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MEMORANDUM

TO: Gerald E. Wuetcher, Executive Advisor/Attorney
 Public Service Commission

FROM: Emily Caudill *EC*
 Regulations Compiler

RE: Administrative Regulation Amended After Comments – 807 KAR 5:076

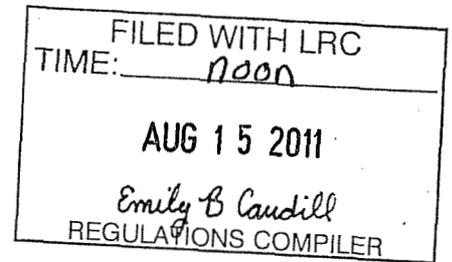
DATE: August 15, 2011

A copy of the amended after comments administrative regulation, listed above, and the statement of consideration, are enclosed for your files.

This administrative regulation will be reviewed by the Administrative Regulation Review Subcommittee at its **September 2011** meeting. Please notify the proper person(s) of this meeting.

If you have any questions, please contact this office at 564-8100.

Enclosure



1 ENERGY AND ENVIRONMENT CABINET

2 Public Service Commission

3 (Amended After Comments)

4 807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

5 RELATES TO: KRS Chapter 278.

6 STATUTORY AUTHORITY: KRS 278.030; KRS 278.040; KRS 278.160; KRS 278.180;

7 KRS 278.185; KRS 278.190; KRS 278.310; KRS 278.380.

8 NECESSITY, FUNCTION AND CONFORMITY: This administrative regulation
9 provides a simplified and less expensive procedure for [by which] small utilities to [may]
10 apply to the commission for rate adjustments [increases]. A small utility may apply for
11 rate adjustments using the formal procedure outlined in 807 KAR 5:001, Section 10
12 [~~Chapter 5~~] or by using the procedure prescribed in this administrative regulation which
13 is intended to minimize the need for formal hearings, to reduce filing requirements, and
14 ~~in many cases to~~ shorten the time period between application and commission order.

15 Section 1. Definitions.

16 (1) "Annual report" means the financial and statistical report that 807 KAR
17 5:006, Section 3(1), requires a utility to file with the commission;

18 (2) "Annual report for the immediate past year" means an annual report that
19 covers the applicant's operations for either

1 (a) the calendar year period prior to the year in which the applicant's
2 application for rate adjustment is filed with the commission, or

3 (b) the most recent calendar year period that 807 KAR 5:006, Section 3(1),
4 requires the applicant to have on file with the Commission as of the date of the filing of
5 its application for rate adjustment;

6 (3) "Gross annual revenue" means total revenue that a utility derived during a
7 calendar year, unless the utility operates two (2) or more divisions that provide different
8 types of utility service, in which case, the total amount of revenue derived from the
9 division for which a rate adjustment is sought; and,

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

11 Section 2 [4]. Utilities Permitted to File Application. Any utility with [500 or fewer
12 customers or] \$5,000,000 [~~\$300,000~~] or less gross annual revenue in the immediate
13 past calendar year may apply for an adjustment of rates using the procedure in this
14 administrative regulation [~~described below~~]. The applicant shall have maintained
15 adequate financial records fully separated from any commonly-owned enterprise and
16 shall have on file with the commission fully completed annual reports for the immediate
17 past year and for the two (2) prior years if the applicant has been in existence that long.

18 Section 3 [2]. The Record upon which Decision Shall [~~Will~~] Be Made. Unless a
19 hearing is held the commission shall make its decision based on the:

20 (1) [(a)] Annual reports of the applicant for the immediate past year and for
21 the two (2) prior years, if the applicant has been in existence that long;

22 (2) [(b)] Application;

1 (3) ~~[(e)]~~ Information supplied by the applicant in response to requests for
2 information submitted by other parties to the proceeding or [the intervenors and] the
3 commission; [and]

4 (4) ~~[(d)]~~ Written reports submitted by commission staff; ~~[subsequent to field~~
5 ~~review, if one (1) is conducted]~~

6 (5) Stipulations and agreements between the parties and commission staff;
7 and

8 (6) Written comments and information that the parties to the proceeding
9 submitted in response to the findings and recommendations contained in any written
10 report that commission staff submitted.

