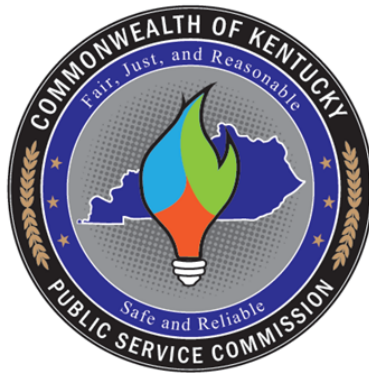




Kentucky Public Service Commission

Water Commissioner Training

2026



Andy Beshear
Governor

Rebecca W. Goodman
Secretary
Energy and Environment Cabinet



Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
psc.ky.gov

Angie Hatton
Chair

Mary Pat Regan
Commissioner

Andrew W. Wood
Commissioner

January 12, 2026

2026 TRAINING ATTENDEES

RE: Training Materials

Commission Staff have compiled select statutes and Commission regulations that will be discussed during Water Commissioner Training and have provided current copies in this packet. It is our hope that this will aid our discussion and provide you with a resource as you serve your utility.

Kentucky's legal code, the "Kentucky Revised Statutes," can be accessed free of charge at:
<https://apps.legislature.ky.gov/law/statutes>

Commission regulations can be accessed free of charge at:
<https://apps.legislature.ky.gov/law/kar/titles/807/005/>

These statutes and regulations are current as of this training, and may be used as a resource, but they are not an adequate substitute for competent legal representation in any given situation.

The Commission speaks only through its orders. Therefore, the opinions of Staff expressed throughout this training may not accurately reflect the views of the Commission in a matter before the Commission.

Sincerely,

Commission Staff



Water District Commissioners & Managers

74.010 Creation of a water district.

Subject to the provisions of KRS 74.012 a fiscal court may create a water district in accordance with the procedures of KRS 65.810.

Effective: July 13, 1984

History: Amended 1984 Ky. Acts ch. 64, sec. 10, effective July 13, 1984. -- Amended 1978 Ky. Acts ch. 384, sec. 179, effective June 17, 1978. -- Amended 1968 Ky. Acts ch. 200, sec. 1. -- Amended 1966 Ky. Acts ch. 70, sec. 2; and ch. 239, sec. 20. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-1.

74.020 Appointment of commissioners -- Number -- Terms -- Removal -- Vacancies -- Organization -- Bond -- Compensation -- Mandatory training -- Notice of vacancy.

- (1) A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. The term of each commissioner is four (4) years, except as provided in this section:
 - (a) If a district lies wholly within a single county, or operates as a single-county district, as provided in paragraph (c) of this subsection, the board of commissioners shall be composed of either three (3) or five (5) members as the county judge/executive shall determine. Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established, who shall be appointed by the county judge/executive with the approval of the fiscal court. Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the court;
 - (b) Except as provided in paragraph (c) of this subsection, if a district formed in a single county extends its area to include territory in one (1) or more adjacent counties, as provided by KRS 74.115, the board of commissioners shall be appointed by the appropriate county judges/executive, with the approval of the respective fiscal courts of the concerned counties as follows: in two (2) county districts, three (3) members from the original district and two (2) members from the extended portion of the district; for extensions into three (3) or more counties, the respective county judges/executive, with the approval of the respective fiscal courts, shall appoint, in addition to the existing membership of the commission, two (2) members from the original one-county district and two (2) members from the newly extended portion of the district. Orders establishing the extension shall provide for the staggering of initial terms in an equitable manner; and
 - (c) If a district acquires an existing water or gas distribution system serving an area which extends beyond the boundaries of the district into one (1) or more additional counties, or if a district extends its area to include territory in one (1) or more adjacent counties as provided by KRS 74.115, it may operate the distribution system so acquired, or extended, without adding additional board members, if the new area to be served shall be deemed to be a minor portion of the total area served by the district, and if the fiscal court of the county containing the minor portion of the total area shall have agreed to the acquisition or to the extension of the distribution system. If less than twenty-five percent (25%) of the total assets of the distribution system are located within any particular county included in the territorial boundaries of the district, it shall be conclusively presumed, with respect to that particular county, that the district comes within the terms of this subsection.
- (2) A commissioner may be removed from office as provided by KRS 65.007 or 74.025.
- (3) A commissioner who participates in any official action by the water district

board of commissioners which results in a direct financial benefit to him or her may be removed from office as provided by KRS 65.007 or 74.025.

- (4) Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.
- (5) The commission shall elect a chairman, vice chairman, secretary, treasurer, and any other officers and assistant officers as the commission may deem necessary, each of whom shall be members of the commission. Any two (2) or more offices may be held by the same person, except that the chairman may not hold any other office. Each commissioner shall execute a bond for the faithful performance of the duties of his or her position.
- (6) Each commissioner shall receive an annual salary of not more than thirty-six hundred dollars (\$3,600), which shall be paid out of the water district fund, except that beginning January 1, 1999, and subject to subsection (9) of this section, each commissioner who completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the Public Service Commission may receive an annual salary of not more than six thousand dollars (\$6,000) to be paid out of the water district fund. An educational year shall begin on January 1 and end on the following December 31. In the case of single-county districts, which shall be deemed to include districts described in subsection (1)(c) of this section, the salary shall be fixed by the county judges/executive with the approval of the fiscal court; in multicounty districts, it shall be fixed by the agreement between the county judges/executive with the approval of their fiscal courts. In fixing and approving the salary of the commissioners, the county judge/executive and the fiscal court shall take into consideration the financial condition of the district and its ability to meet its obligations as they mature.
- (7)
 - (a) Except as provided in subsection (9) of this section, in order to receive an increase in salary as specified in subsection (6) of this section, commissioners shall successfully complete six (6) instructional hours of water district management training annually. The training shall be approved and paid for by the water district of the county the commissioner represents. Those commissioners not required to complete the six (6) instructional hours shall be reimbursed for the cost of instruction if they choose to complete the water district training.
 - (b) The Public Service Commission shall be responsible for the regulation of all water district management training programs for commissioners of water districts, combined water, gas, or sewer districts, or water commissions.
 - (c) The Public Service Commission shall encourage and promote the offering of high quality water district management training programs that enhance a water district commissioner's understanding of his or her responsibilities

and duties. The commission shall, no later than January 1, 1999, establish standards and procedures to evaluate, accredit, and approve water district management training programs.

- (8) (a) At least once annually, the Public Service Commission shall provide or cause to be conducted a program of instruction, consisting of at least twelve (12) hours of instruction, that is intended to train newly appointed commissioners in the laws governing the management and operation of water districts and other subjects that the Public Service Commission deems appropriate. The commission may charge a reasonable registration fee to recover the cost of the programs and may accredit programs of instruction that are conducted by other persons or entities and that the commission deems equivalent to its program of instruction.
- (b) Within twelve (12) months of his or her initial appointment, each commissioner shall complete the program of instruction described in paragraph (a) of this subsection. Except as provided in subsection (9) of this section, any commissioner who fails to complete the program within twelve (12) months of his or her initial appointment shall forfeit his or her office and all right to act in discharge of the duties of the office. A commissioner required to attend a program under this subsection shall be reimbursed for the cost of instruction by his or her water district.
- (9) The Public Service Commission may grant a reasonable extension of time, not to exceed six (6) months, for completing the training requirements of subsections (6), (7), and (8) of this section for good cause shown.
- (10) (a) Within thirty (30) days of the occurrence of a vacancy on its board of commissioners resulting from the expiration of a term or the death, resignation, or removal of the incumbent, a water district shall notify in writing the Public Service Commission of the existence of the vacancy. The notice shall include the name of the commissioner who last held the position and the date on which the unexpired term will end.
- (b) Within thirty (30) days of the appointment of a commissioner and the appropriate fiscal court's approval of that appointment, a water district shall notify the Public Service Commission of the appointment. The notice shall include the appointed person's name and the date of the expiration of his or her term.
- (11) The Public Service Commission may promulgate administrative regulations in accordance with KRS Chapter 13A to implement the requirements of this section.

Effective: March 18, 2021

History: Amended 2021 Ky. Acts ch. 43, sec. 1, effective March 18, 2021. -- Amended 2010 Ky. Acts ch. 18, sec. 1, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 6, sec. 3, effective July 15, 2008. -- Amended 1998 Ky. Acts ch. 76, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 236, sec. 1, effective April 4, 1996. -- Amended 1994 Ky. Acts ch. 298, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 310, sec. 1, effective July 14, 1992; and ch. 388, sec. 3, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 307, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 330, sec. 9, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 18, sec. 4, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 384, sec. 181, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 257, sec. 1. -- Amended 1974 Ky. Acts ch. 309,

sec. 1. -- Amended 1970 Ky. Acts ch. 218, sec. 1. -- Amended 1966 Ky. Acts ch. 170, sec. 1; and ch. 255, sec. 88. -- Amended 1962 Ky. Acts ch. 218, sec. 1. -- Amended 1958 Ky. Acts ch. 174, sec. 1. -- Amended 1952 Ky. Acts ch. 12, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 928g-2, 938g-4.

Legislative Research Commission Note (6/5/2014). The Reviser of Statutes renumbered KRS 74.455 as KRS 74.025 on this date to provide a more appropriate location for that statute within KRS Chapter 74. References to KRS 74.455 in this statute were also changed to KRS 74.025 to conform.

74.070 Duties and powers of commission -- Corporate powers of water district exercised by or under authority of commission.

- (1) The commission shall be a body corporate for all purposes, and may make contracts for the water district with municipalities and other persons.
- (2) All corporate powers of the water district shall be exercised by, or under the authority of, its commission. The business and affairs of the water district shall be managed under the direction and oversight of its commission.
- (3) The commission may prosecute and defend suits, hire the chief executive officer and do all acts necessary to carry on the work of the water district.
- (4) The commission may adopt bylaws not inconsistent with the provisions of this chapter.
- (5) The commission shall comply with the provisions of KRS 65A.010 to 65A.090.

Effective: March 21, 2013

History: Amended 2013 Ky. Acts ch. 40, sec. 26, effective March 21, 2013. -- Amended 2008 Ky. Acts ch. 6, sec. 7, effective July 15, 2008. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 938g-4, 938g-5.

74.040 Chief executive officer -- Employees -- Expenses -- Salary.

The commission may employ a person to serve as the chief executive officer of the water district. This person shall not be one (1) of the water district's commissioners. The person may be designated the general manager, superintendent, or chief executive officer of the district or by any other similar title. The chief executive officer shall perform such additional duties as the commission may require of him or her and shall be subject to the orders of the commission. The chief executive officer shall employ all necessary labor and assistance in the performance of his or her duties, and he or she shall report to the commission all expenses incurred. The salary of the chief executive officer shall be fixed by the commission.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 6, sec. 5, effective July 15, 2008. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 938g-21.

278.015 Water district; combined water, gas, or sewer district; or water commission a public utility subject to Public Service Commission -- Exceptions.

Notwithstanding any of the provisions of KRS Chapter 74, any water district; combined water, gas, or sewer district; or water commission, except a joint commission created under the provisions of KRS 74.420 to 74.520, shall be a public utility and shall be subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility as defined in KRS 278.010, except:

- (1) As provided in KRS 278.023; or
- (2) When a wholesale supplier selling water or providing sewage treatment to a water district; combined water, gas, or sewer district; or water commission increases its rates, the water district or combined water, gas, or sewer district shall have the authority to increase its rates commensurate with the wholesale supplier without prior approval by the commission.

Within twenty (20) days after any such increase in rates, the district shall file its revised tariffs with the commission, together with a copy of the notice from its wholesale supplier showing the increase in the rate charged to the utility, and a statement of the volume of purchased water used or sewage treated to calculate the increase in rates. The commission shall approve the filing or establish revised rates by order no later than thirty (30) days after the above documents are filed with it. Prior to or at the time of the first billing of the new rates, the district shall give notice to its customers of the increase.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 122, sec. 10, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 276, sec. 1, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 12, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 495, sec. 2, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 3, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 3, effective April 1, 1979. -- Created 1964 Ky. Acts ch. 195, sec. 2.

Kentucky Open Meetings Requirements

61.800 Legislative statement of policy.

The General Assembly finds and declares that the basic policy of KRS 61.805 to 61.850 is that the formation of public policy is public business and shall not be conducted in secret and the exceptions provided for by KRS 61.810 or otherwise provided for by law shall be strictly construed.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 162, sec. 1, effective July 14, 1992.

