



**STOLL  
KEENON  
OGDEN**  
PLLC

2000 PNC PLAZA  
500 WEST JEFFERSON STREET  
LOUISVILLE, KY 40202-2828  
MAIN: (502) 333-6000  
FAX: (502) 333-6099

**KENDRICK R. RIGGS**  
DIRECT DIAL: (502) 560-4222  
DIRECT FAX: (502) 627-8722  
kendrick.riggs@skofirm.com

July 31, 2014

**VIA ELECTRONIC MAIL and HAND DELIVERY**

Ms. Stephanie Bell  
Deputy Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602-0615

**RE: Comments of Louisville Gas and Electric Company and Kentucky Utilities  
Company to Proposed Changes to Commission Regulations**

Dear Ms. Bell:

Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, the “Companies”) hereby respectfully submit the following comments to the Kentucky Public Service Commission (the “Commission”) concerning proposed revisions to 807 KAR 5:001 and 807 KAR 5:011.

**Service of Papers and Commission Orders**

The Commission’s proposed revision to 807 KAR 5:001, Section 4(8), would permit only two methods of service of papers on a party: personal delivery to the party or its attorney and delivery by electronic mail. It would eliminate the option of service of papers on a party by mail unless the receiving party demonstrates good cause to be excused from receiving papers by electronic mail. If a party makes such showing and is excused, the proposed revision requires all other parties to serve papers on the excused party by mail only. The Commission states that the proposed revision “reflects changes in the method of the delivery of the commission’s orders by electronic transmission mandated by the recent revision of KRS 278.380.”<sup>1</sup>

The recent amendment of KRS 278.380 does not require the Commission to serve its orders electronically, but affords the Commission that option. The Companies applaud the Commission’s efforts to promote electronic service of its orders. Electronic service of Commission orders will reduce agency costs, speed the delivery of Commission orders and documents, and allow parties to Commission proceedings additional response time.

---

<sup>1</sup> Regulatory Impact Analysis and Tiering Statement at ¶ (2)(a)(b).

The recently-amended KRS 278.300, however, does not require the elimination of a party's option to serve documents by mail in non-electronic cases. A party should continue to have the option of selecting the method of service for its documents. In most instances, electronic mail will be the most convenient and cost-effective method. In some instances, however, it may not be cost-effective or practical. For example, the electronic version of a voluminous filing in a non-electronic proceeding may exceed the size limitations of most commercial mail servers. Moreover, where a party objects to service by electronic mail, the serving party should have the option to make service by personal delivery or mail. The proposed revision unnecessarily removes the option of personal delivery.

The Companies respectfully submit that the Commission withdraw its proposed revisions to Section 4(8), and instead insert a new subsection immediately following Section 4(8) that reads:

(9) Service of commission orders and commission-related documents. (a) In all formal proceedings, commission orders, commission staff requests for information, and any correspondence or other documents from the commission or commission staff that are placed into the record shall be served on each party or, if a party is represented by an attorney, its attorney by electronic transmission to its designated electronic mail address.

(b) If the commission finds that good cause exists to excuse a party from receiving service of documents by electronic transmission, the Executive Director shall serve a document on the party by mailing the document by United States mail or other recognized mail carrier to the party or its attorney at its designated mail address.

(c) Each party is responsible for possessing and maintaining a functional electronic mail address capable of receiving orders and commission-related documents. The commission is not responsible for ascertaining whether an electronic mail address is properly functioning and receiving electronic mail.

(d) For purposes of this subsection only, "party" includes those persons who have moved for intervention in a formal proceeding and whose motion for intervention is pending before the commission or has been denied.

The Companies further recommend that a new subsection be inserted in Section 1 of 807 KAR 5:001 immediately following Section 1(7) that reads:

(8) “Electronic transmission” means sending an electronic mail message that contains an electronic version of the paper or document or a hyperlink that enables the recipient to access, view, and download an electronic copy of the paper or document from a web site that is accessible to the public and on which the document or paper will be available for a period not less than 60 days following the transmission of the electronic mail message.

The Companies further recommend that Section 4(8) be retitled to “Service of Papers” and that Section 4(8)(b)3 be revised to read:

Unless the commission has determined that the party shall be served commission orders by mail, sending a copy by electronic transmission [~~means~~] to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served by electronic transmission [~~means~~] shall comply with Section 8(4) of this administrative regulation.

These proposed revisions will allow the Commission to fully implement electronic service of Commission orders while permitting parties to Commission to maintain their existing options for service of documents. They will place all parties on notice as to their responsibility to properly maintain their designated e-mail accounts. (In this regard, the Companies’ proposal is consistent with the notices that the Commission has posted on its website.) The proposed revisions also eliminate the need for a party to make separate requests to be excused from electronic delivery of documents by the Commission and from the other parties to the proceeding by automatically eliminating a party’s option to serve papers electronically on a party who has shown cause that it should be excused from electronic delivery of Commission orders.