11 Section 4 ~~[3]~~. Application. (1) An application for alternative rate adjustment
12 shall consist of:

13 (a) A completed alternative rate adjustment application form that is made
14 under oath and signed by the applicant or an officer who is duly designated by the
15 applicant and who has knowledge of the matters set forth in the application;

16 (b) A copy of all outstanding evidences of indebtedness, such as mortgage
17 agreements, promissory notes, and bond resolutions;

18 (c) A copy of the amortization schedule for each outstanding bond issuance,
19 promissory note, and debt instrument;

20 (d) A depreciation schedule of utility plant in service;

21 (e) A copy of the most recent state and federal tax returns of the applicant, if
22 applicant is required to file returns;

1 (f) An analysis of customers' bills in such detail that revenues from the
2 present and proposed rates can be readily determined for each customer class;

3 (g) A copy of the notice of the proposed rate change that is provided to
4 customers of the applicant; [and,]

5 (h) If the applicant is a corporation [or a limited liability company], a
6 certified copy of its articles of incorporation and all amendments thereto, or a written
7 statement attesting that its articles and all amendments thereto have been filed with the
8 commission in a prior proceeding and referencing the style and case number of the prior
9 proceeding; [-]

10 (i) If the applicant is a limited liability company, a certified copy of its articles
11 of organization and all amendments thereto, or a written statement attesting that its
12 articles and all amendments thereto have been filed with the commission in a prior
13 proceeding and referencing the style and case number of the prior proceeding; and,

14 (j) If the applicant is a limited partnership, a certified copy of limited
15 partnership agreement and all amendments thereto, or a written statement attesting that
16 its partnership agreement and all amendments thereto have been filed with the
17 commission in a prior proceeding and referencing the style and case number of the prior
18 proceeding.

19 (2) Unless electronic filing procedures are used, the applicant shall submit
20 one (1) original and five (5) paper copies of its application to the executive director of
21 the commission.

22 (3) When submitting its application to the commission, the applicant shall also
23 deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the

1 Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-
2 8204 or transmit by electronic mail an electronic copy in portable document format to
3 the Office of Rate Intervention at rateintervention@ag.ky.gov
4 [\[rintervention@ag.ky.gov\]](mailto:rintervention@ag.ky.gov).

5 (4)(a) If the application contains certain personal data, including an individual's
6 social security number, taxpayer identification number, birth date, or a financial account
7 number, the applicant shall redact the document so the following information cannot be
8 read:

- 9 1. the digits of the Social Security number or taxpayer identification number;
- 10 2. the month and day of an individual's birth; and
- 11 3. the digits of the financial account number.

12 (b) Redaction may be made by any method, including but not limited to
13 replacing the identifiers with neutral placeholders or covering the identifiers with an
14 indelible mark, that so obscures the identifiers that they cannot be read.

15 (5) The application shall not contain any request for relief from the
16 commission other than an adjustment of rates.

17 (6) An applicant may make written request to the executive director for
18 commission staff assistance in preparing the application. The applicant shall obtain
19 from the Executive Director of the Public Service Commission, 211 Sower Boulevard,
20 Frankfort, Kentucky 40601, the alternative rate adjustment application form. The
21 applicant shall complete the form, attach any documents requested and a copy of the
22 notice of the proposed rate change that it provided to its customers, and submit one (1)
23 original and ten (10) copies to the executive director of the commission and one (1)

1 ~~copy to the Public Service Litigation Branch, Office of the Attorney General, P.O. Box~~
2 ~~2000, Frankfort, Kentucky 40602-2000, together with one (1) copy of each of the three~~
3 ~~(3) annual reports. An applicant may, in writing, request commission assistance in~~
4 ~~preparing the application.]~~

5 Section 5 [4]. Notice to Customers of Proposed Rate Changes.

6 (1) If the applicant has twenty (20) or fewer customers or is a sewer utility, it
7 shall mail written notice of the proposed rate changes [~~and the estimated amount of~~
8 ~~increase per customer class]~~ to each customer no later than the date on which the
9 application is filed with the commission. In addition, the applicant shall post at its place
10 of business no later than the filed date of the application a sheet containing the
11 information provided in the written notice to its customers and shall keep this notice
12 posted until the commission has issued a final decision on the application.

13 (2) An [~~Except for sewer utilities, which must give notice pursuant to KRS~~
14 ~~278.185, an]~~ applicant that has [~~with~~] more than twenty (20) customers and is not a
15 sewer utility shall post at its place of business a sheet containing the information
16 provided in the notice to its customers [~~post a sheet stating the proposed rates and the~~
17 ~~estimated amount of increase per customer class at its place of business;]~~ and shall:

18 (a) Include notice with customer bills mailed by the date the application is
19 filed; or

20 [(b) ~~Publish notice in a trade publication or newsletter that will be received by~~
21 ~~all customers by the date the application is filed; or]~~

1 (b) ~~[(e)]~~ Publish notice once a week for three (3) consecutive weeks in a
2 prominent manner in a newspaper of general circulation in its service area, the first
3 publication to be made by the date the application is filed.

