or cogeneration facility and the electric utility, the commission will determine the qualifying status of the facility under this administrative regulation on a case-by-case basis.

Section 5. (1)(a) All electric utilities with annual retail sales greater than 500 million kilowatt hours shall provide data to the commission from which avoided costs may be derived not later than June 30, 1982, and not less often than every two (2) years thereafter unless otherwise determined by the commission.

(b) In the case of a utility required to purchase all of its electricity from a wholesale supplier by contract, the utility shall file the contracts under which its capacity and energy are purchased, in addition to data provided by the supplying utility required by subsection (2) of this section.

(2) Each electric utility as described in subsection (1) of this section shall file with the commission and shall maintain for public inspection the following data:

(a) Estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1,000 megawatts or more, and in blocks equivalent to not more than ten (10) percent of system peak demands for systems with peak demand of less than 1,000 megawatts. Avoided costs shall be stated on a cents per kilowatt-hour basis during daily, seasonal peak and off-peak periods, by year, for the current calendar year, and each of the next five (5) years.

(b) The electric utility's plan for addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding ten (10) years.

(c) Estimated capacity costs at completion of planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy cost of each unit, expressed in cents per kilowatt-hour. These costs shall be expressed separately for each individual unit and individual planned firm purchases.

(3)(a) Any data submitted by an electric utility beginning with the scheduled June 30, 1982, data shall be subject to review by the commission.

(b) The electric utility has the burden of proof to justify the data it supplies.

Section 6. Electric Utility Obligations. (1) Each electric utility shall purchase any energy and capacity which is made available from a qualifying facility except as provided in subsections (2) and (3) of this section.

(2) The qualifying facility's right to sell power to the utility shall be curtailed in periods when purchases from qualifying facilities will result in costs greater than those which the utility would incur if it generated an equivalent amount of energy instead of purchasing that energy.

(3) During any system emergency, an electric utility may discontinue:

(a) Purchases from a qualifying facility if such purchases would contribute to such emergency; or

(b) Sales to a qualifying facility if discontinuance is nondiscriminatory.

(4) Any utility which invokes subsection (2) of this section shall provide adequate notice to the qualifying facility. In addition, the commission may require the utility to furnish documentation within ten (10) working days after suspension occurs. If the utility fails to provide adequate notice or incorrectly identifies such a period, it will be required to reimburse the qualifying facility for energy or capacity or both available for delivery on a legally enforceable basis as if that period had not occurred.

(5) Rates for sale. An electric utility shall sell power to a qualifying facility upon request except as provided in subsection (3)(b) of this section. Rates for sale shall be just and reasonable, in the public interest and nondiscriminatory. Rates for sale which are based on accurate data and consistent system costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the utility's other customers with similar load or cost-related characteristics. If a utility provides back-up or supplementary power to a

qualifying facility, then costs associated with that capacity reservation are properly recoverable from the qualifying facility.

(6) Obligation to interconnect.

(a) An electric utility is required to make any interconnection with a qualifying facility that is necessary for purchase and sale. Owners of qualifying facilities shall be required to pay for any additional interconnection costs to the extent that those costs are in excess of costs that the electric utility would have incurred if the qualifying facility's output had not been purchased. Payment shall be over a reasonable period of time, and terms of payment shall be a part of the contract between the electric utility and the qualifying facility.

(b) Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with applicable standards established in accordance with Section 7(6) of this administrative regulation.

Section 7. Purchase of Output from Qualifying Facilities. (1) Qualifying facilities shall be permitted the option of either:

(a) Using output of the qualifying facility to supply their power requirements and selling their surplus; or

(b) Simultaneously selling their entire output to the interconnecting utility while purchasing their own requirements from that utility.

(2) Rates for purchase of output of qualifying facility with design capacity of 100 kilowatts or less. Each electric utility shall prepare standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. These rates shall be just and reasonable to the electric customer of the utility, in the public interest and nondiscriminatory. These rates shall be based on avoided costs after consideration of the factors listed in subsection (5)(a) of this section and shall be subdivided into an energy component and a capacity component.

(a) Rates for power offered on an "as available" basis shall be based on the purchasing utility's avoided energy costs estimated at time of delivery.

(b) Rates for power offered on all legally enforceable obligations shall be based at the option of the qualifying facility on either avoided costs at the time of delivery or avoided costs at the time the legally enforceable obligation is incurred. The capacity component shall be based on supply characteristics of qualifying facilities, and the aggregate capacity value of all 100 kilowatts or less facilities which supply power on a legally enforceable basis.

(3) Electric utilities shall design and offer a standard contract to qualifying facilities with a design capacity of 100 kilowatts or less. This contract shall be subject to commission approval.

(4) Rates for purchase of output of qualifying facility with design capacity over 100 kilowatts. Each electric utility shall provide a standard rate schedule for qualifying facilities with design capacity over 100 kilowatts. The rate schedule shall be based on avoided costs which shall be subdivided into an energy component and a capacity component. These rates shall be used only as the basis for negotiating a final purchase rate with qualifying facilities after proper consideration has been given to factors affecting purchase rates listed in subsection (5)(a) of this section. Negotiated rates shall be just and reasonable to the electric customer of the utility, in the public interest and nondiscriminatory. If the electric utility and qualifying facility cannot agree on the purchase rate, then the commission shall determine the rate after a hearing.

(a) Rates for power offered on an "as available" basis shall be based on the purchasing utility's avoided costs estimated at time of delivery.

(b) Rates for energy or capacity or both offered on a legally enforceable basis shall be based at the option of the qualifying facility on either avoided costs at the time of delivery or avoided costs at the time the legally enforceable obligation is incurred.

(5) Factors affecting rates for purchase for all qualifying facilities. In determining the final purchase rate, the following factors shall be taken into account:

(a) Availability of capacity or energy from a qualifying facility during the system daily and seasonal peak. The utility should consider for each qualifying facility the ability to dispatch, reliability, terms of contract, duration of obligation, termination requirements, ability to coordinate scheduled outages, usefulness of energy and capacity during system emergencies, individual and aggregate value of energy and capacity, and shorter construction lead times associated with cogeneration and small power production.

(b) Ability of the electric utility to avoid costs due to deferral, cancellation, or downsizing of capacity additions, and reduction of fossil fuel use.

(c) Savings or costs resulting from line losses that would not have existed in the absence of purchases from a qualifying facility.

(6) Utility safety and system protection requirements. The qualifying facility shall provide adequate equipment to insure the safety and reliability of interconnected operations. This equipment shall be designed to protect interconnect operations between the qualifying facility and the electric utility grid. If the electric utility and qualifying

facility cannot agree, then the qualifying facility may apply to the commission for a determination of adequate system protection.

(7) Additional services to be provided to qualifying facilities. Upon request by a qualifying facility each electric utility shall provide supplementary power, back-up power, maintenance power, and interruptible power. The commission may waive this requirement if the electric utility demonstrates that compliance with it would impair its ability to render adequate service to its other customers or would be unduly burdensome.

(8) Wheeling. The electric utility may wheel power to another utility if the qualifying facility approves. This provision shall not eliminate the responsibility of the interconnected electric utility to purchase power from the qualifying facility if the qualifying facility does not approve the wheeling transaction. The electric utility which agrees to purchase power shall pay to the qualifying facility its avoided cost connected with the transmission of this power adjusted for line losses.

(9) This administrative regulation is not intended to restrict voluntary agreements between qualifying facilities and electric utilities. All contracts between qualifying facilities and electric utilities shall be provided to the commission for its review.

(10) Disputes. The commission's inquiry and determination shall be limited to those parts of a proposed contract which are in dispute. (8 Ky.R. 216; Am. 837; eff. 4-7-82; 16 Ky.R. 1478; 1945; eff. 3-8-90.)

807 KAR 5:056. Fuel adjustment clause.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.030(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) provides that all rates received by an electric utility subject to the jurisdiction of the Public Service Commission shall be fair, just and reasonable. This administrative regulation prescribes the requirements with respect to the implementation of automatic fuel adjustment clauses by which electric utilities may immediately recover increases in fuel costs subject to later scrutiny by the Public Service Commission.

Section 1. Fuel Adjustment Clause. Fuel adjustment clauses which are not in conformity with the principles set out below are not in the public interest and may result in suspension of those parts of such rate schedules:

(1) The fuel clause shall provide for periodic adjustment per KWH of sales equal to the difference between the fuel costs per KWH sale in the base period and in the current period according to the following formula:

$$\text{Adjustment Factor} = \frac{F(m)}{S(m)} - \frac{F(b)}{S(b)}$$

Where F is the expense of fossil fuel in the base (b) and current (m) periods; and S is sales in the base (b) and current (m) periods, all as defined below.

(2) FB/SB shall be so determined that on the effective date of the commission's approval of the utility's application of the formula, the resultant adjustment will be equal to zero.

(3) Fuel costs (F) shall be the most recent actual monthly cost of:

(a) Fossil fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants, plus the cost of fuel which would have been used in plants suffering forced generation or transmission outages, but less the cost of fuel related to substitute generation; plus

(b) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than identified in paragraph (c) of this subsection, but excluding the cost of fuel related to purchases to substitute for the forced outages; plus

(c) The net energy cost of energy purchases, exclusive of capacity or demand charges (irrespective of the designation assigned to such transaction) when such energy is purchased on an economic dispatch basis. Included therein may be such costs as the charges for economy energy purchases and the charges as a result of scheduled outage, all such kinds of energy being purchased by the buyer to substitute for its own higher cost energy; and less

(d) The cost of fossil fuel recovered through intersystem sales including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis.

(e) All fuel costs shall be based on weighted average inventory costing.

(4) Forced outages are all nonscheduled losses of generation or transmission which require substitute power for a continuous period in excess of six (6) hours. Where forced outages are not as a result of faulty equipment, faulty manufacture, faulty design, faulty installations, faulty operation, or faulty maintenance, but are Acts of God, riot, insurrection or acts of the public enemy, then the utility may, upon proper showing, with the approval of the commission, include the fuel cost of substitute energy in the adjustment. Until such approval is obtained, in making the calculations of fuel cost (F) in subsection (3)(a) and (b) of this section the forced outage costs to be subtracted shall be no less than the fuel cost related to the lost generation.

(5) Sales (S) shall be all KWH's sold, excluding intersystem sales. Where, for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of:

(a) Generation;

(b) Purchases;

(c) Interchange-in; less

(d) Energy associated with pumped storage operations; less

(e) Intersystem sales referred to in subsection (3)(d) above; less

(f) Total system losses. Utility used energy shall not be excluded in the determination of sales (S).

(6) The cost of fossil fuel shall include no items other than the invoice price of fuel less any cash or other discounts. The invoice price of fuel includes the cost of the fuel itself and necessary charges for transportation of the fuel from the point of acquisition to the unloading point, as listed in Account 151 of FERC Uniform System of Accounts for Public Utilities and Licensees.

(7) At the time the fuel clause is initially filed, the utility shall submit copies of each fossil fuel purchase contract not otherwise on file with the commission and all other agreements, options or similar such documents, and all

amendments and modifications thereof related to the procurement of fuel supply and purchased power. Incorporation by reference is permissible. Any changes in the documents, including price escalations, or any new agreements entered into after the initial submission, shall be submitted at the time they are entered into. Where fuel is purchased from utility-owned or controlled sources, or the contract contains a price escalation clause, those facts shall be noted and the utility shall explain and justify them in writing. Fuel charges which are unreasonable shall be disallowed and may result in the suspension of the fuel adjustment clause. The commission on its own motion may investigate any aspect of fuel purchasing activities covered by this administrative regulation.

(8) Any tariff filing which contains a fuel clause shall conform that clause with this administrative regulation within three (3) months of the effective date of this administrative regulation. The tariff filing shall contain a description of the fuel clause with detailed cost support.

(9) The monthly fuel adjustment shall be filed with the commission ten (10) days before it is scheduled to go into effect, along with all the necessary supporting data to justify the amount of the adjustment which shall include data and information as may be required by the commission.

(10) Copies of all documents required to be filed with the commission under this administrative regulation shall be open and made available for public inspection at the office of the Public Service Commission pursuant to the provisions of KRS 61.870 to 61.884.

(11) At six (6) month intervals, the commission will conduct public hearings on a utility's past fuel adjustments. The commission will order a utility to charge off and amortize, by means of a temporary decrease of rates, any adjustments it finds unjustified due to improper calculation or application of the charge or improper fuel procurement practices.

(12) Every two (2) years following the initial effective date of each utility's fuel clause the commission in a public hearing will review and evaluate past operations of the clause, disallow improper expenses and to the extent appropriate reestablish the fuel clause charge in accordance with subsection (2) of this section. (8 Ky.R. 822; eff. 4-7-82.)

807 KAR 5:058. Integrated resource planning by electric utilities.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.040(3), 278.230(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278. This administrative regulation prescribes rules for regular reporting and commission review of load forecasts and resource plans of the state's electric utilities to meet future demand with an adequate and reliable supply of electricity at the lowest possible cost for all customers within their service areas, and satisfy all related state and federal laws and regulations.

Section 1. General Provisions. (1) This administrative regulation shall apply to electric utilities under commission jurisdiction except a distribution company with less than $10,000,000 annual revenue or a distribution cooperative organized under KRS Chapter 279.
(2) Each electric utility shall file triennially with the commission an integrated resource plan. The plan shall include historical and projected demand, resource, and financial data, and other operating performance and system information, and shall discuss the facts, assumptions, and conclusions, upon which the plan is based and the actions it proposes.
(3) Each electric utility shall file ten (10) bound copies and one (1) unbound, reproducible copy of its integrated resource plan with the commission.

Section 2. Filing Schedule. (1) Each electric utility shall file its integrated resource plan according to a staggered schedule which provides for the filing of integrated resource plans one (1) every six (6) months beginning nine (9) months from the effective date of this administrative regulation.
(a) The integrated resource plans shall be filed at the specified times following the effective date of this administrative regulation:
1. Kentucky Utilities Company shall file nine (9) months from the effective date;
2. Kentucky Power Company shall file fifteen (15) months from the effective date;
3. East Kentucky Power Cooperative, Inc. shall file twenty-one (21) months from the effective date;
4. The Union Light, Heat & Power Company shall file twenty-seven (27) months from the effective date;
5. Big Rivers Electric Corporation shall file thirty-three (33) months from the effective date; and
6. Louisville Gas & Electric Company shall file thirty-nine (39) months from the effective date.
(b) The schedule shall provide at such time as all electric utilities have filed integrated resource plans, the sequence shall repeat.
(c) The schedule shall remain in effect until changed by the commission on its own motion or on motion of one (1) or more electric utilities for good cause shown. Good cause may include a change in a utility's financial or resource conditions.
(d) If any filing date falls on a weekend or holiday, the plan shall be submitted on the first business day following the scheduled filing date.
(2) Immediately upon filing of an integrated resource plan, each utility shall provide notice to intervenors in its last integrated resource plan review proceeding, that its plan has been filed and is available from the utility upon request.
(3) Upon receipt of a utility's integrated resource plan, the commission shall establish a review schedule which may include interrogatories, comments, informal conferences, and staff reports.

Section 3. Waiver. A utility may file a motion requesting a waiver of specific provisions of this administrative regulation. Any request shall be made no later than ninety (90) days prior to the date established for filing the integrated resource plan. The commission shall rule on the request within thirty (30) days. The motion shall clearly identify the provision from which the utility seeks a waiver and provide justification for the requested relief which shall include an estimate of costs and benefits of compliance with the specific provision. Notice shall be given in the manner provided in Section 2(2) of this administrative regulation.

Section 4. Format. (1) The integrated resource plan shall be clearly and concisely organized so that it is evident to the commission that the utility has complied with reporting requirements described in subsequent sections.
(2) Each plan filed shall identify the individuals responsible for its preparation, who shall be available to respond to inquiries during the commission's review of the plan.

Section 5. Plan Summary. The plan shall contain a summary which discusses the utility's projected load growth and the resources planned to meet that growth. The summary shall include at a minimum:

(1) Description of the utility, its customers, service territory, current facilities, and planning objectives;

(2) Description of models, methods, data, and key assumptions used to develop the results contained in the plan;

(3) Summary of forecasts of energy and peak demand, and key economic and demographic assumptions or projections underlying these forecasts;

(4) Summary of the utility's planned resource acquisitions including improvements in operating efficiency of existing facilities, demand-side programs, nonutility sources of generation, new power plants, transmission improvements, bulk power purchases and sales, and interconnections with other utilities;

(5) Steps to be taken during the next three (3) years to implement the plan;

(6) Discussion of key issues or uncertainties that could affect successful implementation of the plan.

Section 6. Significant Changes. All integrated resource plans, shall have a summary of significant changes since the plan most recently filed. This summary shall describe, in narrative and tabular form, changes in load forecasts, resource plans, assumptions, or methodologies from the previous plan. Where appropriate, the utility may also use graphic displays to illustrate changes.

Section 7. Load Forecasts. The plan shall include historical and forecasted information regarding loads.

(1) The information shall be provided for the total system and, where available, disaggregated by the following customer classes:

(a) Residential heating;

(b) Residential nonheating;

(c) Total residential (total of paragraphs (a) and (b) of this subsection);

(d) Commercial;

(e) Industrial;

(f) Sales for resale;

(g) Utility use and other.

The utility shall also provide data at any greater level of disaggregation available.

(2) The utility shall provide the following historical information for the base year, which shall be the most recent calendar year for which actual energy sales and system peak demand data are available, and the four (4) years preceding the base year:

(a) Average annual number of customers by class as defined in subsection (1) of this section;

(b) Recorded and weather-normalized annual energy sales and generation for the system, and sales disaggregated by class as defined in subsection (1) of this section;

(c) Recorded and weather-normalized coincident peak demand in summer and winter for the system;

(d) Total energy sales and coincident peak demand to retail and wholesale customers for which the utility has firm, contractual commitments;

(e) Total energy sales and coincident peak demand to retail and wholesale customers for which service is provided under an interruptible or curtailable contract or tariff or under some other nonfirm basis;

(f) Annual energy losses for the system;

(g) Identification and description of existing demand-side programs and an estimate of their impact on utility sales and coincident peak demands including utility or government sponsored conservation and load management programs;

(h) Any other data or exhibits, such as load duration curves or average energy usage per customer, which illustrate historical changes in load or load characteristics.

(3) For each of the fifteen (15) years succeeding the base year, the utility shall provide a base load forecast it considers most likely to occur and, to the extent available, alternate forecasts representing lower and upper ranges of expected future growth of the load on its system. Forecasts shall not include load impacts of additional, future demand-side programs or customer generation included as part of planned resource acquisitions estimated separately and reported in Section 8(4) of this administrative regulation. Forecasts shall include the utility's estimates of existing and continuing demand-side programs as described in subsection (5) of this section.

(4) The following information shall be filed for each forecast:

(a) Annual energy sales and generation for the system and sales disaggregated by class as defined in subsection (1) of this section;

(b) Summer and winter coincident peak demand for the system;

(c) If available for the first two (2) years of the forecast, monthly forecasts of energy sales and generation for the system and disaggregated by class as defined in subsection (1) of this section and system peak demand;

(d) The impact of existing and continuing demand-side programs on both energy sales and system peak demands, including utility and government sponsored conservation and load management programs;

(e) Any other data or exhibits which illustrate projected changes in load or load characteristics.

(5) The additional following data shall be provided for the integrated system, when the utility is part of a multistate integrated utility system, and for the selling company, when the utility purchases fifty (50) percent of its energy from another company:

(a) For the base year and the four (4) years preceding the base year:

1. Recorded and weather normalized annual energy sales and generation;

2. Recorded and weather-normalized coincident peak demand in summer and winter.

(b) For each of the fifteen (15) years succeeding the base year:

1. Forecasted annual energy sales and generation;

2. Forecasted summer and winter coincident peak demand.

(6) A utility shall file all updates of load forecasts with the commission when they are adopted by the utility.

