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**Johnny Ray Turner**  
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**Bob Jackson**  
Minority Whip



**LEGISLATIVE RESEARCH COMMISSION**

State Capitol      700 Capital Avenue      Frankfort KY 40601

502/564-8100

Capitol FAX 502-223-5094  
Annex FAX 502-564-6543  
[www.lrc.state.ky.us/home.htm](http://www.lrc.state.ky.us/home.htm)

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Minority Caucus Chairman  
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**Ken Upchurch**  
Minority Whip

MEMORANDUM

CASE 2004-00343  
**RECEIVED**

JUL 13 2004

**PUBLIC SERVICE  
COMMISSION**

TO: Jason Bentley, General Counsel  
Public Service Commission

FROM: Donna Kemper  
Regulations Compiler *DK*

RE: Acknowledgement of Proposed Administrative Regulation and Emergency Administrative  
Regulation - 807 KAR 5:120 & E

DATE: July 13, 2004

A copy of the administrative regulation and the emergency administrative regulation listed above are enclosed for your files. This administrative regulation and the emergency administrative regulation are tentatively scheduled for review by the Administrative Regulation Review Subcommittee at its **September 2004**, meeting. We will notify you of the date and time of this meeting when it has been scheduled.

Pursuant to KRS 13A.280, if a public hearing is held or you receive written comments on the ordinary administrative regulation, the Statement of Consideration for this ordinary administrative regulation is due by noon on **September 15, 2004**. Please reference KRS 13A.270 and 13A.280 for other requirements relating to public hearings and the Statement of Consideration.

The above-referenced emergency administrative regulation was filed with our office and became effective on **July 13, 2004**, and will expire **January 18, 2005**, 170 days after publication or when replaced by the ordinary administrative regulation, whichever occurs first.

If you have any questions, please do not hesitate to contact me at (502) 564-8100.

Enclosures

STATEMENT OF EMERGENCY

807 KAR 5:120E

FILED WITH LRC TIME: <u>4pm</u> JUL 13 2004 <i>Ernie Fletcher</i> REGULATIONS COMPILER
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- (1) Nature of the emergency: Chapter 75 (Senate Bill 246) of the last legislative session enacted an amendment to KRS 278.020 giving the Public Service Commission certificating authority over certain transmission lines, effective July 13, 2004. This emergency regulation is necessary to prevent harm to the public health, safety, and welfare that would result if a certificate procedure were not in place to handle applications for such a new certificate. Specifically, the procedure is needed to prevent harm to human health and the environment that would result from such a line being built without Commission authorization. This harm could include destruction of personal property, environmental and health consequences of unwarranted construction, and damage to air and water resources that could impact human health or the environment.
- (2) The reasons an ordinary administrative regulation is not sufficient. The statute is effective July 13, 2004. An ordinary regulation could not be effective by that date. Thus an emergency regulation is required to bridge the time between the effective date of the statute and the time needed to put a regular regulation in place.
- (3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

7.13.04  
Date

*Ernie Fletcher*  
Ernie Fletcher, Governor

7/7/04  
Date

*Mark David Goss*  
Mark David Goss, Chairman  
Public Service Commission

7/13/04  
Date

*LaJuana S. Wilcher*  
LaJuana S. Wilcher, Secretary  
Environmental and Public Protection Cabinet

1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 The Kentucky Public Service Commission

3 (New Emergency Administrative Regulation)

4 807 KAR 5:120E. Applications for Certificate of Public Convenience and Necessity for  
5 Certain Electric Transmission Lines

6 RELATES TO: KRS 278.020(2); KRS 278.020(8).

7 STATUTORY AUTHORITY: KRS 278.040(3).

8 NECESSITY, FUNCTION, and CONFORMITY: KRS 278.040(3) authorizes the  
9 Commission to promulgate reasonable administrative regulations to implement the  
10 provisions of KRS Chapter 278. KRS 278.020(2) provides that interested parties shall  
11 be notified and that a certificate of public convenience and necessity must be obtained  
12 prior to construction of an electric transmission line of one hundred thirty-eight (138)  
13 kilovolts or more and of more than 5,280 feet in length. This administrative regulation  
14 establishes procedures and minimum filing requirements for an application to construct  
15 an electric transmission line of one hundred thirty-eight (138) kilovolts or more and of  
16 more than 5,280 feet in length.

17 Section 1. Notice of Intent to File Application.

18 (1) At least thirty (30) days prior to filing an application to construct an electric  
19 transmission line of one hundred thirty-eight (138) kilovolts or more and of more than  
20 5,280 feet in length, an applicant shall file with the Commission a Notice of Intent to File  
21 Application.

1 (2) A Notice of Intent to File Application shall include:

2 (a) The name, address and telephone number of the person who intends to  
3 file the application;

4 (b) A brief description of the proposed construction that will be the subject of  
5 the application along with a map of suitable scale to show the route proposed and any  
6 alternative route that was considered; and

7 (c) The name of the county or counties in which the construction will be  
8 proposed.

9 Section 2. Application.

10 (1) To apply for a certificate of public convenience and necessity to construct  
11 an electric transmission line of 138 kilovolts or more and 5,280 feet or more, a utility  
12 shall file with the Commission the following:

13 (a) All documents and information required by:

14 1. 807 KAR 5:001, Section 8, except that the applicant shall file the original  
15 and six (6) copies of the application; and

16 2. 807 KAR 5:001, Section 9(2)(a) through (c) and (e) through (g);

17 (b) Three (3) maps of no less than 1" = 400' scale for the project proposed.  
18 The map detail shall include the affected property boundaries as indicated on the  
19 Property Valuation Administrator's maps, modified as required, and the location of all  
20 proposed structures, facilities, proposed rights of way and proposed easements.