4 (3) Each notice shall contain the following information:

5 (a) The amount of the change requested in both dollar amounts and
6 percentage change for each customer classification to which the proposed rate change
7 will apply;

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

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

12 (d) A statement that the rates contained in this notice are the rates proposed by
13 (name of utility) but that, the Public Service Commission may order rates to be charged
14 that differ from the proposed rates contained in this notice;

15 (e) A statement that any corporation, association, or person with a substantial
16 interest in the matter may, by written request, within thirty (30) days after publication or
17 mailing of this notice of the proposed rate changes request to intervene; intervention may
18 be granted beyond the thirty (30) day period;

19 (f) A statement that copies of the application may be obtained at no charge
20 from (the name of the utility) at (the utility's address) and that the application and all
21 documents filed with the Public Service Commission may be viewed and downloaded at
22 the Public Service Commission's Web site - <http://psc.ky.gov/> [language: ~~The rates~~
23 contained in this notice are the rates proposed by (name of utility). However, the Public

1 ~~Service Commission may order rates to be charged that are higher or lower than the~~
2 ~~rates proposed in this notice. Any corporation, association, body politic or person may~~
3 ~~request leave to intervene by motion within thirty (30) days after notice of the proposed~~
4 ~~rate changes is given. A motion to intervene shall be in writing, shall be submitted to~~
5 ~~the Executive Director, Public Service Commission, 211 Sewer Boulevard, P.O. Box~~
6 ~~615, Frankfort, Kentucky, 40602, and shall set forth the grounds for the motion,~~
7 ~~including the status and interest of the party movant. Copies of the application may be~~
8 ~~obtained at no charge from (the applicant) at (the applicant's address). Upon request~~
9 ~~from an intervenor, the applicant shall furnish to the intervenor a copy of the application~~
10 ~~and supporting documents."].~~

11 (4) Proof of notice. An applicant shall file with the commission no later than
12 forty-five (45) days from the filed date of the application:

13 (a) If its notice is published, an affidavit from the publisher verifying the notice
14 was published, including the dates of the publication with an attached copy of the
15 published notice;

16 (b) If the notice is mailed, a written statement signed by the utility's chief
17 executive officer verifying the notice was mailed.

18 (5) If an applicant maintains a Web site, the applicant shall post on its website
19 within seven (7) days of the filed date of the application a notice containing the
20 information provided in the written notice to its customers and a link to a copy of its
21 application posted on the commission's Web site and shall keep both posted until the
22 commission has finally determined the utility's rates.

1 Section 6 [5]. Except as provided in Section 13 [14] of this administrative
2 regulation, no applicant shall be required to provide the commission with advance notice
3 of its intent to file an application for rate adjustment using the procedure set forth in this
4 administrative regulation.

5 Section 7 [6]. Effective Date of Proposed Rates. No applicant may place its
6 proposed rates into effect until the commission has issued an order approving those
7 rates or six (6) months from the date of filing of its application, whichever occurs first. If
8 the commission has not issued its order within six (6) months from the date of filing of
9 the application, the applicant may place its proposed rates in effect subject to refund
10 upon providing the commission with written notice of its intent to place the rates into
11 effect. The applicant shall maintain its records in a manner to enable it, or the
12 commission, to determine the amounts to be refunded and to whom is due a refund if
13 the commission orders a refund. ~~[Motion for Formal Hearing. Within ninety (90) days~~
14 ~~after the application has been filed, any party may file a written request for a formal~~
15 ~~hearing setting forth grounds therefore].~~

16 Section 8 [7]. Test Period. The reasonableness of the proposed rates shall be
17 determined using a twelve (12) month historical test period, adjusted for known and
18 measureable changes, that coincides with the reporting period of the applicant's **annual**
19 **report for the immediate past year** ~~[most recent annual report on file with the~~
20 ~~commission].~~

21 Section 9 [8]. Discovery. Unless the commission otherwise directs, a party may
22 serve written requests for information upon the applicant within twenty-one (21) days of
23 an order permitting that party to intervene in the proceeding. At the time of serving its

1 request upon the applicant, the party shall also file a copy of its request with the
2 commission and serve a copy upon all other parties. Within twenty-one (21) days of
3 service of timely requests for information from a party, the applicant shall serve its
4 written responses upon each party and shall file with the commission one (1) original
5 and five (5) copies. Nothing in this section shall preclude the commission from
6 establishing different arrangements for discovery.

7 Section 10 [9]. Commission Staff Report. Unless the commission directs
8 otherwise,

9 (1) Commission staff shall prepare and file with the commission and serve a
10 copy on all parties of record a report on the application that contains its findings and
11 recommendations regarding the proposed rates.

12 (2) Each party shall file with the commission a written response to the report
13 within fourteen (14) days of the filing of the report. This written response shall contain
14 all objections to and other comments on the findings and recommendations of
15 commission staff, any request for hearing or informal conference, and the reasons why
16 a hearing or informal conference is necessary. If a party fails to file a written response
17 with the commission within this time period, it shall be deemed to have waived any
18 objections to the findings and recommendations contained in the report and any right to
19 a hearing on the application.