61.810 Exceptions to open meetings.

- (1) All meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times, except for the following:
 - (a) Deliberations for decisions of the Kentucky Parole Board;
 - (b) Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency;
 - (c) Discussions of proposed or pending litigation against or on behalf of the public agency;
 - (d) Grand and petit jury sessions;
 - (e) Collective bargaining negotiations between public employers and their employees or their representatives;
 - (f) Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student without restricting that employee's, member's, or student's right to a public hearing if requested. This exception shall not be interpreted to permit discussion of general personnel matters in secret;
 - (g) Discussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business;
 - (h) State and local cabinet meetings and executive cabinet meetings;
 - (i) Committees of the General Assembly other than standing committees;
 - (j) Deliberations of judicial or quasi-judicial bodies regarding individual adjudications or appointments, at which neither the person involved, his representatives, nor any other individual not a member of the agency's governing body or staff is present, but not including any meetings of planning commissions, zoning commissions, or boards of adjustment;
 - (k) Meetings which federal or state law specifically require to be conducted in privacy;
 - (l) Meetings which the Constitution provides shall be held in secret;
 - (m) That portion of a meeting devoted to a discussion of a specific public record exempted from disclosure under KRS 61.878(1)(m). However, that portion of any public agency meeting shall not be closed to a member of the Kentucky General Assembly; and
 - (n) Meetings of any selection committee, evaluation committee, or other similar group established under KRS Chapter 45A or 56 or other state or local law, to select a successful bidder for award of a state or local contract.
- (2) Any series of less than quorum meetings, where the members attending one (1) or more of the meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the

requirements of subsection (1) of this section, shall be subject to the requirements of subsection (1) of this section. Nothing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues.

Effective: July 14, 2022

History: Amended 2022 Ky. Acts ch. 37, sec. 1, effective July 14, 2022. -- Amended 2018 Ky. Acts ch. 176, sec. 4, effective July 14, 2018. -- Amended 2005 Ky. Acts ch. 93, sec. 1, effective March 16, 2005. -- Amended 1992 Ky. Acts ch. 162, sec. 3, effective July 14, 1992. -- Created 1974 Ky. Acts ch. 377, sec. 2.

Legislative Research Commission Note (3/16/2005). The Office of the Kentucky Attorney General requested that amendments in 2005 Ky. Acts ch. 93, sec. 1, to the arrangement of the paragraphs of subsection (1) of this section be changed. The change was requested "in the interest of preventing confusion to the public and public agencies" and was made by the Statute Reviser under the authority of KRS 7.136.

61.815 Requirements for conducting closed sessions.

- (1) Except as provided in subsection (2) of this section, the following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:
 - (a) Notice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session;
 - (b) Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session;
 - (c) No final action may be taken at a closed session; and
 - (d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.
- (2) Public agencies and activities of public agencies identified in paragraphs (a), (c), (d), (e), (f), but only so far as (f) relates to students, (g), (h), (i), (j), (k), (l), and (m) of subsection (1) of KRS 61.810 shall be excluded from the requirements of subsection (1) of this section.

Effective: March 16, 2005

History: Amended 2005 Ky. Acts ch. 93, sec. 2, effective March 16, 2005. -- Amended 1992 Ky. Acts ch. 162, sec. 4, effective July 14, 1992. -- Created 1974 Ky. Acts ch. 377, sec. 3.

61.820 Schedule of regular meetings to be made available.

- (1) All meetings of all public agencies of this state, and any committees or subcommittees thereof, shall be held at specified times and places which are convenient to the public. In considering locations for public meetings, the agency shall evaluate space requirements, seating capacity, and acoustics.
- (2) All public agencies shall provide for a schedule of regular meetings by ordinance, order, resolution, bylaws, or by whatever other means may be required for the conduct of business of that public agency. The schedule of regular meetings shall be made available to the public.

Effective: June 25, 2013

History: Amended 2013 Ky. Acts ch. 124, sec. 10, effective June 25, 2013. -- Amended 1992 Ky. Acts ch. 162, sec. 5, effective July 14, 1992. -- Created 1974 Ky. Acts ch. 377, sec. 4.

61.823 Special meetings -- Emergency meetings.

- (1) Except as provided in subsection (5) of this section, special meetings shall be held in accordance with the provisions of subsections (2), (3), and (4) of this section.
- (2) The presiding officer or a majority of the members of the public agency may call a special meeting.
- (3) The public agency shall provide written notice of the special meeting. The notice shall consist of the date, time, and place of the special meeting and the agenda. Discussions and action at the meeting shall be limited to items listed on the agenda in the notice.
- (4)
 - (a) As soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to every member of the public agency as well as each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting. The public agency may periodically, but no more often than once in a calendar year, inform media organizations that they will have to submit a new written request or no longer receive written notice of special meetings until a new written request is filed.
 - (b) A public agency may satisfy the requirements of paragraph (a) of this subsection by transmitting the written notice by electronic mail to public agency members and media organizations that have filed a written request with the public agency indicating their preference to receive electronic mail notification in lieu of notice by personal delivery, facsimile machine, or mail. The written request shall include the electronic mail address or addresses of the agency member or media organization.
 - (c) As soon as possible, written notice shall also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building which houses the headquarters of the agency. The notice shall be calculated so that it shall be posted at least twenty-four (24) hours before the special meeting.
- (5) In the case of an emergency which prevents compliance with subsections (3) and (4) of this section, this subsection shall govern a public agency's conduct of a special meeting. The special meeting shall be called pursuant to subsection (2) of this section. The public agency shall make a reasonable effort, under emergency circumstances, to notify the members of the agency, media organizations which have filed a written request pursuant to subsection (4)(a) of this section, and the public of the emergency meeting. At the beginning of the emergency meeting, the person chairing the meeting shall briefly describe for the record the emergency circumstances preventing compliance with subsections (3) and (4) of this section. These comments shall appear in the minutes. Discussions and action at the emergency meeting shall be limited to the emergency for which the meeting is called.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 20, sec. 1, effective July 15, 2008. -- Created 1992 Ky. Acts ch. 162, sec. 6, effective July 14, 1992.

61.826 Video teleconferencing of meetings.

- (1) A public agency may conduct any meeting through video teleconference.
- (2) Notice of a video teleconference meeting shall:
 - (a) Comply with the requirements of KRS 61.820 or 61.823 as appropriate;
 - (b) Clearly state that the meeting will be a video teleconference;
 - (c) Provide specific information on how any member of the public or media organization may view the meeting electronically; and
 - (d) In any case where the public agency has elected to provide a physical location, or in any circumstance where two (2) or more members of the public agency are attending a video teleconference meeting from the same physical location, precisely identify a primary physical location of the video teleconference where all members can be seen and heard and the public may attend in accordance with KRS 61.840.
- (3) The same procedures with regard to participation, distribution of materials, and other matters shall apply in all video teleconference locations. Members of the public agency who participate in a video teleconference shall remain visible on camera at all times that business is being discussed.
- (4) Any interruption in the video or audio broadcast of a video teleconference at any location shall result in the suspension of the video teleconference until the broadcast is restored.
- (5) If a regular meeting is changed to a video conference, the meeting shall remain a regular meeting if the meeting occurs on the same date and time as originally scheduled and the public agency follows the provisions of KRS 61.823(4) to provide a notice that meets the requirements of subsection (2)(b) to (d) of this section.

Effective: July 14, 2022

History: Amended 2022 Ky. Acts ch. 37, sec. 2, effective July 14, 2022. -- Amended 2018 Ky. Acts ch. 200, sec. 2, effective April 26, 2018. -- Created 1994 Ky. Acts ch. 245, sec. 2, effective July 15, 1994.

61.835 Minutes to be recorded -- Open to public.

The minutes of action taken at every meeting of any such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded and such records shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body.

History: Created 1974 Ky. Acts ch. 377, sec. 7.

61.840 Conditions for attendance.

No condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency. No person may be required to identify himself in order to attend any such meeting. All agencies shall provide meeting room conditions, including adequate space, seating, and acoustics, which insofar as is feasible allow effective public observation of the public meetings. All agencies shall permit news media coverage, including but not limited to recording and broadcasting.

Effective: June 25, 2013

History: Amended 2013 Ky. Acts ch. 124, sec. 11, effective June 25, 2013. -- Created 1974 Ky. Acts ch. 377, sec. 8.

Construction Approval

278.020 Certificate of convenience and necessity required for construction provision of utility service or of utility -- Exceptions -- Approval required for acquisition or transfer of ownership -- Public hearing on proposed transmission line -- Limitations upon approval of application to transfer control of utility or to abandon or cease provision of services -- Hearing -- Severability of provisions.

- (1) (a) No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except:
1. Retail electric suppliers for service connections to electric-consuming facilities located within its certified territory;
 2. Ordinary extensions of existing systems in the usual course of business; or
 3. A water district created under KRS Chapter 74 or a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project if the water district or water association is a Class A or B utility as defined in the uniform system of accounts established by the commission according to KRS 278.220 and:
 - a. The water line extension or improvement project will not cost more than five hundred thousand dollars (\$500,000); or
 - b. The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring commission approval as required by KRS 278.300.
- In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers;
- until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.
- (b) Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement.
- (c) The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth.
- (d) The commission, when considering an application for a certificate to construct an electric transmission line, may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric

transmission facilities in the Commonwealth.

- (e) Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.
- (2) For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity. However, ordinary extensions of existing systems in the usual course of business not requiring such a certificate shall include:
 - (a) The replacement or upgrading of any existing electric transmission line; or
 - (b) The relocation of any existing electric transmission line to accommodate construction or expansion of a roadway or other transportation infrastructure; or
 - (c) An electric transmission line that is constructed solely to serve a single customer and that will pass over no property other than that owned by the customer to be served.
- (3) Prior to granting a certificate of public convenience and necessity to construct facilities to provide the services set forth in KRS 278.010(3)(f), the commission shall require the applicant to provide a surety bond, or a reasonable guaranty that the applicant shall operate the facilities in a reasonable and reliable manner for a period of at least five (5) years. The surety bond or guaranty shall be in an amount sufficient to ensure the full and faithful performance by the applicant or its successors of the obligations and requirements of this chapter and of all applicable federal and state environmental requirements. However, no surety bond or guaranty shall be required for an applicant that is a water district or water association or for an applicant that the commission finds has sufficient assets to ensure the continuity of sewage service.
- (4) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.
- (5) No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.
- (6) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of

stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

- (7) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.
- (8) Subsection (7) of this section shall not apply to any acquisition of control of any:
 - (a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection (7) of this section;
 - (b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or
 - (c) Utility pursuant to the terms of any indebtedness of the utility, provided the

issuance of indebtedness was approved by the commission.

- (9) In a proceeding on an application filed pursuant to this section, any interested person, including a person over whose property the proposed transmission line will cross, may request intervention, and the commission shall, if requested, conduct a public hearing in the county in which the transmission line is proposed to be constructed, or, if the transmission line is proposed to be constructed in more than one county, in one of those counties. The commission shall issue its decision no later than ninety (90) days after the application is filed, unless the commission extends this period, for good cause, to one hundred twenty (120) days. The commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its discretion, it deems it necessary to hire a competent, qualified and independent firm to assist it in reaching its decision. The issuance by the commission of a certificate that public convenience and necessity require the construction of an electric transmission line shall be deemed to be a determination by the commission that, as of the date of issuance, the construction of the line is a prudent investment.
- (10) The commission shall not approve any application under subsection (6) or (7) of this section for the transfer of control of a utility described in KRS 278.010(3)(f) unless the commission finds, in addition to findings required by those subsections, that the person acquiring the utility has provided evidence of financial integrity to ensure the continuity of sewage service in the event that the acquirer cannot continue to provide service.
- (11) The commission shall not accept for filing an application requesting authority to abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease providing services unless the applicant has provided written notice of the filing to the following:
 - (a) Kentucky Division of Water;
 - (b) Office of the Attorney General; and
 - (c) The county judge/executive, mayor, health department, planning and zoning commission, and public sewage service provider of each county and each city in which the utility provides utility service.
- (12) The commission may grant any application requesting authority to abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease providing services upon terms and conditions as the commission deems necessary or appropriate, but not before holding a hearing on the application and no earlier than ninety (90) days from the date of the commission's acceptance of the application for filing, unless the commission finds it necessary for good cause to act upon the application earlier.
- (13) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 66, sec. 1, effective June 27, 2019. -- Amended 2018 Ky. Acts ch. 171, sec. 9, effective April 14, 2018; and ch. 207, sec. 9, effective

April 27, 2018. -- Amended 2016 Ky. Acts ch. 50, sec. 1, effective April 8, 2016. -- Amended 2006 Ky. Acts ch. 137, sec. 1, effective July 12, 2006. -- Amended 2004 Ky. Acts ch. 75, sec. 1, effective July 13, 2004. -- Amended 2001 Ky. Acts ch. 35, sec. 1, effective June 21, 2001. -- Amended 1998 Ky. Acts ch. 388, sec. 1, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 144, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 102, sec. 2, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 12, sec. 3, effective July 15, 1988; ch. 22, sec. 5, effective July 15, 1988; ch. 335, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 368, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 5, effective July 15, 1982; ch. 130, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 6, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 388, sec. 3. -- Amended 1972 Ky. Acts ch. 83, sec. 5. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-25.

