

August 31, 2012

Gerald E. Wuetcher
PSC Regulations
Public Service Commission
P. O. Box 615
Frankfort, Kentucky 40602-0615

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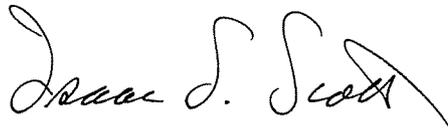
RE: Comments on Proposed Regulations
807 KAR 5:001 – Rules of Procedure
807 KAR 5:006 – General Rules
807 KAR 5:011 – Tariffs

Dear Mr. Wuetcher:

Please find enclosed a copy of the comments offered by the East Kentucky Power Cooperative, Inc. ("EKPC") on the proposed changes to the three administrative regulations noted above. EKPC appreciates the opportunity to provide these comments and would like to thank the Commission Staff for the opportunity to participate in the informal work group process that examined and reviewed these regulations.

In accordance with the suggestions of the Commission Staff, page and line references correspond to the Word document version of the three regulations distributed by the Commission Staff via e-mail on August 1, 2012.

Sincerely,



Isaac S. Scott
Pricing Manager

Enclosure

807 KAR 5:001 – Rules of Procedure

Section 4(11) – Intervention and Parties

Word Document reference: Page 6, line 23 through Page 7, line 16

One of the goals in amending 807 KAR 5:001 was to enable all parties that practice before the Commission to have a clearer understanding of the rules of procedure the Commission operates under. As acknowledged by the Commission in the Regulatory Impact Analysis and Tiering Statement accompanying the proposed amendment to 807 KAR 5:001, the amendment “reflects and incorporates informal practices and procedural devices that the Public Service Commission has developed and used in formal proceedings since the last revision” in 1993. While EKPC does not have any comments on Section 4(11) as proposed, it does believe the Commission has overlooked two additional procedures that should be included concerning intervening parties.

The first procedure would address the situation where a party seeks intervention in a proceeding after one or more events outlined in the case procedural schedule have occurred. In the past the Commission has addressed this situation by finding and requiring that the party being granted intervention had to accept the existing procedural schedule “as it now stands.”¹ EKPC believes the rules of procedure would be enhanced if this current practice were included in the administrative regulation. Therefore, EKPC recommends that the following language be added as a separate subpart of Section 4(11):

If the commission has established a procedural schedule in the formal proceeding, any party granted leave to intervene by the commission shall accept the existing procedural schedule as it exists on the date intervention is granted.

The second procedure would address the situation where a party that is seeking intervention includes its initial data or discovery request along with its motion to intervene. In recent years, parties that apparently are not familiar with the Commission’s practices have waited until near the date a data request is due to file for intervention in the proceeding. These parties have included their initial data request along with their petition, obviously wanting to make sure their initial data request was addressed. However, by filing in this manner, these parties actually are being disruptive to the process, as their intervention is not guaranteed² and is at the “sound discretion” of the Commission. Invariably, when the Commission has found such interventions to be timely and permitted, accommodations for the pre-intervention data request have had to be made in the existing procedural schedule.

Interested parties to a proceeding have the obligation to make a timely request for intervention. Considering the notice requirements on the applicant and the information available on the Commission’s website, no interested party should need to file their initial data request

¹ For examples of this practice, please see the following Orders granting intervention: Case No. 2009-00548, Orders issued March 3, 2010, March 12, 2010, and April 1, 2010; Case No. 2011-00036, two Orders issued April 1, 2011.

² EKPC acknowledges that the Attorney General has a statutory right to intervene pursuant to KRS 367.150(8) and would like to note these comments are referring to parties other than the Attorney General.

prior to being granted intervention. EKPC believes the rules of procedure should clearly state that data requests cannot be filed prior to a party being granted intervention. Therefore, EKPC recommends that the following language be added as a separate subpart of Section 4(11):

No party granted leave to intervene in a case shall submit a request for information or other discovery request prior to the date the commission grants intervention, with the exception of the Attorney General whose intervention is established pursuant to KRS 367.150(8).

Section 13(10)(a) – Confidential material, time afforded confidentiality

Word Document reference: Page 22, lines 9 through 16

EKPC understands and can appreciate the Commission's desire to place a limit on the length of time information can remain confidential. However, EKPC believes as currently drafted Section 13(10)(a) needs further clarifications. In addition, EKPC does not believe the two year time limit is reasonable.