21 (c) A verified statement that each property owner over whose property the  
22 transmission line is proposed to cross has been:

- 1           1.     Notified of the proposed construction by certified mail, return receipt  
2 requested;
- 3           2.     Given the Commission docket number under which the application will be  
4 processed and a map showing the proposed location;
- 5           3.     Given the address and telephone number of the Executive Director of the  
6 Commission;
- 7           4.     Informed of his or her rights to request a local public hearing and to move  
8 to intervene in the case;
- 9           5.     Given a description, including the proposed scope, of the project.
- 10          (d)    A copy of each notice provided to a property owner, pursuant to the  
11 preceding paragraph;
- 12          (e)    A statement that a notice of the intent to construct the proposed  
13 transmission line has been published in a newspaper of general circulation in the county  
14 or counties in which the construction is proposed, which notice included:
  - 15           1.     A map showing the proposed route;
  - 16           2.     A statement of the right to request a local public hearing; and
  - 17           3.     A statement of the right to move to intervene.
- 18          (f)    A copy of the newspaper notice described in the preceding paragraph;
- 19          (g)    A statement describing or summarizing discussions occurring during any  
20 public meeting with persons who own property over which the line is proposed to be  
21 constructed;

1 (h) A copy of each written assessment of the environmental, historical, and  
2 archeological impact of the proposed construction, if any, required by a governmental  
3 administrative agency with jurisdiction;

4 (i) A statement as to whether the project involves sufficient capital outlay to  
5 materially affect the existing financial condition of the utility involved.

6 Section 3. Local Public Hearing.

7 (1) A resident of a county in which a transmission line of one hundred thirty-  
8 eight (138) kilovolts or more and of more than 5,280 feet in length is proposed to be  
9 built may request that a local public hearing be held by sending a written request  
10 complying with subsections (2) and (3) of this section to the Executive Director, Public  
11 Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Ky. 40602.

12 (2) A request for a local public hearing shall contain:

13 (a) The docket number of the case to which the request refers;

14 (b) The name, address, and telephone number of the person sending the  
15 request; and

16 (c) A statement as to whether the person making the request wishes to  
17 participate in an evidentiary hearing or to make unsworn public comment.

18 (3) If a person requesting a local public hearing wishes to participate in an  
19 evidentiary hearing, the written request shall include a request, pursuant to 807 KAR  
20 5:001, Section 3(8), to intervene in the Commission proceedings on the application.

7/7/04

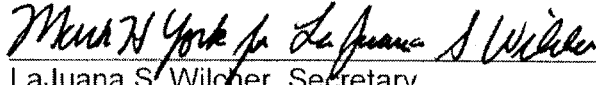
Date



Mark David Goss, Chairman  
Public Service Commission

7/13/04

Date



LaJuana S. Wilcher, Secretary  
Environmental and Public Protection Cabinet

## REGULATORY IMPACT ANALYSIS

Administrative Regulation #: 807 KAR 5:120

Contact Person: A.W. Turner, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes a procedure for applications for a certificate of convenience and necessity for construction of a transmission line under KRS 278.020. It also provides for public notice of such an application and a procedure for members of the affected public to participate in the certificate proceedings.

(b) The necessity of this administrative regulation: This proposed regulation will assist the Public Service Commission in enforcing the statutes, and is necessary to the Public Service Commission's authority to regulate utilities and enforce KRS Chapter 278.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.020 authorizes the Commission to grant certificates of convenience and necessity for construction of certain utility plant. The amendments of Chapter 75 (Senate Bill 246) of the latest legislative session extend this authority to certain significant transmission lines. This regulation establishes procedures for utilities to apply for such a certificate and provides for public participation in that process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedure for a public electric utility to apply for a certificate of convenience and necessity to construct a transmission line that, under the amendments to KRS 278.020, requires such a certificate. In addition, the regulation explains how the affected public may participate in the certificate case. Adoption of the regulation will therefore assist the Commission in administering this new set of certificate cases.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 21 rural electric utilities their customers, 5 investor-owned electric utilities their customers, and any persons owning property over which a utility proposes to locate such a transmission line.



(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact of implementing this administrative regulation is not extensive. It will establish necessary procedures for processing applications for transmission line certificates.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

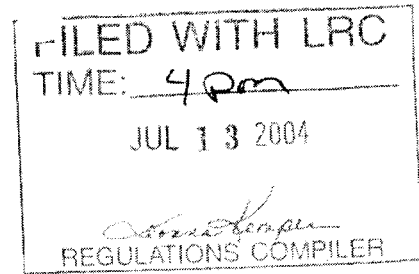
(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Yes, tiering is used in this proposed regulation. The regulation only requires an application for those facilities that are larger and have higher transmission capacities. Larger facilities create a greater potential for disrupting the environment and the use and enjoyment of property upon or near where the lines are proposed to be placed. In addition, larger facilities tend to generate more public involvement in the process.



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Date 7/7/04

Mark D. Goss  
Mark David Goss, Chairman  
Public Service Commission

Date 7/13/07

Mark N. York for Lajuana S. Wilcher  
Lajuana S. Wilcher, Secretary  
Environmental and Public Protection Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on August 30, 2004, at 10:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by August 24, 2004, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jason Bentley, General Counsel, Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

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