Federally Funded Construction

278.023 Approval of federally-funded construction projects -- Commission review of agreement and supporting documents -- Surcharge.

- (1) The provisions of this section shall apply to any construction project undertaken by a water association, commission, district, or combined water, gas or sewer district formed under KRS Chapter 74 or 273, which is financed in whole or in part under the terms of an agreement between the water utility and the United States Department of Agriculture or the United States Department of Housing and Urban Development. Because federal financing of such projects entails prior review and oversight by the federal agency and obligates the utility to certain actions, and because conflicting requirements by the federal agency and the Public Service Commission may place the water utility in an untenable position and delay or jeopardize such projects, it is declared to be the policy of the Commonwealth that such agreements shall be accepted by the Public Service Commission, and that the commission shall not prohibit a water utility from fulfilling its obligations under such an agreement.
- (2) No agreement between a water utility and federal agency under this section shall take effect until thirty (30) days after such agreement, together with necessary applications and documentation, is filed with the commission, unless the commission acts within a lesser time. The commission in its administrative regulations shall list the specific documents required to be filed under this subsection.
- (3) The commission shall review the project and the agreement, may recommend changes to the utility and the federal agency, but shall not modify or reject any portion of the agreement on its own authority. The commission shall issue a certificate of necessity and convenience and such other orders as may be required to implement the terms of the agreement no later than thirty (30) days after filing.
- (4) The commission shall not prohibit the inclusion of any cost or the use of any accounting procedure in reviewing or setting the rates of the utility if such cost or procedure is required as a condition for federal financing of a construction project under an approved agreement between the water utility and federal agency.
- (5) If the federal agency approves a surcharge to the water bills of customers who receive service through an extension of water facilities under this section, which is in lieu of an assessment against the customer for the cost of the extension, then the Public Service Commission shall allow collection of the surcharge to continue for the period of years for which the surcharge was established.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 158, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 388, sec. 2, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 12, sec. 4, effective July 15, 1988.

Debt/Financing Approval

278.300 Issuance or assumption of securities by utilities.

- (1) No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.
- (2) Application for authority to issue or assume securities or evidences of indebtedness shall be made in such form as the commission prescribes. Every such application shall be made under oath, and shall be signed and filed on behalf of the utility by its president, or by a vice president, auditor, comptroller, or other executive officer having knowledge of the matters set forth and duly designated by the utility. Every such application shall be placed at the head of the docket of the commission and disposed of promptly within sixty (60) days after it is filed with the commission, unless it is necessary for good cause to continue the application for longer time than sixty (60) days, in which case the order making the continuance shall state fully the facts that make it necessary.
- (3) The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.
- (4) The commission may grant or deny the application in whole or in part, or may grant it with such modifications and upon such terms and conditions as the commission deems necessary or appropriate. The order of the commission shall specify that the securities or evidences of indebtedness, or the proceeds thereof, shall be used only for the lawful purposes specified in the application, and both the application of the utility and the order of the commission shall state in general terms the purpose of the issuance or assumption.
- (5) A copy of any order made and entered by the commission under this section, duly certified by the executive director of the commission, shall be sufficient evidence for all purposes of full and complete compliance by the utility with all procedural and other matters required precedent to the entry of the order.
- (6) Securities and evidences of indebtedness issued and obligations and liabilities assumed by a utility, for which, under the provisions of this section, the authorization of the commission is required, shall comply with the terms and conditions of the order of authorization entered prior to the issue or assumption, and where the order has been fully complied with the validity of the issue or assumption shall not be affected by a failure to comply with any provision of this section or rule of the commission relating to procedure or other matters preceding the entry of the order of authorization or order supplemental thereto.
- (7) The commission may require periodical or special reports from the utility issuing any security or evidence of indebtedness. The report shall show, in such detail as the commission requires, the disposition made of such securities or evidences of

indebtedness, and the application of the proceeds thereof.

- (8) This section does not apply to notes issued by a utility, for proper purposes and not in violation of law, that are payable at periods of not more than two (2) years from the date thereof, or to like notes, payable at a period of not more than two (2) years from date thereof, that are issued to pay or refund in whole or in part any such notes, or to renewals of such notes from time to time, not exceeding in the aggregate six (6) years from the date of the issue of the original notes so renewed or refunded.
- (9) Nothing in this section implies any guarantee of securities or evidences of indebtedness by the state, or any obligation on the part of the state with respect thereto, and nothing in this section limits the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity.
- (10) This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof, but the commission may appear as a party to any proceeding filed or pending before any federal agency if the issuance of the securities or evidences of indebtedness will materially affect any utility over which the commission has jurisdiction.
- (11) This section also does not apply to the issuance of securities or evidence of indebtedness by a utility principally engaged in transportation of gas by pipeline in interstate commerce and subject to the supervision, control or jurisdiction of the federal government or any agency, board or commission thereof.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 166, sec. 3, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 34, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 37, effective April 1, 1979. -- Amended 1972 Ky. Acts ch. 9, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-24.

General Regulations

807 KAR 5:006. General rules.

RELATES TO: KRS 65.810, 74, 96.934, 220.510, 278, 49 C.F.R. Part 192, 49 U.S.C. 60105

STATUTORY AUTHORITY: KRS 278.230, 278.280(2), 49 C.F.R. 192

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.230(3) requires every utility to file with the commission reports, schedules, and other information that the commission requires. KRS 278.280(2) requires the commission to promulgate an administrative regulation for the performance of a service or the furnishing of a commodity by a utility. This administrative regulation establishes requirements that apply to electric, gas, water, sewage, and telephone utilities.

Section 1. Definitions.

- (1) "Built-up community" means urban areas and those areas immediately adjacent.
- (2) "Commission" is defined by KRS 278.010(15).
- (3) "Corporation" is defined by KRS 278.010(1).
- (4) "Customer" means a person, firm, corporation, or body politic applying for or receiving service from a utility.
- (5) "Gross Annual Operating Revenue Reports" means reports that KRS 278.140 requires each utility to file with the commission.
- (6) "Nonrecurring charge" means a charge or fee assessed to a customer to recover the specific cost of an activity, which:
 - (a) Is due to a specific request for a certain type of service activity for which, once the activity is completed, additional charges are not incurred; and
 - (b) Is limited to only recover the specific cost of the specific service.
- (7) "Person" is defined by KRS 278.010(2).
- (8) "Tariff" means a utility's schedule of all its rates, charges, tolls, maps, terms, and conditions of service over which the commission has jurisdiction.
- (9) "Utility" is defined by KRS 278.010(3).
- (10) "Water association" means a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of a public water supply.
- (11) "Water District" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

Section 2. General Provisions. Reference to standards or codes in 807 KAR Chapter 5 shall not prohibit a utility from continuing or initiating experimental work and installations to improve, decrease the cost of, or increase the safety of its service.

Section 3. Utility Contact Information.

- (1) A utility shall notify the commission in writing of:
 - (a) The address of its main corporate and Kentucky offices, including street address and post office box, city, state, and zip code;
 - (b) The name, telephone number, facsimile number, and mailing address of the person who serves as its primary liaison with the commission regarding its operations; and
 - (c) Its electronic mail address.
- (2) The electronic mail address required in subsection (1) of this section shall be to an electronic mail account that the utility accesses at least once weekly and that is capable of receiving electronic mail from external sources and with attachments up to five (5) megabytes in size. Unless a utility otherwise advises the commission in writing, all electronic mail transmissions from the commission to the utility shall be sent to this address.
- (3) A utility shall notify the commission in writing of a change in the information required in subsection (1) of this section within ten (10) days of the date of the change.

Section 4. Reports.

- (1) Gross annual operating revenue reports.
 - (a) Each utility shall file with the commission its gross operating revenue report on or before March 31 of each year.
 - (b) An extension request shall not be permitted for a gross annual operating revenue report.
 - (c) A utility may file an amendment to its report. An amendment shall be filed with the commission on or before May 24 of the same year.
 - (d) The commission shall:
 1. Not certify to the Department of Revenue the amounts of intrastate business established in an amendment filed with the commission after May 24 of that year; and
 2. Report those amounts to the Department of Revenue for informational purposes.
- (2) Financial and statistical reports.
 - (a) Every utility shall file annually using the commission's electronic filing system a financial and statistical report on or before March 31 of each year.
 - (b) This report shall be based upon utility type and the accounts established in conformity with the uniform system of accounts prescribed for that utility type.
 - (c) If documents are required to supplement or complete the report and cannot be submitted through the commission's electronic filing system, the utility shall file these documents in paper form with the commission no later than March 31.
 - (d) The commission shall make the reporting forms available on the commission's Web site at <http://psc.ky.gov/>.
 - (e) For good cause shown, the executive director of the commission shall, upon application in writing, allow an appropriate extension of time for the filing.
- (3) Financial statement audit reports. A utility required to file a report in accordance with subsection (2) of this section shall file with the commission on or before September 30 each year, a copy of the audit report of the Kentucky regulated entity, from the audit performed the previous year, or a statement that no audit was performed of the Kentucky regulated entity the previous year. For good cause shown, the executive director of the commission shall, upon application in writing, allow an appropriate extension of time for the filing.
- (4) Report of meters, customers, and refunds. Each gas, electric, or water utility shall file quarterly either a Quarterly Meter Report-Electric, Quarterly Meter Report, or a Quarterly Meter Report-Electric-Gas-Water, of meter tests, number of customers, and amount of refunds.
- (5) Report of terminations for nonpayment of bills. Each water, electric, or gas utility shall file either the Water Utility Non-Payment Disconnection/Reconnection Report, Electric Utility Non-Payment Disconnection/Reconnection Report, or Gas Utility Non-Payment Disconnection/Reconnection Report, annually to report the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.
- (6) Record and report retention. All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified.
- (7) Transmittal letter. Each report shall be accompanied by a transmittal letter describing the report being furnished.
- (8) Amending reports. Upon discovering a material error in a report filed with the commission, a utility shall file an amended report to correct the error.

Section 5. Service Information.

- (1)

- (a) A utility shall, on request, give its customers or prospective customers information that enables the customers to secure safe, efficient, and continuous service.
- (b) A utility shall inform its customers of a change made or proposed in the character of its service that might affect the efficiency, safety, or continuity of operation.
- (2) Prior to making a substantial change in the character of the service furnished that would affect the efficiency, adjustment, speed, or operation of the equipment or appliances of a customer, a utility shall apply for the commission's approval. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.
- (3) The utility shall inform each applicant for service of each type, class, and character of service available at each location.

Section 6. Special Rules or Requirements.

- (1) A utility shall not establish a special rule or requirement without first obtaining the approval of the commission.
- (2) Unless specifically authorized by this administrative regulation, a utility shall not deny or refuse service to a customer who has complied with all conditions of service established in the utility's tariff on file with the commission
- (3)
 - (a) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility.
 - (b) A utility shall not:
 - 1. Require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service; or
 - 2. Refuse to provide service to a prospective or existing customer on the basis of that customer's refusal to grant an easement for facilities that do not serve the customer.
 - (c) The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with 807 KAR 5:041, 5:061, or 5:066.

Section 7. Billings, Meter Readings, and Information.

- (1) Information on bills.
 - (a) Each bill for utility service issued periodically by a utility shall clearly show:
 - 1. The date the bill was issued;
 - 2. Class of service;
 - 3. Present and last preceding meter readings;
 - 4. Date of the present reading;
 - 5. Number of units consumed;
 - 6. Meter constant, if applicable;
 - 7. Net amount for service rendered;
 - 8. All taxes;
 - 9. Adjustments, if applicable;
 - 10. The gross amount of the bill;
 - 11. The date after which a penalty may apply to the gross amount; and
 - 12. If the bill is estimated or calculated.
 - (b) The rate schedule under which the bill is computed shall be posted on the utility's Web site, if it maintains a Web site, and shall also be furnished under one (1) of the following methods, by:
 - 1. Printing it on the bill;
 - 2. Publishing it in a newspaper of general circulation once each year;
 - 3. Mailing it to each customer once each year; or
 - 4. Providing a place on each bill for a customer to indicate the customer's desire for a copy of the applicable rates. The utility shall mail the customer a copy by return

first class mail.

(2) Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. The rate schedule shall clearly establish the basis upon which consumption is estimated.

(3) Bill format. Each utility shall include the billing form; including an e-bill form, if applicable; to be used by it, or its contents, in its tariffed rules.

(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.

(5) Frequency of meter reading.

(a) Except as provided in paragraph (b) of this subsection, each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly;

(b) Each customer-read meter shall be read manually, at least once during each calendar year.

(c) Records shall be kept by the utility to insure that the information required by this subsection is available to the commission and any customer requesting this information.

(d) If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.

Section 8. Deposits.

(1) Determination of deposits.