20 Section 11 [10] [6]. Notice of Hearing. If the commission orders a hearing, the
21 applicant shall publish in a newspaper or mail to its customers notice of the hearing give
22 notice as required by KRS 424.300. The notice shall state the purpose, time, place, and
23 date of the hearing. Newspaper notice shall be published once in a newspaper of

1 general circulation in the applicant's service area no fewer than seven (7) and no more
2 than twenty-one (21) days prior to the hearing. [~~The notice shall state the purpose,
3 time, place, and date of the hearing.~~]

4 Section 12 [11]. Utility Personnel Participation in Commission Proceedings.

5 (1) An authorized official or employee of the applicant who is not licensed to
6 practice law in Kentucky may on behalf of an applicant that is a **water district,**
7 corporation, partnership, or limited liability company file the application, responses to
8 commission orders and requests for information, as well as appear at conferences
9 related to the application.

10 (2) Any applicant that is a **water district,** corporation, partnership, or limited
11 liability company shall at any hearing conducted on the application be represented by
12 an attorney who is authorized to practice law in Kentucky.

13 Section 13 [12]. Use of Electronic Filing Procedures in lieu of Submission of
14 Paper Documents. An applicant may elect to use electronic filing procedures in lieu of
15 submission of paper documents to the commission. At least seven (7) days prior to the
16 submission of its application, an applicant shall file with the commission written notice of
17 its election and, if it does not have an account for electronic filing with the Commission,
18 register for an account at <http://psc.ky.gov/Account/Register>. Upon electing the use of
19 electronic filing procedures, the following procedures shall be followed in the
20 commission proceeding on the application unless the commission orders otherwise:

21 (1) All pleadings, documents, and exhibits shall be filed with the commission
22 by uploading an electronic version of the document using the commission's E-Filing

1 System at <http://psc.ky.gov>. In addition, the filing party shall file one (1) original and one
2 (1) paper copy with the commission.

3 (2) Each file in an electronic submission shall be:

4 (a) in portable document format;

5 (b) search-capable;

6 (c) optimized for viewing over the Internet;

7 (d) where appropriate, bookmarked to distinguish sections of the pleading or
8 document; and,

9 (e) if a scanned document, scanned at a resolution of 300 dots per inch.

10 (3) All electronic submissions shall include an introductory file in portable
11 document format that is named "Read1st" and that contains a general description of the
12 filing, a list of all materials not included in the electronic filing, and a statement attesting
13 that the electronically filed documents are a true representation of the original
14 documents. The "Read1st" file and any other document that normally contains a
15 signature shall contain a signature in the electronically submitted document. The
16 electronic version of the cover letter accompanying the paper filing may be substituted
17 for a general description. If the electronic submission does not include all documents
18 contained in the paper version (e.g., confidential materials, materials that are too large
19 or bulky to transfer by electronic medium), the absence of these documents shall be
20 noted in the "Read1st" document.

21 (4) An electronic transmission or uploading session shall not exceed twenty
22 (20) files. An individual file shall not exceed fifty (50) megabytes. If a filing party's

1 submission exceeds these limitations, the filer shall make its electronic submission in
2 two (2) or more consecutive electronic transmission or uploading sessions.

3 (5) When filing any document with the commission, the filing party shall certify
4 that:

5 (a) The electronic version of the filing is a true and accurate copy of the
6 document(s) filed in paper medium;

7 (b) The electronic version of the filing has been transmitted to the
8 commission; and

9 (c) A copy of the filing in paper medium has been mailed to all parties that the
10 commission has excused from participation by electronic means.

11 (6) Upon completion of a party's uploading of an electronic submission, the
12 commission shall cause an electronic mail message to be sent to all parties of record
13 advising that an electronic submission has been made to the commission. Upon a
14 party's receipt of this message, it shall be the receiving party's responsibility to access
15 the commission's electronic file depository at <http://psc.ky.gov> and view or download a
16 copy of the submission.

17 (7) Unless it states its objection to the use of electronic filing procedures in its
18 motion for intervention, a party granted leave to intervene shall be deemed to have
19 consented to the use of electronic filing procedures and the service of all documents
20 and pleadings, including orders of the commission, by electronic means and shall file
21 with the commission within seven (7) days of the date of an order of the commission
22 granting its intervention a written statement that it waives any right to service of

1 commission orders by United States mail and that it, or its authorized agent, possesses
2 the facilities to receive electronic transmissions.

3 (8) If a party objects to the use of electronic filing procedures and the
4 commission determines that good cause exists to excuse that party from the use of
5 electronic filing procedures, service of documents on that party and by that party shall
6 be made in accordance with 807 KAR 5:001.

7 (9) A document shall be considered timely filed with the commission if it has
8 been successfully transmitted in electronic medium to the commission within the time
9 allowed for filing. The original document, in paper medium, shall be filed at the
10 commission's offices no later than the second business day following the electronic
11 filing. Parties shall attach to the top of such submission a paper copy of the electronic
12 mail message from the commission confirming transmission and receipt of its electronic
13 submission.