(7) The plan shall include a complete description and discussion of:

(a) All data sets used in producing the forecasts;

(b) Key assumptions and judgments used in producing forecasts and determining their reasonableness;

(c) The general methodological approach taken to load forecasting (for example, econometric, or structural) and the model design, model specification, and estimation of key model parameters (for example, price elasticities of demand or average energy usage per type of appliance);

(d) The utility's treatment and assessment of load forecast uncertainty;

(e) The extent to which the utility's load forecasting methods and models explicitly address and incorporate the following factors:

1. Changes in prices of electricity and prices of competing fuels;

2. Changes in population and economic conditions in the utility's service territory and general region;

3. Development and potential market penetration of new appliances, equipment, and technologies that use electricity or competing fuels; and

4. Continuation of existing company and government sponsored conservation and load management or other demand-side programs.

(f) Research and development efforts underway or planned to improve performance, efficiency, or capabilities of the utility's load forecasting methods; and

(g) Description of and schedule for efforts underway or planned to develop end-use load and market data for analyzing demand-side resource options including load research and market research studies, customer appliance saturation studies, and conservation and load management program pilot or demonstration projects.

Technical discussions, descriptions, and supporting documentation shall be contained in a technical appendix.

Section 8. Resource Assessment and Acquisition Plan. (1) The plan shall include the utility's resource assessment and acquisition plan for providing an adequate and reliable supply of electricity to meet forecasted electricity requirements at the lowest possible cost. The plan shall consider the potential impacts of selected, key uncertainties and shall include assessment of potentially cost-effective resource options available to the utility.

(2) The utility shall describe and discuss all options considered for inclusion in the plan including:

(a) Improvements to and more efficient utilization of existing utility generation, transmission, and distribution facilities;

(b) Conservation and load management or other demand-side programs not already in place;

(c) Expansion of generating facilities, including assessment of economic opportunities for coordination with other utilities in constructing and operating new units; and

(d) Assessment of nonutility generation, including generating capacity provided by cogeneration, technologies relying on renewable resources, and other nonutility sources.

(3) The following information regarding the utility's existing and planned resources shall be provided. A utility which operates as part of a multistate integrated system shall submit the following information for its operations within Kentucky and for the multistate utility system of which it is a part. A utility which purchases fifty (50) percent or more of its energy needs from another company shall submit the following information for its operations within Kentucky and for the company from which it purchases its energy needs.

(a) A map of existing and planned generating facilities, transmission facilities with a voltage rating of sixty-nine

(69) kilovolts or greater, indicating their type and capacity, and locations and capacities of all interconnections with other utilities. The utility shall discuss any known, significant conditions which restrict transfer capabilities with other utilities.

(b) A list of all existing and planned electric generating facilities which the utility plans to have in service in the base year or during any of the fifteen (15) years of the forecast period, including for each facility:

1. Plant name;
2. Unit number(s);
3. Existing or proposed location;
4. Status (existing, planned, under construction, etc.);
5. Actual or projected commercial operation date;
6. Type of facility;
7. Net dependable capability, summer and winter;
8. Entitlement if jointly owned or unit purchase;
9. Primary and secondary fuel types, by unit;
10. Fuel storage capacity;
11. Scheduled upgrades, deratings, and retirement dates;
12. Actual and projected cost and operating information for the base year (for existing units) or first full year of operations (for new units) and the basis for projecting the information to each of the fifteen (15) forecast years (for example, cost escalation rates). All cost data shall be expressed in nominal and real base year dollars.

a. Capacity and availability factors;
b. Anticipated annual average heat rate;
c. Costs of fuel(s) per millions of British thermal units (MMBtu);
d. Estimate of capital costs for planned units (total and per kilowatt of rated capacity);
e. Variable and fixed operating and maintenance costs;
f. Capital and operating and maintenance cost escalation factors;
g. Projected average variable and total electricity production costs (in cents per kilowatt-hour).

(c) Description of purchases, sales, or exchanges of electricity during the base year or which the utility expects to enter during any of the fifteen (15) forecast years of the plan.

(d) Description of existing and projected amounts of electric energy and generating capacity from cogeneration, self-generation, technologies relying on renewable resources, and other nonutility sources available for purchase by the utility during the base year or during any of the fifteen (15) forecast years of the plan.

(e) For each existing and new conservation and load management or other demand-side programs included in the plan:

1. Targeted classes and end-uses;
2. Expected duration of the program;
3. Projected energy changes by season, and summer and winter peak demand changes;
4. Projected cost, including any incentive payments and program administrative costs; and
5. Projected cost savings, including savings in utility's generation, transmission and distribution costs.

(4) The utility shall describe and discuss its resource assessment and acquisition plan which shall consist of resource options which produce adequate and reliable means to meet annual and seasonal peak demands and total energy requirements identified in the base load forecast at the lowest possible cost. The utility shall provide the following information for the base year and for each year covered by the forecast:

(a) On total resource capacity available at the winter and summer peak:

1. Forecast peak load;
2. Capacity from existing resources before consideration of retirements;
3. Capacity from planned utility-owned generating plant capacity additions;
4. Capacity available from firm purchases from other utilities;
5. Capacity available from firm purchases from nonutility sources of generation;
6. Reductions or increases in peak demand from new conservation and load management or other demand-side programs;
7. Committed capacity sales to wholesale customers coincident with peak;
8. Planned retirements;
9. Reserve requirements;
10. Capacity excess or deficit;
11. Capacity or reserve margin.

(b) On planned annual generation:

1. Total forecast firm energy requirements;
2. Energy from existing and planned utility generating resources disaggregated by primary fuel type;
3. Energy from firm purchases from other utilities;
4. Energy from firm purchases from nonutility sources of generation; and
5. Reductions or increases in energy from new conservation and load management or other demand-side programs;

(c) For each of the fifteen (15) years covered by the plan, the utility shall provide estimates of total energy input in primary fuels by fuel type and total generation by primary fuel type required to meet load. Primary fuels shall be organized by standard categories (coal, gas, etc.) and quantified on the basis of physical units (for example, barrels or tons) as well as in MMBtu.

(5) The resource assessment and acquisition plan shall include a description and discussion of:

(a) General methodological approach, models, data sets, and information used by the company;

(b) Key assumption and judgments used in the assessment and how uncertainties in those assumptions and judgments were incorporated into analyses;

(c) Criteria (for example, present value of revenue requirements, capital requirements, environmental impacts, flexibility, diversity) used to screen each resource alternative including demand-side programs, and criteria used to select the final mix of resources presented in the acquisition plan;

(d) Criteria used in determining the appropriate level of reliability and the required reserve or capacity margin, and discussion of how these determinations have influenced selection of options;

(e) Existing and projected research efforts and programs which are directed at developing data for future assessments and refinements of analyses;

(f) Actions to be undertaken during the fifteen (15) years covered by the plan to meet the requirements of the Clean Air Act amendments of 1990, and how these actions affect the utility's resource assessment; and

(g) Consideration given by the utility to market forces and competition in the development of the plan.

Technical discussion, descriptions and supporting documentation shall be contained in a technical appendix.

Section 9. Financial Information. The integrated resource plan shall, at a minimum, include and discuss the following financial information:

(1) Present (base year) value of revenue requirements stated in dollar terms;

(2) Discount rate used in present value calculations;

(3) Nominal and real revenue requirements by year; and

(4) Average system rates (revenues per kilowatt hour) by year.

Section 10. Notice. Each utility which files an integrated resource plan shall publish, in a form prescribed by the commission, notice of its filing in a newspaper of general circulation in the utility's service area. The notice shall be published not more than thirty (30) days after the filing date of the report.

Section 11. Procedures for Review of the Integrated Resource Plan. (1) Upon receipt of a utility's integrated resource plan, the commission shall develop a procedural schedule which allows for submission of written interrogatories to the utility by staff and intervenors, written comments by staff and intervenors, and responses to interrogatories and comments by the utility.

(2) The commission may convene conferences to discuss the filed plan and all other matters relative to review of the plan.

(3) Based upon its review of a utility's plan and all related information, the commission staff shall issue a report summarizing its review and offering suggestions and recommendations to the utility for subsequent filings.

(4) A utility shall respond to the staff's comments and recommendations in its next integrated resource plan filing. (17 Ky.R. 1289; Am. 1720; eff. 12-18-90; 21 Ky.R. 2799; 22 Ky.R. 287; eff. 7-21-95.)

807 KAR 5:061. Telephone.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishings of any commodity by the utility. This administrative regulation establishes general rules which apply to telephone utilities.

Section 1. Definitions. (1) "Access line" means wires or channels used to connect network interface at the subscriber premises with the central office.

(2) "Average busy season; busy hour traffic" means the average traffic volume for the busy season, busy hours.

(3) "Base rate area" means the developed portion or portions within each exchange service area as set forth in telephone utility tariffs, maps or descriptions. Access line service within this area is furnished at uniform rates without mileage charges.

(4) "Basic or regular service" includes all one (1), two (2), four (4) and eight (8) party access line service.

(5) "Busy hour" means the two (2) consecutive half-hours during which the greatest volume of traffic is handled in the central office.

(6) "Busy season" means that period of the year during which the greatest volume of traffic is handled in the central office.

(7) "Calls" means telephone messages attempted by a customer.

(8) "Central office" means a unit of a telephone utility, including switching equipment and appurtenant facilities used to establish connections between customer lines or between customer lines and trunk or toll lines to other central offices within the same or at other exchanges.

(9) "Class of service" means the various categories of telephone service generally available to customers, such as business or residence.

(10) "Customer or subscriber" means any person, firm, partnership, corporation, municipality, cooperative, organization or governmental agency provided with telephone service by any telephone utility.

(11) "Customer trouble report" means any oral or written report from a subscriber or user of telephone service relating to a physical defect or difficulty with the operation of telephone facilities.

(12) "Direct distance dialing (DDD)" means customer dialing over the nationwide intertoll telephone network of calls to which toll charges are applicable. No operator assistance is required for DDD calls.

(13) "Exchange" means a geographical area established by a telephone utility for the administration of telephone service. It may embrace a city, town, or village and its environs or a portion thereof. It may consist of one (1) or more central offices together with associated plant used in furnishing communication service in that area.

(14) "Extended area service (EAS)" means the provision of toll free calling between or among two (2) or more exchange areas.

(15) "Grade of service" means the number of parties served on a telephone line such as one (1) party, two (2) party, four (4) party, etc.

(16) "Intercept service" means a service arrangement provided by the utility whereby calls placed to a disconnected, discontinued, or improperly listed telephone number are intercepted and the calling party is informed that the called telephone number has been disconnected, discontinued, changed, or that calls are being received by another telephone. This may be accomplished by recording or by operator.

(17) "Message" means a completed customer telephone call.

(18) "Outside plant" means telephone equipment and facilities installed on, along, over or under streets, alleys, highways, or on private rights-of-way between central office and customer's location or between central offices.

(19) "Regrade" means an application for a different class or grade of service.

(20) "Service line" means those facilities owned and maintained by a customer or group of customers. Lines of those facilities are connected with facilities of a telephone utility at an agreed point for communication service.

(21) "Service objectives," as construed in these administrative regulations, shall mean a designated number or percentage, applicable to various service measures, maintenance of which shall indicate a minimum satisfactory level of service.

(22) "Special service" means unusual and complex services such as data terminals, teletypewriter, full period circuits, wide area telephone service (WATS), or other items that require special engineering, installation or manufacturing to provide service.

(23) "Switching service" means switching performed for service lines.

(24) "Tariff" means the entire body of rates, tolls, rentals, charges, classifications, regulations and rules, adopted

by a public utility in accordance with laws governing the provisions of public utility service.

(25) "Telephone utility" means any person, firm, partnership, cooperative, organization or corporation furnishing telephone service to the public under the jurisdiction of the commission.

(26) "Toll connecting trunks" means a general classification of trunks carrying toll traffic and ordinarily extending between a local office and a toll office.

(27) "Toll station" means an access line and associated equipment connected to a toll line or directly to a toll board.

(28) "Traffic" means telephone call volume, based on number and duration of messages.

Section 2. General Provisions. This administrative regulation governs furnishing of intrastate telephone service and facilities to the public by telephone utilities subject to the jurisdiction of the commission. These rules set forth reasonable service standards and procedures for rendering adequate and satisfactory service to the public.

Section 3. Acceptable Standards. Unless otherwise specified by the commission, the utility shall use applicable provisions in the following publications as standards of accepted good engineering practice for construction and maintenance of plant and facilities, incorporated in this administrative regulation by reference. Copies are available at the Commission office, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.

(1) National Electrical Safety Code; ANSI C2. 1990 Edition, available by contacting the IEEE Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855-1331. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.

(2) National Electrical Code; ANSI/NFPA 70, 1990 Edition, available by contacting the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02169. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.

Section 4. Basic Utility Obligations. (1) Each telephone utility shall provide telephone service to the public in its service area in accordance with its rules and tariffs on file with the commission. Such service shall meet or exceed standards set forth in this administrative regulation.

(2) Each telephone utility shall continually review its operations to assure adequate service.

(3) Each telephone utility shall maintain records of its operations in sufficient detail necessary to permit review, and those records shall be available for inspection by the commission upon request.

(4) Each utility shall maintain records of various service objectives by exchange, district, or as otherwise approved by the commission. A records summary shall be submitted monthly to the commission. If the utility's performance falls below the service objective for two (2) consecutive months, the utility shall submit to the commission a report setting forth action taken or planned to correct performance levels.

(5) Where a telephone utility is generally operated in conjunction with any other enterprise, suitable records shall be maintained so that results of the telephone operation may be determined upon reasonable notice and request by the commission.

Section 5. Directories. (1) Telephone directories shall be published at least yearly for each exchange listing the name, location and telephone numbers of all customers, except public telephones and numbers unlisted at customer request, which can be called within the service area without a long distance charge.

(2) Upon issuance, a copy of each directory shall be distributed by each utility to all its subscribers served by that directory, and a copy of each directory shall be furnished to the commission.

(3) The name of the telephone utility, the area included in the directory, and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for police and fire departments shall appear conspicuously in the front part of directory pages.

(4) The directory shall contain such instructions concerning placing local and long distance calls, calls to repair and information services, and location of telephone company business offices appropriate to the area served by the directory. Rates between frequently called points may also be included.

(5)(a) Information operators shall have access to records which include all listed telephone numbers, except public telephones and numbers that are unlisted at customer's request, in the area for which they are responsible for furnishing information service.

(b) Intercept operators shall have access to records which indicate the status of all telephone numbers in the area for which they are responsible for furnishing intercept service.

(6) In the event of an error in the listed number of any customer, the telephone utility shall intercept all calls to the listed number for ninety (90) days provided the number is not in service. In the event of an error or omission in the name listing of a customer, such customer's correct name and telephone number shall be in the files of information or intercept operators and the correct number furnished the calling party either upon request or interception.

(7) Whenever any customer's telephone number is changed after a directory is published, and if central office capacity exists to do so, the utility shall intercept all calls to the former number for ninety (90) days, and give the calling party the new number if the customer so desires.

(8) When a large group of number changes are scheduled due to additions or changes in plant, records or operations, reasonable notice shall be given to all customers so affected even though the additions or changes may be coincident with a directory issue.

Section 6. Exchange Maps. (1) Each telephone utility shall file maps with the commission showing the current exchange service area for each telephone exchange operated. Maps shall be in sufficient detail to reasonably permit locating exchange service area boundaries in the field. A copy of such map shall be included in the utility's tariff, in accordance with requirements of 807 KAR 5:011.

(2) With every revised map, the telephone utility so filing shall submit proof of notice of the proposed revision to each telephone utility whose exchange area adjoins exchange area boundary lines or is located reasonably near territory which would be changed by such revisions. This shall include provision for the signature of an official of each telephone utility concerned on the copy of the exchange maps filed with the commission.

Section 7. Tariffs. Each telephone utility shall file with its tariff the various exchange areas, base rate areas where they exist, conditions and circumstances under which service will be furnished, and definition of the classes and grades of service available to customers, in accordance with 807 KAR 5:011.

Section 8. Extensions of Service. (1) The utility shall extend service to applicants within the base rate area where it exists without a construction charge except in cases of special requirements as identified by the utility in its approved tariff.

(2) Each telephone utility shall make an extension of 750 feet or less, free of charge, from existing plant facilities to provide service to applicants who shall apply for and contract to use the service for up to one (1) year and guarantee payment for the service.

(3) Other extensions.

(a)1. When an extension to serve an applicant or a group of applicants amounts to more than 750 feet per applicant, the utility may, if not inconsistent with its filed tariff, require the total cost of excessive footage over 750 feet per customer to be paid to the utility by the applicant or applicants, based on average estimated cost per foot of the total extension.

2. Each customer receiving service under such extension will be reimbursed under the following plan: Each year for a refund period of not less than ten (10) years, the utility shall refund to any customer who paid for the excessive footage the cost of 750 feet of the extension in place for each additional customer connected to the extension installed and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid the utility. After the refund period ends, no refund will be required.

(b) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 750 feet of the extension installed for each additional customer connected during the year. Total amount refunded shall not exceed the amount paid to the utility. After the refund period ends, no refund shall be required.

(4) Nothing contained in this administrative regulation shall be construed to prohibit a utility from making at its expense greater extensions than prescribed, if similar free extensions are made to other customers under similar conditions.

(5) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 750 feet upon a finding by the commission that such extension is reasonable.

(6) Nothing contained in this administrative regulation shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

Section 9. Grade of Service. (1) Within the base rate area, no telephone utility shall place more than four (4) customers on any local exchange access line. Within the service area no telephone utility shall connect more customers on any line than are contemplated under the grade of service charged the customer on such line.

(2) On rural lines where multiparty service is provided, no more than eight (8) customers shall be connected to any local exchange access line. The telephone utility may regroup customers in such a manner as necessary to carry out the provisions of this administrative regulation.

Section 10. Provision of Service. (1) It shall be the service objective of all utilities to fill ninety (90) percent of applications for regular service within five (5) working days of receipt unless applicant specifically requests a later date.

(2) The service objective for regular regrades shall be to fill ninety (90) percent of applications within thirty (30) days unless applicant specifically requests a later date.

(3) Applications for special service shall be filled as expeditiously as equipment and facilities permit.

(4) All applications which are not filled within five (5) working days for initial regular service and within thirty (30) days for regular regrades shall be considered as held applications.

(5) The utility shall keep a record by exchanges showing name and address of each applicant, date of application, date service desired, class and grade of service applied for, and any reason for inability to provide new or regrade service to applicant.

(6) When, because of shortage of facilities, a utility is unable to supply telephone service on dates requested by applicant, first priority shall be given to furnishing those services which are essential to public health and safety. In cases of prolonged shortage or other emergency, the commission may require establishment of a priority plan subject to its approval for clearing held orders, and may request periodic reports concerning progress being made.

(7) If circumstances beyond the control of the utility make it impossible to provide service within the time limits specified above, the utility shall promptly notify applicant of the reason for delay and give him a commitment date based upon best available information.

Section 11. Public Telephone Service. In each exchange, the telephone utility shall supply at least one (1) public coin-activated telephone that will be available on a twenty-four (24) hour basis. This public telephone shall be located in a prominent location in the exchange and shall be lighted at night. The utility may establish additional public telephone service at other locations. The commission may direct additional public telephone service upon finding that public convenience would be served.

Section 12. Discontinuance of Service. (1) When a telephone utility is notified in writing by the commission, federal or state law enforcement agency, Attorney General of Kentucky, a Commonwealth's attorney, or a county attorney acting within the agency or official's jurisdiction, that any facility furnished by it is being used or will be used for transmitting or receiving gambling information, that utility shall discontinue or refuse, to lease, furnish, or maintain such facility, after reasonable notice to the subscriber. No damages, penalty or forfeiture, civil or criminal, shall be recovered from any telephone utility for any act done in compliance with any notice received from the commission or law enforcement agency.

(2) Nothing in this section shall be deemed to prejudice the right of any person affected by this administrative regulation to secure an appropriate judicial determination that such facility should not be discontinued or removed, or should be restored.

(3) Nothing in this administrative regulation shall be construed to prevent transmission of information for use in legitimate news reporting of sporting events or contests by recognized news media.

Section 13. Customer Billing. Bills to customers shall be rendered regularly and shall contain clear listings of all charges. The utility shall comply with reasonable customer requests for an itemized statement of charges. All toll charges shall be itemized separately.

Section 14. Adequacy of Service. (1) Each utility shall employ recognized engineering and administrative procedures to determine adequacy of service being provided to the customer.