(a) A utility may require from a customer a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection pursuant to Section 16 of this administrative regulation.

(b) A utility shall not require a deposit based solely on the customer being a tenant or renter.

(c) The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class.

(d) The amount of a cash deposit shall be determined by one (1) of the methods established in this paragraph.

1. Calculated deposits.

a. If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period.

b. If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system.

c. Deposit amounts shall not exceed two-twelfths (2/12) of the customer's actual or estimated annual bill if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

2. Equal deposits.

a. A utility may establish an equal deposit amount for each class based on the average bill of customers in that class.

b. Deposit amounts shall not exceed two-twelfths (2/12) of the average bill of customers in the class if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

3. Recalculation of deposits.

a. If a utility retains either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit shall be recalculated every eighteen (18) months based on actual usage of the customer.

b. The notice of deposit recalculation shall be included:

- (i) On the customer's application for service;
 - (ii) On the receipt of deposit; or
 - (iii) Annually with or on customer bills.
 - c. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, the utility shall refund any over-collection and may collect any underpayment.
 - d. A refund shall be made either by check, electronic funds transfer, or by credit to the customer's account, except that a utility shall not be required to refund an excess deposit if the customer's account is delinquent upon recalculation of the deposit.
- (2) Waiver of deposits. Deposits may be waived in accordance with criteria established in its tariff.
- (3) Additional deposit requirement.
- (a) If a deposit has been waived as established in subsection (2) of this section or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility's tariff, a utility may require a deposit.
 - (b) If substantial change in the customer's usage has occurred, the utility may require an additional deposit.
 - (c) An additional or subsequent deposit shall not be required of a residential customer whose payment record is satisfactory, unless the customer's classification of service changes, except as established in subsection (1)(d)3 of this section.
- (4) Receipt of deposit.
- (a) A utility shall issue to every customer from whom a deposit is collected a receipt of deposit.
 - (b) The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit.
 - (c) If the notice of recalculation established in subsection (1)(d)3 of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification.
 - (d) If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.
- (5) Deposits as a condition of service. Except as established in Section 16 of this administrative regulation, a utility may refuse or discontinue service to a customer pursuant to Section 15 of this administrative regulation if payment of requested deposits is not made.
- (6) Interest on deposits.
- (a) Interest shall accrue on all deposits at the rate prescribed by KRS 278.460, beginning on the date of deposit.
 - (b) Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis.
 - (c) If interest is paid or credited to the customer's bill prior to twelve (12) months from the date of deposit, or the last interest payment date, the payment or credit shall be on a prorated basis.
 - (d) Upon termination of service, the deposit; any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.
- (7) Interest on deposits for water districts and associations.
- (a) A water district or association that maintains a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers

on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for the customer deposit account.

(b) A water district or association that does not maintain a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers on the deposits held at a rate that is the weighted average rate of all of its interest bearing accounts as of December 31 of the previous year.

(c) If the water district or association does not have funds in an interest-bearing account, the water district or association shall pay interest to its customers on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for a basic savings account at the financial institution at which the water district or association maintains its operation and maintenance account.

(8) Tariff requirements. A utility that chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:

(a) The method by which deposit amounts will be determined for each customer class;

(b) Standard criteria for determining if a deposit will be required or waived;

(c) The deposit amount for each customer class if the method in subsection (1)(d)(2) of this section is used;

(d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable; and

(e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.

Section 9. Nonrecurring Charges.

(1) A utility may make special nonrecurring charges to recover customer-specific costs incurred that would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. A utility desiring to establish or change a special nonrecurring charge shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

(2) A nonrecurring charge shall be included in a utility's tariff and applied uniformly throughout the area served by the utility. A charge shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3) A nonrecurring charge shall include the charges listed in this subsection and may include other customer specific costs in accordance with this section and 807 KAR 5:011, Section 10.

(a) Turn-on charge.

1. A turn-on charge may be assessed for a new service turn on, seasonal turn on, or temporary service.

2. A turn-on charge shall not be made for initial installation of service if a tap fee is applicable.

(b) Reconnect charge.

1. A reconnect charge may be assessed to reconnect a service that has been terminated for nonpayment of bills or violation of the utility's tariffed rules or 807 KAR Chapter 5.

2. A customer who qualifies for service reconnection pursuant to Section 16 of this administrative regulation shall be exempt from reconnect charges.

(c) Termination or field collection charge.

1. A charge may be assessed if a utility representative makes a trip to the premises of a customer for the purpose of terminating service.

2. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the utility representative agrees to delay termination

based on the customer's payment or agreement to pay the delinquent bill by a specific date.

3. The utility shall not make a field collection charge more than once in a billing period.

(d) Special meter reading charge. This charge may be assessed if:

1. A customer requests that a meter be reread, and the second reading shows the original reading was correct. A charge shall not be assessed if the original reading was incorrect; or

2. A customer who reads his or her own meter fails to read the meter for three (3) consecutive months and it is necessary for a utility representative to make a trip to read the meter.

(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.

(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 19 of this administrative regulation and the tests show the as-found meter accuracy is within the limits established by 807 KAR 5:022, Section 8(3)(a)1. and 8(3)(b)1.; 5:041, Section 17(1); or 5:066, Section 15(2)(a).

(g) Returned payment charge. A returned payment charge may be assessed if payment of a utility bill is not honored by the customer's financial institution.

(h) Late payment charge. A late payment charge may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill.

1. The late payment charge may be assessed only once on a bill for rendered services.

2. A payment received shall first be applied to the bill for service rendered.

3. Additional late payment charges shall not be assessed on unpaid late payment charges.

Section 10. Customer Complaints to the Utility.

(1) Upon complaint to a utility by a customer at the utility's office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the customer of the utility's findings.

(2) The utility shall keep a record of all written complaints concerning the utility's service. This record shall include:

(a) The customer's name and address;

(b) The date and nature of the complaint; and

(c) The disposition of the complaint.

(3) Records shall be maintained for two (2) years from the date of resolution of the complaint.

(4) If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the customer of his or her right to file a complaint with the commission and shall provide the customer with the mailing address, Web site address, and telephone number of the commission.

(5) If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the customer of his or her right to file a complaint with the commission and the mailing address, Web site address, and telephone number of the commission.

Section 11. Bill Adjustment for Gas, Electric, or Water Utilities.

(1) If, upon periodic test, request test, or complaint test, a meter in service is found to be in error in excess of the limits established by 807 KAR 5:022, Section 8(3)(a)2.; 5:041, Section 17(1); or 5:066, Section 15(4), additional tests shall be made in accordance with those same administrative regulations applicable for the meter type involved to determine the average meter error.

(2)

(a) If test results on a customer's meter show an average meter error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for another reason, except if a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall:

1. Immediately determine the period during which the error has existed;
2. Recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer; and
3. Readjust the account based upon the period during which the error is known to have existed.

(b)

1. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using the data as elapsed time since the last meter test, if applicable, and historical usage data for the customer.
2. If that data is not available, the average usage of a similar class of customers shall be used for comparison purposes in calculating the time period.

(c) If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue based on this section.

(d) In an instance of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after the investigation is complete.

(e) A utility shall not require customer repayment of an underbilling to be made over a period shorter than a period coextensive with the underbilling.

(3) Monitoring usage.

(a) A utility shall monitor a customer's usage at least quarterly according to procedures that shall be included in its tariff.

(b) The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can determine the reasons for the unusual deviation.

(c) If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine if the meter shows an average meter error greater than two (2) percent fast or slow.

(4) Usage investigation.

(a) If a utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer in writing:

1. Within ten (10) days of removing the meter from service, that a usage investigation is being conducted and the reasons for the investigation; and
2. Within ten (10) days upon completion of the investigation of the findings of the investigation.

(b) If knowledge of a serious situation requires more expeditious notice, the utility shall notify the customer by the most expedient means available.

(c) If the meter shows an average meter error greater than two (2) percent fast or slow, the utility shall maintain the meter in question at a secure location under the utility's control, for a period of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the utility or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

(5) Customer notification. If a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form: On _____, (date)____, the meter bearing identification No. _____ installed in your building located at _____ (Street and Number) in _____ (city) was tested at

_____ (on premises or elsewhere) and found to register _____ (percent fast or slow). The meter was tested on _____ (Periodic, Request, Complaint) test. Based upon these test results the utility will _____ (charge or credit) your account in the sum of \$ _____, which has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you shall notify this office in writing within seven (7) days of the date of this notice.

(6) A customer account shall be considered to be current while a dispute is pending pursuant to this section, if the customer:

- (a) Continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads; and
- (b) Stays current on subsequent bills.

Section 12. Status of Customer Accounts During Billing Dispute. With respect to a billing dispute to which Section 11 of this administrative regulation does not apply, a customer account shall be considered to be current while the dispute is pending if the customer continues to make undisputed payments and stays current on subsequent bills.

Section 13. Customer's Request for Termination of Service.

(1)

- (a) A customer who requests that service be terminated or changed from one (1) address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, if the notice does not violate contractual obligations or tariff provisions.
 - (b) The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides access to the meter during the notice period in accordance with section 20 of this administrative regulation.
 - (c) If the customer notifies the utility of his request for termination by telephone, the burden of proof shall be on the customer to prove that service termination was requested if a dispute arises.
- (2) Upon request that service be reconnected at a premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee established in its filed tariff.
- (3) A utility desiring to establish a termination or reconnection charge pursuant to subsection (2) of this section shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

Section 14. Utility Customer Relations.

(1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers and to respond to inquiries from the commission regarding customer complaints.

(a) Available telephone numbers. Each utility shall:

- 1. Maintain a telephone;
- 2. Publish the telephone number in all service areas; and
- 3. Permit all customers to contact the utility's designated representative without charge.

(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes, and negotiate partial payment plans at the utility's office. The designated representative shall be knowledgeable of this administrative regulation; 807 KAR 5:001, Section 20; KRS 278.160(2); and KRS 278.225 regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.

- 1. Each water, sewer, electric, or gas utility having annual operating revenues of \$250,000 or more shall make the designated representative available during the

utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding legal holidays.

2. Each water, sewer, electric, or gas utility having annual operating revenues of less than \$250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each utility providing gas or electric service shall make available the designated representative during the utility's established working hours not fewer than five (5) days per week, excluding legal holidays.

(c) Display of customer rights.

1. Each utility shall prominently display in each office open to the public for customer service, and shall post on its Web site, if it maintains a Web site, a summary, prepared and provided by the commission, of the customer's rights pursuant to this section and Section 16 of this administrative regulation.

2. If a customer indicates to any utility personnel that he or she is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for an explanation of his or her rights.

(d) Utility personnel training.

1. The chief operating officer of a utility that provides electric or gas service to residential customers shall certify under oath annually the training of utility personnel assigned to counsel persons presenting themselves for utility service pursuant to this section.

2. If the electric or gas utility is not incorporated in Kentucky and if the utility's corporate headquarters is not located in Kentucky, then the utility's highest ranking officer located in Kentucky shall make the required certification.

3. Training shall include an annual review of this administrative regulation and policies regarding winter hardship and disconnect, Cabinet for Health and Family Services (or its designee) policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and weather or health disconnect policies.

4. Certification shall include written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.

(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 15 of this administrative regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 15 of this administrative regulation. Partial payment plans that extend for a period longer than thirty (30) days shall be in writing or electronically recorded, state the date and the amount of payment due. Written partial payment plans shall be dated and signed by both parties, and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

(a) Budget payment plans for water, gas, and electric utilities. A water, gas, and electric utility shall develop and offer to the utility's residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage.

1. Pursuant to this plan, a utility shall issue bills that adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end of the twelve (12) month period or

through a series of levelized adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount.

2. Budget payment plans shall be offered to residential customers and may be offered to other classes of customers.

3. The provisions of the budget plan shall be included in the utility's tariffed rules.

4. The utility shall provide information to its customers regarding the availability of budget payment plans.

(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates pursuant to the provisions of Sections 15(3) and 16 of this administrative regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. The plans include, for example, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.

(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water, and sewer utility shall inspect the condition of its meter and service connections before making service connections to a new customer so that prior or fraudulent use of the facilities shall not be attributed to the new customer.

(a) The new customer shall be afforded the opportunity to be present at the inspections.

(b) The utility shall not be required to render service to a customer until all defects in the customer-owned portion of the service facilities have been corrected.

(4) Prompt connection of service. Except as provided in Section 16 of this administrative regulation, the utility shall reconnect existing service within twenty-four (24) hours or close of the next business day, whichever is later, and shall install and connect new service within seventy-two (72) hours or close of the next business day, whichever is later, if the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and 807 KAR Chapter 5 have been met.

(5) Advance termination notice. If advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the customer's last known address. The termination notice shall be in writing, distinguishable and separate from a bill.