14 Section 14 [13]. The provisions of 807 KAR 5:001 that do not conflict with the
15 provisions of this administrative regulation shall apply to commission proceedings
16 involving applications filed pursuant to this administrative regulation.

17 Section 15 [14] [7]. Upon a showing of good cause, the commission may permit
18 deviations from this administrative regulation.

19 Section 16 [15]. Incorporation by Reference.

20 (1) The following material is incorporated by reference:

21 (a) "Application For Rate Adjustment Before The Public Service Commission
22 For Small Utilities Pursuant to 807 KAR 5:076," August [June]15, 2011;

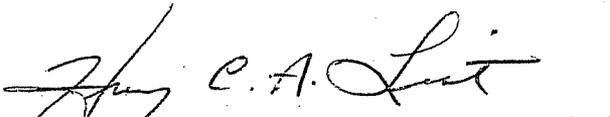
1 (b) “Notice of Election To Use Electronic Filing Procedures,” August 15, 2011

2 [is incorporated by reference].

3 (2) This material may be inspected, copied, or obtained, subject to applicable
4 copyright law at the commission’s offices at 211 Sower Boulevard, Frankfort, Kentucky
5 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's
6 Web site at <http://psc.ky.gov/>.


David L. Armstrong, Chairman
Public Service Commission

DATE: 8/15/11


Leonard K. Peters, Secretary
Energy and Environment Cabinet
Henry C.A. List
Deputy Secretary

DATE: 8/15/11

REGULATORY IMPACT ANALYSIS

Administrative Regulation #: 807 KAR 5:076

Contact Person: Gerald E. Wuetcher, Executive Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a simplified and less expensive procedure by which small utilities may apply to the commission for rate adjustments. A small utility may apply for rate adjustments using the formal procedure outlined in 807 KAR 5:001, Section 10, or by using the procedure prescribed in this administrative regulation, which is intended to minimize the need for formal hearings, to reduce filing requirements, and to shorten the time period between application and commission order.

(b) The necessity of this administrative regulation: This regulation will assist the Public Service Commission in timely reviewing applications for rate adjustment, will reduce the expense of rate case proceedings, and is necessary to the Public Service Commission's authority to regulate the rates of small utilities. It provides a structural framework for using electronic filing procedures for small utility rate cases.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and simplified means for small utilities to apply for rate adjustments. It provides clear guidance to small utilities on the documents necessary for a rate adjustment and simplifies the procedures necessary for a rate adjustment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will expand eligibility to use simplified filing procedures from 107 utilities to 254 utilities. Eligibility requirements, which have been unchanged

for more than 15 years, have been revised to reflect the effects of inflation and to acknowledge that review of rate adjustment applications of utilities with gross annual revenues of \$5,000,000 or less does not require the level of documentary evidence that is required for larger utilities. Elimination of the eligibility provisions related to the number of customers will prevent two electric cooperatives, each of which has annual revenues in excess of \$340,000,000, from using the simplified filing procedures. The amendment clarifies the record upon which the Public Service Commission should base its decision. It specifies actions that applicants should take to protect sensitive personal information that may be contained in such applications. It amends the notice requirements for rate adjustments to conform to the notice requirements in 807 KAR 5:001 and 807 KAR 5:011. It clarifies when a small utility using alternative rate filing procedures may place its proposed rates into effect if the commission fails to make a timely decision. It provides a formal framework for the use of electronic filing procedures and establishes a schedule for discovery and responses to commission staff reports. The regulation eliminates the need for an applicant to include within its application, copies of its annual reports, which are currently on file with the Public Service Commission, and reduces the number of copies of the application that must be filed.

(b) The necessity of the amendment to this administrative regulation: Eligibility requirements for alternative rate filing procedures had not been adjusted for the effects of inflation for 15 years. Current Public Service Commission regulations make no provision for the use of electronic procedures. Provisions in the proposed amendment that are related to discovery and to the record upon which the Commission will base its decision are not addressed in existing regulation and will incorporate Public Service Commission practices developed since the regulation's last amendment in 1996. The proposed regulation also attempts to reconcile the Commission's alternative rate filing procedures with the Commission's Rules of Procedure (807 KAR 5:001), which distinguishes between utilities based upon the level of their gross annual revenues and provides for a lower level of supporting documentation for rate adjustment applications of utilities with gross annual revenues that are \$5,000,000 or less.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service. The proposed amendment eliminates inefficiencies in the rate adjustment process and reduces transactional costs for small utilities that are less able to afford large rate case expenses and that have less expertise in the ratemaking process than larger utilities.