(2) Traffic studies shall be made and records maintained to the extent and frequency necessary to determine that sufficient equipment and an adequate operating force are provided at all times including the busy hour, busy season.

(3) Each telephone utility shall provide for operator assistance on a twenty-four (24) hour per day basis.

(4) Each utility shall employ adequate procedures for assignment of facilities. The assignment record shall be kept current and checked periodically to determine if adjustments are necessary to maintain proper balance in all groups.

Section 15. Dial Service Requirements. Sufficient central office capacity and equipment shall be provided to meet the following minimum requirements during the busy season:

(1) Dial tone within three (3) seconds on at least ninety-five (95) percent of telephone calls.

(2) No more than five (5) percent of dialed, local interoffice calls shall experience blockage due to an equipment or all-trunk busy condition.

(3) Sufficient toll connecting or interexchange trunks shall be provided by each utility in its service area so that no more than three (3) percent of calls offered to the telephone final trunk group will encounter an all-trunks busy condition.

(4) Each utility shall employ appropriate procedures to determine adequacy of central office equipment and local interoffice and EAS trunks.

Section 16. Grounded Circuits. The utility shall not construct any telephone lines less than a two (2) wire circuit or equivalent.

Section 17. Transmission Requirements. Telephone utilities shall furnish and maintain adequate plant equipment and facilities to provide satisfactory transmission of communications between customers in their service areas. Transmission shall be at adequate volume levels and free of excessive distortion. Levels of noise and crosstalk shall not impair communications.

Section 18. Minimum Transmission Objectives. (1) Transmission objectives set forth in this administrative regulation are based upon use of standard Federal Communications Commission registered telephone sets connected to a minimum forty-eight (48) volt dial central office and measured at a frequency of 1,000 cycles.

(2) Access lines shall have a loop resistance not exceeding the operating design of associated central office equipment.

(3) Telephone utilities shall, as nearly as possible, design access line loops having a transmission loss of no more than eight and five-tenths (8.5) decibels measured to the network interface.

(4) Overall transmission loss, including terminating equipment, on local interoffice trunks shall be no more than seven (7) decibels.

(5) Whenever feasible, overall transmission loss, including terminating equipment, on intertoll trunks and terminating links shall be no more than five (5) decibels.

Section 19. Provisions for Testing. Each telephone utility shall provide test facilities to determine the operating and transmission capabilities of circuit and switching equipment.

Section 20. Selective Ringing. Each telephone utility shall provide full selective ringing to all subscribers.

Section 21. Traffic Rules. (1) Suitable practices shall be adopted by each telephone utility that furnishes operator services concerning operating methods to be employed by operators with the objective of providing efficient and agreeable service to customers. The utility shall comply with provisions of the Communications Act of 1934 in maintaining secrecy of communications.

(2) When a utility is notified by a customer that he has reached a wrong number on a call provided by that utility, the customer shall be given credit on his bill when the claim has been substantiated.

Section 22. Answering Time. (1) Utilities that furnish operator services shall provide adequate personnel for operator assisted calls and operator number identification (ONI) to meet the service objective so that the average speed of answering time shall not exceed eight (8) seconds.

(2) The service objective for calls to the utility's repair service shall be an average speed of answering time no greater than twenty (20) seconds.

Section 23. Maintenance of Plant and Equipment. Each telephone utility shall have a written preventative maintenance program aimed at achieving efficient operation of its system to render safe, adequate and continuous service at all times. The written program shall include a plan depicting the types and frequency of preventive maintenance performed on outside plant, central office equipment, vehicles and buildings. The utility shall maintain records descriptive of its preventative maintenance program indicating both accomplished and planned work, carried out on a routine periodic basis.

Section 24. Emergency Operations. (1) Each telephone utility shall have a written plan to meet service emergencies resulting from failures of power service, sudden and prolonged increase in traffic, fire, storm, or acts of God. Each telephone utility shall train employees in procedure to be followed in an emergency.

(2) All central offices and toll centers shall adequately provide for emergency power. Each central and/or toll office shall have a minimum of four (4) hours of battery reserve. In exchanges exceeding 5,000 lines and in toll offices, a permanent auxiliary power unit shall be installed. In offices without installed emergency power facilities there shall be a mobile power unit available of suitable capacity which can be delivered and connected within two (2) hours, or one-half (1/2) the battery reserve time, whichever is greater.

Section 25. Service Interruption. (1) Each utility shall have arrangements to receive customer trouble reports twenty-four (24) hours per day and to clear trouble as quickly as possible during regular working hours, consistent with the bona fide needs of the customer and personal safety of utility personnel.

(2) Each telephone utility shall maintain an accurate record of trouble reports made by its customers. This record shall include appropriate customer identification; service affected; time, date and nature of report; action taken to clear trouble or satisfy complaint; and date and time of trouble clearance or other disposition. This record shall be available to the commission or its authorized representatives upon request, and shall be retained for at least one (1) year.

(3) The service objective shall be to clear eighty-five (85) percent of out-of-service troubles within twenty-four (24) hours of the report received by the utility, unless the customer specifically requests a later time.

(4) The service objective of the utility shall be to maintain service so that the average rate of customer trouble reports in an exchange is no greater than eight (8) per 100 access lines per month.

(5) When a customer's access line is reported to be out of order and remains out of order in excess of twenty-four (24) consecutive hours, the utility shall refund to the customer upon request the pro rata part of that month's charges for the period of days during which the telephone was out of order. This refund may be accomplished by a credit on a subsequent bill for telephone service.

Section 26. Construction Work near Utility Facilities. Telephone utilities shall, when requested, furnish to contractors appropriate information concerning location of underground conduit, cable, and other equipment in order to prevent any interruption of service to telephone customers. Nothing in this administrative regulation is intended to affect the responsibility, liability or legal rights of any party under applicable laws or statutes.

Section 27. Customer Service. A customer may be required to take service of a different type or insufficient quantity if the use of service interferes unreasonably with necessary service of other customers.

Section 28. Deviations from Rules. In special cases for good cause shown the commission may permit deviations from these rules. (8 Ky.R. 823; eff. 4-7-82; Am. 1481; eff. 3-8-90; 17 Ky.R. 2515; eff. 4-4-91.)

807 KAR 5:062. Changing primary interexchange carrier; verification procedures.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.040(3), 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.280(2) provides that the commission shall prescribe rules for performing any service or furnishing any commodity of the character furnished or supplied by any utility. This administrative regulation establishes procedures by which customer-ordered changes of presubscribed long distance telecommunications carriers shall be confirmed.

Section 1. Definitions. For purposes of this administrative regulation:
(1) "Interexchange carrier" (IXC) means a provider of long distance telecommunications services. Facilities-based carriers of long distance service, resellers of long distance service, and local exchange carriers providing long distance service are included in this definition.
(2) "Letter of agency" means a customer's written statement that authorizes a primary interexchange carrier change and bears the customer's signature.
(3) "Local exchange carrier" means a provider of switched telecommunications service that carries calls originating and terminating within the local calling area.
(4) "Long distance telecommunications service" means service that carries calls to exchanges that are not within the local calling area of the originating number.
(5) "PIC freeze order" means an order submitted by a customer stating he does not want his PIC to be changed until further notice.
(6) "Primary interexchange carrier" (PIC) means a carrier to which a customer has presubscribed for long distance service.
(7) "Two (2) PIC system" means a system which enables a customer to presubscribe to one (1) primary interexchange carrier for interLATA (long haul) long distance service and to another for intraLATA (short haul) long distance service.

Section 2. Verification Procedures. No IXC shall submit to a local exchange carrier a PIC change order unless the customer's authorization to change his PIC has been confirmed by one (1) of the three (3) procedures prescribed in this administrative regulation.
(1) The IXC has obtained a letter of agency from the customer that:
(a) Authorizes the change;
(b) Demonstrates that the customer understands what occurs when a PIC is changed;
(c) States the customer's billing name and address and each telephone number to be covered by the PIC change order;
(d) Demonstrates that the customer understands the PIC change fee; and
(e) If the PIC change order applies to a number in an area with a two (2) PIC system, clearly states whether the customer has authorized the change of his intraLATA PIC, his interLATA PIC, or both; or
(2) The IXC has obtained the customer's electronic authorization, placed from a telephone number on which the customer's PIC is to be changed, to submit a PIC change order. The electronic authorization shall include the information described in subsection (1)(a) through (e) of this section. IXCs electing to confirm sales electronically shall establish one (1) or more toll-free telephone numbers exclusively for that purpose. A call to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information and automatically records the originating number; or
(3) An appropriately qualified and independent third party operating in a location physically separate from the IXC's telemarketing representative has obtained the customer's electronic authorization to submit the PIC change order. The electronic authorization shall include the information described in subsection (1)(a) through (e) of this section and appropriate verification data such as the customer's date of birth or Social Security number.

Section 3. Prohibition of Additional LEC Verification. A local exchange carrier shall not seek independent verification of PIC changes properly submitted to it by IXCs unless the customer whose PIC is to be changed has previously submitted to the local exchange carrier a PIC freeze order that has not been revoked. Nothing in this administrative regulation shall be construed to impose upon a local exchange carrier a duty to verify a PIC change it did not solicit or to change a PIC that is the subject of a PIC freeze order until the customer has, by notice given directly to the LEC, revoked the PIC freeze order.

Section 4. Records to be Retained. All written and electronic evidence of PIC change orders shall be retained by the soliciting carrier for one (1) year after the date the PIC has been changed.

Section 5. Letters of Agency. (1) Letters of agency shall be separate or severable from inducements or promotions of any kind, except as provided in subsection (2) of this section.

(2) A letter of agency may be combined with a check which states in bold-face type on its front and near the signature line on its back that the customer is authorizing a long distance carrier change by signing the check. A letter of agency check shall contain only the information prescribed in Section 2(1) of this administrative regulation and the language necessary to make the check a negotiable instrument. (22 Ky.R. 1915; Am. 23 Ky.R. 156; eff. 7-19-96.)

807 KAR 5:063. Filing requirements and procedures for proposals to construct antenna towers or to co-locate antennas on an existing structure for cellular telecommunications services or personal communications services.

RELATES TO: KRS 100.111, 278.010, 278.020, 278.650, 278.660, 278.665
STATUTORY AUTHORITY: KRS 278.040(3), 278.665(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.665(1) requires the commission to promulgate administrative regulations to establish the minimum content of an application for a certificate of convenience and necessity to construct cellular antenna towers for areas outside the jurisdiction of a planning commission. KRS 278.665(2) requires that an application concerning a site outside of an incorporated city shall, at a minimum, demonstrate that each person who owns property contiguous to the property upon which the construction is proposed has received notice of the proposed construction. KRS 278.280(1) requires the commission to establish proper practices to be observed in regard to the facilities of a utility. KRS 278.020(1) authorizes the commission to issue certificates of public convenience and necessity for utility construction. KRS 278.650 requires a local public hearing upon the request of the local governing body or at least three (3) local residents. KRS 100.987(9) requires an applicant to notify the commission within ten (10) working days of planning commission approval of an application to construct a tower. This administrative regulation prescribes filing requirements and procedures to be followed for: (1) applying for a certificate of public convenience and necessity to construct a telecommunications antenna tower for cellular telecommunications services or personal communications services in an area outside the jurisdiction of a planning unit; (2) notifying the commission of a planning commission approval; and (3) notifying the commission of the placement of an antenna on an existing structure.

Section 1. (1) To apply for a certificate of public convenience and necessity, a utility proposing to construct a telecommunications antenna tower in an area which is not within the jurisdiction of a planning unit that has adopted planning and zoning administrative regulations in accordance with KRS Chapter 100, shall file with the Public Service Commission the following information:
(a) All documents and information required by:
1. 807 KAR 5:001, Section 14, except that the applicant shall file with the commission the original and five (5) copies of the application; and
2. 807 KAR 5:001, Section 15(2)(a), (b), (c), (d) and (g);
(b) A copy of the utility's applications to the Federal Aviation Administration and Kentucky Airport Zoning Commission and written authorizations from these agencies as soon as they are available;
(c) A copy of the utility's application to, and authorization from, the Federal Communications Commission, if applicable;
(d) A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs, foundation design recommendations, and a finding as to the proximity of the proposed site to flood hazard areas, except that the utility may file findings prepared by a land surveyor as to the proximity of the proposed site to flood hazard areas;
(e) Clear directions from the county seat to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions;
(f) The lease or sale agreement for the property on which the tower is proposed to be located, except that, if the agreement has been filed in abbreviated form with the county clerk, utility may file a copy of the agreement as recorded by the county clerk;
(g) The identity and qualifications of each person directly responsible for the design and construction of the proposed tower;
(h) A site development plan or survey, signed and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures within 500 feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within 200 feet of the access drive, including the intersection with the public street system;
(i) A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas;

(j) The tower and foundation design plans and a description of the standard according to which the tower was designed, signed and sealed by a professional engineer registered in Kentucky;

(k) A map, drawn to a scale no less than one (1) inch equals 200 feet, that identifies every structure and every owner of real estate within 500 feet of the proposed tower;

(l) A statement that every person who, according to the records of the property valuation administrator, owns property within 500 feet of the proposed tower has been:

1. Notified by certified mail, return receipt requested, of the proposed construction;

2. Given the commission docket number under which the application will be processed; and

3. Informed of his right to request intervention;

(m) A list of the property owners who received the notice, together with copies of the certified letters sent to listed property owners;

(n) A statement that the county judge executive has been:

1. Notified by certified mail, return receipt requested, of the proposed construction;

2. Given the commission docket number under which the application will be processed; and

3. Informed of his right to request intervention;

(o) A copy of the notice sent to the county judge executive;

(p) A statement that:

1. Two (2) written notices meeting the requirements of subsection (2) of this section have been posted, one (1) in a visible location on the proposed site and one (1) on the nearest public road; and

2. The notices shall remain posted for at least two (2) weeks after the application has been filed;

(q) A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed.

(r) A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved;

(s) A statement that the utility has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to co-locate, including documentation of attempts to co-locate, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the utility attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures, such as a telecommunications tower, or another suitable structure capable of supporting the utility's facilities; and

(t) A map of the area in which the tower is proposed to be located, that is drawn to scale and that clearly depicts the necessary search area within which a site should, pursuant to radio frequency requirements, be located.

(2)(a) The notices required by subsection (1)(p) of this section shall:

1. Be at least two (2) feet by four (4) feet in size; and

2. Except as provided by paragraph (b) of this subsection, state the following: "(Name of utility) proposes to construct a telecommunications ("tower" or "monopole") on this site. If you have questions, please contact (name and address of utility) or the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602. Please refer to (assigned docket number) in your correspondence."

(b) The notice posted on the nearest public road shall state the following: "(Name of utility) proposes to construct a telecommunications ("tower" or "monopole") near this site. If you have questions, please contact (name and address of utility) or the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602. Please refer to (assigned docket number) in your correspondence."

(c) In both posted notices, the word "tower" or "monopole" shall be printed in letters at least four (4) inches high.

Section 2. If the construction is proposed for an area outside the incorporated boundaries of a city, the application shall state that public notices required by Section 1(1)(l) have been sent to every person who, according to the property valuation administrator, owns property contiguous to the property upon which the construction is proposed.

Section 3. (1) A utility planning to co-locate its antennas on an existing structure outside the jurisdiction of a planning unit, or to augment an existing structure outside the jurisdiction of a planning

unit, to enable the utility to place its antennas on that structure shall file with the Executive Director of the Public Service Commission, in lieu of an application, written notice of its intent, including the name and address of the utility filing the notice, the name of the owner of the structure, the latitude and longitude of the structure, and a description of the plan to augment or co-locate, if the proposed augmentation will neither:

(a) Increase the height of the structure more than fifty (50) percent; nor

(b) Result in new lighting requirements for a structure on which lighting is not currently required.

(2) A utility planning to co-locate its antennas on an existing structure that is in an area under the jurisdiction of a planning unit shall file with the commission written notice of its intent. The notice shall include:

(a) Name and address of the utility filing the notice;

(b) Name of the owner of the structure;

(c) Street address and latitude and longitude of the structure; and

(d) A description of the plan to co-locate.

Section 4. (1) A resident of a county in which an antenna tower for cellular telecommunications services or personal communications services is proposed, or the local governing body of a county or municipal corporation for which an antenna tower for cellular telecommunications services or personal communications services is proposed, may request a local public hearing by sending a written request complying with subsections (2) and (3) of this section to the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40601.

(2) A request for a local public hearing shall contain:

(a) The docket number of the case to which the request refers;

(b) The name and address of the person sending the request; and

(c) Statement as to whether the requestor wishes to participate in an evidentiary hearing or to make unsworn public comment.

(3) If a person requesting a local public hearing wishes to participate in an evidentiary hearing, the written request shall include a request to intervene in the Public Service Commission proceedings on the application.

Section 5. To notify the Public Service Commission of a planning commission approval of an application for the construction of an antenna tower for cellular telecommunications services or personal communications services, an applicant shall file with the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40601, the following information:

(1) The name, address, telephone number and facsimile number of the person whose application to construct the tower has been approved;

(2) The street address of the tower site;

(3) The names of the county and, if applicable, the city in which the tower will be located;

(4) The latitude and longitude of the tower site;

(5) A brief description of the tower, including the tower height, the ground elevation at the tower site, and a statement as to whether the tower will be self-supporting or guyed;

(6) The name of the planning commission that approved the construction;

(7) The date of the planning commission decision approving the construction. (23 Ky.R. 3659; Am. 4185; 24 Ky.R. 367; eff. 8-27-1997; 25 Ky.R. 916; 1402; 1289; eff. 12-18-1998; 27 Ky.R. 1096; eff. 12-7-2000; 29 Ky.R. 564; 956; eff. 10-9-2002; TAm 1-30-2013.)

807 KAR 5:064. Telephone depreciation filing procedure.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation establishes general rules which apply to telephone utilities.

Section 1. General. It is the purpose of this administrative regulation to provide the method for determining the appropriateness of telephone utility depreciation rates and methods. It is also the purpose of this administrative regulation to provide for frequent reviews of depreciation rates to avoid under- and overaccruals.

Section 2. Definitions. (1) "Commission" means the Kentucky Public Service Commission.
(2) "Accumulated provision for depreciation" or "depreciation reserve" means an account containing the net balance of the accumulated depreciation accruals less the retirements from the depreciable plant accounts, plus the gross salvage realized from the disposition of retired plant, less the cost of removal associated with the disposition of retired plant, when using net salvage, less adjustments/entries permitted by the Federal Communications Commission's Uniform System of Accounts.
(3) "Annual provision for depreciation accrual" means the annual amount of depreciation charged to expenses and/or clearing accounts.
(4) "Cost of removal" means the cost of demolishing, dismantling, removing, tearing down or abandoning of physical assets, including the cost of transportation and handling incidental thereto.
(5) "Depreciation," as applied to depreciable utility plant, means the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of utility plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities.
(6) "Future net salvage" means an estimate of the net salvage realized from the future retirement of property now in service.
(7) "Net salvage" means salvage of property retired less the cost of removal.
(8) "Original cost" means the actual money cost of property at the time it was first dedicated to the public use whether by the accounting utility or by predecessors.
(9) "Remaining life" means the future expected service in years of the survivors at a given age.
(10) "Remaining life technique" means the technique of calculating a depreciation rate based on the unrecovered plant balance less average future net salvage over the average remaining life. The formula for calculating a remaining life rate is:

$$\text{Remaining Life Rate} = \frac{100\% - \text{reserve } \% - \text{average future net salvage } \%}{\text{average remaining life in years}}$$

(11) "Gross salvage" means the amount received for property retired, if sold, or if retained for reuse, the amount at which the materials recovered are chargeable to materials and supplies, or other appropriate accounts.
(12) "Straight-line average service life method" means the method which seeks to recover the original cost of depreciable property, minus net salvage, over the average service life of the property.
(13) "Straight-line remaining life method" means the method which seeks to recover the undepreciated original cost of depreciable property, minus any future net salvage, over the remaining life of the property.
(14) "Service value" means the difference between original cost and net salvage value of utility plant.
(15) "Average service life" means the average expected life of all units of a group when new and is determined as the weighted dollar average of the lives of the units. It is equal to the area under the survivor curve divided by original placements.
(16) "Whole life technique" means the technique of calculating a depreciation rate based on the average service life and the average net salvage. Both life and salvage components are the estimated or calculated composite of realized experience and expected activity. The formula for calculating a whole life rate is:

$$\text{Whole life rate} = \frac{100\% - \text{average net salvage\%}}{\text{average service life in years}}$$

(17) "Vintage group procedure" means the procedure which treats the same type of property placed in service during the same year as a distinct group for depreciation purposes.