(a) The termination notice shall plainly state the reason for termination, that the termination date shall not be affected by receipt of a subsequent bill, and that the customer has the right to dispute the reasons for termination.

(b) The termination notice shall also comply with the applicable requirements of Section 15 of this administrative regulation.

Section 15. Refusal or Termination of Service.

(1) A utility may refuse or terminate service to a customer only pursuant to the following conditions, except as provided in subsections (2) and (3) of this section:

(a) For noncompliance with the utility's tariffed rules or the commission's administrative regulations.

1. A utility may terminate service for a customer's failure to comply with applicable tariffed rules or 807 KAR Chapter 5 pertaining to that service.

2. A utility shall not terminate or refuse service to a customer for noncompliance with the utility's tariffed rules or 807 KAR Chapter 5 without first having made a reasonable effort to obtain customer compliance.

3. After the effort by the utility, service may be terminated or refused only after the customer has been given at least ten (10) days written termination notice pursuant to Section 14(5) of this administrative regulation.

(b) For dangerous conditions. If a dangerous condition relating to a utility's service that could subject a person to imminent harm or result in substantial damage to the property

of the utility or others is found to exist on the customer's premises, the service shall be refused or terminated without advance notice.

1. The utility shall notify the customer immediately in writing and, if possible, orally of the reasons for the termination or refusal.
2. The notice shall be recorded by the utility and shall include the corrective action to be taken by the customer or utility before service can be restored or provided.
3. If the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.

(c) For refusal of access. If a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance, or removal of utility property, the utility may terminate or refuse service. The action shall be taken only if corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 14(5) of this administrative regulation.

(d) For outstanding indebtedness. Except as provided in Section 16 of this administrative regulation, a utility shall not be required to furnish new service to a person contracting for service who is indebted to the utility for service furnished or other tariffed charges until that person contracting for service has paid his indebtedness.

(e) For noncompliance with state, local, or other codes. A utility may refuse or terminate service to a customer if the customer does not comply with state, municipal, or other codes. A utility may terminate service pursuant to this subsection only after ten (10) days' written notice is provided pursuant to Section 14(5) of this administrative regulation, unless ordered to terminate immediately by a governmental official.

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery. A utility shall not terminate service to any person contracting for service for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 14(5) of this administrative regulation.

1. Termination notice requirements for electric or gas service.
 - a. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer ten (10) days' written notice of intent to terminate.
 - b. Service shall not, for any reason, be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill.
 - c. The termination notice to residential customers shall include written notification to the customer of the existence of local, state, and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Cabinet for Health and Family Services (or its designee) to contact for possible assistance.
2. Termination notice requirements for water, sewer, or telephone service.
 - a. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate.
 - b. Service shall not, for any reason, be terminated before twenty (20) days after the mailing date of the original unpaid bill.
3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise

dictated by the terms of a special contract between the utility and customer, which has been approved by the commission.

4. This subsection shall not prevent or restrict a utility from discontinuing service if a sewer service provider requests discontinuance of a customer's water service pursuant to KRS 74.408, 96.934, or 220.510, nor shall it restrict a water district from discontinuing water service to a customer who has failed to pay his bill for sewer service that the water district has provided.

(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft.

1.

a. Within twenty-four (24) hours after termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission.

b. This right of termination is separate from and in addition to any other legal remedies that the utility may pursue for illegal use or theft of service.

2. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility, KRS Chapter 278, and 807 KAR Chapter 5.

(2) A utility shall not terminate service to a customer if:

(a) Payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination of service payment of the amount in arrears is received by the utility, service shall not be terminated;

(b) A payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 14 of this administrative regulation and the customer is meeting the requirements of the plan; or

(c) A medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if a physician, registered nurse, or public health officer certifies in writing that termination of service will aggravate a debilitating illness or infirmity currently suffered by a resident living at the affected premises.

1. A utility may refuse to grant consecutive extensions for medical certificates past the original thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 14 of this administrative regulation.

2. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents to the utility a medical certificate certified in writing by a physician, registered nurse, or public health officer.

(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Health and Family Services (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents the certificate to the utility.

(a) A customer eligible for certification from the Cabinet for Health and Family Services shall have been issued a termination notice between November 1 and March 31.

(b) Each certificate shall be presented to the utility during the initial ten (10) day termination notice period.

(c)

1. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so.

2. In addition, the customer shall agree to a repayment plan in accordance with Section 14 of this administrative regulation, which shall permit the customer to become current in the payment of his bill as soon as possible but not later than October 15.

(d) A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents a certificate to the utility certified by the Cabinet for Health and Family Services (or its designee) that the customer is eligible for the cabinet's Energy Assistance Program or whose household income is at or below 130 percent of the poverty level.

Section 16. Winter Hardship Reconnection.

(1) Notwithstanding the provisions of Section 14(4) of this administrative regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 15(1)(f) of this administrative regulation prior to application for reconnection, and who applies for reconnection during the months from November 1 through March 31 if the customer or his agent:

(a) Presents a certificate of need from the Cabinet for Health and Family Services (or its designee), including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;

(b) Pays one-third (1/3) of his outstanding bill or \$200, whichever is less; and

(c) Agrees to a repayment schedule that would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15.

1. If the customer applies for reconnection and the customer has an outstanding bill in excess of \$600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then the plan shall be accepted.

2. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.

(d) A utility shall not require a new deposit from a customer whose service is reconnected due to paragraphs (a), (b), or (c) of this subsection.

(2) Certificate of need for reconnection. A customer who is eligible for energy assistance under the Cabinet for Health and Family Services' guidelines or is certified as being in genuine financial need, which is defined as a household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the cabinet (or its designee) to be used in obtaining a service reconnection from the utility.

(3) Weatherization program. Customers obtaining a certificate of need pursuant to this administrative regulation shall agree to accept referral to and utilize weatherization services administered by the Cabinet for Health and Family Services. The provision and acceptance of weatherization services shall be contingent on the availability of funds and other program guidelines. Weatherization services include, for example, weather stripping, insulation, and caulking. A customer current with his or her payment plan pursuant to subsection 1(c) of this section shall not be disconnected.

Section 17. Meter Testing.

(1) All electric, gas, and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically established in 807 KAR 5:022, 5:041, and 5:066. Before being installed for use by a customer, an electric, gas, and water meter shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically established in 807 KAR 5:022, Section 8(3)(a), 5:041, Section 17(1)(a)-(c), and 5:066, Section 15(2)(a)-(b).

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that purpose. Each utility having tests made by another agency or utility shall notify the commission of those arrangements in detail to include make, type, and serial number of standards used to make the tests.

(3) A utility shall not place in service a basic measurement standard required by 807 KAR Chapter 5 unless the calibration has been approved by the commission. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of a basic standard requiring commission approval of the calibration.

(4) An electric, gas, and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the commission. These certified meter testers shall perform tests as necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by 807 KAR Chapter 5.

(5) A utility or agency desiring to have an employee certified as meter tester shall submit the name of each applicant on an "Application for Appointment of Meter Tester." The applicant shall pass a written test administered by commission staff and have his competency in the testing of meters verified by commission staff, at which time the applicant shall be certified as a meter tester and furnished with a card authorizing him to perform meter tests.

(6) A utility or agency may employ apprentices in training for certification as meter testers.

(a) The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section.

(b) All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

Section 18. Meter Test Records.

(1)

(a) A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. The record shall include:

1. Information to identify the unit and its location;
2. Date of tests;
3. Reason for the tests;
4. Readings before and after test;
5. Statement of "as found" and "as left" accuracies sufficiently complete to permit checking of calculations employed;
6. Notations showing that all required checks have been made;
7. Statement of repairs made, if any;
8. Identifying number of the meter;
9. Type and capacity of the meter; and
10. The meter constant.

(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.

(2) Historical records.

(a) A utility shall keep numerically arranged and properly classified records for each meter that it owns, uses, and inventories.

(b) These records shall include:

1. Identification number;
2. Date of purchase;
3. Name of manufacturer;
4. Serial number;

5. Type;
6. Rating; and
7. Name and address of each customer on whose premises the meter has been in service with date of installation and removal.

(c) These records shall also contain condensed information concerning all tests and adjustments including dates and general results of the adjustments. The records shall reflect the date of the last test and indicate the proper date for the next periodic test required by the applicable commission administrative regulation in 807 KAR Chapter 5.

(3) Sealing of meters. Upon completion of adjustment and test of a meter pursuant to 807 KAR Chapter 5, a utility shall affix to the meter a suitable seal in a manner that adjustments or registration of the meter cannot be altered without breaking the seal.

(4) A utility may store the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.

Section 19. Request Tests.

(1) A utility shall make a test of a meter upon written request of a customer if the request is not made more frequently than once each twelve (12) months.

(a) The customer shall be given the opportunity to be present at the requested test.

(b) If the tests show the as-found meter accuracy is within the limits allowed by 807 KAR 5:022, Section 8(3)(a)1., 5:022, Section 8(3)(b)1., 5:041, Section 17(1), or 5:066, Section 15(4), the utility may make a reasonable charge for the test.

(c) The commission-approved amount of the charge shall be established in the utility's filed tariff.

(d) The utility shall maintain a meter removed from service for testing, in a secure location under the utility's control, for a period of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the utility or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved, or the meter is picked up for testing by personnel from the commission's Meter Standards Laboratory.

(2) After having first obtained a test from the utility, a customer of the utility may request a meter test by the commission upon written application.

(a) The request shall not be made more frequently on one (1) meter than once each twelve (12) months.

(b) Upon request, personnel from the commission's Meter Standards Laboratory shall pick up the meter from the utility and maintain the meter for a minimum of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the commission's Meter Standards Laboratory or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

Section 20. Access to Property. The utility shall at all reasonable hours have access to meters, service connections, and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement, or removal of its property. An employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, and show a badge or other identification that shall identify him as an employee of the utility.

Section 21. Pole Identification.

- (1) Each utility owning poles or other structures supporting its wires shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every structure can be readily determined.
- (2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.
- (3) If a utility's structures are located outside of a built-up community, at least every tenth structure shall be marked as established in subsection (2) of this section.
- (4) All junction structures shall bear the identification mark and structure number of the owner.
- (5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.
- (6) A utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.

Section 22. Cable Television Pole Attachments and Conduit Use.

- (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.
- (2) The tariffs of the utility shall establish the rates, terms, and conditions under which the utility's facilities may be used.
- (3) With respect to a complaint before the commission in an individual matter concerning cable television pole attachments, final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

Section 23. System Maps and Records.

- (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve. The map or maps should be available preferably in electronic format as a PDF file or as a digital geographic database. The following data shall be available on the map or maps:
 - (a) Operating districts;
 - (b) Rate districts;
 - (c) Communities served;
 - (d) Location and size of transmission lines, distribution lines and service connections;
 - (e) Location and layout of all principal items of plant; and
 - (f) Date of construction of all items of plant by year and month.
- (2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.
- (3) In lieu of showing the above construction information in (1)(f) on maps, a card record or suitable digital data may be used.
 - (a) The construction data about a plant feature, such as a pipeline, may be stored in a table and linked to the geographic plant feature by a unique identifier that is present in both the table and the geographic database.
 - (b) For all prospective construction the records shall also show the date of construction by month and year.

Section 24. Location of Records. All records required by 807 KAR Chapter 5 shall be kept in the office of the utility and shall be made available to representatives, agents, or staff of the commission upon reasonable notice at all reasonable hours.

Section 25. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:

- (1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees;
- (2) Instruct employees in safe methods of performing their work. For electric utilities, this is to include the standards established in 807 KAR 5:041, Section 3; and
- (3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation, or drowning, in accepted methods of artificial respiration.

Section 26. Inspection of Systems.

- (1) A utility shall adopt inspection procedures to assure safe and adequate operation of the utility's facilities and compliance with KRS Chapter 278 and 807 KAR Chapter 5 and shall file these procedures with the commission for review.
- (2) Upon receipt of a report of a potentially hazardous condition at a utility facility, the utility shall inspect all portions of the system that are the subject of the report.
- (3) Appropriate records shall be kept by a utility to identify the inspection made, the date and time of inspection, the person conducting the inspection, deficiencies found, and action taken to correct the deficiencies.
- (4) Electric utility inspection. An electric utility shall make systematic inspections of its system in the manner established in this subsection to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than established in this subsection for various classes of facilities and types of inspection.
 - (a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.
 - (b) At intervals not to exceed six (6) months, the utility shall inspect:
 1. Unmanned production facilities, including peaking units not on standby status, and all monitoring devices, for evidence of abnormality;
 2. Transmission switching stations if the primary voltage is sixty-nine (69) KV or greater, for damage to or deterioration of components including structures, fences, gauges, and monitoring devices;
 3. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, for leaks, condition of case, connections, temperature, and overloading; and
 4. Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage, deterioration and vegetation management consistent with the utility's vegetation management practices.
 - (c) In addition to the requirements established in paragraph (b) of this subsection, all electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities shall be inspected from the ground for damage, deterioration, and vegetation management consistent with the utility's vegetation management practices at intervals not to exceed:
 1. Six (6) years for each electric line supported by a wood pole or other wood support structure; or
 2. Twelve (12) years for each electric line supported by a pole or other support structure constructed of steel or other nonwood material.
 - (d) At intervals not to exceed one (1) year, the utility shall inspect:
 1. Production facilities maintained on a standby status. Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected; and
 2. Distribution substations with primary voltage of fifteen (15) to sixty-nine (69) KV.
 - (e) At intervals not to exceed two (2) years, the utility shall inspect all electric facilities operating at voltages of less than sixty-nine (69) KV, to the point of service including insulators, conductors, meters, and supporting facilities from the ground for damage,

deterioration, and vegetation management consistent with the utility's vegetation management practices.

