



July 23, 2014

Stephanie Bell
Deputy Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602

RE: Proposed Revisions to 807 KAR 5:001, Section 4(8)(b)

Dear Ms. Bell:

East Kentucky Power Cooperative, Inc. ("EKPC") appreciates the opportunity to provide comments and suggestions on the proposed revisions to 807 KAR 5:001, Section 4(8)(b).

807 KAR 5:001, Section 4 deals with general matters pertaining to all cases and subsection 8 specifically deals with the service of papers during a case. As currently enacted, Section 4(8)(b) provides for three methods of serving papers during a case: 1) delivering a copy to the attorney or party; 2) mailing a copy by U.S. mail or other recognized mail carrier to the attorney or party at the last known address; or 3) sending a copy by electronic means to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic means shall comply with Section 8(4) of 807 KAR 5:001.

807 KAR 5:001, Section 8 deals with the Commission's electronic filing procedures and subsection 4 specifically deals with formats that can be utilized. The procedures established in Section 8 are to be utilized in lieu of other filing procedures established in 807 KAR 5:001 if an applicant has made a timely election of the use of electronic filing procedures or upon order of the Commission in a case that the Commission has initiated on its own motion.

The Commission proposes to revise 807 KAR 5:001, Section 4(8)(b) by eliminating the use of the U.S. mail or other recognized mail carrier as an option for serving papers in case. The revised regulation requires service of papers either by delivery or electronic mail. Only if a party can demonstrate to the Commission that good cause exists to excuse the party from receiving a copy by electronic means will service by the U.S. mail or other recognized mail carrier be permitted.

The Commission also proposes that those parties utilizing electronic mail "shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site."

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The proposed revisions to Section 4(8)(b) appear to be related to the recently enacted amendment to KRS 278.380, which became effective July 15, 2014. KRS 278.380 was amended by Senate Bill 91 of the 2014 Regular Session of the Kentucky General Assembly. The newly amended KRS 278.380 states that the Commission may deliver its orders by means of electronic transmission rather than by mail. The amended statute further provides that the Commission shall deliver its orders by mail to any party that requests and demonstrates good cause for that means of delivery. Lastly, the amended KRS 278.380 states “For purposes of this section, electronic transmission of a commission order includes the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission’s Web site.”

EKPC wishes to state that it is not opposed to the utilization of electronic mail for the service of papers in a case per se. It appears that the proposed revisions to Section 4(8)(b) were designed to reflect the Commission’s newly established ability to serve its orders by electronic mail, which EKPC does not oppose or have issue with. However, EKPC believes the proposed revisions to Section 4(8)(b) go much further than just addressing how the Commission serves its orders.

The proposed revisions to Section 4(8)(b) in effect require all parties to a case – applicant and any intervenors – to accomplish the service of papers by either delivery or electronic mail, unless the party demonstrate to the Commission’s satisfaction that good cause exists to permit a party to accomplish service using the U.S. mail or other recognized mail carrier. The practical result of the proposed revision is to essentially require all cases to be filed subject to the Commission’s electronic filing procedures. While there may be benefits to the submission of all cases utilizing the Commission’s electronic filing procedures, until this proposed revision of regulations the Commission has been willing to allow applicants to have the option of filing either traditional “hard copies” or electronic versions of papers. EKPC believes allowing the applicant the choice of filing options has served the Commission and all parties well. This proposed revision in essence removes the choice of options by the applicant. EKPC has reviewed the “Regulatory Impact Analysis and Tiering Statement” attached to the proposed changes to 807 KAR 5:001 and can find no justification or explanation of why applicants and intervenors are being required to utilize electronic mail for the service of papers. Further, there is no justification or explanation of why applicants and intervenors are required to include an electronic version of the Commission’s order or a hyperlink to the Commission’s order from the Web site. The distribution of the Commission’s orders is the responsibility of the Commission, not the applicants and intervenors.

EKPC believes that the proposed revisions to 807 KAR 5:001, Section 4(8) unintentionally overlooked the fact that this regulation addresses the service of papers by both the Commission and the parties to a case. The proposed revisions clearly reflect the requirements for service *by the Commission* as provided in the recently amended KRS 278.380. However, KRS 278.380 as amended does not apply *to the parties* in a case. EKPC believes the proposed revisions have the unintended consequence of eliminating the filing election option applicants currently have under 807 KAR 5:001, Section 8.

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EKPC would prefer that the proposed revisions to 807 KAR 5:001, Section 4(8)(b) not be adopted. However, EKPC recognizes that the Commission's service requirements probably need to be incorporated into this section of the regulations. Therefore, EKPC would suggest that 807 KAR 5:001, Section 4(8) be revised as follows:

(8) Service.

(a) Unless the commission orders service upon a party and the party's attorney, service shall be made upon the party's attorney if the party is represented by an attorney.

(b) Service upon an attorney or upon a party by the commission shall be made in accordance with the provisions of KRS 278.380.

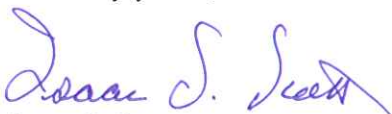
(c) Service upon an attorney or upon a party by the parties in a case shall be made by:

1. Delivering a copy to the attorney or party;
2. Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or
3. Sending a copy by electronic means to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic means shall comply with Section 8(4) of this administrative regulation.

(d) Service shall be complete upon mailing or electronic transmission. If a serving party learns that the mailing or electronic transmission did not reach the person to be served, the serving party shall take reasonable steps to immediately re-serve the party to be served, unless service is refused, in which case the serving party shall not be required to take additional action.

EKPC believes this suggestion addresses the need to reflect the service requirements of the Commission pursuant to KRS 278.380 and preserves the ability of applicants to choose whether it will utilize the option of electronic filing of applications.

Sincerely yours,



Isaac S. Scott
Pricing Manager