(18) "Equal life group procedure" means the procedure in which vintage groups are divided into subgroups for depreciation purposes, each of which is expected to live an equal life.

Section 3. Applicability. This administrative regulation shall apply to all telephone utilities subject to the jurisdiction of the commission, except for telephone utilities also subject to Federal Communications Commission jurisdiction.

Section 4. General Provisions. (1) All telephone utilities shall maintain, and have available for inspection by the commission upon request, adequate records related to the depreciation practices as defined herein, except for those utilities utilizing Section 8 of this administrative regulation.

(2) Each utility has the responsibility of proposing the depreciation rates and methods that will be used. This administrative regulation contemplates the use of straight-line, whole life rates and straight-line, remaining life rates. All rates and methods shall be proposed to be effective on the January 1st following the utility's application as specified in Section 5 of this administrative regulation.

(3) Certified rates and methods are binding on all future rate proceedings and will remain in effect until the next certification, except upon special request, to be determined by the commission.

(4) Depreciation certification studies shall be made periodically. All depreciable plant accounts shall have been reviewed no more frequently than every three (3) years.

Section 5. Filing Requirements: Depreciation Certification Studies. (1) Initially and not less than every three (3) years thereafter each telephone utility may file an application for depreciation certification and the data described in the following paragraphs on or before the July 1st prior to the January 1st effective date.

(2) Each application shall contain the following:

(a) A schedule showing for each class and subclass of plant (whether or not the depreciation rate is proposed to be changed) an appropriate designation therefor, the depreciation rate currently in effect, the proposed rate, and the service-life and net-salvage estimates underlying both the current and proposed depreciation rates. If the utility proposes to use the remaining life technique, the schedule shall also contain remaining service-life and future net-salvage estimates, reserve percentage, and remaining life rates derived therefrom.

(b) An additional schedule showing for each class and subclass, as well as the totals for all depreciable plant:

1. The book cost of plant at the most recent date available;

2. The estimated amount of depreciation accruals determined by applying the currently effective rate to the amount of such book cost;

3. The estimated amount of depreciation accruals determined by applying the rate proposed to be used to the amount of such book cost; and

4. The difference between the amounts determined in subparagraphs 2 and 3 of this paragraph;

(c) A statement giving the reasons for the proposed change in each rate;

(d) A statement describing the method or methods employed in the development of the service life and salvage estimates underlying each proposed change in a depreciation rate; and

(e) The date as of which the revised rates are proposed to be made effective in the accounts.

(f) When the change in the depreciation rate proposed for any class or subclass of plant (other than one occasioned solely by a shift in the relative investment in the several subclasses of the class of plant) amounts to twenty (20) percent or more of the rate currently applied thereto, or when the proposed change will produce an increase or decrease of one (1) percent or more of the aggregate depreciation charges for all depreciable plant (based on the amounts determined in compliance with paragraph (b) of this subsection), the data required by paragraphs (a), (b), (c), (d), and (e) of this subsection shall be supplemented by copies of the underlying studies, including calculations and charts, developed by the utility to support service-life and net-salvage estimates (remaining service-life and future net-salvage estimates if applicable); provided, however, that if compliance with this requirement involves submission of a large volume of data of a repetitive nature, only a fully illustrative portion thereof need be filed.

(g) Each report shall be filed in duplicate and the original shall be signed by the responsible official to whom correspondence related thereto shall be addressed.

(h) In no event shall a utility for which the commission has prescribed depreciation rates make any changes in such rates unless the changes are prescribed by the commission.

(i) Any changes in depreciation rates that are made under the provisions of Section 4 of this administrative regulation shall not be construed as having been approved by the commission unless the utility has been specifically so informed.

Section 6. Prescribed Methods: Depreciation Certification Studies. (1) The commission prescribes the straight-line method and the whole life technique or remaining life technique utilizing the vintage group or equal life group procedures for calculating depreciation accruals.

(2) No specific methods are prescribed by the commission for estimating service lives and salvage values, including remaining life and future net salvage values.

(3) Any exceptions to these methods will require specific justification and approval by the commission.

Section 7. Filing Procedures. (1) Telephone utilities may apply no more frequently than every three (3) years to the commission for changes in depreciation rates and methods in accordance with this administrative regulation, except for those utilities which may use the average schedule as defined in Section 8 of this administrative regulation. Utilities may propose interim studies of particular accounts prior to the minimum three (3) year period allowed by this administrative regulation; however, the commission shall have binding discretion as to whether the studies will be considered.

(2) The commission shall schedule conferences with the utilities to review the utilities' proposed rates and methods. In the event that a disagreement concerning a proposed depreciation rate (or rates) and underlying studies cannot be agreed to by both the utility and the commission, the prior rate (or rates) shall remain in effect until the next certification or until the commission shall determine otherwise.

(3) After review by the commission as outlined in subsection (2) of this section, and prior to certification by the commission, a public notice will be issued by the utility allowing twenty (20) days for comments by any interested parties.

(4) In the event the commission has not issued a certification order by December 1 following the application, the commission may issue a letter to the utility authorizing interim booking effective on the following January 1, of the rates agreed upon until the commission issues its final order.

Section 8. Average Schedule. For those telephone utilities not having adequate records or staff to perform the studies specified in this administrative regulation, the commission will issue a proposed average schedule each year. Utilities may either elect to accept the proposed schedule, to be effective January 1 following its issuance, or may reject it, in which case their existing depreciation rates will remain in effect until the next average schedule is proposed. The average schedule for a particular utility will remain in effect for three (3) years upon acceptance by that utility. In the event that a utility elects to utilize a proposed average schedule but because circumstances unique to that utility require a deviation for a particular account (or accounts), the utility may file studies as outlined in Section 5 of this administrative regulation for that account (or accounts).

Section 9. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviation from these rules. (9 Ky.R. 1076; Am. 1198; eff. 4-6-83.)

807 KAR 5:066. Water.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the Public Service Commission (hereinafter referred to as "commission") shall prescribe rules for the performance of any service or the furnishing of any commodity by the utility. This administrative regulation establishes general rules which apply to water utilities.

Section 1. Definitions. (1) "Customer" means, in addition to the definition in 807 KAR 5:006, Section 1(4), a person who purchases water from a utility's water loading station.
(2) "Distribution main" means a line from which service connections with customers are taken at frequent intervals.
(3) "Meter" means any device used for the purpose of measuring the quantity of water delivered by a utility to a customer.
(4) Natural Resources Cabinet" means the state Environmental Public Protection Cabinet, Department for Environmental Protection, Division of Water.
(5) "Point of service" means the outlet of a customer's water meter, or valve if no meter is placed.
(6) "Service connection" means the line from the main to the customer's point of service, and shall include the pipe fittings and valves necessary to make the connection.
(7) "Service line" means the water line from the point of service to the place of consumption.
(8) "Transmission main" means a line which is used for conveying water to the distribution system, reservoirs, tanks or stand pipes, and has generally no service connections with customers.

Section 2. Information Available to Customers. A utility shall provide the following information to any customer upon request:
(1) Characteristics of water. A description in writing of chemical constituents and bacteriological standards of the treated water as required by the Natural Resources Cabinet.
(2) Rates. A schedule of rates for water service applicable to the service to be rendered to the customer.
(3) Reading meters. Information about method of reading meters.
(4) Bill analysis. A statement of the past readings of a customer's meter for a period of two (2) years.

Section 3. Quality of Water. (1) Compliance with Natural Resources Cabinet. Any utility furnishing water service for human consumption or domestic use shall conform to all legal requirements of the Natural Resources Cabinet for construction and operation of its water system as pertains to sanitation and potability of the water.
(2) Water supply. In absence of comparable requirements of the Natural Resources Cabinet, water supplied by any utility shall be:
(a) Adequately protected by artificial treatment to include continuous disinfection throughout the distribution system;
(b) Free from objectionable color, turbidity, taste, and odor; and
(c) From a source reasonably adequate to provide a continuous supply of water.
(3) Operation of supply system.
(a) Sanitary conditions. The water supply system, including wells, reservoirs, pumping equipment, treatment works, mains, and service pipes shall be free from sanitary defects.
(b) Potable water connections. No utility shall make a physical connection between its distribution system and that of any other water supply unless the other water supply maintains a safe sanitary quality in accordance with this administrative regulation, and the utility provides notice to the commission prior to any such interconnections.
(c) Algae growth. The growth of algae in water at the source of supply, in reservoirs or other basins, and in water mains, shall be controlled by proper treatment.
(d) Well integrity. Utilities obtaining water supplies from driven or drilled wells must maintain the tightness of well casings and provide protection at the ground surface to prevent infiltration of water other than that from strata tapped by such wells. Wells shall be a minimum of 300 feet from any source of pollution.

(4) Testing of water.

(a) Test. Each utility shall have representative samples of its water examined by the appropriate state or local agency or by a competent chemist and bacteriologist skilled in the sanitary examination of water, under methods approved by the Natural Resources Cabinet, to insure a safe water supply.

(b) Report to the commission. If a utility is required by the Natural Resources Cabinet to make a public notification pursuant to administrative regulations of the Natural Resources Cabinet, the utility shall provide the commission with a copy of the public notification when it is made.

Section 4. Continuity of Service. (1) Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its consumers and the general public. If an emergency interruption of service affects service to any public fire protection device, the utility shall immediately notify the fire chief or other public official responsible for fire protection.

(2) Scheduled interruptions. If any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption, stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at hours of least inconvenience to customers. If public fire protection is provided by mains affected by the interruptions, the utility shall notify the fire chief or other officials responsible for fire protection of the interruption, stating the time and anticipated duration. The fire chief or other official responsible for fire protection shall be notified immediately upon restoration of service.

(3) Standby equipment. The utility shall have available standby pumps capable of providing the maximum daily pumping demand of the system for use when any pump is out of service.

(4) Storage. The minimum storage capacity for systems shall be equal to the average daily consumption.

(5) Record of interruptions. Each utility shall keep a complete record of all interruptions on its entire system or on major divisions of that system. This record shall show the cause of interruption, date, time, duration, remedy and steps taken to prevent recurrence.

Section 5. Pressures. (1) Standard pressure. Each utility shall, subject to the approval of the commission, adopt and maintain a standard pressure in its distribution system at locations to be designated as the point or points of "standard pressure." The selection of such points shall be confined to locations fairly representative of average conditions. In selecting points for fixed standard pressure, a utility may divide its distribution system into districts if division is necessary due to differences of elevation or loss of pressure because of friction, or both, and may either adopt a standard pressure for each division or establish a single standard pressure for its distribution system as a whole. In no case shall the constant difference between the highest and lowest pressures in a district for which a standard has been adopted exceed fifty (50) percent of such standard. In the interpretation of this rule it shall be understood that in districts of widely varying elevations or low customer density a utility may undertake to furnish a service which does not comply with the foregoing specifications if the customer is fully advised of the conditions under which average service may be expected. It shall be understood that nothing shall prevent the commission from requiring improvements when, upon investigation, it appears right and proper that such betterments should be made. In no event, however, shall the pressure at the customer's service pipe under normal conditions fall below thirty (30) psig nor shall the static pressure exceed 150 psig.

(2) Pressure gauges. Each utility shall provide itself with one (1) or more recording pressure gauges to make pressure surveys as required by these rules. These gauges shall be suitable to record the pressure experienced on the utility's system and shall be able to record a continuous twenty-four (24) hour test. One (1) of these recording pressure gauges shall be maintained for a minimum of one (1) week per month in continuous service at some representative point on the utility's mains.

(3) Pressure surveys. At least once annually, each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the quality of service being rendered at representative points in its system. Pressure charts for these surveys shall show the date and time of beginning and end of the test and the location at which the test was made. Records of these pressure surveys shall be maintained at the utility's principal office in Kentucky and shall be made available to the commission upon request.

Section 6. Water Supply Measurement. (1) Measuring devices. Each utility shall install a suitable measuring device at each source of supply so that a record may be maintained of the quantity of water produced by each source.

(2) Records. The quantity of water produced or purchased for resale to customers from each source of supply shall be determined on a monthly basis. The volumes of water distributed to customers and the volume used by the utility shall be determined in the same manner. Twelve (12) month totals of the volumes produced or purchased from each source of supply, distributed to customers, and used by the utility shall be recorded separately and transmitted to the commission in the utility's annual report to the commission.

(3) Unaccounted-for water loss. Except for purchased water rate adjustments for water districts and water associations, and rate adjustments pursuant to KRS 278.023(4), for rate making purposes a utility's unaccounted-for water loss shall not exceed fifteen (15) percent of total water produced and purchased, excluding water used by a utility in its own operations. Upon application by a utility in a rate case filing or by separate filing, or upon motion by the commission, an alternative level of reasonable unaccounted-for water loss may be established by the commission. A utility proposing an alternative level shall have the burden of demonstrating that the alternative level is more reasonable than the level prescribed in this section.

Section 7. Standards of Construction. Design and construction of the utility's facilities shall conform to good standard engineering practice. Plans and specifications for water supplies shall be prepared by an engineer registered in Kentucky, with the submitted plans bearing the engineer's seal. The utility's facilities shall be designed, constructed and operated so as to provide adequate and safe service to its customers and shall conform to requirements of the Natural Resources Cabinet with reference to sanitation and potability of water.

Section 8. Distribution Mains. (1) Depth of mains. Water mains shall be placed a minimum of twenty-four (24) inches below ground level and shall be protected sufficiently to prevent freezing during the coldest weather normally experienced in the community in which laid, and to prevent damage by traffic.

(2) Dead ends. In order to provide increased reliability of service and reduce head loss, dead ends shall be minimized by making appropriate tie-ins whenever practicable. Where dead ends occur they shall be provided with a fire hydrant, if flow and pressure are sufficient to meet the requirements of Section 10(2)(b) of this administrative regulation, or with an approved flushing hydrant or blowoff for flushing purposes. Flushing devices shall be sized to provide flows which will give a velocity of at least two and one-half (2.5) feet per second in the water main being flushed. No flushing device shall be directly connected to any sewer. Mains with dead ends shall be flushed at least once each year but more often if necessary to maintain the quality of the water.

(3) Segmentation of system. Valves or stopcocks shall be provided at reasonable intervals in the mains so that repairs may be made with the least possible interruption of service.

(4) Disinfection of water mains. All new mains shall be thoroughly disinfected before being connected to the system. The method of disinfecting shall comply with requirements of the Natural Resources Cabinet.

(5) Grid systems. Wherever feasible the distribution system shall be laid out in a grid to facilitate identification of line location and minimize service interruptions caused by breaks or repairs.

Section 9. Service Lines. (1) Size of service line. The size, design, material and installation of the service line shall conform to such reasonable requirements of the utility as may be incorporated in its rules and administrative regulations. However, the minimum size of the line shall not be less than three-fourths (3/4) inch nominal size except under unusual circumstances which shall be clearly defined.

(2) Depth of service line. All service lines shall be laid at a depth sufficient to prevent freezing during the coldest weather normally experienced except where services are not intended for use during freezing weather and are actually drained during such periods.

(3) Inspection of service line. In the installation of the service line, the utility shall require the customer to leave the trench open and pipe uncovered, and the utility shall inspect the line to determine it is free from any tee, branch connection, irregularity or defect. The utility may substitute for its inspection an inspection by the appropriate state or local plumbing inspector, if proof of that inspection is presented to the utility by the customer.

Section 10. Construction Requirements. (1) The system shall be adequate to deliver all reasonable water requirements of its customers and meet the requirements of Section 5(1) of this administrative regulation except under emergency conditions.

(2) Distribution system.

(a) Minimum pipe sizes. The distribution system shall be of adequate size and so designed in conjunction with related facilities to maintain the minimum pressures required by Sections 5(1) and 7 of this administrative regulation. The maximum length of any individual small pipe line shall be as follows:

	Circulating	Noncirculating
1 inch nominal size	150 feet	100 feet
1 1/2 inch nominal size	300 feet	200 feet
2 inch nominal size	500 feet	250 feet

In the case of rural water lines, if hydraulic studies indicate they can comply with Section 5(1) of this administrative regulation and can provide adequate flow of water to serve the peak requirements of customers, the above maximum extension lengths may be extended with approval of the commission.

(b) Fire protection.

1. On or after the effective date of this administrative regulation, fire hydrants may be installed by a utility only if:

a. A professional engineer with a Kentucky registration has certified that the system can provide a minimum fire flow of 250 gallons per minute; and

b. The system supporting this flow has the capability of providing this flow for a period of not less than two (2) hours plus consumption at the maximum daily rate.

2. The location, installation, and the responsibility for maintenance of fire hydrants, public and private fire protection facilities, connecting mains, and their ownership may be subject to negotiation between the utility and the applicant. Fire hydrants and public and private fire protection facilities shall be installed as required by the utility and if owned by the utility shall be subject to any conditions the commission may impose, based upon the compensation received for this service.

(3) Transmission systems. Transmission pipe lines from sources of supply shall be designed to deliver in combination with related storage facilities and to the limits of the capacity of those sources of supply the maximum requirements of that portion of the system which is dependent upon such transmission pipe lines.

(4) Water supply requirements. The quantity of water delivered to the utility's distribution system from all source facilities shall be sufficient to supply adequately, dependably and safely the total reasonable requirements of its customers under maximum consumption.

(5) Materials. Metallic and nonmetallic materials may be used separately and in combination to construct component parts of a water system including, but not limited to, conduits, pipes, couplings, caulking materials, protective linings and coatings, services, valves, hydrants, pumps, tanks and reservoirs, provided:

(a) The material shall have a reasonable useful service life.

(b) The material shall be capable of withstanding with ample safety factors the internal and external forces to which it may be subjected in service.

(c) The material shall not cause the deterioration of the potability of the water supply.

(d) Materials and equipment shall be so selected as to mitigate corrosion, electrolysis and deterioration.

Section 11. Extension of Service. (1) Normal extension. An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more.

(2) Other extensions.

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than fifty (50) feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer who paid for service under such extension shall be reimbursed under one (1) of the following plans, which shall be included in the utility's filed tariff:

1. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the customer or customers who paid for the excessive footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension

installed and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid the utility. No refund shall be made after the refund period ends.

2. As an alternative to the refund plan outlined in subparagraph 1 of this paragraph, the utility may use the following plan: for a period of five (5) years after construction of the extension, each additional customer whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom, shall be required to contribute to the cost of the extension based on a recomputation of both the utility's portion of the total cost and the amount contributed by the customers. The utility shall refund to those customers that have previously contributed to the cost of the extension that amount necessary to reduce their contribution to the currently calculated amount for each customer connected to the extension. All customers directly connected to the extension for a five (5) year period after it is placed in service shall contribute equally to the cost of construction of the extension. In addition, each customer shall pay the approved tap-on fee applicable at the time of his application for the meter connection. The tap-on fee shall not be considered part of the refundable cost of the extension and may be changed during the refund period. After the five (5) year refund period expires, any additional customer shall be connected to the extension for the amount of the approved tap-on fee only. After the five (5) year refund period expires, the utility shall be required to make refunds for an additional five (5) year period in accordance with subparagraph 1 of this paragraph.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends.

(4) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements if such arrangements have receive the prior approval of the commission.

(5) Nothing contained herein shall prohibit a utility from making at its expense greater extensions than herein prescribed, provided like free extensions are made to other customers under similar conditions. The conditions under which such extensions will be made shall be stated in the utility's filed tariff.

(6) Upon complaint to and investigation by the commission a utility may be required to construct extensions greater than fifty (50) feet upon a finding by the commission that such extension is reasonable and that an extension of fifty (50) feet or less is unreasonable under the circumstances.

Section 12. Service Connections. (1) Ownership of service.