(f) The utility shall inspect other facilities as follows:

1. Utility buildings shall be inspected for compliance with safety codes at least annually; and
2. Construction equipment shall be inspected for defects, wear, and operational hazards at least quarterly.

(g) Aerial inspections shall not be used as the basis for compliance with paragraphs

(b)1. through 3., support facilities provisions in (b)4., (d)1., and (f) of this subsection.

(5) Gas utility inspection. A gas utility shall make systematic inspections of its system to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is prescribed or recommended by the Department of Transportation, 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities.

(a) The following maximum time intervals shall be established for certain inspections provided for in 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in the code.

1. At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine:

- a. Production wells, storage wells, and well equipment, including their exterior components;
- b. Pressure limiting stations, relief devices, pressure regulating stations, and vaults; and
- c. Accessibility of the curb box and valve on a service line.

2. At intervals not to exceed three (3) years, gas meters shall be manually inspected and visually examined for proper working condition.

3. The utility shall inspect other facilities as follows:

- a. Utility buildings shall be inspected for compliance with safety codes at least annually; and
- b. Construction equipment under the control of the utility shall be inspected for defects, wear, and operational hazards at least quarterly.

(b) At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents, and relief valve vents shall be checked for operable condition.

(c) At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.

(d) Aerial inspections shall not be used as the basis for compliance with paragraphs (a) through (c) of this subsection.

(6) Water utility inspections. Each water utility shall make systematic inspections of its system as established in paragraphs (a) through (c) of this subsection to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than as established in paragraphs (a) through (c) of this subsection for various classes of facilities and types of inspection.

(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation;

(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity, and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water

storage facilities, including electric power wiring and controls; and hydrants, mains, meters, meter settings and valves; and

(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.

(7) Telephone utility inspection. Each telephone utility shall make systematic inspections of its system as established in paragraphs (a) through (f) of this subsection to insure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than as established in paragraphs (a) through (f) of this subsection for various classes of facilities and types of inspection.

(a) The utility shall inspect aerial plant for electrical hazards, proper clearance for electric clearances of facilities, vegetation management consistent with the utility's vegetation management practices, and climbing safety every two (2) years;

(b) The utility shall inspect underground plant for presence of gas, proper clearance from electric facilities, and safe working conditions at least annually;

(c) The utility shall inspect utility-provided station equipment and connections for external electrical hazards, damaged instruments or wiring, and appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises;

(d) The utility shall inspect utility buildings for compliance with safety codes at least annually;

(e) The utility shall inspect construction equipment for defects, wear, and operational hazards at least quarterly; and

(f) Aerial inspections shall not be used as the basis for compliance with this subsection.

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner established in 807 KAR 5:071 to ensure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than established in 807 KAR 5:071.

Section 27. Reporting of Accidents, Property Damage, or Loss of Service.

(1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of a utility related accident that results in:

(a) Death or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;

(b) Actual or potential property damage of \$25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident. For good cause shown, the executive director of the commission, shall, upon application in writing, allow a reasonable extension of time for submission of this report.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

Section 28. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 29. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Annual Financial and Statistical Reports:

1. "FERC Form 1 – Annual Report of Major Electric Utilities, Licensees and Others", March 2007;

2. "Annual Reporting Form for Rural Electric Cooperative Corporations", July 2012;

3. "FERC Form 2 â€“ Annual Report of Major Natural Gas Companies", December 2007;
4. "Annual Reporting Form for Class C and D Gas Utilities", August 2005;
5. "Annual Reporting Form for Local Exchange Carriers", August 2005;
6. "Annual Reporting Form for Local Exchange Carriers â€“ Kentucky Operations Only", August 2004;
7. "Annual Reporting Form for Water Company â€“ Class A & B", July 2012;
8. "Annual Reporting Form for Water Company â€“ Class C", July 2012;
9. "Annual Reporting Form for Water Districts/Water Associations â€“ Class A & B", July 2012;
10. "Annual Reporting Form for Water Districts/Water Associations â€“ Class C", July 2012; and
11. "Annual Reporting Form for Sewer Utilities", September 2005;

(b) Quarterly Meter Reports:

1. "Quarterly Meter Report-Electric", August 2011;
2. "Quarterly Meter Report-Water", July 2012; and
3. "Quarterly Meter Report-Gas", July 2007;

(c) Non-payment Disconnection/Reconnection Reports:

1. "Water Utility-Non-Payment Disconnection/Reconnection Report", February 2012;
2. "Electric Utility-Non-Payment Disconnection/Reconnection Report", September 2000; and
3. "Gas Utility Non-Payment Disconnection/Reconnection Report" September 2000;

(d) "Application for Appointment of Meter Testers", August 2012; and

(e) Gross Annual Operating Revenue Reports:

1. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business", December 2010;
2. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Electric Utilities", October 2012;
3. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Long Distance Carriers and Operator Services", September 2010;
4. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Paging and Cellular", September 2010; and
5. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Local Exchange Carriers and Competitive Local Exchange Carriers", September 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at the commission's Web site at <http://psc.ky.gov>.

(8 Ky.R. 791; 961; 1137; eff. 4-7-1982; 9 Ky.R. 217; 473; eff. 8-25-1982; 11 Ky.R. 790; 1048; eff. 1-7-1985; 12 Ky.R. 967; 1343; 1510; eff. 2-4-1986; 18 Ky.R. 1953; 2554; eff. 2-26-1992; TAm eff. 8-9-2007; 295; 1015; 1136; eff. 1-4-2013; TAm 1-30-2013; Crt eff. 3-27-2019.)

Rate Filings

278.190 Procedure when new schedule of rates filed -- Suspension of new rate schedule -- Burden of proof -- Refunds.

- (1) Whenever any utility files with the commission any schedule stating new rates, the commission may, upon its own motion, or upon complaint as provided in KRS 278.260, and upon reasonable notice, hold a hearing concerning the reasonableness of the new rates.
- (2) Pending the hearing and the decision thereon, and after notice to the utility, the commission may, at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service, but not for a longer period than five (5) months beyond the time when it would otherwise go into effect if an historical test period is used, or longer than six (6) months if a forward-looking test period is used, pursuant to KRS 278.192; and after such hearing, either completed before or after the rate, charge, classification, or service goes into effect, the commission may make those orders with reference thereto as it deems proper in the matter. If the proceeding has not been concluded and an order made at the expiration of five (5) months, or six (6) months, as appropriate, the utility may place the proposed change of rate, charge, classification, or service in effect at the end of that period after notifying the commission, in writing, of its intention so to do. Where increased rates or charges are thus made effective, the commission may, by order, require the interested utility or utilities to maintain their records in a manner as will enable them, or the commission, or any of its customers, to determine the amounts to be refunded and to whom due in the event a refund is ordered, and upon completion of the hearing and decision may, by further order, require such utility or utilities to refund to the persons in whose behalf the amounts were paid that portion of the increased rates or charges as by its decision shall be found unreasonable. Provided, however, if the commission, at any time, during the suspension period, finds that the company's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the period, the commission may, after any hearing or hearings, permit all or a portion of the rates to become effective under terms and conditions as the commission may, by order, prescribe.
- (3) At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility, and the commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible, and in any event not later than ten (10) months after the filing of such schedules.
- (4) If the commission, by order, directs any utility to make a refund, as hereinabove provided, of all or any portion of the increased rates or charges, the utility shall make the refund within sixty (60) days after a final determination of the proceeding by an order of the court or commission with or without interest in the discretion of the commission. If the utility fails to make the refund within sixty (60) days after the final determination, any party entitled to a refund may, after ten (10) days' written demand, bring an action in any court of competent jurisdiction of this state,

and may recover, in addition to the amount of the refund due, legal interest, court costs, and reasonable attorney's fees. No such action may be maintained unless instituted within one (1) year after the final determination. Any number of persons entitled to refunds may join in as plaintiffs in a single action and the court shall render a judgment severally for each plaintiff as his interest may appear.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 308, sec. 2, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 111, sec. 123, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 82, sec. 24, effective July 15, 1982; and ch. 242, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 26, effective April 1, 1979. -- Amended 1952 Ky. Acts ch. 46, sec. 2, effective March 5, 1952. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-16.

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

RELATES TO: KRS 278.010, 278.030, 278.160, 278.180, 278.190, 278.310, 278.380

STATUTORY AUTHORITY: KRS 278.040(3), 278.160(1), 278.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement KRS Chapter 278. This administrative regulation establishes a simplified and less expensive procedure for small utilities to use to apply to the commission for rate adjustments.

Section 1. Definitions.

- (1) "Annual report" means the financial and statistical report incorporated by reference in 807 KAR 5:006, which requires a utility to file the annual report with the commission.
- (2) "Annual report for the immediate past year" means an annual report that covers the applicant's operations for either:
 - (a) The calendar year period prior to the year in which the applicant's application for rate adjustment is filed with the commission; or
 - (b) The most recent calendar year period that 807 KAR 5:006, Section 4(1), requires the applicant to have on file with the commission as of the date of the filing of its application for rate adjustment.
- (3) "Applicant" means a utility that is applying for an adjustment of rates using the procedure established in this administrative regulation.
- (4) "Gross annual revenue" means:
 - (a) The total revenue that a utility derived during a calendar year; or
 - (b) If the utility operates two (2) or more divisions that provide different types of utility service, the total amount of revenue derived from the division for which a rate adjustment is sought.
- (5) "Rate" is defined by KRS 278.010(12).
- (6) "Utility" is defined by KRS 278.010(3).
- (7) "Water district" means a special district or special purpose governmental entity created pursuant to KRS Chapter 74.
- (8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Utilities Permitted to File Application. A utility may apply for an adjustment of rates using the procedure established in this administrative regulation if it:

- (1) Had gross annual revenue in the immediate past calendar year of \$5,000,000 or less;
- (2) Maintained financial records fully separated from a commonly-owned enterprise; and
- (3) Filed with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if the utility has been in existence that long.

Section 3. The Record upon which Decision Shall Be Made. The commission shall make its decision based on the:

- (1) Applicant's annual report for the immediate past year and the annual reports for the two (2) prior years, if the utility has been in existence that long;
- (2) Application required by Section 4 of this administrative regulation;
- (3) Information supplied by the parties in response to requests for information;
- (4) Written reports submitted by commission staff;
- (5) Stipulations and agreements between the parties and commission staff;
- (6) Written comments and information that the parties to the proceeding submitted in response to the findings and recommendations contained in a written report that commission staff submitted; and
- (7) If a hearing is held, the record of that hearing.

Section 4. Application.

- (1) An application for alternative rate adjustment shall consist of a:
 - (a) Completed Application for Rate Adjustment before the Public Service Commission, ARF Form-1, that is made under oath and signed by the applicant or an officer who is duly designated by the applicant and who has knowledge of the matters established in the application;
 - (b) Copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;
 - (c) Copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;
 - (d) Depreciation schedule of all utility plant in service;
 - (e) Copy of the most recent state and federal tax returns of the applicant, if the applicant is required to file returns;
 - (f) Detailed analysis of the applicant's customers' bills showing revenues from the present and proposed rates for each customer class;
 - (g) Copy of the notice of the proposed rate change that is provided to customers of the applicant; and
 - (h) Statement of Disclosure of Related Transactions, ARF Form-3, for each member of the utility's board of commissioners or board of directors, each person who has an ownership interest of ten (10) percent or more in the utility, and the utility's chief executive officer.
- (2) Except as provided in 807 KAR 5:001, Section 8 for electronic filings, the applicant shall:
 - (a) Submit one (1) original and five (5) paper copies of its application to the executive director of the commission; and
 - (b) Deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 or transmit by electronic mail an electronic copy in portable document format to the Office of Rate Intervention at rateintervention@ag.ky.gov.
- (3) Each party filing documents with the commission shall be responsible for reviewing and redacting any personal identifying information in compliance with the rules and procedures set forth in 807 KAR 5:001, Section 4(10).
- (4) The application shall not contain any request for relief from the commission other than an adjustment of rates.
- (5) A utility may make written request to the executive director for commission staff assistance in preparing the application.