(d) How the amendment will assist in the effective administration of the statutes: Amendment expands the eligibility of alternative rate filing procedures and will allow 147 additional utilities to take advantage of simplified and less costly review procedures. It implements new measures for the protection of sensitive personal information contained in applications, reduces the documents that must be filed with the Public Service Commission and served upon other parties, and allows for the use of electronic filing and notification procedures that are expected to decrease the time and expense necessary to adjudicate rate adjustment applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect 240 water, natural gas, and sewer utilities whose annual gross revenues are \$5 million or less and their customers. The proposed amendment will remove two (2) electric utilities, whose gross annual revenues exceed \$340,000,000, from eligibility for alternative rate filing procedures. Neither electric utility has used alternative rate filing procedures to adjust its rates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary. This amendment enlarges eligibility for alternative rate filing procedures. The use of alternative rate filing procedures is entirely voluntarily. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs to comply. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures. Because the amendment will reduce the number of documents that must be filed and allows for the use of electronic transmission of documents in lieu of service of paper documents, the amendment should reduce the cost of filing an application for rate adjustment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed Amendment will reduce the time necessary for review of rate case applications and the cost of rate case proceedings and thus lessen or reduce the level of requested rate adjustments. It should enhance public awareness of utility rate adjustment applications made by small utilities. It provides greater certainty and stability in the ratemaking process that the Public Service Commission uses for small utilities. The proposed amendment generally reflects ad hoc

practices with which the Public Service Commission has employed over several years and which it found improved and shortened the review process.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary. No new fees or funding will be required.

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

(9) TIERING: Is tiering applied? To the extent that the regulation establishes simplified procedures for utilities with annual revenues of less than \$5 million, tiering has been applied. The Public Service Commission believes that tiering is appropriate because the operations of smaller utilities are less complex, their recordkeeping practices are simpler, and the amount of documentary evidence to verify their financial operations is less than that of larger utilities. Moreover, given the smaller number of customers over which small utilities must spread rate case expense, the use of the same procedures as used for larger utilities will result in larger rate increases for smaller utilities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No.: 807 KAR 5:076

Contact Person: Gerald Wuetcher
(502) 564-3940 x259
gerald.wuetcher@ky.gov

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? **Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts**

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

KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? **No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge. While the proposed amendment may allow for water districts to more easily obtain rate adjustments, water districts would have been able to obtain same level of rate adjustment if the proposed amendment is not enacted.**

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? **No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge. While the proposed amendment may allow for water districts to more easily obtain rate adjustments, water districts would have been able to obtain same level of rate adjustment if the proposed amendment is not enacted.**

(c) How much will it cost to administer this program for the first year? **No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. Water districts that are currently ineligible to use the procedures in 807 KAR 5:076 but that will be eligible if the proposed amendment is adopted will experience lower rate case expenses when filing for rate adjustments as they will file fewer documents with their application and may be able to avoid the need to retain rate case consultants and other professionals to prepare and support their application. The exact amount of any savings is too difficult to quantify.**

(d) How much will it cost to administer this program for subsequent years? **No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. Water districts that are currently ineligible to use the procedures in 807 KAR 5:076 but that will be eligible if the proposed amendment is adopted will experience lower rate case expenses when filing for rate adjustments as they will file fewer documents with their application and may be able to avoid the need to retain rate case consultants and other professionals to prepare and support their application. The exact amount of any savings is too difficult to quantify.**

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF CONSIDERATION
RELATING TO 807 KAR 5:076

Energy and Environment Cabinet
Public Service Commission

Amended after Comments

1. A public hearing was held on the above regulation on July 25, 2011 at 9:30 a.m. Eastern Time, in Hearing Room 1, Public Service Commission Building, 211 Sower Boulevard, Frankfort, Kentucky.

2. The following persons attended this public hearing or submitted written or verbal comments.

Name and Title	Affiliation
Jim Bruce, General Manager	Hardin County Water District No. 1
Scott Schuck, Finance & Accounting Mgr	Hardin County Water District No. 1
Damon Talley, General Counsel	Kentucky Rural Water Association
David Spenard, Assistant Atty. Gen.	Office of Attorney General

3. The following persons from the promulgating administrative body attended this public hearing or responded to written comments:

Name and Title
Gerald Wuetcher, Executive Advisor/Attorney
Brent Kirtley, Manager, Tariffs Branch

Summary of Comments and Responses

(1) Determination of eligibility when applicant provides multiple utility services:

(a) Comment: Damon Talley of the Kentucky Rural Water Association stated that the proposed regulation fails to address whether eligibility for using alternative rate filing procedures would consider total applicant revenues when applicant provides multiple utility services (e.g., water service and sewage treatment service). He suggested that eligibility be based only on the revenues associated with the utility's operation or division for which the applicant is seeking a rate adjustment. Jim Bruce of Hardin County Water District No. 1 made a similar comment.

(b) Response: The Commission agrees. A new section has been created to define certain terms used in the regulation. This section contains a definition for "gross annual revenues" that addresses utilities that provide multiple utility services. It will permit a utility that operates two or more divisions that provide different types of utility

service and whose total gross annual revenues are in excess of \$5,000,000 to use the alternative rate filing procedure for any division whose gross annual revenues are less than \$5,000,000.