(a) Utility's responsibility. The utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service connection from its main to and including the meter and meter box. The utility may recoup this expense from the customer in accordance with KRS 278.0152.

(b) In areas where the distribution system follows well-defined streets and roads, the customer's point of service shall be located at that point on or near the street right-of-way or property line most accessible to the utility from its distribution system. In areas where the distribution system does not follow streets and roads, the point of service shall be located as near the customer's property line as practicable. Prior to installation of the meter the utility shall consult with the customer as to the most practical location.

(2) Customer's responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the point of service to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and administrative regulations.

Section 13. Measurement of Service. (1) Metering. All water sold by a utility shall be upon the basis of metered volume sales except as set forth in subsection (2) of this section.

(2) Unmetered service. If water usage can be readily estimated, the utility may, subject to commission approval, provide unmetered service. For unmetered service the utility shall develop standard methods for estimating the volume of water used and maintaining records which show volumes used and associated revenues and expenses. Methods proposed to be used shall be submitted to the commission for approval. Flat rates conforming to the requirements set forth in 807 KAR 5:006, Section 7(2), may be charged for the following:

(a) Temporary service of such duration that installation of a meter is not feasible.
(b) Public and private fire protection service.
(c) Water used for street sprinkling and sewer flushing, when provided for in a contract between the utility and a municipality or other local government authority.
(d) Service to water haulers if installation of coin-operated or other metered stations is not feasible.
(3) Registration of meter. All meters used for metered sales shall have registration devices indicating the volume of water measured in either cubic feet or U.S. gallons. Where a constant or multiplier is necessary to convert the meter reading to cubic feet or gallons, the constant shall be indicated upon the face of the meter.
(4) Standard method of meter and service line installation. Each utility shall adopt a standard method of installing meters and service lines and shall file with the commission a written description and drawings in sufficient detail that the requirements are clearly understandable. Copies of these standard methods shall be made available to prospective customers and contractors or others engaged in the business of placing pipe for water utilization. All meters shall be set in place by the utility.

Section 14. Meter Test Facilities and Equipment. (1) Test facilities. Except as provided in 807 KAR 5:006, Section 17(2), each utility furnishing metered water service shall have the necessary standard facilities, instruments and other equipment for testing its meters in compliance with this administrative regulation.
(2) Shop equipment. The utility's meter test shop shall, insofar as practicable, simulate actual service conditions of temperature, inlet pressure, and outlet pressure. It shall be provided with necessary equipment, including valves on the inlet and outlet sides of the meter test bench, calibrated tanks, a device for regulating flow, a gauge to measure flow rate, pressure gauges and pressure relief valves. The overall error of the calibrated test tanks shall not exceed three-tenths (.3) of one (1) percent.
(3) Test measurement standards.
(a) Basic standard. Measuring devices for testing meters shall consist of a calibrated tank for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be certified as to its accuracy by the commission within the preceding thirty-six (36) months. If a weight standard is used, the scales shall be tested and calibrated at least once a year and certified as to accuracy by the commission.
(b) Size of basic standards. When meters are tested by weight method, utilities whose measure of quantity is the cubic foot shall use test equipment capable of holding not less than one (1) cubic foot of water. Utilities whose measure of quantity is the U.S. gallon shall use equipment holding not less than ten (10) U.S. gallons.
(c) Standard meter. With commission approval, a standard meter may be provided and used by any utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated to a basic standard periodically to insure its accuracy within the limits required by this administrative regulation. In any event, such test shall be made at least once every other week while the standard meter is in use and a record of such tests shall be kept by both the utility and, if applicable, the organization doing the meter testing.

Section 15. Accuracy Requirements of Water Meters. (1) General. All meters used for measuring the quantity of water delivered to a customer shall be in good mechanical condition and shall be adequate in size and design for the type of service which they measure.
(2) Testing of meters. All new meters, and any meter removed from service for any cause, shall be tested for accuracy as specified herein prior to being placed in service.
(a) Test flows. The test flow and normal test flow limits for the various types of cold water meters shall be as follows:

TEST REQUIREMENTS FOR NEW, REBUILT, AND REPAIRED COLD WATER METERS*													
	Maximum Rate (All Meters)				Intermediate Rates (All Meters)				Minimum Rate (New and Rebuilt)				Minimum (Repaired)
Size in.	Flow Rate gpm	Test Quantity gal	Test Quantity ft^3	Accuracy Limits %	Flow Rate gpm	Test Quantity gal	Test Quantity ft^3	Accuracy Limits %	Flow Rate gpm	Test Quantity gal	Test Quantity ft^3	Accuracy Limits Percent	Accuracy Limits % (min.)
Displacement Meters													
5/8	15	100	10	98.5-101.5	2	10	1	98.5-101.5	1/4	10	1	95-101	90
5/8 x 3/4	15	100	10	98.5-101.5	2	10	1	98.5-101.5	1/4	10	1	95-101	90
3/4	25	100	10	98.5-101.5	3	10	1	98.5-101.5	1/2	10	1	95-101	90
1	40	100	10	98.5-101.5	4	10	1	98.5-101.5	3/4	10	1	95-101	90
1 1/2	50	100	10	98.5-101.5	8	100	10	98.5-101.5	1 1/2	100	10	95-101	90
2	100	100	10	98.5-101.5	15	100	10	98.5-101.5	2	100	10	95-101	90
3	150	500	50	98.5-101.5	20	100	10	98.5-101.5	4	100	10	95-101	90
4	200	500	50	98.5-101.5	40	100	10	98.5-101.5	7	100	10	95-101	90
6	500	1000	100	98.5-101.5	60	100	10	98.5-101.5	12	100	10	95-101	90
Multijet Meters													
5/8	15	100	10	98.5-101.5	1	10	1	98.5-101.5	1/4	10	1	97-103	90
5/8 x 3/4	15	100	10	98.5-101.5	1	10	1	98.5-101.5	1/4	10	1	97-103	90
3/4	25	100	10	98.5-101.5	2	10	1	98.5-101.5	1/2	10	1	97-103	90
1	35	100	10	98.5-101.5	3	10	1	98.5-101.5	3/4	10	1	97-103	90
1 1/2	70	100	10	98.5-101.5	5	100	10	98.5-101.5	1 1/2	100	10	97-103	90
2	100	100	10	98.5-101.5	8	100	10	98.5-101.5	2	100	10	97-103	90
Class I Turbine Meters													
1 1/2	80	200	20	98-102	Not Required				12	100	10	98-102	-
2	120	300	30	98-102					16	100	10	98-102	-
3	250	500	50	98-102					24	100	10	98-102	-
4	400	1000	100	98-102					40	100	10	98-102	-
6	1000	2000	200	98-102					80	1000	100	98-102	-
8	1500	3000	300	98-102					140	1000	100	98-102	-
10	2200	5000	500	98-102					225	1000	100	98-102	-
12	3300	7000	700	98-102					400	1000	100	98-102	-
Class II Turbine Meters													
2	120	300	30	98.5-101.5	Not Required				4	100	10	98.5-101.5	-
3	275	600	60	98.5-101.5					8	100	10	98.5-101.5	-
4	500	1000	100	98.5-101.5					15	100	10	98.5-101.5	-
6	1100	2500	250	98.5-101.5					30	1000	100	98.5-101.5	-
8	1800	4000	400	98.5-101.5					50	1000	100	98.5-101.5	-
10	3000	6000	600	98.5-101.5					75	1000	100	98.5-101.5	-
12	4000	8000	800	98.5-101.5					120	1000	100	98.5-101.5	-
Propeller Meters													
2	100	200	20	98-102	35	100	10	98-102	30	100	10	95	90
3	150	300	30	98-102	40	100	10	98-102	35	100	10	95	90
4	200	500	60	98-102	50	100	10	98-102	45	100	10	95	90
5	400	1000	100	98-102	75	200	20	98-102	70	200	20	95	90
6	500	1000	100	98-102	90	300	30	98-102	85	300	30	95	90
8	600	2000	200	98-102	100	300	30	98-102	90	300	30	95	90
10	900	3000	300	98-102	125	300	30	98-102	110	300	30	95	90
12	1000	5000	500	98-102	150	400	50	98-102	140	400	50	95	90
14	1100	5000	500	98-102	250	1000	100	98-102	225	1000	100	95	90
16	1400	5000	600	98-102	350	1000	100	98-102	315	1000	100	95	90
18	1600	5000	600	98-102	450	2000	200	98-102	405	2000	200	95	90
20	2000	10000	1000	98-102	550	2000	200	98-102	495	2000	200	95	90
24	3000	10000	1000	98-102	800	5000	500	98-102	720	5000	500	95	90
30	4500	20000	2000	98-102	1200	5000	500	98-102	1080	5000	500	95	90
36	6000	20000	2000	98-102	1500	5000	500	98-102	1350	5000	500	95	90
Compound Meters													
2	100	100	10	97-103	sec.					100	10	90-103	-
3	150	500	50	97-103						100	10	90-103	-
4	200	500	50	97-103						100	10	90-103	-
6	500	1000	100	97-103						100	10	90-103	-
8	600	2000	200	97-103						200	20	90-103	-
10	900	2000	200	97-103						1000	100	90-103	-
Fire-Service Type													
3	100	500	50	97-103	sec.					sec.		Not Less	-
4	200	500	100	97-103								than 85%	-
6	500	3000	200	97-103									-
8	600	3000	300	97-103									-
10	900	5000	500	97-103									-

* - A rebuilt meter is one that has had the measuring element replaced with a factory-made new unit. A repaired meter is one that has had the old measuring element cleaned and refurbished in a utility repair shop.
sec. - Quantity should be one or more full revolution of the test hand but not less than two (2) min running.

(b) Determination of meter accuracy. No new, rebuilt or repaired meter shall be placed in service if the following required tests show that it does not register within the accuracy limits specified in paragraph (a) of this subsection.

1. Displacement, multijet, compound, fire service and propeller type meters. Meters of the displacement, multijet, compound, fire service and propeller type shall be tested at the minimum, intermediate and high test flow rates shown in paragraph (a) of this subsection. At least one (1) additional test shall be performed within the range of flows of compound and fire service meters to determine overall operational efficiency and accuracy of registration.

2. Class I and Class II turbine type meters. Meters of the Class I and Class II turbine type shall be tested at the minimum and high test flow rates shown in paragraph (a) of this subsection.

(3) As found tests. All meters tested in accordance with the rules for periodic, request or complaint tests, shall be tested in the condition as found in the customer's service prior to any alteration or adjustment. This test shall consist of three (3) rates of flow in the minimum, intermediate and high flow range for that type of meter as set out in subsection (2)(a) of this section.

(4) Determination of meter error for bill adjustment purposes. When upon periodic, request or complaint test, a meter is found to be in error in excess of the limits allowed by the commission's administrative regulations, three (3) additional tests shall be made: one (1) at seventy-five (75) percent of rated maximum capacity; one (1) at fifty (50) percent of rated maximum capacity; one (1) at twenty-five (25) percent of the rated maximum capacity. The average meter error shall be the algebraic average of the errors of the three (3) tests.

Section 16. Periodic Tests. (1) Each utility shall test periodically all water meters so that no meter will remain in service without test for a period longer than specified in the following table:

Size of Meter Inches	Interval Between Tests Years
5/8	10
5/8 x 3/4	10
3/4	10
1	10
1 1/4	4
1 1/2	4
2	4
3	2
4 and larger	1

(2) Meters of the current and compound type shall be cleaned at a minimum of the frequency listed in subsection (1) of this section for testing. If meters are tested in place at the frequency listed in subsection (1) of this section and during the test are flushed at a high rate of flow, the meter shall be considered to be in compliance with this section.

(3) If the number of meters of any type which register in error beyond the limits specified in this administrative regulation is found by the commission to be excessive, then that type shall be tested with such additional frequency as the commission may direct.

Section 17. Water Shortage Response Plans. Each utility which files a water shortage response plan with the Natural Resources Cabinet shall simultaneously file a copy of the plan with the commission. Any utility which has already filed a plan with the Natural Resources Cabinet shall file the plan with the commission within sixty (60) days of the effective date of this administrative regulation.

Section 18. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation. (8 Ky.R. 828; eff. 4-7-1982; Am. 18 Ky.R. 1968; 3388; eff. 6-7-1992; TAm eff. 8-9-2007; TAm 1-30-2013.)

807 KAR 5:067. Purchased water adjustment for investor-owned utilities.

RELATES TO: KRS 278.010, 278.030, 278.040
STATUTORY AUTHORITY: KRS 278.030(1), 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation establishes the requirements under which a privately-owned water utility implements a purchased water adjustment to recover the cost of water purchased.

Section 1. Definitions. (1) "Application" means:
(a) A completed Purchased Water Adjustment Form 2;
(b) A schedule listing current and proposed rates;
(c) A copy of the supplier's notice showing a change in supplier's base rate;
(d) The calculation and all supporting documents used to determine the change in purchased water costs sufficient to determine the accuracy of the calculation; and
(e) If the utility is not a sole proprietorship or partnership, a copy of the resolution or other document of the utility's governing body authorizing the proposed rates.
(2) "Changed rate" means the rate of a utility's supplier after the most recent increase or decrease in the supplier's base rate.
(3) "Commission" is defined by KRS 278.010(15).
(4) "Person" is defined by KRS 278.010(2).
(5) "Supplier's base rate" means the rate of a utility's supplier in effect immediately prior to the most recent increase or decrease.
(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.
(7) "Unaccounted for water" means the volumetric sum of all water purchased and produced by the utility less the volume of water:
(a) Sold;
(b) Provided to customers without charge as authorized by the utility's tariff; and
(c) Used by the utility to conduct the daily operation and maintenance of its treatment, transmission, and distribution systems.
(8) "Utility" means a privately-owned utility that meets the requirements of KRS 278.010(3)(d).
(9) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Supplier's Base Rate. (1) Upon an increase in its supplier's base rate, a utility may increase each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased purchased water costs to its customers on a per unit basis regardless of customer classification.
(2) Upon a decrease in the supplier's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased purchased water costs on a per unit basis regardless of customer classification.

Section 3. Purchased Water Adjustment Factor. (1) If unaccounted for water does not exceed fifteen (15) percent, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales}}$$

(a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(2) If unaccounted for water exceeds fifteen (15) percent and no reasonable percentage has been determined, pursuant to 807 KAR 5:006, Section 6, in the utility's last rate case, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate x Total Utility Water Purchases}) - (\text{Base Rate x Total Utility Water Purchases})}{\text{Total Utility Water Sales ¸ 85\%}}$$

(a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(3) If unaccounted for water exceeds fifteen (15) percent and a reasonable percentage has been determined, pursuant to 807 KAR 5:006, Section 6, in the utility's last rate case, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate x Total Utility Water Purchases}) - (\text{Base Rate x Total Utility Water Purchases})}{\text{Total Utility Water Sales x (100\% - Determined Reasonable Unaccounted for Water Percentage)}}$$

(a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

Section 4. Submitting the Purchased Water Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted in accordance with 807 KAR 5:001, Sections 7 and 8.

Section 5. Notice. Upon filing an application for a purchased water adjustment resulting from a supplier's increased rate, a utility shall provide notice as follows:

(1) Public postings.

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

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

1. A copy of the public notice; and

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

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

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

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

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

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

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

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

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

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

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

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

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

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

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

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice.

Section 6. Orders of the Commission. (1) A utility shall not implement its proposed rates until the commission issues an order authorizing the utility to adjust its rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

Section 7. Refund from a Supplier. (1) A utility that receives a refund from its supplier for previously paid for water service due to a reduction in the supplier's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by

reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the supplier's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor upon calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Purchased Water Adjustment Form 2", Purchased Water Adjustment for Privately-Owned Utilities, July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov. (7 Ky.R. 793; eff. 9-2-81; Am. 1895; eff. 7-2-86; 40 Ky.R. 452; 815; eff. 10-18-2013.)

807 KAR 5:068. Purchased water adjustment for water districts and water associations.

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.012, 278.015
STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation prescribes the requirements under which a water district or a water association may implement a purchased water adjustment to recover the cost of water purchased.

Section 1. Definitions. (1) "Application" means:
(a) A completed Purchased Water Adjustment Form 1;
(b) A schedule listing current and proposed rates;
(c) A copy of the supplier's notice showing a change in supplier's base rate;
(d) The calculation and all supporting documents used to determine the change in purchased water costs sufficient to determine the accuracy of the calculation;
(e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates; and
(f) If the applicant is a water district and proposes to increase any of its rates for service, a statement from an authorized official of the district indicating the date its proposed rate adjustment was reported to the governing body of the county in which the largest number of its customers reside and the date it presented testimony, or is scheduled to present testimony, to that governing body.
(2) "Changed rate" means the rate of a utility's supplier after the most recent increase or decrease in the supplier's base rate.
(3) "Commission" is defined by KRS 278.010(15).
(4) "Person" is defined by KRS 278.010(2).
(5) "Supplier's base rate" means the rate of a utility's supplier in effect immediately prior to the most recent increase or decrease.
(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.
(7) "Utility" means:
(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of water service; or
(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.
(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Supplier's Base Rate. (1) Upon an increase in its supplier's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased purchased water costs to its customers on a per unit basis regardless of customer classification.
(2) Upon a decrease in the supplier's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased purchased water costs on a per unit basis regardless of customer classification.

Section 3. Purchased Water Adjustment Factor. (1) The purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales}}$$

(2) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(3) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total utility water purchases and total water utility sales.

Section 4. Submitting the Purchased Water Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

(a) In accordance with 807 KAR 5:001, Sections 7 and 8; and

(b) No earlier than thirty (30) days prior to the proposed effective date of the supplier's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its purchased water costs due to the supplier's changed rate.

Section 5. Notice. Upon filing an application for a purchased water adjustment resulting from a supplier's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

1. A copy of the public notice; and

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

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

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the issuance of the first bill at the increased rate;

2. Mailing a written notice to each customer no later than the issuance of the first bill at the increased rate; or

3. Publishing notice one (1) time in a prominent manner in a newspaper of general circulation in the utility's service area no later than the issuance of the first bill at the increased rate.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order approving an adjustment to the utility's rates pursuant to this administrative regulation:

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

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the date of the notice's publication.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The effective date;

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

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

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

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

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

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner prescribed in Section 5(2) of this administrative regulation.

Section 7. Refund from a Supplier. (1) A utility that receives a refund from its supplier for previously paid for water service due to a reduction in the supplier's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the supplier's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor upon calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Purchased Water Adjustment Form 1", Purchased Water Adjustment for Water Districts and Associations, July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov. (12 Ky.R. 1965; Am. 13 Ky.R. 235; eff. 7-2-86; 40 Ky.R. 488; 822; eff. 10-18-2013.)

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

RELATES TO: KRS 278.020(1), 278.023, 278.190, 278.300
STATUTORY AUTHORITY: KRS 278.020(1), 278.023, 278.040(3), 278.190, 278.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.020(1) authorizes the commission to issue a certificate of public convenience and necessity for utility construction. KRS 278.300 authorizes the commission to approve the assumption of an obligation, liability, or evidence of indebtedness by a utility. KRS 278.190 authorizes the commission to approve proposed changes in rates. KRS 278.023 provides that the 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 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 with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, commission or district or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273. This administrative regulation prescribes filing requirements and procedures a water association, commission, or district, or a combined water, gas or sewer districted formed under KRS Chapter 74 or 273 shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

Section 1. Filing Requirements. A utility proposing to construct a project financed in whole or in part by the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development shall file with the commission the following documents and information:
(1) All documents and information required by 807 KAR 5:001, Section 14;
(2) A copy of the documents from the U.S. Department of Agriculture or U.S. Department of Housing and Urban Development, as appropriate, stating approval of the project and including all terms and conditions to be met;
(3) A copy of the letter of concurrence in bid award;
(4) A copy of the preliminary and final engineering reports;
(5) A certified statement from an authorized utility official confirming:
(a) That the proposed plans and specifications for the project have been designed to meet the minimum construction and operating requirements established in 807 KAR 5:066, Section 4(3) and (4), Section 5(1), Sections 6 and 7, Section 8(1) through (3), Section 9(1) and Section 10;
(b) That all other state approvals or permits have been obtained;
(c) That the proposed rates, if any, shall produce the total revenue requirements set out in the engineering reports; and
(d) The dates upon which construction will begin and end;
(6) If applicable, a statement that notice meeting the requirements of Section 2 of this administrative regulation has been given, together with a copy of the notice; and
(7) If applicable, a motion requesting approval to deviate from a minimum construction standard or operating condition required by subsection (5)(a) of this section, together with supporting evidence to identify and explain the reasons that the minimum requirements cannot be met.

