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Friday, August 31, 2012

Gerald E. Wuetcher, Executive Advisor/Attorney
Public Service Commission of Kentucky
211 Sower Boulevard
Post Office Box 615
Frankfort, Kentucky 40602

By email only gerald.wuetcher@ky.gov

Dear Mr. Wuetcher:

These comments are tendered on behalf of the Kentucky Resources Council, Inc., a nonprofit membership-based organization incorporated under the laws of the Commonwealth of Kentucky and dedicated to prudent use and conservation of the natural resources of the state. KRC provides legal, strategic, and technical assistance without charge to individuals, community groups, and communities concerning environmental, energy, and utility matters. These comments are also submitted on behalf of low-income and fixed-income advocates that KRC has represented before the Commission.

Before turning to specific comments, KRC wishes to express our appreciation to staff and the Commissioners for the open and collaborative approach that was taken towards the development of these regulatory revisions. Specific comments follow, referenced by proposed regulation and section, as appropriate.

807 KAR 5:001

The definition of "case" in Section 1(1) refers to a matter coming "formally" before the Commission, yet there is no definition of informal matters to differentiate the two. The Council recommends revising the definition to state that a "case" is any matter coming before the Commission that is initiated by a party, or by the Commission (since both terms are

defined).

Section 4(9)

The regulation indicates that a document (other than those electronically filed) is not considered filed until it is physically received by the Executive Director. Since the filing actually occurs with the docket clerk, should this section be revised to indicate that filing occurs when physically accepted by the "Executive Director or a designee," or is "stamped as received" by the Commission?

Section 4(11)(b)

The Council recommends replacing “his intervention” with “the intervention”.

Section 4(11)(c)

It is uncertain whether the regulation requires a party, once granted intervenor status, to be served with all filings by other parties (including those previously filed) or instead with all filings occurring after the grant of intervention. KRC believes it would be a good idea to clarify that point by adding after “submitted by the parties to the case” either “after the Order granting intervention” or “before and after the Order granting intervention”, depending on how the Commission wishes to handle the matter. Since the pleadings are generally available on-line, the Council believes that service of all filings after the approval of intervenor status would be sufficient, unless a party requests serves of previously-filed documents due to lack of computer or web access.

Section 8

KRC supports the inclusion of the process by which a person may be excused from participating in the electronic filing process by the Commission, which should address those cases in which parties don’t have access to the web. The Council does continues to believe that in the filings section or elsewhere in the general obligation section, inclusion of a requirement that the utility maintain a public access copy of all cases, including all filings by parties, through a reading room that has a table and computer access in order to allow public access to the filings.

Section 9(a)

The use of “person” and elimination of “corporation” addresses KRC’s concern that there are multiple types of business entities that formerly didn’t exist. “Person” is broad enough to cover them all.

Section 9(4)

KRC believes that broadening the potential subject matter of staff conferences beyond merely settlement of all or part of a case, would be beneficial, and suggests the inclusion of broader language to read:

“...to provide opportunity for clarification of the issues to be adjudicated at the hearing, for stipulation of evidence or witnesses, and other procedural matters, and to explore the possibility of settlement....”

Section 9(8)

KRC believes that it would assist in efficient disposition of objections as to pre-filed testimony or evidence, to require that any objection to either be asserted in a timely manner, by

requiring assertion of such objection within X days of service of the testimony or evidence, and requiring any reply to the objection within X days of the objection being lodged. This would allow the Commission to dispose of objections and motions in limine in advance of the hearing.

Section 16(4)(e)

The proposed public notice language does not sufficiently apprise the public of the opportunity for intervention, nor of the allegations that must be included. There is no “30-day” rule, nor a “good cause” standard in Commission Orders, rather the intervenor takes the schedule as they find it. The Council recommends the replacement of (4)(e) with the following, to better inform the public and cut down on staff workload in addressing insufficient *pro se* requests for intervention:

(e) A statement that any person with a special interest in the matter or whose participation as a party would present issues or develop facts that would assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings may submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602; setting out the grounds for the request including the special interest of the party or the facts and issues that the party wishes to present. The statement shall also provide that a person not wishing to intervene may submit written comments and provide oral comments at the hearing on the case, which shall be made part of the record of the proceeding.

807 KAR 5:006

Section 2

In order to assure that experimental work undertaken by a utility in order to improve safety or to lower costs is well-conceived, it would make sense to require that the utility undertaking such experimental work include a description of that work in a notice filed by the utility upon commencement of the experimental work.

Section 4

The Council is appreciate of changes in the tariff regulation that recognize the inability of some to access reports electronically filed with the Commission, and which make reasonable accommodations. It would be helpful to include a simple requirement here that the utility maintain, in the public access database available to the public at the utility’s office, a copy of **all** reports required to be filed with the Commission by 807 KAR 5:006.

Section 5(2)

KRC is concerned that, in the first instance, the decision of whether a change in the character of the service furnished that would affect the efficiency, adjustment, speed or operation of the

equipment or appliances of any customer is “substantial” enough to require Commission review, is left to the utility’s discretion . It would seem that **any** change that could adversely affect any of these matrices (efficiency, speed, operation of equipment) should be required to be approved by the Commission staff or the Commission, depending on the degree of impact.

Section 5(3)

It would be helpful to consumers to require the utility to notify not only applicants, but also **existing** customers when the types of available service change.

807 KAR 5:011

Section 2(4)

The requirement to maintain a hard or electronic copy of the tariff at the utility’s place of business, for those without access to the web, is supported; however, the Council asks that two clarifications be made – first, that the place of business or office be within the service area; and second, that the copy be made available **and** be updated.

Section 4(2)(d)

The Council supports the inclusion of language qualifying the minimum charge as reading “quantity allowed, if volumetrically based.”

Section 5(1)(c)

Revising to read “at a resolution of 300 dots per inch (dpi) or greater” would allow higher quality resolution.

Section 8

KRC believes it would be helpful to have the utility maintain a list of individuals or organizations who request to receive electronic or paper notice of proposed filings, so that those who assist customers or classes of customers in rate cases but who may **not** reside within the service area of the utility, may receive routine notice of all filings.

Section 8(3)(e)

The language of this subsection should be revised to read as follows:

(e) A statement that any person with a special interest in the matter or whose participation as a party would present issues or develop facts that would assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings may submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602; setting out the grounds for the request including the special interest of the party or the facts and issues that the

party wishes to present. The statement shall also provide that a person not wishing to intervene may submit written comments and provide oral comments at the hearing on the case, which shall be made part of the record of the proceeding.

Section 12(3)

In order to assure that the public inspection copy of the proposed tariff be current, the requirement of subsection 3 should include after “format”, a comma, followed by “which shall be updated as any changes are proposed during or after Commission review.”

Thanks in advance for your consideration of these comments, and for the changes that have been made in response to Council comments on previous drafts of the regulatory revisions.

Cordially,

/s/

Tom FitzGerald

Director