Section 13(10)(a) as currently drafted does not state from what date the two year time limit will commence. While it could be assumed the time period would begin with the date of the executive director's notice granting confidential treatment, for clarity sake the administrative regulation should definitively state the starting date for the time limit. EKPC believes this clarification should be included in Section 13(10)(a).

In the event the person requesting continued confidential treatment of the material can justify the treatment, Section 13(10)(a) does not indicate if the continued confidential treatment will be time limited. The administrative regulation could state that the time limit shall be the same as originally granted unless the Commission ordered otherwise. EKPC believes this clarification should be included in Section 13(10)(a).

EKPC also does not believe the proposed two year time limit for confidentiality is reasonable. Assuming the two year time limit begins with the date the executive director grants confidentiality, it is possible during some administrative or investigation proceedings the confidential protection would have to be renewed during the proceeding. Using the timing established for the integrated resource plan reviews, EKPC believes that a three year time limit is, at a minimum, more reasonable. EKPC considers the timing of the integrated resource plan review a reasonable minimum standard based on the types of information contained in the plans and the confidential treatment normally sought in those proceedings. However, a renewal of confidential protection on a three-year cycle is not likely to administratively efficient. Therefore, EKPC would suggest that the time period be set at five years.

Section 15(2)(f) – Certificate of Public Convenience and Necessity, estimated cost of operation

Word Document reference: Page 25, lines 13 and 14

The proposed amendment to Section 15(2)(f) states "An estimated cost of operation thirty (30) days after the proposed facilities are completed." The "thirty (30) days" phrase was added

to the existing administrative regulation. EKPC does not understand why the reference to 30 days was added to this administrative regulation and what the amendment is trying to accomplish. An application for a certificate of public convenience and necessity for new construction or extensions is submitted prior to the construction beginning. EKPC has understood that the current requirement to provide an estimate of the cost of operation for the proposed facilities was seeking an estimate of the annual cost of operation upon completion. If the addition of the 30 day requirement is to establish a due date for providing information, this appears to be in conflict with the overall regulation, which deals with a filing made prior to construction beginning. If by adding the 30 day requirement the Commission was clarifying that it only wanted the first month's cost of operations, the amendment should have been "An estimated cost of the first month of operation after the proposed facilities are completed." EKPC believes the proposed amendment in its current form will cause confusion rather than clarity and suggests the amendment either be revised to better explain what the Commission is seeking or withdrawn.

Section 16(9)(n) – Adjustments in Existing Rates, historic test period, depreciation study

Word Document reference: Page 33, line 8;

Section 16(12)(s) – Adjustments in Existing Rates, forecasted test period, depreciation study

Word Document reference: Page 40, line 23; and

Section 17(2)(b) – Authority to Issue Indebtedness

Word Document reference: Page 46, line 13

All three of the subsections referenced above contain a statement to the effect that if the requested study or documents have already been filed with the Commission in another case, a reference to that case's number and style would be sufficient. The proposed amendment to Sections 14(2)(a), 14(2)(b), and 14(2)(c) only require a reference to the prior case number. EKPC believes that similar revisions to remove the case style references should be made in Sections 16(9)(n), 16(12)(s), and 17(2)(b), as reference to the prior case number will provide sufficient cross-reference.

807 KAR 5:006 – General Rules

Section 4(3) – Reports, Financial statement audit reports

Word Document reference: Page 4, lines 13 through 19

Section 4(3) is a new section to the administrative regulations which requires a utility that is required to file annual financial and statistical reports to also file by September 30th of each year a copy of the audit report of the Kentucky regulated entity from the audit performed the previous year or state that no audit was performed of the Kentucky regulated entity in the previous year. EKPC has several concerns about the reasonableness of this new requirement.

First, EKPC would note that the Commission has not explained why this new requirement is needed. A review of the Regulatory Impact Analysis and Tiering Statement accompanying 807 KAR 5:006 reveals this document does not contain a single reference to or discussion of this new requirement. It would seem appropriate that if the Commission is going

to annually require audit reports, or statements that no audit was performed, from over 1,500 regulated utilities, some explanation for this requirement would be provided.

Related to this first concern, EKPC's second concern deals with how important are the audit reports to the Commission. The proposed amendment to the administrative regulation only requires a utility to state there was no audit performed of the Kentucky regulated entity the previous year. No explanation is required concerning why the audit was not performed. Also, EKPC understands that investor-owned utilities that are part of multi-state holding companies generally do not have annual audits covering only their Kentucky regulated operations, but rather those annual audits cover all consolidated operations. Consequently, the majority of the investor-owned utilities in Kentucky would be annually submitting statements that audits of the Kentucky regulated entity were not performed.