Section 2. Notice to Customers of Rate Change. If a change in rates is required to finance the construction project, the utility shall, before application is made, mail to each customer, or publish in a newspaper of general circulation in the local service area, a notice that contains the current and proposed rates and a brief description of the construction project.

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

Section 4. System Maps and Records. Within thirty (30) days after completion of construction authorized under this administrative regulation, the utility shall revise its system maps and records maintained pursuant to 807 KAR 5:006, Section 23, to include all required information regarding the new construction. (15 Ky.R. 900; eff. 11-4-1988; Am. 24 Ky.R. 1774; 2122; eff. 4-13-1998; TAm 1-30-2013.)

807 KAR 5:070. Filing requirements and standards for commission approval of water district commissioner training programs.

RELATES TO: KRS 74.020(6), (7)
STATUTORY AUTHORITY: KRS 74.020(6), (7)(b), (c), (d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 74.020(6) provides that each water district commissioner may receive an annual salary of not more than $6,000 to be paid out of the water district management fund if he completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the commission. KRS 74.020(7)(b) provides that the commission shall be responsible for the regulation of all water district management training programs for commissioners of water districts, combined water, gas, or sewer districts, or water commissions. KRS 74.020(7)(c) requires the commission to establish standards and procedures to evaluate, accredit, and approve water district management training programs. KRS 74.020(7)(d) provides that the commission may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to implement KRS 74.020. This administrative regulation establishes filing requirements and standards for commission approval of water district commissioner training programs.

Section 1. Filing Requirements. To apply for approval of a proposed water district commissioner training program, an applicant shall file with the commission an original and five (5) copies of the following documents and information concerning the program for which approval is sought:
(1) The name and address of the applicant;
(2) The name and sponsor of the program and the subject matter covered by the program;
(3) A summary of the content of the program in detail sufficient to describe how the program will enhance the management, operation, and maintenance of water treatment and distribution systems;
(4) The number of credit hours requested for the program;
(5) The name and relevant qualifications and credentials of each instructor presenting the program;
(6) A copy of written materials given to water commissioners attending the program; and
(7) If the program has been certified by an organization that provides training to persons associated with the water industry, the name of the certifying organization and a statement that the certification remains valid.

Section 2. Subject Matter. Program hours consisting of one (1) or more of the following areas of instruction shall be approved as to subject matter:
(1) Federal and state law regarding safety standards for drinking water;
(2) Management techniques;
(3) Accounting standards and treatment of costs;
(4) Financing principles;
(5) Rate design;
(6) Water technology and system facilities;
(7) Ethics; and
(8) Other areas of instruction related to, and calculated to enhance the quality of, the management, operation, and maintenance of a water system.

Section 3. Expiration and Renewal. Approval of a program shall automatically expire twelve (12) months after commission approval has been issued, except that an applicant may request that approval be renewed for an additional twelve (12) month period by submitting the following:
(1) A copy of the initial application with a copy of the commission order approving;
(2) Updates, if any, to the application, with supporting documentation, if necessary. (25 Ky.R. 2245; eff. 5-19-99.)

807 KAR 5:071. Sewage.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation establishes general rules which apply to sewage utilities.

Section 1. General. The purpose of this administrative regulation is to provide standard rules and administrative regulations governing the service of sewage utilities operating under the jurisdiction of the Public Service Commission.

Section 2. Definitions. The following terms when used in these rules, shall have the meaning indicated:
(1) "Commission" means the Public Service Commission.
(2) "Collecting sewers" means sewers, including force lines, gravity sewers, interceptors, laterals, trunk sewers, manholes, lampholes and necessary appurtenances and including service wyes, which are used to transport sewage and are owned, operated, or maintained by a sewage disposal utility.
(3) "Customer" means any person, partnership, association, corporation or governmental agency being provided with sewage disposal service by a utility.
(4) "Customer's service pipe" means any sewer pipe extending from the customer's residence or other structure receiving and transporting sewage to the utility's collecting sewer, but excluding service wyes.
(5) "Lift station" means that portion of the sewage system which is used to lift the sewage to a higher elevation.
(6) "Premises" means a tract of land or real estate including buildings and other appurtenances thereon.
(7) "Sewage" means ground garbage, human and animal excretions, and all other domestic type waste normally disposed of by a residential, commercial, or industrial establishment, through the sanitary sewer system.
(8) "Sewage treatment facilities" includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, and controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for the public, or other beneficial or necessary purpose.
(9) "Sewage utility" means any person except a city, who owns, controls or operates or manages any facility used or to be used for or in connection with the treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district. (KRS 278.010(5)(c))

Section 3. Filings with this Commission. In addition to all filing requirements provided by 807 KAR 5:001, Rules of procedure, the following requirements must also be met for all formal applications (outlined below) by sewage utilities before this commission:
(1) Application for certificates of public convenience and necessity. In addition to the filing requirements provided by 807 KAR 5:001, Sections 14 and 15, the applicant shall submit with its application, the following:
(a) A copy of a valid third-party beneficiary agreement guaranteeing the continued operation of the sewage treatment facilities or other evidence of financial integrity such as will insure the continuity of sewage service.
(b) A copy of a preliminary approval issued by the Division of Water Quality of the Kentucky Department for Natural Resources and Environmental Protection approving the plans and specifications of the proposed construction.
(c) A detailed map of the sewage treatment facilities showing location of plant, effluent discharge, collection mains, manholes, and utility service area.
(d) A detailed estimated cost of construction which should include all capitalized costs (construction, engineering, legal, administrative, etc.).
(e) A financial exhibit as described in 807 KAR 5:001, Section 12.
(f) The manner in detail in which it is proposed to finance the new construction, specifically stating amount to be invested, recouped through lot sales, or contributions (to be) received, etc.

(g) An estimated cost of operation after the proposed facilities are completed.

(h) An estimate of the total number of customers to be served by the proposed sewage treatment facilities, initially and ultimately the class of customers served (i.e., residential, commercial, apartments, recreational, institutional, etc.) and the average monthly water consumption for each class of customer.

(i) A copy of the latest tax returns (federal and state, if applicable) filed by the applicant.

(j) A detailed depreciation schedule of all treatment plant, property and facilities, both existing and proposed, listing all major components of "package;" treatment plants separately.

(k) The proposed rates to be charged for each class of customers and an estimate of the annual revenues derived from the customers using the proposed rate schedules.

(l) A full and complete explanation of corporate or business relationships between the applicant and a parent or brother-sister corporation, subsidiary(ies), a development corporation(s), or any other party or business to afford the commission a full and complete understanding of the situation.

(m) If the establishment of rates is not sought by the applicant, omit paragraphs (i), (j), and (k) of this subsection.

(2) Application for authority to adjust rates. In addition to the filing requirements provided by 807 KAR 5:001, Sections 12, 14, and 17, the applicant shall submit with its application, the following:

(a) A copy of a valid third-party beneficiary agreement guaranteeing the continued operation of the sewage treatment facilities or other evidence of financial integrity such as will insure the continuity of sewage service.

(b) A comparative income statement (PSC Form) showing test period; per books, revenues and expenses, pro forms adjustments to those figures, and explanations for each adjusted entry.

(c) A detailed analysis of any expenses contained in the comparative income statement which represent an allocation or proration of the total expense.

(d) A detailed depreciation schedule of all treatment plant properties and facilities, listing all major components of "package;" treatment plants separately.

(e) Copies of all service contracts entered into by the utility for outside services, such as but not limited to: operation and maintenance, sludge hauling, billing, collection, repairs, etc., in order to justify current contract services and charges or proposed changes in said contracts.

(f) A description of the applicant's property and facilities, including a statement of the net original cost (estimate if not known), the cost thereof to the applicant, and a current breakdown of contributed and noncontributed property and facilities owned by the applicant ("contributed property" means property paid for by others).

(g) A detailed customer listing showing number of customers in each customer class and average water consumption for each class of customers.

(h) If the utility has billing and collection services provided by the Louisville Water Company, remittance advices from the Louisville Water Company showing revenues and collection charges should be submitted for the test period.

(i) A copy of the latest tax returns (federal and state, if applicable) filed by the applicant.

(j) A full and complete explanation of corporate or business relationships between the applicant and a parent or brother-sister corporation, subsidiary(ies), a development corporation(s), or any other party or business, to afford the commission a full and complete understanding of the situation.

(3) Application for authority to issue securities, notes, bonds, stocks, or other evidences of indebtedness. In addition to the filing requirements, provided by 807 KAR 5:001, Sections 12, 14, and 17, the applicant shall submit with its application the following:

(a) Copy of amortization schedules of present and proposed indebtedness.

(b) A full and complete explanation of any corporate or business relationships between the applicant and a parent or brother-sister corporation, subsidiary(ies), a development corporation(s), or any other party or business to afford the commission a full and complete understanding of the situation.

Section 4. Information Available to Customers. (1) System maps or records. Each utility shall maintain up-to-date maps, plans, or records of its entire force main and collection systems, with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving any locality.

(2) Rates, rules, and regulations. A schedule of approved rates for sewage service applicable for each class of customers and the approved rules and regulations of the sewage utility shall be available to any customer or prospective customer upon request.

Section 5. Quality of Service. (1) General. Each utility shall maintain and operate sewage treatment facilities of adequate size and properly equipped to collect, transport, and treat sewage, and discharge the effluent at the degree of purity required by the health laws of the State of Kentucky, and all other regulatory agencies, federal, state, and local, having jurisdiction over such matters.

(2) Limitations of service. No sewage disposal company shall be obliged to receive for treatment or disposal any material except sewage as defined by Section 2(7) of this administrative regulation. In compliance with the administrative regulation, the utility shall make all reasonable efforts to eliminate or prevent the entry of surface or ground water, or any corrosive or toxic industrial liquid waste into its sanitary sewer system. A utility may request assistance from the appropriate state, county, or municipal authorities in its efforts, but such a request does not relieve the utility of its aforementioned responsibilities.

Section 6. Continuity of Service. (1) Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(2) Scheduled interruptions. Whenever any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at such hours as will provide least inconvenience to the customers.

(3) Record of interruptions. Each utility shall keep a complete record of all interruptions on its system. This record shall show the cause of interruption, date, time, duration, remedy, and steps taken to prevent recurrence.

Section 7. Design, Construction, and Operation. (1) General. The sewage treatment facilities of the sewage utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

(2) Design and construction requirements. The design and construction of the sewage utility's collecting sewers, treatment plant and facilities, and all additions thereto and modifications thereof, shall conform to the requirements of the Kentucky Department for Natural Resources and Environmental Protection, Bureau of Environmental Quality, Division of Water Quality.

(3) Adequacy of facilities. The capacity of the sewage utility's sewage treatment facilities for the collection, treatment and disposal of sewage and sewage effluent must be sufficiently sized to meet all normal demands for service and provide a reasonable reserve for emergencies.

(4) Inspection of facilities. Each sewage utility shall adopt procedures for inspection of its sewage treatment facilities to assure safe and adequate operation of its facilities and compliance with commission rules. These procedures shall be filed with the commission. Unless otherwise authorized in writing by the commission, the sewage utility shall make inspections of collecting sewers and manholes on a scheduled basis at intervals not to exceed one (1) year, unless conditions warrant more frequent inspections and shall make inspections of all mechanical equipment on a daily basis. The sewage utility shall maintain a record of findings and corrective actions required, and/or taken, by location and date.

Section 8. Service Pipe Connections. (1) Sewage utility's service pipe. The sewage utility shall install and maintain that portion of the service pipe from the main to the boundary line of the easement, public road, or street, under which such main may be located.

(2) Customer's service pipe.

(a) The customer shall install and maintain that portion of the service pipe from the end of the sewage utility's portion into the premises served.

(b) Requirements for customer's service pipe. That portion of the service pipe installed and maintained by the customer shall conform to all reasonable rules of the utility. It shall be constructed of materials approved by the sewage utility and installed under the inspection of the sewage utility.

(3) Restriction on installation. A sewer service pipe shall not be laid in the same trench with a water pipe.

(4) Inspection. If a governmental agency requires an inspection of the customer's plumbing, the sewage utility shall not connect the customer's service pipe until it has received notice from the inspection agency certifying that the customer's plumbing is satisfactory. (8 Ky.R. 833; eff. 4-7-1982; TAm 1-30-2013.)

807 KAR 5:075. Treated sewage adjustment for water districts and water associations.

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.012, 278.015, 278.030, 278.040
STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation establishes the requirements under which a water district or a water association may implement a treated sewage adjustment to recover the costs of treated sewage.

Section 1. Definitions. (1) "Application" means:
(a) A completed Treated Sewage Adjustment Form 1;
(b) A schedule listing current and proposed rates;
(c) A copy of the provider's notice showing a change in provider's base rate;
(d) The calculation and all supporting documents used to determine the change in treated sewage costs sufficient to determine the accuracy of the calculation;
(e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates; and
(f) If the applicant is a water district and proposes to increase any of its rates for service, a statement from an authorized official of the district indicating the date its proposed rate adjustment was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body.
(2) "Changed rate" means the rate of a utility's provider after the most recent increase or decrease in the provider's base rate.
(3) "Commission" is defined by KRS 278.010(15).
(4) "Person" is defined by KRS 278.010(2).
(5) "Provider's base rate" means the rate of a utility's provider in effect immediately prior to the most recent increase or decrease.
(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.
(7) "Utility" means:
(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of sewage service; or
(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.
(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Provider's Base Rate. (1) Upon an increase in its provider's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased treated sewage costs to its customers on a per unit basis regardless of customer classification.
(2) Upon a decrease in the provider's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased treated sewage costs on a per unit basis regardless of customer classification.

Section 3. Treated Sewage Adjustment Factor. (1) The treated sewage adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{TSA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Treated Sewage}) - (\text{Base Rate} \times \text{Total Treated Sewage})}{\text{Total Utility Water Sales}}$$

(2) The treated sewage adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customer bills.

(3) Total treated sewage shall be determined based upon the level of treated sewage for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total treated sewage and total utility water sales.

Section 4. Submitting the Treated Sewage Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

(a) In accordance with 807 KAR 5:001, Sections 7 and 8; and

(b) No earlier than thirty (30) days prior to the proposed effective date of the provider's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its treated sewage costs due to the provider's changed rate.

Section 5. Notice. Upon filing an application for a treated sewage adjustment resulting from a provider's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

1. A copy of the public notice; and

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

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

(2) Customer Notice. A utility shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order approving an adjustment to the utility's rates pursuant to this administrative regulation an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The effective date;

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

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

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

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

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

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner established in Section 5(2) of this administrative regulation.

Section 7. Refund from a Provider. (1) A utility that receives a refund from its provider for previously paid for treated sewage due to a reduction in the provider's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the provider's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customer bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor when calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Treated Sewage Adjustment Form 1", Treated Sewage Adjustment for Water Districts and Associations, July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov. (12 Ky.R. 1965; Am. 13 Ky.R. 235; eff. 7-2-86; 40 Ky.R. 488; 822; eff. 10-18-2013.)

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

RELATES TO: KRS 278.010, 278.030, 278.160, 278.180, 278.185, 278.190, 278.310, 278.380
STATUTORY AUTHORITY: KRS 278.040(3), 278.160(1), 278.180, 278.185(4)
NECESSITY, FUNCTION AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement KRS Chapter 278. This administrative regulation establishes a simplified and less expensive procedure for small utilities to use to apply to the commission for rate adjustments.

Section 1. Definitions. (1) "Annual report" means the financial and statistical report incorporated by reference in 807 KAR 5:006, which requires a utility to file the annual report with the commission.
(2) "Annual report for the immediate past year" means an annual report that covers the applicant's operations for either:
(a) The calendar year period prior to the year in which the applicant's application for rate adjustment is filed with the commission; or
(b) The most recent calendar year period that 807 KAR 5:006, Section 4(1), requires the applicant to have on file with the commission as of the date of the filing of its application for rate adjustment.
(3) "Applicant" means a utility that is applying for an adjustment of rates using the procedure established in this administrative regulation.
(4) "Gross annual revenue" means:
(a) The total revenue that a utility derived during a calendar year; or
(b) If the utility operates two (2) or more divisions that provide different types of utility service, the total amount of revenue derived from the division for which a rate adjustment is sought.
(5) "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).
(6) "Utility" is defined by KRS 278.010(3).

Section 2. Utilities Permitted to File Application. A utility may apply for an adjustment of rates using the procedure established in this administrative regulation if it:
(1) Had gross annual revenue in the immediate past calendar year of $5,000,000 or less;
(2) Maintained adequate financial records fully separated from a commonly-owned enterprise; and
(3) Filed with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if the utility has been in existence that long.

Section 3. The Record upon which Decision Shall Be Made. The commission shall make its decision based on the:
(1) Applicant's annual report for the immediate past year and the annual reports for the two (2) prior years, if the utility has been in existence that long;
(2) The application required by Section 4 of this administrative regulation;
(3) Information supplied by the applicant in response to requests for information submitted by other parties to the proceeding or the commission;
(4) Written reports submitted by commission staff;
(5) Stipulations and agreements between the parties and commission staff;
(6) Written comments and information that the parties to the proceeding submitted in response to the findings and recommendations contained in a written report that commission staff submitted; and
(7) If a hearing is held, the record of that hearing.

Section 4. Application. (1) An application for alternative rate adjustment shall consist of:
(a) A completed ARF Form-1 that is made under oath and signed by the applicant or an officer who is duly designated by the applicant and who has knowledge of the matters established in the application;
(b) A copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;
(c) A copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;
(d) A depreciation schedule of all utility plant in service;
(e) A copy of the most recent state and federal tax returns of the applicant, if the applicant is required to file returns;

(f) A detailed analysis of the applicant's customers' bills showing revenues from the present and proposed rates for each customer class;

(g) A copy of the notice of the proposed rate change that is provided to customers of the applicant;

(h) A completed ARF Form-3 for each member of the utility's board of commissioners or board of directors, each person who has an ownership interest of ten (10) percent or more in the utility, and the utility's chief executive officer; and

(i)1. If the applicant is a corporation, a certified copy of its articles of incorporation and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding;

2. If the applicant is a limited liability company, a certified copy of its articles of organization and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding; or

3. If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments thereto, or a written statement attesting that its partnership agreement and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(2) Except as provided in Section 13 of this administrative regulation for electronic filings, the applicant shall:

(a) Submit one (1) original and five (5) paper copies of its application to the executive director of the commission; and

(b) Deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 or transmit by electronic mail an electronic copy in portable document format to the Office of Rate Intervention at rateintervention@ag.ky.gov.

(3)(a) If the application contains an individual's Social Security number, taxpayer identification number, birth date, or a financial account number, the applicant shall redact the document so the following information cannot be read:

1. The digits of the Social Security number or taxpayer identification number;

2. The month and day of an individual's birth; and

3. The digits of the financial account number.

(b) To redact the document, the applicant shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(4) The application shall not contain any request for relief from the commission other than an adjustment of rates.

(5) A utility may make written request to the executive director for commission staff assistance in preparing the application.

Section 5. Notice to Customers of Proposed Rate Changes. (1) If the applicant has twenty (20) or fewer customers or is a sewage utility, it shall:

(a) Mail written notice in accordance with subsection (3) of this section to each customer no later than the date on which the application is filed with the commission;

(b) Post at its place of business no later than the filed date of the application a sheet containing the information provided in the written notice to its customers; and

(c) Keep the notice posted until the commission has issued a final decision on the application.

(2) An applicant that has more than twenty (20) customers and is not a sewage utility shall post at its place of business a sheet containing the information required by subsection (3) of this section and shall:

(a) Include notice with customer bills mailed by the date the application is filed;

(b) Publish notice in a trade publication or newsletter going to all customers by the date the application is filed;

(c) Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the applicant's service area, the first publication to be made by the date the application is filed; or

(d) If it provides service in more than one (1) county, use a combination of the methods established in this subsection.

