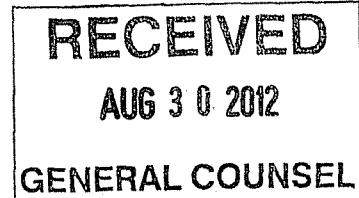




LEGAL AID SOCIETY

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EILEEN L. ORDOVER
 (502) 614-3125
 EORDOVER@LASLOU.ORG

August 30, 2012

By Facsimile Transmission to 502/564-7279, Original To Follow

Gerald E. Wuetcher
 Executive Advisor/Attorney
 Public Service Commission
 211 Sower Boulevard
 P.O. Box 615
 Frankfort, KY 40602

Re: Regulation Revisions Advisory Board/807 KAR 5:001, Sections 5(2) and 7(3)

Dear Mr. Wuetcher:

Thank you again for the opportunity to participate on the PSC Regulation Advisory Board. I submit the following comments and solutions regarding proposed 807 KAR 5:001, Section 5(2) and Sections 7(3) and 8 in response to the e-mail invitation sent Advisory Board members on July 13, 2012.

Section 5(2)

Comment: Section 5(2) provides that unless otherwise ordered by the commission, any response to a motion must be filed no later than seven (7) days from the date of filing of the motion. Pursuant to Section 7, this period includes weekends, legal holidays and any other day that commission offices are legally closed (unless the seventh day of the period is such a day, in which case the response period runs to the next day that is not a weekend, etc.). Thus, under the proposed rule, intervenors would have only five business days to respond to even a dispositive motion—for example, a motion to submit a case for decision on the record—and even less time should a legal holiday fall before the last day of the response period.

Such a truncated time frame places small, non-profit community-based intervenors at a great and unnecessary disadvantage. Lacking the staff and legal resources available to utilities, their opportunity to be fully and meaningfully heard will be significantly diminished. This, in turn, will undermine the purpose for which the commission in a given case has granted leave to



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intervene – whether that be to protect an otherwise unrepresented interest, to present particular issues and/or to assist the commission in developing facts. It will also undermine the public interest the commission sought to protect by adopting its regulation on intervention.

Solution: Section 5(2) should be revised to provide in pertinent part that unless the commission orders otherwise, any response to a motion shall be filed “no later than ten (10) days from the date of filing of a motion.” To the extent that statutory deadlines might make a blanket 10-day rule untenable in a given case, the commission would retain the discretion via its procedural order (or otherwise) to establish shorter response times as appropriate, including differentiating among different types of motions, for example, non-dispositive vs. dispositive motions.

Sections 7(3) and 8

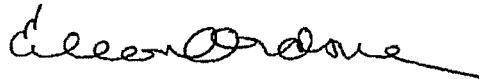
Comment: The proposed regulations need fine-tuning on the question of when electronic filings made outside of business hours will be deemed to have been filed. Section 7(3) states that “[e]xcept as provided for in Section 8 of this administrative regulation, any filing made with the commission outside its business hours shall be considered as filed on the commission’s next business day.” Section 8, Electronic Filing Procedures, in turn, is silent on the subject. If this is interpreted to mean that the Section 7(3) rule regarding filings made outside of business hours does not apply to electronic filings, then, for example, a motion filed electronically at 10:00 P.M. on a Friday would be considered to have been filed on Friday, rather than on Monday, and parties would lose two of the seven days of response time allowed under Section 5(2). Were the electronic filing a response to a motion, a party wishing to file a reply would lose two of the five days of reply time allotted under Section 5(3).

Solution: A new subsection should be added to the end of Section 8, as follows:

“(14) Any electronic filing of a motion or a response to a motion made with the commission outside its business hours shall be considered as filed on the commission’s next business day.”

Again, I appreciate the invitation to serve on the advisory board and to offer these comments.

Yours truly,



Eileen L. Ordovery