(2) Requirement for Water Associations to File Tax Returns

(a) Comment: Damon Talley of the Kentucky Rural Water Association recommended that Section 3(1)(e) be amended to exclude water associations formed under KRS Chapter 273 from the requirement that a corporation file a copy of its state and federal tax returns with its application.

(b) Response: The Commission declines to make the proposed amendment. To the extent that a water association is required to file a state or federal tax return, the Commission finds no reason to treat it more favorably than other types of corporate organizations.

(3) Filing requirements

(a) Comment: David Spenard of the Attorney General's Office stated that Section 3(1)(h) requires an applicant that is a limited liability company to file a copy of its articles of incorporation with its application. He notes that a limited liability company has articles of organization, not articles of incorporation.

(b) Response: The Commission has amended Section 3(1)(h), now Section 4(1)(h), to remove the reference to limited liability company and has added two additional sub-sections to address separately limited liability companies and limited partnerships.

(4) Erroneous E-Mail Address

(a) Comment: David Spenard of the Attorney General's Office stated that Section 3(3) provides the incorrect electronic mail address of the Attorney General's Office of Rate Intervention.

(b) Response: The Commission has modified the section, now Section 4(3) to reflect the correct electronic mail address.

(5) Test Period

(a) Comment: David Spenard of the Attorney General's Office recommended that Section 7, which specifies that the test period the Commission will use for a rate application is the "reporting period of the applicant's most recent annual report on file with the commission" be amended to make clear that "the applicant's most recent annual report on file with the commission" means the immediate past year as identified in Section 1 of the regulation rather than simply the most recent annual report on file with the Commission. He notes that Section 1 limits eligibility to use the alternative rate filing procedure to utilities that have "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."

(b) Response: The Commission has made the proposed revision to Section 7, now Section 8, and has defined "annual report" and "annual report for the immediate past year" in Section 1 of the regulation. 807 KAR 5:006, Section 3, requires a utility to file an annual financial and statistical report on or before March 31 of each year. This report is the annual report referenced in the proposed regulation. As a utility is not

required to file an annual report for the prior calendar year until March 31 of the current year and could possibly obtain an extension to file the report later, a utility could be prevented from using the alternative rate filing procedures for the first three calendar months of the year as it prepares its annual report for the preceding calendar year. To avoid this possibility, the Commission has defined "annual report for the immediate past year" to include an annual report that covers the applicant's operations for the most recent calendar year period for which 807 KAR 5:006, Section 3(1), requires, as of the date of the filing of the applicant's application for rate adjustment under this regulation, the applicant to have on file with the Commission.

(6) Erroneous Reference

(a) Comment: Damon Talley of the Kentucky Rural Water Association and David Spenard of the Attorney General's Office stated that the reference to Section 11 contained in Section 5 of the proposed regulation is erroneous and should refer to Section 12 (now Section 13).

(b) Response: The Commission agrees and has made the proposed revision. The reference in Section 5, now Section 6, has been changed from Section 11 to Section 13.

(7) Utility Personnel Participation in Commission Proceedings

(a) Comment: Damon Talley of the Kentucky Rural Water Association stated that Section 11(1) should be modified to include water associations and governmental entities, such as water districts, as applicants eligible to file an application without the assistance of a licensed attorney.

(b) Response: The Commission agrees and has revised the section to include water districts. As water associations are non-profit corporations, the section already covers water associations. No revision to expressly include water associations, therefore, is necessary.

(8) General Nature of Application Form

(a) Comment: Damon Talley of the Kentucky Rural Water Association stated that the Application Form is overwhelming and confusing. He suggested that some portions of the form be converted to question and answer form to eliminate confusion.

(b) Response: The application forms have been redesigned to eliminate confusing portions. Additional instructions have been added to the form to further reduce applicant confusion. A form to notify the Commission of the applicant's election of the use of electronic procedures has also been developed and is referenced in the regulation.

(9) Application Form: Reference to Gross Annual Operating Revenues

(a) Comment: Damon Talley of the Kentucky Rural Water Association suggested that additional language be added to Item 1 of the Application Form to clarify that "gross annual revenue" refers only to the specific utility service for which the rate adjustment is sought and does not mean the combined gross annual revenue from all utility operations where the applicant provides multiple utility services (e.g., water and wastewater services).

(b) Response: The Commission agrees and has modified the application form to allow a utility that has two or more divisions that provide different utility services to specify that the division for which the utility seeks a rate adjustment has gross annual revenue of less than \$5,000,000.

(10) Application Form: "Commonly-owned enterprises"

(a) Comment: Damon Talley of the Kentucky Rural Water Association stated that the phrase "commonly-owned enterprises" is confusing.

(b) Response: The Commission disagrees. The phrase "commonly-owned enterprises" is generally used in the industry, appears as a requirement in the eligibility section of the regulation, and has been in the regulation since its initial promulgation in 1982.