### **Electronic Filing Rules**

The amendment of KRS 278.380 eliminates the need for a written statement from each party waiving its right to service of commission orders by mail and attesting that it or its agent possesses the facilities to receive electronic transmissions. While the Commission proposed revision eliminates from 807 KAR 5:001, Section 8, the requirement for a waiver, it retains the requirement for a statement that the party possesses the facilities to receive electronic transmissions. If such a statement is not necessary for electronic delivery of commission orders in non-electronic proceedings, it should also be unnecessary in electronic proceedings – proceedings in which the commission notifies all parties by electronic mail of each filing made with the Commission.

Accordingly, the Companies propose that the Commission revise Section 8(9) and (10) to read:

(9) Unless a party objects to the use of electronic filing procedures in its [the party's] motion for intervention, it shall be deemed to have consented to the use of electronic filing procedures [:

~~(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and~~

~~(b) File with the commission within seven (7) days of the date of an order of the commission granting the party's intervention a written statement that:~~

~~1. The party waives any right to service of commission orders by United States mail; and~~

~~2. The party, or the party's authorized agent, possesses the facilities to receive electronic transmissions].~~

(10) In cases in which the commission has ordered the use of electronic filing procedures on its own motion, unless a party files with the commission an objection to the use of those [electronic filing] procedures within seven (7) days of issuance of the order directing the use of those [electronic filing] procedures, the party shall be deemed to have consented to the use of electronic filing procedures [:

~~(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and~~

~~(b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that:~~

~~1. The party waives any right to service of commission orders by United States mail; and~~

~~2. The party, or the party's authorized agent, possesses the facilities to receive electronic transmissions].<sup>2</sup>~~

---

<sup>2</sup> For each proposal, the current version of the regulation, not the proposed version, is shown with the proposed edits.

For similar reasons, the Companies also propose that the “Notice of Election of Use of Electronic Filing Procedures” Form be revised to eliminate the line that reads “It or its authorized agents possess the facilities to receive electronic transmissions.” KRS 278.380 no longer requires this statement. If the requesting party supplies e-mail addresses as required, it is self-evident that it has such facilities. The Companies also proposed that the form require the person signing the form to provide his or her e-mail address. It currently does not.

The Companies request that the Commission consider revising Section 8(2) to permit a “Notice of Election of Use of Electronic Filing Procedures” Form to be submitted by electronic mail without the submission of a duplicate paper copy. The revised Section 8(2) would read:

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) Submit to the commission by electronic mail to psc.filings@ky.gov or by mail or in person [~~File with the eommission~~] its notice of election to use electronic filing procedures using the Notice of Election of Use of Electronic Filing Procedures form; and

(b) If it does not have an account for electronic filing with the commission, register for an account at <http://psc.ky.gov/Account/Register>.

Elimination of the need for a paper copy would reduce processing time, simplify the election process, and promote electronic filing. Moreover, if a paper copy of the completed form is required, the burden on the Commission to print a copy for placement in the newly-created case record is very small and is far outweighed by the benefits of an electronically filed proceeding.

For same reasons that the Companies have recommended that the proposed revision to 807 KAR 5:001, Section 4(8), be withdrawn, they recommend that the proposed revision to 807 KAR 5:001, Section 4(11) be withdrawn and no revisions be made to that subsection.

#### **Privacy Protections for Filings**

The Commission proposes to revise 807 KAR 5:001, Section 4(10), to bring the Commission’s rules into compliance with KRS 61.931-.934. While they do not alter the filing party’s current duty to redact any personal information in its filing, Section 4(10)(c) implies that all parties to a proceeding have the duty to review the filing party’s filing and report all instances of unredacted personal information. To avoid misinterpretation of the section, the Companies proposed that Section 4(10)(c) be revised to read:

(c) Before filing any paper, a filing party shall review the [~~The executive director shall not be required to review papers~~] paper for compliance with this section. Responsibility [~~The responsibility~~] to redact or encrypt a paper [~~document~~] shall rest with the filing party [~~that files the document~~].

To render Section 4(10)(a) easier to read and to address instances where the Commission has expressly directed a party to file personal information or a party is seeking confidential treatment of information filed under seal, the Companies propose that Section 4(10)(a) be revised to read:

(a) Unless the commission otherwise directs or a party submits an unredacted copy of a paper under seal pursuant to Section 13 of this administrative regulation, if [H] a party files a paper containing personal information [an individual's Social Security number, taxpayer identification number, birth date, or a financial account number], the party shall encrypt or redact the paper [document] so that the personal [following] information cannot be read [:

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

The Companies further proposed that a new subsection be inserted after Section 1(11) of 807 KAR 5:001 to define "personal information" and that this subsection read as follows:

(12) "Personal information" is defined by KRS 61.931(6).

The Companies further propose that the Commission revise the "Relates To" and "Statutory Authority" sections of the regulation to include KRS 61.931-.934. This revision would clearly establish that the privacy protection rules within the Commission's Rules of Procedure were promulgated in response to KRS 61.931-.934 and would ensure that no private right of action is created against a party or the Commission where a disclosure of personal information occurs as a result of a violation of these rules.<sup>3</sup>

### **Notice and Electronic Billing**

More than four percent of the Companies' customers currently receive bills through electronic mail. This number is expected to grow significantly in future years. Electronic billing provides many benefits including immediate delivery of customer bills, significant savings in the cost of billing, and easy storage and retrieval of older bills. Notices that accompany these bills are more likely to reach and be read by the customer than notices delivered through older means, such as notice by publication.