(3) Each notice shall state:

(a) The present rates and proposed rates for each customer class to which the proposed rates will apply;

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

(c) The amount of the average usage and the effect upon the average bill for each customer class to which the proposed rate change will apply;

(d) That the rates contained in this notice are the rates proposed by (name of utility) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) That a corporation, association, or person may, within thirty (30) days after the initial publication or mailing of notice of the proposed rate change, submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request and including the status and interest of the party;

(f) That a person may examine this application at the main offices of (the name of the utility) located at (the utility's address) and on the utility's Web site at (the utility's Web site address), if the utility maintains a public Web site; and

(g) That the application and all documents filed with the Public Service Commission may be viewed and downloaded at the Public Service Commission's Web site at http://psc.ky.gov/.

(4) Proof of notice. An applicant shall file with the commission no later than forty-five (45) days from the filed date of the application:

(a) If its notice is published in a newspaper of general circulation in the applicant's service area, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

(b) If notice is published in a trade publication or newsletter going to all customers, an affidavit from an authorized representative of the utility verifying the trade publication or newsletter was mailed; or

(c) If the notice is mailed, an affidavit from an authorized representative of the utility verifying the notice was mailed.

(5) If an applicant maintains a Web site, the applicant shall:

(a) Post on its Web site within seven (7) days of the filed date of the application:

1. A notice containing the information provided in the written notice to its customers; and

2. A hyperlink to a copy of its application posted on the commission's Web site; and

(b) Keep both items posted until the commission has finally determined the utility's rates.

Section 6. Except as provided in Section 13 of this administrative regulation, an applicant shall not be required to provide the commission with advance notice of its intent to file an application for rate adjustment using the procedure established in this administrative regulation.

Section 7. Effective Date of Proposed Rates. (1) An applicant shall not place the proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first.

(2) If the commission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect.

(3) The applicant shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom is due a refund if the commission orders a refund.

Section 8. Test Period. The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measureable changes, that coincides with the reporting period of the applicant's annual report for the immediate past year.

Section 9. Discovery. (1) The minimum discovery available to intervening parties shall be as prescribed by this subsection.

(a) A party in the proceeding may serve written requests for information upon the applicant within twenty-one (21) days of an order permitting that party to intervene in the proceeding.

(b) Upon serving requests upon the applicant, the party shall file a copy of the party's requests with the commission and serve a copy upon all other parties.

(c) Within twenty-one (21) days of service of timely requests for information from a party, the applicant shall serve its written responses upon each party and shall file with the commission one (1) original and five (5) copies.

(2) The commission may establish different arrangements for discovery if it finds different arrangements are necessary to evaluate an application or to protect a party's rights to due process.

Section 10. Commission Staff Report. (1) Within thirty (30) days of the date that an application is accepted for filing, the commission shall enter an order advising the parties if commission staff will prepare a report on the application.

(2) If a commission staff report is prepared, the:

(a) Commission staff shall:

1. File the report with the commission; and

2. Serve a copy of the report on all parties of record; and

(b) Report shall contain the commission staff's findings and recommendations regarding the proposed rates.

(3)(a) Each party shall file with the commission a written response to the commission staff report within fourteen (14) days of the filing of the report.

(b) This written response shall contain:

1. All objections to and other comments on the findings and recommendations of commission staff;

2. A request for hearing or informal conference, if applicable;

3. The reasons why a hearing or informal conference is necessary; and

4. If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or recommends the assessment of an additional rate or charge not proposed in the application, the filing party's position on if the commission should authorize the assessment of the higher rate or the recommended additional rate or charge.

(c) If a party's written response fails to contain an objection to a finding or recommendation contained in the commission staff report, it shall be deemed to have waived all objections to that finding or recommendation. A party's failure to request a hearing or informal conference in the party's written response shall be deemed a waiver of all rights to a hearing on the application and a request that the case stand submitted for decision.

(d) If a party fails to file a written response with the commission within this time period, it shall be deemed to have waived all objections to the findings and recommendations contained in the report and all rights to a hearing on the application.

(e) Acceptance of the findings and recommendations contained in the commission staff report by all parties in a proceeding shall not preclude the commission from conducting a hearing on the application, taking evidence on the applicant's financial operations, or ordering rates that differ from or conflict with the findings and recommendations established in the commission staff report.

(f) If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or recommends the assessment of an additional rate or charge not proposed in the application and the proposed rates produce total revenues in excess of 115 percent of the total revenue that the applicant's proposed rates will produce, the commission shall order the applicant to provide notice of the finding or recommendation to its customers.

Section 11. Notice of Hearing. (1) If the commission orders a hearing, the applicant shall publish in a newspaper or mail to the applicant's customers notice of the hearing.

(2) The notice shall state the purpose, time, place, and date of the hearing.

(3) Newspaper notice shall be published once in a newspaper of general circulation in the applicant's service area no fewer than seven (7) and no more than twenty-one (21) days prior to the hearing.

(4) Mailed notices shall be mailed at least fourteen (14) days prior to the date of the hearing.

Section 12. Utility Personnel Participation in Commission Proceedings. (1) An authorized official or employee of the applicant who is not licensed to practice law in Kentucky may, on behalf of an applicant that is a water district, corporation, partnership, or limited liability company, file the application, responses

to commission orders and requests for information, as well as appear at conferences related to the application.

(2) An applicant that is a water district, corporation, partnership, or limited liability company shall, at a hearing conducted on the application, be represented by an attorney who is authorized to practice law in Kentucky.

Section 13. Use of Electronic Filing Procedures in lieu of Submission of Paper Documents. (1) Upon an applicant's timely election of the use of electronic filing procedures, the procedures established in this section shall be used in lieu of other filing procedures established in this administrative regulation.

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of the applicant's election using the ARF Form-2; and

(b) If the applicant or its authorized agent does not have an account for electronic filing with the commission, register for an account at http://psc.ky.gov/Account/Register.

(3) Each pleading, document, and exhibit shall be filed with the commission by uploading an electronic version of the document using the commission's E-Filing System at http://psc.ky.gov. In addition, the filing party shall file the original with the commission as required by subsection (11) of this section.

(4) Each file in an electronic submission shall be:

(a) In portable document format;

(b) Search-capable;

(c) Optimized for viewing over the Internet;

(d) Bookmarked to distinguish sections of the pleading or document; and

(e) If a scanned document, scanned at a resolution of no less than 300 dots per inch.

(5)(a) Each electronic submission shall include an introductory file in portable document format that is named "Read1st" and that contains a:

1. General description of the filing;

2. List of all materials not included in the electronic filing; and

3. Statement attesting that the electronically filed documents are a true representation of the original documents.

(b) The "Read1st" file and any other document that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper filing may be substituted for a general description.

(d) If the electronic submission does not include all documents contained in the paper version, the absence of these documents shall be noted in the "Read1st" document.

(6)(a) An electronic transmission or uploading session shall not exceed twenty (20) files.

(b) An individual file shall not exceed fifty (50) megabytes.

(c) If a filing party's submission exceeds the limitations established in paragraph (a) or (b) of this subsection, the filing party shall make its electronic submission in two (2) or more consecutive electronic transmission or uploading sessions.

(7) If filing a document with the commission, the filing party shall certify that:

(a) The electronic version of the filing is a true and accurate copy of each document filed in paper medium;

(b) The electronic version of the filing has been transmitted to the commission; and

(c) A copy of the filing in paper medium has been mailed to all parties that the commission has excused from participation by electronic means.

(8)(a) Upon completion of a party's uploading of an electronic submission, the commission shall cause an electronic mail message to be sent to all parties of record advising that an electronic submission has been made to the commission.

(b) Upon a party's receipt of this message, it shall be the receiving party's responsibility to access the commission's electronic file depository at http://psc.ky.gov and view or download a copy of the submission.

(9) Unless a party states an objection to the use of electronic filing procedures in its motion for intervention, a party granted leave to intervene shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all documents and pleadings, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting the party's intervention a written statement that:

1. The party waives the right to service of commission orders by United States mail; and

2. The party or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) If a party objects to the use of electronic filing procedures and if good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

(11)(a) A document shall be considered timely filed with the commission if the document:

1. Has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements established in this administrative regulation and an order of the commission; and

2. Is filed, in paper medium at the commission's offices no later than the second business day following the electronic filing.

(b) Each party shall attach to the top of the paper submission a paper copy of the electronic mail message from the commission confirming transmission and receipt of the party's electronic submission.

(12) Except as expressly provided in this section, a party making a filing in accordance with the procedures established in this section shall not be required to comply with a provision of this administrative regulation that requires service of a document or material filed with the commission on other parties in the case.

Section 14. The provisions of 807 KAR 5:001, Sections 1 through 6, 9, 10, 11, and 13, shall apply to commission proceedings involving applications filed pursuant to this administrative regulation.

Section 15. Upon a showing of good cause, the commission may permit deviations from this administrative regulation. Requests for deviation shall be submitted in writing by letter to the commission.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Rate Adjustment before the Public Service Commission", ARF Form 1, September 2012;

(b) "Notice of Election of Use of Electronic Filing", ARF Form 2, September 2011; and

(c) "Statement of Disclosure of Related Party Transactions", ARF Form 3, September 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov/.(8 Ky.R. 835; eff. 4-7-82; Am. 22 Ky.R. 994; 1312; 1-3-96; 38 Ky.R. 132; 629; 765; eff. 11-4-11; 39 Ky.R. 320, 1159; eff. 1-4-13.)

807 KAR 5:080. Procedural and filing requirements and safeguards concerning nonregulated activities of utilities or utility affiliates.

RELATES TO: KRS 278.010, 278.2201, 278.2203, 278.2205, 278.2207, 278.2213, 278.2215, 278.2219, 278.230, 278.260

STATUTORY AUTHORITY: KRS 278.040(3), 278.2201, 278.280(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.280(1) authorizes the commission to establish proper practices to be observed in regard to a utility's practices and services. KRS 278.2201 prohibits a utility governed by KRS 278.2201 through 278.2219 from subsidizing nonregulated activities performed by the utility or an affiliate and authorizes the commission to promulgate administrative regulations to implement this section. KRS 278.2205(3) requires a utility governed by KRS 278.2201 through 278.2219 to file with the commission a statement that its cost allocation manual has been prepared and adopted, together with the manual. KRS 278.2205(4) requires a utility governed by KRS 278.2201 through 278.2219 to amend its cost allocation manual to reflect any material changes. KRS 278.230 requires a utility to file with the commission any reports, schedules, classifications or other information that the commission reasonably requires. KRS 278.2207 prescribes requirements for transactions between a utility governed by KRS 278.2201 through 278.2219 and its affiliate, and provides for deviations from those requirements. KRS 278.2213(13) requires the commission to establish specifications for a disclaimer to be used by an affiliate using the name, trademark, brand or logo of a utility governed by KRS 278.2201 through 278.2219 and requires commission approval prior to the use of any disclaimer. KRS 278.2213(15) requires a utility governed by KRS 278.2201 through 278.2219 to inform the commission of any new nonregulated activity within the time specified by the commission. KRS 278.2213(17) authorizes the commission to require a utility to file annual reports relating to its transactions with affiliates. KRS 278.2219 authorizes the commission to grant a deviation from a provision of KRS 278.2201 through 278.2213. This administrative regulation prescribes procedures, filing requirements, and safeguards relating to nonregulated activities of a utility or a utility affiliate.

Section 1. Definitions. For purposes of this administrative regulation:

(1) "Affected utility" means a utility not exempted by KRS 278.2215, or other law, from a requirement of KRS 278.2201 through 278.2219.

(2) "Service agreement" means an agreement between an affected utility and an affiliate or subsidiary that delineates the activities, duties, pricing and accounting for transactions between the parties.

Section 2. Annual Reports Relating to a Nonregulated Activity of an Affected Utility or Its Affiliate. (1) An affected utility shall file with the commission, by March 31 of each calendar year, a report containing the following information:

(a) A description of each change in the affected utility's cost allocation manual during the preceding calendar year that has not been previously reported;

(b) A report on the utility's incidental nonregulated activity that describes the activity and provides justification for reporting the nonregulated activity as an incidental nonregulated activity, including:

1. Revenue per year or percentage of total revenue per year of the activity reported as an incidental nonregulated activity;

2. A calculation demonstrating the manner in which the affected utility has determined the percentage of revenue set forth in subparagraph 1 of this paragraph;

3. A full explanation as to why the activity reported as an incidental nonregulated activity is reasonably related to the affected utility's regulated services; and

(c) A list of nonregulated affiliates and a brief description of the activities in which each affiliate is involved, except that an affected utility may meet the requirements of this paragraph for a nonregulated affiliate that has not, within the reporting period, offered or sold goods and services in the Commonwealth of Kentucky or entered into a transaction with an affected utility by stating the name of the nonregulated affiliate and the nature of its business.

(2) A copy of each service agreement existing on the effective date of KRS 278.2201 through 278.2219 and remaining in effect shall be filed as an attachment to the annual report required by this subsection. After the initial filing, an affected utility shall file only new or amended service agreements with the annual report.

Section 3. Filing of the Cost Allocation Manual and Amendments. (1) An affected utility shall file a copy of a new cost allocation manual or a new amendment to its cost allocation manual within:

(a) Sixty (60) days of a material change in matters required to be included in the cost allocation manual; or

(b) Ninety (90) days of engaging in a new nonregulated activity that is not classified as an incidental nonregulated activity pursuant to KRS 278.2203(4).

(2) If an affected utility files a new cost allocation manual or an amendment to a cost allocation manual, it shall include with its filing a cover letter containing a brief description of the activity or material change in circumstance that necessitates the filing of the cost allocation manual or amendment.

(3) An affected utility filing under this section shall include in its filing all documents and information required by 807 KAR 5:001, Section 14, except that only one (1) copy of the cost allocation manual shall be filed.

Section 4. Notice of Establishment of New Nonregulated Activity. (1) Within ten (10) days of establishing a new nonregulated activity, an affected utility shall file with the commission a written notice that:

(a) Briefly describes the new nonregulated activity; and

(b) States whether the new nonregulated activity is proposed to be classified as an incidental nonregulated activity.

(2) If a new nonregulated activity is proposed to be classified as an incidental nonregulated activity, an affected utility shall include in the notice required by subsection (1) of this section the information required by Section 2 (1)(b) of this administrative regulation.

Section 5. Petition for Deviation. (1) To request a deviation pursuant to KRS 278.2219, an affected utility shall file with the commission the following documents and information:

(a) All documents and information required by 807 KAR 5:001, Section 14;

(b) An original and five (5) copies of the petition;

(c) All documents and information required by KRS 278.2219;

(d) A full description of the reasons that compliance with the requirements from which deviation is sought is impractical or unreasonable.

(2) To request a deviation from KRS 278.2207, an affected utility shall file with the commission the following documents and information:

(a) All documents and information required by 807 KAR 5:001, Section 14;

(b) An original and five (5) copies of the petition;

(c) All documents and information required by KRS 278.2219;

(d) The proposed price of services or products proposed by the affected utility or nonregulated affiliate;

(e) A detailed calculation demonstrating the manner in which the affected utility or nonregulated affiliate has determined the proposed price of services or products;

(f) An explanation of the reasons the affected utility believes that the proposed price of services and products is in the public interest; and

(g) A statement demonstrating good cause for the requested deviation.

Section 6. Disclaimer to be Employed When an Affiliate of an Affected Utility Uses the Utility's Name, Trademark, Brand, or Logo. The disclaimer used by an affiliate of an affected utility shall comply with the following requirements:

(1) The disclaimer shall state that "(affiliate's name) is not the same company as (utility's name). (Affiliate's name) is not regulated by the Kentucky Public Service Commission. You do not have to buy (the affiliate's) (products or services, as applicable) in order to continue to receive quality regulated services from the utility.";

(2) If an affiliate of an affected utility uses the utility's name, trademark, brand, or logo in a print format, the disclaimer shall appear in capital letters on the first page or at the first point where the utility's name, trademark, logo or brand appears;

(3) If an affiliate of an affected utility uses the utility's name, trademark, brand, or logo in a televised format, the disclaimer shall appear at the first point at which the utility's name, trademark, logo, or brand appears; and

(4) If an affiliate of an affected utility uses the utility's name in an audio format, the disclaimer shall be spoken at the close of the advertisement. (28 Ky.R. 204; Am. 640; 1395; eff. 12-19-2001; TAm 1-30-2013.)

807 KAR 5:090. System development charges for water utilities.

RELATES TO: KRS 278.012, 278.015, 278.030, 278.040, 278.160, 278.180, 278.190, 278.200, 278.230, 278.310

STATUTORY AUTHORITY: KRS 278.040(2), (3), 278.200, 278.230(3), 278.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) grants the commission exclusive jurisdiction over utility rates and services. KRS 278.200 authorizes the commission to originate, establish, change or promulgate any rate standard that has been or may be fixed by any contract or agreement between a utility and any city. KRS 278.030 authorizes a utility to collect fair, just and reasonable rates for its services. KRS 278.230(3) requires a utility to file with the commission any reports or other information that the commission may reasonably require. KRS 278.310 authorizes the commission to adopt rules to govern the conduct of its hearings and investigations. This administrative regulation prescribes filing requirements and procedures to be followed by a public water utility applying for authority to assess a system development charge or a municipal water utility applying for authority to assess a system development charge to a public water utility.

Section 1. Definitions. (1) "Municipal water utility" means any city that provides the services enumerated in KRS 278.010(3)(d) to a public water utility.

(2) "Public water utility" means any person including a water district or water association, except a city, who owns, controls, operates or manages facilities that are used or to be used to provide the services enumerated in KRS 278.010(3)(d).

(3) "System development charge" means a one (1) time charge assessed by a water utility on a real estate developer, on a new customer, or on an existing customer who significantly increases its demand for water service to finance construction of a system improvement necessary to serve that customer or a proposed real estate development.

(4) "Water utility" means any municipal water utility or public water utility.

Section 2. A municipal water utility shall assess a system development charge upon a public water utility only after obtaining commission approval. A public water utility shall assess a system development charge only after obtaining commission approval.

Section 3. To apply to assess a system development charge, a public water utility shall file with the commission an application that includes the following:

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

(2) A statement of the reason the system development charge is required;

(3) The prepared testimony of each witness the applicant proposes to call in a hearing on its application;

(4) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the property and cost to the applicant;

(5) A general description of how the applicant's property has been financed;

(6) A capital improvement plan that:

(a) Covers a minimum of ten (10) years from the date of the filing of the application;

(b) Projects the amount of and characteristics of projected growth and the demand that growth will place on the system;

(c) States the amount of projected growth for each customer class;

(d) States the proposed level of service after the completion of planned improvements;

(e) Determines the cost of system upgrades and improvements needed to provide the desired level of service;

(f) States when and where the proposed system upgrades and improvements would be needed;

(g) Contains a deficiency analysis of the applicant's current system and identifies the system improvements necessary to provide adequate service at existing and future demand levels; and

(h) If improvements are needed to provide adequate service to existing customers at existing demand levels, identifies the portion of the system improvement that will serve existing customers;

(7) A statement describing when the proposed system development charge will be assessed and explaining why the proposed time for assessment is reasonable;

(8) A statement that notice has been given in compliance with Sections 6 and 7 of this administrative regulation;

(9) A proposed tariff sheet that complies with 807 KAR 5:011, that proposes an effective date not less than thirty (30) days from the date the application is filed, and that sets forth the procedures and rules governing assessment of the proposed system development charge;

(10) A certified copy of the resolution or ordinance of the applicant's governing body authorizing the assessment of the proposed system development charge and the filing of an application with the commission; and

(11) If the applicant proposes to assess a system development charge upon another water utility, a copy of the water utility's current water supply agreement with each effected water utility and a statement explaining why the rates contained in the contract are inadequate and why an assessment of a system development charge to that water utility is necessary.

Section 4. To apply to assess a system development charge to a public water utility, a municipal water utility shall file with the commission an application that includes the following:

(1) All documents and information required by Section 3(1) through (10) of this administrative regulation; and

(2) A copy of the municipal water utility's current water supply agreement with each affected public water utility and a statement explaining why the rates contained in the contract are inadequate and why an assessment of a system development charge to that public water utility is necessary.