The last concern deals with the use of the audit reports by the Commission. Since the filing of the audit reports was linked to those utilities required to file financial and statistical reports, it would be logical to assume the Commission would be planning on comparing the information in the annual financial and statistical reports with the annual audit reports. EKPC believes such comparisons could prove difficult for two reasons. First, often regulated utilities' audit reports cover a 12-month period other than a calendar year, which is utilized for the financial and statistical reporting. Second, often the audit standards require the presentation of financial information in a different manner than that required by the uniform system of accounts or the format prescribed for the financial and statistical reports.

EKPC wishes to stress that it can provide the Commission with its annual audit report. However, given that there has been no explanation of why this requirement is needed and how the Commission intends to use the audit reports, EKPC questions the need for the requirement. Currently, utilities filing applications for an adjustment of existing rates are required to file copies of their independent auditor's reports, which generally include the audited financial statements (see 807 KAR 5:001, Section 16(9)(k) and Section 16(12)(q) – amended references). EKPC would suggest that the current arrangement is sufficient and further suggest the Commission withdraw this new requirement.

Section 7(5)(c) – Meter Readings, Frequency of reading, remote read technology
Word Document reference: Page 8, lines 10 through 12

Section 7(5)(c) is a new section of the administrative regulation recognizing the use of remote reading technology and requiring these meters “be inspected for proper working condition and readings verified at the intervals established in Section 26 of this administrative regulation.” EKPC wishes to point out that the generic cross-reference to Section 26 does not provide sufficient clarity concerning the intervals for the inspections. EKPC believes that during the informal working group meetings, it was the Commission's intent that the applicable interval was to be 2 years, and this additional inspection was to be incorporated as part of Section 26(4)(e). However, the amended language contained in Section 26(4)(e) does not clearly establish that the additional inspections are to be undertaken at 2 year intervals. EKPC suggests that the cross-reference in Section 7(5)(c) be revised to state the applicable subpart of Section 26

and that if the applicable subpart is Section 26(4)(e), that subpart be revised to clearly establish that requirement.

Section 8(8)(c) – Deposits, Tariff requirements, deposit amounts
Word Document reference: Page 13, lines 4 and 5

In discussing the tariff requirements concerning deposit policy, Section 8(8)(c) states “The deposit amount for each customer class if the method in subsection (1)(b) of this section is used.” This cross-reference appears to be unchanged from the current version of the administrative regulation. However, due to the addition of several sub-breaks in the text, subsection (1)(b) of this section as amended no longer discusses the determination of a deposit amount, but instead states that a deposit shall not be required based solely on the customer being a tenant or renter. EKPC believes the correct cross-references in the amended regulation are Sections 8(1)(d)(2)(a) and 8(1)(d)(2)(b) and suggests that Section 8(8)(c) should be updated accordingly.

807 KAR 5:011 – Tariffs

Section 9(1)(a) – Statutory Notice, New tariff or revised sheets of existing tariff, proper notice
Word Document reference: Page 10, lines 11 through 13

The proposed amendment to Section 9(1)(a) adds the requirement that proper notice be given to the Commission and the public for revised sheets of an existing tariff before becoming effective. EKPC understands the need to notice the public when revisions to existing tariffs affect the rates, charges, or terms and conditions of service. However, this amendment will require utilities to notice the public when text changes are proposed. Examples of such text changes would include those dealing with correcting typographical errors, correcting references to statutes and regulations, or other changes not related to the rates, charges or terms and conditions of service. The notice requirements outlined in Section 8 are essentially the same as those required when a utility files a base rate case. Given the level of expense that would be incurred, this proposed amendment will likely result in utilities delaying the filing of revised tariff sheets containing needed text changes. EKPC believes the proposed amendment should be modified to permit the filing of revised tariff sheets without notice to the public of text changes that do not affect the rates, charges, or terms and conditions of service.

Conclusion

EKPC appreciates the opportunity to provide these comments on the proposed amendments to the administrative regulations. This concludes the comments of EKPC on the proposed amendments to administrative regulations 807 KAR 5:001, 807 KAR 5:006, and 807 KAR 5:011. EKPC has no comments on administrative regulation 807 KAR 5:076 – Alternative Rate Filing Adjustment.