---

<sup>3</sup> See KRS 61.933(6).

Neither 807 KAR 5:001 nor 807 KAR 5:011 specifically address the issue of notices within electronic billings. In their current form, neither regulation expressly permits a utility to the use of electronic notices to customers who have consented to electronic billing. As a result, a utility that engages in electronic billing is required to mail written notice of a proposed rate adjustment to a customer who participates in an electronic billing program or to publish notice of a proposed adjustment in a newspaper of general circulation. The Companies respectfully submit that utilities that engage in electronic billing be permitted the option of providing notice of a proposed rate adjustment electronically with its electronic bills. Such option would likely reduce rate case expense and achieve greater customer awareness of any proposed rate adjustment.

To permit this option, the Companies proposed several revisions to 807 KAR 5:001 and 807 KAR 5:011. First, 807 KAR 5:001, Section 1, and 807 KAR 5:011, Section 1, should be amended to insert the following subsection:

“Customer bill” means a statement of account for utility services provided by a utility and any related notice that is delivered to the customer in paper form through United States mail or in an electronic form to an e-mail address that the customer has designated for electronic delivery.<sup>4</sup>

Second, 807 KAR 5:001, Section 17(2)(b)1 and 807 KAR 5:011, Section 8(2)(b)1 should be amended to read:

1. Including notice with customer bills mailed or electronically transmitted no later than the date the application is submitted to the commission;

Third, the following sub-subsection should be added to 807 KAR 5:001, Section 17(2), and 807 KAR 5:011, Section 8(2):

(d) If a customer has consented in writing to delivery of notices from a utility by electronic mail to a designated e-mail address, the notice shall be set forth in the message or be in the form of an attachment in portable document format or a hyperlink to the location on the utility’s web site where the notice is available for viewing for a period not less than 60 days following the transmission of the electronic mail message.<sup>5</sup>

---

<sup>4</sup> This new subsection would be inserted following 807 KAR 5:001, Section 1(4) and 807 KAR 5:011, Section 1(1).

<sup>5</sup> This new subsection would be inserted following 807 KAR 5:001, Section 17(2)(c) and 807 KAR 5:011, Section 8(2)(c).

### **Requests for Information**

Kentucky Civil Rule 26.01(2) encourages a party to an action who is propounding interrogatories, or requests for production or requests for admission to serve with its discovery request an electronic version of the request in a format that any commercially available word processing software can read and use. The Companies recommend that the Commission impose a similar requirement on any person or entity requesting information in a Commission proceeding. 807 KAR 5:001, Section 4(12), should be revised to include the following subsection:

(d) When a request for information is served on a party to a proceeding, an electronic copy of the request in rich text format should also be provided to the party by electronic mail or other means.

This revision would reduce the litigation expense, decrease the likelihood of errors when preparing responses to requests for information, and allow for a more efficient practice before the Commission.

The Companies further recommend that the Commission consider limiting the number of requests for information. Kentucky Civil Rule 33.01 places a limit on the number of interrogatories and requests for admission that can be made to other parties. Some regulatory commissions have placed limitations upon the number of discovery requests.<sup>6</sup> The Companies propose that the following be inserted after 807 KAR 5:001, Section 4(12)(c):

(d) The total number of requests for information, including subparts, that a party may serve upon another party in a proceeding shall not exceed one hundred (100) unless authorized by the commission. Any motion seeking authorization to serve more than one hundred (100) requests for information shall contain the additional requests and shall state the reasons why the additional requests are necessary. The commission shall grant the motion only upon a showing of good cause. If a party is served by another party with more than one hundred (100) requests without an order authorizing the higher number, the responding party need only respond to the first one hundred (100) requests.

The proposed limits would reduce litigation costs and increase the efficiency of discovery by requiring parties to carefully consider and draft their requests. They would likely reduce frivolous, extraneous, and duplicative requests. The proposed limitations, however, would not restrict Commission Staff's ability to request information and would not restrict the Commission from permitting parties to make additional requests where the Commission finds a greater number is necessary.

---

<sup>6</sup> See, e.g., Tenn. Comp. R. & Regs. 1220-1-2-.11 (2014).



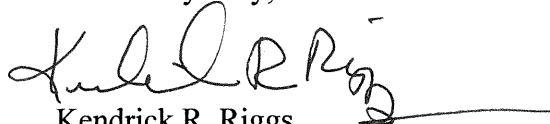
Ms. Stephanie Bell

July 31, 2014

Page 9

In closing, the Companies appreciate the Commission's efforts to maintain and improve the Commission's regulations and its consideration of stakeholder proposals regarding those regulations. As always, please feel free to contact me with any questions you may have.

Yours very truly,



Kendrick R. Riggs

KRR/ec