(11) Application Form: Statement of Nature of Applicant's Organization

(a) Comment: Damon Talley of the Kentucky Rural Water Association recommended that Paragraph 4 of the Application Form include statements or questions that would permit the applicant to identify itself as a water district or a water association.

(b) Response: The Commission agrees and has modified the Application Form to enable such action.

(12) Application Form: Notice Statements

(a) Comment: Damon Talley of the Kentucky Rural Water Association recommended that subsection c of Item 6 of the Application Form be amended to delete the word "published" and the phrase "made arrangements to publish" be substituted.

(b) Response: The Commission agrees and has made the recommended modification.

(13) Application Form: Amortization Schedule

(a) Comment: Damon Talley of the Kentucky Rural Water Association recommended adding an additional subsection to Item 15 of the Application Form to require the applicant to attach a copy of the amortization schedule for each outstanding bond issue, promissory note, or other debt instrument.

(b) Response: The Commission agrees and has made the recommended modification.

(14) Application Form: Plant Recovered from Sale of Real Estate Lots

(a) Comment: Damon Talley of the Kentucky Rural Water Association stated that this section is confusing.

(b) Response: The Commission disagrees. The section appears in the existing application form and has been unchanged since the regulation was promulgated in 1982. Real estate developers established a significant number of small utilities to serve real estate developments in areas where water or wastewater service was unavailable. These developers recovered a portion of the costs associated with the utilities through the sale of the real estate lots within the real estate subdivision development.

(15) Application Form: Require Affirmative Action for All Statements

(a) Comment: Damon Talley of the Kentucky Rural Water Association stated that some of the items contained in the Application Form do not require any affirmative action by the applicant. He suggested that an applicant be required to indicate affirmatively its agreement with each item in the application form.

(b) Response: The Commission agrees and has modified the Application Form accordingly.

Summary of Statement of Consideration and
Action Taken By Promulgating Administrative Body

The Public Service Commission has responded to the comments from the public hearing and public comment period regarding the proposed amendments to 807 KAR 5:076. The Public Service Commission proposes the following amendments after comments:

Page 1

Section 1

Line 15

Insert:

“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 total revenue that a utility derived during a calendar year, unless the utility operates two (2) or more divisions that provide different types of utility service, in which case, the total amount of revenue derived from the division for which a rate adjustment is sought; and,

(4) “Utility” is defined by KRS 278.010(3).”

Page 2

Section 2

Line 11

After “Section” delete “1” and insert “2”

Page 2

Section 3

Line 18

After “Section” delete “2” and insert “3

Page 3

Section 4

Line 11

After “Section” delete “3” and insert “4”

Page 4

Section 4(1)(g)

Line 4

After "applicant;" delete "and"

Page 4

Section 4(1)(h)

Line 5

After "corporation" delete "or a limited liability company"

Page 4

Section 4(1)(h)

Line 9

After "proceeding" delete "." and insert ";

Page 4

Section 4(1)

Line 10

Insert:

"(i) 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 style and case number of the prior proceeding; and,

(j) If the applicant is a limited partnership, a certified copy of 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 style and case number of the prior proceeding."

Page 5

Section 4(3)

Line 3

After "at" delete "rintervention@ag.ky.gov" and insert "rateintervention@ag.ky.gov"

Page 6

Section 5

Line 5

After "Section" delete "4" and insert "5"

Page 9

Section 6

Line 1

After "Section" delete "5" and insert "6"

Page 9

Section 6

Line 1

After "in Section" delete "11" and insert "13"

Page 9
Section 7
Line 5

After "Section" delete "6" and insert "7"

Page 9
Section 8
Line 16

After "Section" delete "7" and insert "8"

Page 9
Section 8
Line 11

After "applicant's" delete "most recent annual report on file with the commission" and insert "annual report for the immediate past year"

Page 9
Section 9
Line 21

After "Section" delete "8" and insert "9"

Page 10
Section 10
Line 7

After "Section" delete "9" and insert "10"

Page 10
Section 11
Line 20

After "Section" delete "10" and insert "11"

Page 11
Section 12
Line 4

After "Section" delete "11" and insert "12"

Page 11
Section 12
Line 6

After "applicant that is a" insert "water district"

Page 11
Section 13
Line 13

After "Section" delete "12" and insert "13"

Page 14
Section 14
Line 14

After "Section" delete "13" and insert "14"

Page 14
Section 15
Line 17

After "Section" delete "14" and insert "15"

Page 14
Section 16
Line 19

After "Section" delete "15" and insert "16"

Page 14
Section 16
Line 20

After "(1)" insert "The following material is incorporated by reference: (a)"

Page 14
Section 16
Line 22

After "807 KAR 5:076," delete "June"

Page 15
Section 16
Line 2

Delete "is incorporated by reference" and add "(b) 'Notice of Election To Use Electronic Filing Procedures,' August 15, 2011"