Section 5. Notice. Upon filing an application for an alternative rate adjustment, a utility shall provide notice as established in this section.

- (1) Public postings.
 - (a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.
 - (b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:
 1. A copy of the public notice; and
 2. A hyperlink to the location on the commission's Web site where the case documents are available.
 - (c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.
- (2) Customer Notice.
 - (a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

- (b) If a utility has more than twenty (20) customers, it shall provide notice by:
1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;
 2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;
 3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission; or
 4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.
- (c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.
- (3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:
- (a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;
 - (b) If notice is published in a newspaper of general circulation in a utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or
 - (c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.
- (4) Notice Content. Each notice issued in accordance with this section shall contain:
- (a) The date the proposed rates are expected to be filed with the commission;
 - (b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;
 - (c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;
 - (d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;
 - (e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);
 - (f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>;
 - (g) A statement that comments regarding the application may be submitted to the Public Service Commission through the commission's Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;
 - (h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;
 - (i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and
 - (j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

Section 6. Except as provided in 807 KAR 5:001, Section 8(2), an applicant shall not be required to provide the commission with advance notice of its intent to file an application for rate adjustment using the procedure established in this administrative regulation.

Section 7. Effective Date of Proposed Rates.

- (1) An applicant shall not place the proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first.
- (2) If the commission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect.
- (3) The applicant shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due if the commission orders a refund.

Section 8. Amendment of Proposed Rates.

- (1) Except if responding to the findings set forth in a commission staff report filed in accordance with Section 11 of this administrative regulation, an applicant shall not amend the proposed rates set forth in its application unless the applicant:
 - (a) Files written notice of the proposed amendment with the commission; and
 - (b) Publishes notice of the amended proposed rates in the manner provided in Section 5 of this administrative regulation.
- (2) An applicant shall not place amended proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of the written notice of proposed amendment, whichever occurs first.
- (3) If the commission has not issued an order within six (6) months from the date of filing of the notice of amended proposed rates, the applicant may place the amended proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect but shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due if the commission orders a refund.

Section 9. Test Period. The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measureable changes, that coincides with the reporting period of the applicant's annual report for the immediate past year.

Section 10. Discovery.

- (1) The minimum discovery available to intervening parties shall be as prescribed by this subsection.
 - (a) A party in the proceeding may serve written requests for information upon the applicant within twenty-one (21) days of an order permitting that party to intervene in the proceeding.
 - (b) Upon serving requests upon the applicant, the party shall file a copy of the party's requests with the commission and serve a copy upon all other parties.
 - (c) Within twenty-one (21) days of service of timely requests for information from a party, the applicant shall serve its written responses upon each party and shall file with the commission one (1) original and five (5) copies.
- (2) The commission may establish different arrangements for discovery if it finds different arrangements are necessary to evaluate an application or to protect a party's rights to due process.

Section 11. Commission Staff Report.

- (1) Within thirty (30) days of the date that an application is accepted for filing, the commission shall enter an order advising the parties if commission staff will prepare a report on the application.
- (2) If a commission staff report is prepared, the:
 - (a) Commission staff shall:
 1. File the report with the commission; and
 2. Serve a copy of the report on all parties of record; and
 - (b) Report shall contain the commission staff's findings and recommendations regarding the proposed rates.
- (3)
 - (a) Each party shall file with the commission a written response to the commission staff report within fourteen (14) days of the filing of the report.
 - (b) This written response shall contain:
 1. All objections to and other comments on the findings and recommendations of commission staff;
 2. A request for hearing or informal conference, if applicable;
 3. The reasons why a hearing or informal conference is necessary; and
 4. If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or recommends the assessment of an additional rate or charge not proposed in the application, the filing party's position on if the commission should authorize the assessment of the higher rate or the recommended additional rate or charge.
 - (c) If a party's written response fails to contain an objection to a finding or recommendation contained in the commission staff report, it shall be deemed to have waived all objections to that finding or recommendation. A party's failure to request a hearing or informal conference in the party's written response shall be deemed a waiver of all rights to a hearing on the application and a request that the case stand submitted for decision.
 - (d) If a party fails to file a written response with the commission within this time period, it shall be deemed to have waived all objections to the findings and recommendations contained in the report and all rights to a hearing on the application.
 - (e) Acceptance of the findings and recommendations contained in the commission staff report by all parties in a proceeding shall not preclude the commission from conducting a hearing on the application, taking evidence on the applicant's financial operations, or ordering rates that differ from or conflict with the findings and recommendations established in the commission staff report.
 - (f) If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or commission staff recommends the assessment of an additional rate or charge not proposed in the application and commission staff's proposed rates produce a total increase in revenues that exceeds 110 percent of the total increase in revenues that the applicant's proposed rates will produce and the applicant amends its application to request commission staff's proposed rates, the commission shall order the applicant to provide notice of the finding or recommendation to its customers.

Section 12. Notice of Hearing.

- (1) If the commission orders a hearing, the applicant shall publish in a newspaper or mail to the applicant's customers notice of the hearing.
- (2) The notice shall state the purpose, time, place, and date of the hearing.
- (3) Newspaper notice shall be published once in a newspaper of general circulation in the applicant's service area no fewer than seven (7) and no more than twenty-one (21) days prior to the hearing.

(4) Mailed notices shall be mailed at least fourteen (14) days prior to the date of the hearing.

Section 13. Utility Personnel Participation in Commission Proceedings.

(1) An authorized official or employee of the applicant who is not licensed to practice law in Kentucky may, on behalf of an applicant that is a water district, corporation, partnership, or limited liability company, file the application, responses to commission orders and requests for information, as well as appear at conferences related to the application.

(2) An applicant that is a water district, corporation, partnership, or limited liability company shall, at a hearing conducted on the application, be represented by an attorney who is authorized to practice law in Kentucky.

Section 14. Filing Procedures.

(1) Unless the commission orders otherwise or the electronic filing procedures established in 807 KAR 5:001, Section 8, are used, if a document in paper medium is filed with the commission, five (5) additional copies in paper medium shall also be filed.

(2) All documents filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Except for ARF Form-1 and ARF Form-3, each filing shall be in type no smaller than twelve (12) point, except footnotes, which shall be in type no smaller than ten (10) point.

(d) Binding. A side-bound or top-bound filing shall also include an identical unbound copy.

(3) Except as provided for in 807 KAR 5:001, Section 8, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A document submitted by facsimile transmission shall not be accepted.

Section 15. Use of Electronic Filing Procedures in lieu of Submission of Paper Documents. Upon an applicant's election of the use of electronic filing procedures within the time limits established in 807 KAR 5:001, Section 8(2), the procedures established in 807 KAR 5:001, Section 8, shall be used in lieu of other filing procedures established in this administrative regulation.

Section 16. The provisions of 807 KAR 5:001, Sections 1 through 6, 8 through 11, and 13, shall apply to commission proceedings involving applications filed pursuant to this administrative regulation.

Section 17. Upon a showing of good cause, the commission may permit deviations from this administrative regulation. Requests for deviation shall be submitted in writing by letter to the commission.

Section 18. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Rate Adjustment before the Public Service Commission", ARF Form 1, July 2014; and

(b) "Statement of Disclosure of Related Party Transactions", ARF Form 3, November 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601,

Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov/>.

(8 Ky.R. 835; eff. 4-7-1982; 22 Ky.R. 994; 1312; 1-3-1996; 38 Ky.R. 132; 629; 765; eff. 11-4-2011; 39 Ky.R. 320, 1159; eff. 1-4-2013; 40 Ky.R. 704; 1123; eff. 1-3-2014; 41 Ky.R. 156; 494; eff. 10-31-2014; Crt eff. 3-27-2019.)

Penalties & Removal from Office

278.990 Penalties.

- (1) Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.
- (2) Actions to recover the principal amount due and penalties under this chapter shall be brought in the name of the Commonwealth in the Franklin Circuit Court. Whenever any utility is subject to a penalty under this chapter, the commission shall certify the facts to its counsel, who shall bring an action for recovery of the principal amount due and the penalty. The commission may compromise and dismiss the action on terms approved by the court. The principal amount due shall be paid into the State Treasury and credited to the account of the commission, and all penalties recovered in such actions shall be paid into the State Treasury and credited to the general fund.
- (3) Any utility that fails to pay an assessment as provided for by KRS 278.130 to 278.150 shall forfeit and pay to the state one thousand dollars (\$1,000), and twenty-five dollars (\$25) for each day it fails to pay the assessment, and shall not be released thereby from its liability for the assessment.
- (4) Any utility that issues any securities or evidences of indebtedness, or assumes any obligation or liability in respect to the securities or evidences of indebtedness of any other person, or makes any sale or other disposition of securities or evidences of indebtedness, or the proceeds thereof, for purposes other than the purposes specified in the order of the commission made with respect thereto under KRS 278.300, shall be fined not more than ten thousand dollars (\$10,000).
- (5) Any utility that violates any of the provisions of KRS 278.460 shall be fined not less than one hundred dollars (\$100) for each offense.
- (6) Any company that willfully fails to receive, transport, and deliver oil or gas as required by KRS 278.490 shall, in addition to being liable in damages to the injured person, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and each day of willful failure shall constitute a separate offense.

- (7) Any telephone company that refuses to make a connection with the exchange or lines of another company for a period of thirty (30) days after being ordered to do so by the commission under subsection (2) of KRS 278.530 shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), to be recovered by indictment in the Franklin Circuit Court or in the Circuit Court of the county where the company requesting the connection resides or has its chief office in this state. If the company desiring the connection proceeds to make the connection, as permitted by subsection (2) of KRS 278.530, and the company so connected with refuses to receive and transmit the toll messages offered to it by the company making the connection, or refuses to deliver messages from its own lines or exchanges to the lines or exchanges of the company making the connection, the company so refusing shall be fined one hundred dollars (\$100) for each day it refuses, to be recovered by indictment in the courts mentioned in the first sentence of this subsection; if it continues so to refuse for a period of six (6) months it shall forfeit its right to do business in this state, and any of its officers, agents, or employees who does or attempts to do any business in this state for it after the expiration of the six (6) months' period shall be fined fifty dollars (\$50) for each day he does or attempts to do such business.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 354, sec. 1, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 300, sec. 4, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 50, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 54, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 308, sec. 47. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 786, 842b-2, 2223-2, 3766b-1e, 3952-24, 3952-59, 3952-61, 4679f-2, 4679f-4.

74.025 Removal of district water commissioner -- Causes.

- (1) From and after the creation and establishment of a water district and the appointment of water commissioners to manage the affairs of the district, and following the acquisition or construction by any duly created and established water district of a public water system, and the consequent establishment of regulatory jurisdiction over such water district by the Public Service Commission of Kentucky, the Public Service Commission may remove any water commissioner from his office for good cause, including, inter alia, incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office, including without limiting the generality of the foregoing, failure to comply with rules, regulations, and orders issued by the Public Service Commission.
- (2) No such order of removal with respect to any water commissioner shall be entered by the Public Service Commission until a public hearing on the merits with reference to such matter has been held by the commission, at which hearing the water commissioner proposed to be removed from office shall be afforded the opportunity to appear, either pro se, or by counsel and file briefs, memoranda and motions, cross-examine witnesses, examine exhibits, and present evidence, both orally and in writing. All such orders of removal entered by the Public Service Commission shall be final and shall not be subject to appeal. Any water commissioner may waive such public hearing, in which case an order on removal may be forthwith entered by the commission.
- (3) Using procedures of this section the Public Service Commission may also request the removal of directors, trustees or other governing persons of water associations in like manner.

History: Created 1972 Ky. Acts ch. 310, sec. 3.

Formerly codified as KRS 74.455.

65.007 Removal of appointed member of special district governing body -- Hearing -- Appeal.

- (1) Unless otherwise provided by state law, an appointed member of the governing body of a special district may be removed from office by the appointing authority after a hearing with notice as required by KRS Chapter 424 for inefficiency, neglect of duty, malfeasance or conflict of interest. The hearing shall be initiated and chaired by the appointing authority, who shall prepare a written statement setting forth the reasons for removal. The member to be removed shall be notified of his proposed removal and the reasons therefor by registered mail sent to his last known address at least ten (10) days prior to the hearing. The person to be removed may employ counsel to represent him. A record of the hearing shall be made by the appointing authority.
- (2) Where the removal of an appointed member of a special district governing body is by the county judge/executive pursuant to subsection (1) of this section, the removal shall be subject to the approval of the fiscal court.
- (3) A member removed pursuant to this section may appeal, within ten (10) days of the rendering of the decision or the approval of the fiscal court if required, to the Circuit Court of the county of the appointing authority. The scope of the appeal shall be limited to whether the appointing authority or the fiscal court abused their discretion in removing the member.