Section 5. The commission shall consider a proposed system development charge reasonable if the applicant demonstrates that the proposed charge:

(1) Offsets an increase in cost to fund system expansion to accommodate new growth and demand;

(2) Recovers only the portion of the cost of a system improvement that is reasonably related to new demand; and

(3) Is based upon the cost of a new facility that will increase or expand capacity.

Section 6. Form of Notice. A water utility filing an application pursuant to this administrative regulation shall notify the public in the manner prescribed in this section. The notice shall include:

(1) The amount of the requested system development charge;

(2) A statement that "The rates contained in this notice are the rates proposed by (name of utility); however, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice";

(3) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of the notice of the proposed rate changes request intervention;

(4) A statement that any person who has been granted intervention by the commission may obtain a copy of the rate application and any other filing made by the water utility by contacting the water utility at an address and phone number that is stated in the notice; and

(5) A statement that "Any person may examine the rate application and any other filing made by (the water utility) at (the main office of the water utility) or at the commission's office at 211 Sower Boulevard, Frankfort, Kentucky 40601".

Section 7. Manner of Notification. A water utility shall give the required notice by publishing the notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in its service area, the first publication to be made within seven (7) days of the filing of the application with the commission. It shall file with the commission no later than forty-five (45) days of the filed date of the application an affidavit from the publisher verifying that the notice was published, stating the dates of the publication, and attaching a copy of the published notice. The water utility shall also post a copy of the required notification at its place of business no later than the date on which the application is filed, and the notice shall remain posted until the commission has ruled upon the water utility's application.

Section 8. After reviewing a water utility's application, the commission shall issue an order approving, modifying or rejecting the proposed capital improvement plan and system development charge.

Section 9. Unless a water utility proposes to assess a system development charge upon another water utility, a system development charge shall be based upon a meter or residential equivalent.

Section 10. Offsets and Credits to Charges. A water utility shall reduce or offset a system development charge to an applicant for service if the applicant has constructed facilities or physical improvements in excess of its own system requirements that will benefit another part of the water utility's system. A water utility shall waive a system development charge for any applicant for service electing to construct a utility facility needed to provide the applicant with water service only if the amount paid for the construction is greater than the system development charge.

Section 11. Use of System Development Charge Funds. (1) A water utility shall place all collections from an approved system development charge in a separate interest-bearing account and shall not commingle collected system development charges and interest income on those charges with other utility funds.

(2) A water utility shall use funds from the separate interest-bearing account exclusively for:

(a) The purposes set forth in the capital improvement plan that the commission has approved; or

(b) Reimbursement or repayment to other accounts from which funds have been taken to pay for growth-related capital projects that are set forth in the approved capital improvement plan.

(3) If a water utility has failed to provide water service at the requested level within five (5) years after the collection of the system development charge began, or if amounts collected from a system development charge have not been spent on the approved capital improvement plan within five (5) years of the date the system development charge began, the water utility shall refund with interest the collected system development charge. Interest shall be computed in accordance with KRS 278.460.

Section 12. Records and Reports. A water utility authorized to assess a system development charge shall:

(1) Maintain a record showing the amount and date of each collection;

(2) Maintain a record showing the amount and purpose of all disbursements from its interest-bearing account;

(3) Notify the commission in writing within sixty (60) days of the date it is authorized to assess a system development charge of the location of and provisions governing its interest-bearing account; and

(4) File annually a report that shows for the previous calendar year:

(a) The amount collected pursuant to its system development charge;

(b) The disbursements of funds from its interest-bearing account; and

(c) The status of all projects included in its approved capital improvements plan.

(5)(a) A public water utility shall file the report required by subsection (4) of this section with its annual financial and statistical report filed pursuant to 807 KAR 5:006, Section 4(2).

(b) A municipal water utility shall file the report required by subsection (4) of this section no later than March 31 of each year following the approval of its application to assess a system development charge.

Section 13. Amendments to Approved Capital Improvement Plans. The water utility may apply for commission approval of an amendment to its capital improvement plan to reflect subsequent developments or new information.

Section 14. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation. (28 Ky.R. 1534; Am. 2048; 2209; eff. 4-15-2002; TAm 1-30-2013.)

807 KAR 5:095. Fire protection service for water utilities.

RELATES TO: KRS 278.010, 278.012, 278.015, 278.030, 278.040, 278.170(3), 278.280
STATUTORY AUTHORITY: KRS 278.040(3), 278.280(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate, pursuant to KRS Chapter 13A, reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) grants the commission exclusive jurisdiction over utility rates and services. KRS 278.012 states that water associations are subject to the commission's jurisdiction. KRS 278.015 expressly subjects water districts to commission jurisdiction. KRS 278.030 authorizes utilities to collect fair, just, and reasonable rates for their services. KRS 278.170(3) provides that a utility may provide free or reduced rate water service to any city, county, urban-county, fire protection district or volunteer fire protection district for fighting fires or training firefighters under a tariff that is approved by the commission and that requires the water user to provide water usage reports to the utility on a regular basis. KRS 278.280 authorizes the commission to prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility. This administrative regulation governs a utility's provision of water for fire protection service.

Section 1. Definitions. (1) "Private fire protection service" means water service to support the operation of a private fire protection system, including private hydrants, automatic fire sprinkler systems, standpipes, and other appurtenances that a customer installs to assist in extinguishing fires.
(2) "Private fire service line" means a water line that is installed at the customer's expense and that extends from a water main to provide private fire protection service to a single customer, a single multi-unit building or complex, or a single commercial or industrial development.

Section 2. A utility may enter into a special contract with a customer regarding the allocation of costs for system improvements necessary for private fire protection service.

Section 3. A utility shall require a customer requesting private fire protection service to bear the cost of constructing a private fire service line that runs from the water utility's distribution or transmission main through the customer's property. The utility shall own and be responsible for the maintenance, repair, and replacement of the portion of a private fire service line that extends from the utility's distribution or transmission main to the utility's easement. The customer shall own and be responsible for the maintenance, repair, and replacement of the remaining portion of the line.

Section 4. A utility shall permit a customer to connect a private fire protection system to a service line that serves the customer for other purposes, including domestic consumption, if the connection to the service line for the fire suppression system is on the customer's side of the customer's metering point.

Section 5. Rates for Private Fire Protection Services. (1) A utility shall not assess a rate for private fire protection service that includes a component for water usage unless that component is based upon a customer's actual usage.
(2) A utility shall not assess a separate charge or fee for private fire protection service if the customer's private fire protection system is directly connected to a service line that serves the customer for other purposes.
(3) A utility shall assess a rate for service to a fire protection system that is separately connected to the utility's distribution system and that does not receive water service for any other purpose. The rate shall recover, at least, the cost of:
(a) Depreciation and debt service or return on utility investment in the utility facilities that directly connect the utility's main to the fire protection system;
(b) Expenses associated with periodic inspections to ensure against unauthorized use;
(c) Expenses associated with meter reading and billing, if a meter is installed for the fire protection system; and
(d) Expenses for maintenance, repairs, and inspection on the utility facilities that directly connect the utility's main to the fire protection system.

Section 6. A utility shall require a customer who receives private fire service through an unmetered connection to report:

(1) At least annually, his reasonable estimate of water usage for flushing, testing, or other purposes and the basis for his estimate; and

(2) Within one (1) month after the service's use to fight a fire, his estimate of the water usage to fight the fire and the basis for his estimate.

Section 7. (1) As a condition of service, a utility shall require a customer who connects a private fire protection system to the utility's facilities, either directly or indirectly, to install double-acting backflow preventers.

(2) A utility shall have access to a customer's premises at all reasonable hours to inspect the customer's private fire protection system to ensure compliance with subsection (1) of this section.

Section 8. Fire Sprinkler Systems. (1) A utility shall provide service dedicated solely to a fire sprinkler system without the use of metering equipment unless good cause related to the delivery or use of the service exists. If a utility installs a metered service for a fire sprinkler system, it may assess a fee for the cost of its installation that includes the cost for service tap, meter, and meter vault.

(2) A utility may require a customer who connects a fire sprinkler system to its water distribution system to make repairs upon or improvements to his fire sprinkler system to correct any deficiency, defect or problem noted in any report of a test or inspection required by 815 KAR 10:060.

(3) A utility may require a customer who connects a fire sprinkler system to its water distribution system to report:

(a) The location of the fire sprinkler system;

(b) A change in the fire sprinkler system's operating status;

(c) The performance of required maintenance on the fire sprinkler system; and

(d) The results of any test or inspection of the fire sprinkler system required by 815 KAR 10:060.

(4) A utility providing service that complies with 807 KAR 5:066, Section 5(1), shall not be required to increase water pressure levels to support fire sprinkler systems unless the commission finds an increase is reasonable and necessary.

Section 9. A utility that permits a fire department to withdraw water from its water distribution system for fire protection and training purposes at no charge or at reduced rates shall:

(1) Require a fire department to submit quarterly reports demonstrating its water usage for the quarter; and

(2) State in its tariff the penalty to be assessed for failure to submit the reports required by subsection (1) of this section.

Section 10. Deviation. For good cause shown, the commission may permit a deviation from this administrative regulation. (29 Ky.R. 200; Am. 983; eff. 11-13-02.)

807 KAR 5:100. Board application fees.

RELATES TO: KRS 278.702, 278.704, 278.706, 278.710, 278.712, 278.714
STATUTORY AUTHORITY: KRS 278.040(3)
NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702 creates the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.706(5) directs the board to promulgate administrative regulations establishing fees to cover the expenses associated with review of applications filed pursuant to KRS 278.704. KRS 278.706(5) provides that, if a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses for review of the application, including the board's expenses associated with legal review of the application, the board shall assess a supplemental application fee to cover the additional expenses. An application filed with the board concerns: (1) construction of a merchant electricity generating plant; (2) transfer of authority to construct and operate a merchant electricity generating plant; or (3) construction of a nonregulated transmission line. KRS 278.706(5) provides that an applicant's failure to pay a fee assessed pursuant to KRS 278.706 shall be grounds for denial of the application. This administrative regulation establishes an initial application fee for each type of application filed with the board and specifies the method by which a supplemental fee may be assessed.

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

Section 2. Application Fee to be Filed with an Application to Construct a Nonregulated Transmission Line. A person seeking board approval of construction of a nonregulated transmission line shall file with its application to the board a fee of fifty (50) dollars per kilovolt of rated capacity per mile of length, except that the initial application fee shall be in an amount not less than $10,000 and not more than $200,000.

Section 3. Application Fee to be Filed with an Application to Transfer a Certificate to Construct a Merchant Electricity Generating Facility. A person seeking board approval to transfer any right or obligation associated with a certificate granted by the board to construct a merchant electricity generating facility shall file with its application to the board, at the offices of the Kentucky Public Service Commission, at 211 Sower Boulevard, Frankfort Kentucky, an initial application fee of $5,000.

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

Section 5. Refund. No later than sixty (60) days after issuance of the board's final decision on an application or, if judicial review has been sought, no later than sixty (60) days after all appeals of the board's decision have been exhausted, the board shall refund to the applicant any amount paid which exceeds the amount expended by the board. (29 Ky.R. 610; Am. 958; eff. 10-9-2002.)

807 KAR 5:110. Board proceedings.

RELATES TO: KRS 278.702(3)
STATUTORY AUTHORITY: KRS 278.040(3)
NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702 creates the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) requires the board to promulgate administrative regulations to implement KRS 278.700 to 278.716. KRS 278.712(2) requires the board to promulgate administrative regulations governing a board hearing. KRS 278.706(2)(c) requires an applicant seeking to obtain a construction certificate from the board to give proper notice of his intention to the public. This administrative regulation establishes procedures related to applications, filings, notice requirements, hearings, and confidential material.

Section 1. General Matters Pertaining to All Formal Proceedings. (1) Address of the board. Written communication may be addressed to "Kentucky State Siting Board on Electric Generation and Transmission Siting, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 406012".
(2) Form of papers filed. A pleading in a formal proceeding shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double-spaced.
(3) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.
(4) Service of process. If a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

Section 2. Notice of Intent to File Application. (1) At least thirty (30) days but no more that six (6) months prior to filing an application to construct a merchant electricity generating plant or nonregulated transmission line, an applicant shall file at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, a Notice of Intent to File Application. If an applicant fails to file an application within six (6) months of the filing of such a Notice, the Notice shall automatically expire without further notice to the applicant.
(2) A Notice of Intent to File Application shall include:
(a) The name, address, and telephone number of the person who intends to file the application;
(b) A brief description of the proposed construction that will be the subject of the application;
(c) A description of the location of the proposed construction, including:
1. The name of the city and county in which the construction will be proposed;
2. The street address and latitude and longitude of the site of the construction to be proposed; and
3. Whether the proposed construction will be within the boundaries of a city;
(d) The address of the planning and zoning commission, if any, with jurisdiction over the site of the construction to be proposed;
(e) If applicable, a description of the setback requirements of the planning and zoning commission with jurisdiction over the site of the construction to be proposed; and
(f) If the planning commission's setback requirements are less stringent than those prescribed by statute, or if the planning commission with jurisdiction, if any, has not established setbacks, a statement as to whether a deviation from the statutory setback requirements will be requested in the application.

Section 3. Board Applications and Subsequent Filings. (1) An applicant shall file an original and ten (10) paper copies, and one (1) copy in electronic format, of its application at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601.
(2) A paper copy of an application shall:
(a) Be in a bound volume with each document tabbed; and
(b) Contain a table of contents that lists, for each document enclosed:
1. The number of the tab behind which the document is located;
2. The statutory provision pursuant to which the document is submitted; and
3. The name of the person who will be responsible for responding to questions concerning information contained in the document.
(3) Administrative staff for the board shall determine whether the application is administratively complete and shall inform the applicant of its determination by letter.
(4) The secretary may reject for filing any document that on its face does not comply with an administrative regulation of the board.

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

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

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

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

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

(2) Procedure for determining confidentiality.

(a) A person requesting confidential treatment of material related to his application shall file a petition with the Executive Director. The petition shall:

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

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

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

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

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

(e) A person may respond to the petition for confidential treatment within five (5) days after it is filed with the board.

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

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

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

(a) A party to a proceeding before the board shall not cite confidentiality as a basis for failure to respond to a discovery request by the board or its staff or any other party to the proceeding. If a party responding to a discovery request seeks to have a portion or all of the response held confidential by the board, it shall follow the "Procedure for Determining Confidentiality" in subsection (2) of this section. A party's response to a discovery request shall be served upon each party, with only the portion for which confidential treatment is sought obscured.

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

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

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

(8) Use of confidential material during a formal proceeding. Material deemed confidential by the board may be addressed and relied upon during a formal hearing by the following procedure:

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

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

(9) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

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

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

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

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

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

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

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

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

Section 7. Filing of Briefs. A party of record may file a brief no later than seven (7) days after the conclusion of the evidentiary hearing.

Section 8. Local Public Hearings. (1) A local public hearing may be conducted before the board or before a person designated by the board to conduct a specific hearing;

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

(3) The board shall, at least twenty (20) days before the hearing date, give notice of the hearing to:

(a) All parties to the proceeding;

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

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

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

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

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

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

(b) Summarizes the comments received.

Section 9. Notice Requirements. (1) Notice of an evidentiary hearing. At least five (5) days before the hearing date, the applicant shall submit to the board proof that it has given notice of the hearing to each party and to the general public by publication in a newspaper of general circulation in the county or municipality in which the plant or transmission line is proposed to be located.

(2) Notice of a local public hearing. At least five (5) days before the hearing date, the applicant shall submit to the board proof that it has given the general public notice of the hearing in a newspaper of general circulation in the county or municipality in which the plant or transmission lines is proposed to be located.

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

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

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

(c) A request for a local public hearing shall be made by at least three (3) interested persons who reside in the county or municipal corporation in which the plant or transmission line is proposed to be located. The request shall be made in writing and shall be filed within thirty (30) days following the filing of a completed application. (29 Ky.R. 611; Am. 959; eff. 10-9-2002; 34 Ky.R. 110; eff. 10-5-2007.)

807 KAR 5:120. Applications for certificate of public convenience and necessity for certain electric transmission lines.

RELATES TO: KRS 278.020(2), (8)
STATUTORY AUTHORITY: KRS 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.020(2) provides that a certificate of public convenience and necessity must be obtained prior to construction of an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length. KRS 278.020(8) includes "a person over whose property the proposed transmission line will cross" among those persons who are an "interested party" who may move to intervene in the proceeding. This administrative regulation establishes procedures and minimum filing requirements for an application to construct an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length.

Section 1. Notice of Intent to File Application. (1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length, an applicant shall file with the commission a notice of intent to file application. If an applicant fails to file an application within six (6) months of the filing of such a notice, the notice shall automatically expire without further notice to the applicant.
(2) A notice of intent to file application shall include:
(a) The name, address and telephone number of the utility that intends to file the application;
(b) A description of the proposed construction that will be the subject of the application; and
(c) The name of the county or counties in which the construction will be proposed.

Section 2. Application. To apply for a certificate of public convenience and necessity to construct an electric transmission line of 138 kilovolts or more and more than 5,280 feet, a utility shall file with the commission the following:
(1) All documents and information required by:
(a) 807 KAR 5:001, Section 14, except that the applicant shall file the original and six (6) copies of the application; and
(b) 807 KAR 5:001, Section 15(2)(a) through (c) and (e) through (g);
(2) Three (3) maps of suitable scale, but no less than one (1) inch equals 1,000 feet for the project proposed. The map detail shall show the location of the proposed transmission line centerline and right of way, and boundaries of each property crossed by the transmission line right of way as indicated on the property valuation administrator's maps, modified as required. Sketches of proposed typical transmission line support structures shall also be provided. A separate map of the same scale shall show any alternative routes that were considered;
(3) A verified statement that, according to county property valuation administrator records, each property owner over whose property the transmission line right-of-way is proposed to cross has been sent by first-class mail, addressed to the property owner at the owner's address as indicated by the county property valuation administrator records, or hand delivered:
(a) Notice of the proposed construction;
(b) The commission docket number under which the application will be processed and a map showing the proposed route of the line;
(c) The address and telephone number of the executive director of the commission;
(d) A description of his or her rights to request a local public hearing and to request to intervene in the case; and
(e) A description of the project;
(4) A sample copy of each notice provided to a property owner, pursuant to the preceding paragraph, and a list of the names and addresses of the property owners to whom the notice has been sent.
(5) A statement that a notice of the intent to construct the proposed transmission line has been published in a newspaper of general circulation in the county or counties in which the construction is proposed, which notice included:
(a) A map showing the proposed route;
(b) A statement of the right to request a local public hearing; and
(c) A statement that interested persons have the right to request to intervene;

(6) A copy of the newspaper notice described in subsection 5 of this section; and

(7) A statement as to whether the project involves sufficient capital outlay to materially affect the existing financial condition of the utility involved.

Section 3. Local Public Hearing. (1) Any interested person under KRS 278.020(8) may request that a local public hearing be held by sending a written request complying with subsections (2) and (3) of this section to the Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. This hearing shall be requested no later than thirty (30) days after filing of an application for a certificate of public convenience and necessity.

(2) A request for a local public hearing shall contain:

(a) The docket number of the case to which the request refers;

(b) The name, address, and telephone number of the person requesting the hearing; and

(c) A statement as to whether the person requesting the hearing wishes to participate in an evidentiary hearing or to make unsworn public comment.

(3) If a person requesting a local public hearing wishes to participate in an evidentiary hearing as well, that person shall also apply to intervene in the commission proceeding on the application pursuant to 807 KAR 5:001, Section 4(11).

(4) At least five (5) days before the date established by the commission for a local public hearing, the applicant shall submit to the commission proof that it has given the general public notice of the hearing in a newspaper of general circulation in the county or counties in which the construction is proposed.

Section 4. Deviation from Rules. The provisions of 807 KAR 5:001, Section 21 apply to applications filed under this administrative regulation, except that the commission shall not permit a deviation from the requirements of this administrative regulation unless the commission finds that failure to permit the deviation will adversely affect utility rates or service. (31 Ky.R. 515; Am. 1256; eff. 1-14-2005; TAm 1-30-2013.)