

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 that 807 KAR 5:006, Section 3(1), requires a utility to file 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 3(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) "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.

(4) "Utility" is defined by KRS 278.010(3)."

Section 2. Utilities Permitted to File Application. (1) Any utility with \$5,000,000 or less gross annual revenue in the immediate past calendar year may apply for an adjustment of rates using the procedure established in this administrative regulation.

(2) The applicant shall have maintained adequate financial records fully separated from any commonly-owned enterprise and shall have on file with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if the applicant 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 applicant 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 any 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 set forth 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; and

(h)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) An applicant 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 sewer utility, it shall:

(a) Mail written notice as required by 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 sewer 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; or

(b) Publish 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 by the date the application is filed.

(3) Each notice shall contain the following information:

(a) 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;

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

(c) The effect upon the average bill for each customer class to which the proposed rate change will apply;

(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 any corporation, association, or person with a substantial interest in the matter may submit a written request to intervene; and

(f) A statement that copies of the application may be obtained at no charge from (the name of the utility) at (the utility's address) and 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, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice; or

(b) If the notice is mailed, a written statement signed by the utility's chief executive officer 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 link 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 set forth in this administrative regulation.

Section 7. Effective Date of Proposed Rates. (1) An applicant shall not place its 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) At the time of serving its requests upon the applicant, the party shall file a copy of its 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 whether 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. Any request for hearing or informal conference; and

3. The reasons why a hearing or informal conference is necessary.

(c) If a party fails to file a written response with the commission within this time period, it shall be deemed to have waived any objections to the findings and recommendations contained in the report and any right to a hearing on the application.

Section 11. Notice of Hearing. (1) If the commission orders a hearing, the applicant shall publish in a newspaper or mail to its 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) Any applicant that is a water district, corporation, partnership, or limited liability company shall, at any 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) An applicant may elect to use electronic filing procedures in lieu of submission of paper documents to the commission.

(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 using the ARF Form-2; 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) Upon electing the use of electronic filing procedures, the procedures established in this section shall be followed in the commission proceeding on the application.

(4) All pleadings, 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 and one (1) paper copy with the commission as required by subsection (12) of this section.

(5) 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.

(6)(a) All electronic submissions 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 materials 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 filing may be substituted for a general description.

(d) If the electronic submission does not include all documents contained in the paper version (e.g., confidential materials, materials that are too large or bulky to transfer by electronic medium), the absence of these documents shall be noted in the "Read1st" document.

(7)(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 its electronic submission in two (2) or more consecutive electronic transmission or uploading sessions.

(8) If filing any 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.

(9)(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.

(10) Unless it states its 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 its intervention a written statement that:

1. It waives any right to service of commission orders by United States mail; and

2. It, or its authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and the commission determines that 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.

(12)(a) A document shall be considered timely filed with the commission if it has been successfully transmitted in electronic medium to the commission within the time allowed for filing.

(b) The original document, in paper medium, shall be filed at the commission's offices no later than the second business day following the electronic filing.

(c) Parties 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 its electronic submission.

Section 14. The provisions of 807 KAR 5:001, Sections 1 through 5 and 7, 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.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ARF Form-1", September 2011; and

(b) "ARF Form-2", September 2011.

(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.)