Effective: July 15, 1980

History: Created 1980 Ky. Acts ch. 18, sec. 1, effective July 15, 1980.

Underground Facilities Damage Prevention

367.4901 Legislative declaration -- Short title for KRS 367.4901 to 367.4917.

The General Assembly finds that the objective of underground facility damage prevention and the resulting benefits of public and workplace safety and protection of consumer services require an effective underground damage prevention procedure. KRS 367.4901 to 367.4917, which may be cited as the "Underground Facility Damage Prevention Act of 1994," are created to provide for this procedure and accomplish this objective.

Effective: January 1, 1995

History: Created 1994 Ky. Acts ch. 425, sec. 1, effective January 1, 1995.

367.4903 Definitions for KRS 367.4903 to 367.4917.

As used in KRS 367.4903 to 367.4917:

- (1) "Underground facility" means an underground line or system used for producing, storing, conveying, transmitting, or distributing telecommunications, electricity, gas, petroleum, petroleum products, cable television, hazardous liquids, water, steam, or sewerage, including storm drainage;
- (2) "Damage" means weakening of structural or lateral support or penetration of a facility coating, housing, or other protective device. It also means the partial or complete dislocation or severance of underground facilities or rendering any underground facility permanently inaccessible by the placement of a permanent structure having one (1) or more stories;
- (3) "Demolition" means any operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of mechanized equipment, or discharge of explosives;
- (4) "Excavator" means any entity or individual, other than those exempted by KRS 367.4915, engaged in excavation, demolition, or timber harvesting using mechanized equipment;
- (5) "Operator" means any entity or individual owning or operating underground facilities to serve the public, but does not include any entity or individual owning or operating underground storage tanks that are subject to Subchapter 60 of KRS Chapter 224;
- (6) "Excavation" means any activity that results in the movement, placement, probing, boring, or removal of earth, rock, or other material in or on the ground by the use of any tools or equipment, by the discharge of explosives, or by the harvesting of timber using mechanized equipment. Forms of excavating include but are not limited to auguring, backfilling, digging, ditching, drilling, driving, grading, piling, pulling-in, ripping, scraping, trenching, and tunneling. Driving wooden stakes by use of hand tools to a depth of six (6) inches or less below existing grade shall not constitute excavation;
- (7) "Emergency" means there exists substantial likelihood that loss of life or property, the inability to restore interrupted utility service, an imminent danger to health or the environment, or the blockage of public transportation facilities will result before procedures required under KRS 367.4909 to 367.4913 can be completed;
- (8) "Protection notification center" means an operator-provided notification center through which an excavator can contact the operator to enable the operator to provide the excavator with the approximate location of underground facilities;
- (9) "Kentucky Contact Center" means Kentucky Underground Protection, Inc., organized as a nonprofit corporation and a multimember protection notification center providing a single telephone contact number and designated by the Kentucky Public Service Commission to be the sole recipient of 811 dialed calls through which an excavator may contact all Kentucky Contact Center members and all affected member operators may receive information to enable them to provide the excavator with the approximate location of underground facilities;
- (10) "Routine road maintenance" means preservation, including road repairs and

resurfacing, and the replacement of signs, posts, and guardrails at the exact same location when no additional penetration of existing grade is necessary, but does not include road construction, installation of signs, posts, and guardrails, or any activity that requires penetration of existing grade;

- (11) "Approximate location," when referring to an underground facility, means:
 - (a) For underground metallic facilities and underground nonmetallic facilities with metallic tracer wire, a distance not to exceed the combined width of the underground facility plus twenty-four (24) inches measured from the outer edge of each side of the underground facility; or
 - (b) For unmapped or untonable facilities, the underground facility shall be located as accurately as possible from field location records and shall require notification from the operator of the inability to accurately locate the facility;
- (12) "Working day" means every day, except Saturday, Sunday, and holidays established by federal or state statute. For purposes of measuring any period of time prescribed or allowed under the Underground Facility Damage Prevention Act of 1994, a working day shall commence at 12:01 a.m. eastern time and end at 12 midnight eastern time excluding the day the locate request was made;
- (13) "Nonintrusive excavating" means excavation using hand tools or equipment that uses air or water pressure as the direct means to break up soil for removal by hand tools or vacuum excavation;
- (14) "Mechanized equipment" means mechanical power equipment, including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, skidders, and yarders;
- (15) "Normal excavation locate request" means a notification made to a protection notification center where a request for locating utility facilities is processed;
- (16) "Emergency locate request" means a notification made to a protection notification center by an excavator to alert facility owners or operators of the need to begin immediate excavation in response to an emergency;
- (17) "Design information request" means a notification made to a protection notification center by a person providing professional services and making a request in preparation for bidding, preconstruction engineering, or other advance planning efforts. A design information request may not be used for excavation purposes;
- (18) "Large project request" means an area of excavation occurring on or after July 1, 2016, measuring more than two thousand (2,000) feet in length. Multiple excavation notifications in an area may be considered together in determining if the excavations are part of a large project;
- (19) "Commission" means the Kentucky Public Service Commission;
- (20) "Person" means an individual, an entity, a foreign entity, or other legal or commercial entity;
- (21) "Positive response" means an automated or written communication system provided by each protection notification center for all locate requests the center receives pursuant to KRS 367.4909 that allows excavators, locators, operators, and other interested parties to determine the status of locating an underground facility and requires response and verification by operators and excavators to comply with their

respective requirements of the Underground Facility Damage Prevention Act of 1994;

- (22) "Unique identification number" or "locate request number" means a unique number that any protection notification center or operator pursuant to KRS 367.4913 has assigned to a locate request for excavation;
- (23) "Locator" means any entity or individual that locates lines or facilities for an operator;
- (24) "Second notice" means a notice that is made by an excavator to a notification center when an operator has failed to comply with the positive response requirements under KRS 367.4909(5);
- (25) "Tolerance zone" means a strip of land at least four (4) feet wide but not wider than the width of the underground facility plus two (2) feet on either side of the outer limits of the facility;
- (26) "Untonable facility" means an underground facility that cannot be located from the surface using locating methods which meet industry standards and that requires additional efforts and extended time;
- (27) "Work site contact" means an individual that will be present at the excavation site when the excavation will occur;
- (28) "Fiber-to-the-premises" means a service that provides network connectivity between a location and a subscriber using fiber;
- (29) "Communications network" means the platform that is used to exchange information and data between two (2) or more devices that are connected to the platform;
- (30) "Communications service provider" means an entity that offers communications services or some combination of information and media services, content, entertainment, and application services over communications networks; and
- (31) "Communications terminal" means the enclosure containing communications equipment that connects users to the communications network.

Effective: July 15, 2024

History: Amended 2024 Ky. Acts ch. 21, sec. 1, effective July 15, 2024. -- Amended 2021 Ky. Acts ch. 80, sec. 1, effective January 1, 2022. -- Amended 2018 Ky. Acts ch. 70, sec. 2, effective July 14, 2018. -- Amended 2015 Ky. Acts ch. 31, sec. 1, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 100, sec. 1, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 137, sec. 1, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 180, sec. 1, effective July 15, 2008. -- Amended 2000 Ky. Acts ch. 222, sec. 1, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 2, effective January 1, 1995.

367.4905 Permit not relieving person from complying with provisions of KRS 367.4905 to 367.4917.

A permit issued pursuant to law authorizing excavation or demolition work shall not relieve a person from the responsibility for complying with KRS 367.4905 to 367.4917.

Effective: January 1, 1995

History: Created 1994 Ky. Acts ch. 425, sec. 3, effective January 1, 1995.

367.4907 Responsibility of persons engaging in nonemergency and emergency work.

Every person who engages in nonemergency timber harvesting using mechanized equipment, excavation, or demolition work shall conform to KRS 367.4905 to 367.4917. Compliance with excavator and operator notification requirements of KRS 367.4905 to 367.4917 shall not be required of authorized persons responding to emergency situations. However, these persons shall take every reasonable precaution to protect the public safety and underground facilities of others.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 137, sec. 2, effective July 12, 2012. -- Created 1994 Ky. Acts ch. 425, sec. 4, effective January 1, 1995.

367.4909 Operator to provide protection notification center access to excavators -- Kentucky Contact Center -- Report of excavation damage -- Duties of operators upon receiving requests -- Rejection of design information request -- Color coding for temporary underground facility markers -- Operator's inability to comply due to extraordinary circumstances -- Underground facilities installed after January 1, 2013.

- (1) Each operator shall provide protection notification center access to excavators.
- (2) Voluntary operator membership in the Kentucky Contact Center shall satisfy the requirement of subsection (1) of this section.
- (3) Each operator member of the Kentucky Contact Center shall provide and update as needed to the Kentucky Contact Center the general location of its underground facilities, the operator identity and business address, and emergency notification telephone numbers.
- (4)
 - (a) Each operator shall report to the commission excavation damage to an underground facility used in the transportation of gas or hazardous liquid within thirty (30) calendar days of being informed of the damage. Each report of excavation damage shall be made by electronic mail or as otherwise prescribed by the commission.
 - (b) If the damage described in paragraph (a) of this subsection is caused by a communications service provider and no attempt to locate underground facilities was made, the operator shall include in its damage report to the commission the distance from the communications terminal that the damage occurred. The commission shall submit a report to the Legislative Research Commission on or before December 1, 2025, detailing the number of damage reports made under this subsection caused by communications service providers that occurred within the area in which nonintrusive excavation is allowed under KRS 367.4915(12).
- (5) An operator shall respond to facility locate requests and provide a positive response as follows:
 - (a) To a normal excavation locate request, within two (2) working days after receiving notification from an excavator or any time prior to the scheduled excavation start date if agreed upon as provided in KRS 367.4917(7), excluding large project requests, design information requests, emergency locate requests, and unmapped or untonable facilities;
 - (b) To an emergency locate request, as quickly as possible but not to exceed forty-eight (48) hours after receiving notification from an excavator;
 - (c) To a design information request, within ten (10) working days after receiving notification from the person making the request;
 - (d) To a large project request, within two (2) working days the operator shall notify the excavator that an excavation area has been determined to be a large project, and the operator shall respond to the request within five (5) working days from the later of receiving notification from an excavator or prior to the scheduled excavation start date for that location if agreed upon as provided in KRS 367.4917(7);

- (e) To an unmapped or untenable facility request, within two (2) working days the operator shall notify the excavator that an excavation area has been determined to be an unmapped or untenable project, and the operator shall respond to the request within five (5) working days for a normal locate request or eight (8) working days for a large project request from the later of receiving notification from an excavator or prior to the scheduled excavation start date if agreed upon as provided in KRS 367.4917(7); and
 - (f) To a fiber-to-the-premises broadband deployment excavation request, in locations not already served by fiber-to-the-premises, within four (4) working days.
- (6) Within one (1) working day after receiving a second notice request from an excavator pursuant to KRS 367.4911(12), an operator shall locate its facility and update the positive response system.
- (7) An operator shall, after receiving an emergency locate request, a normal excavation locate request, an unmapped or untenable locate request, or a large project request as provided in subsection (5) of this section:
 - (a) Inform the excavator of the approximate location and description of any of the operator's underground facilities that may be damaged or pose a safety concern because of excavation or demolition;
 - (b) Unless permanent facility markers are provided, provide temporary markings to inform the excavator of the ownership and approximate location of the underground facility; and
 - (c) Provide a positive response to the requesting party.
- (8) Upon receiving a design information request, an operator shall contact the person making the request within the time period specified in subsection (5) of this section. The operator shall:
 - (a) Designate with temporary underground facility markers the location of all underground facilities owned by the operator within the area of the design information request as defined in KRS 367.4903;
 - (b) Provide to the person making the design information request a description of all underground facilities owned by the operator in the area of the design information request and the location of the facilities, which may include drawings marked with a scale, dimensions, and reference points for underground utilities already built in the area or other facility records that are maintained by the operator; or
 - (c) Allow the person making the design information request or an authorized person to inspect the drawings or other records for all underground facilities with the proposed area of excavation at a location that is acceptable to the operator.
- (9) An operator may reject a design information request and not be held in violation of subsection (6) of this section based upon security considerations or if producing the information will place the operator at a competitive disadvantage, pending the operator obtaining additional information confirming the legitimacy of the notice. The operator shall notify the person making the design information request and may

request additional information.

- (10) Temporary underground facility markers shall consist of paint, chalk, flags, stakes, or any combination thereof and shall conform to the following standards of the American Public Works Association uniform color code:
- | | |
|--|-------------------------------|
| (a) Electric power distribution and transmission | Safety Red |
| (b) Municipal electric systems | Safety Red |
| (c) Gas distribution and transmission | High visibility safety yellow |
| (d) Oil distribution and transmission | High visibility safety yellow |
| (e) Dangerous materials, product lines | High visibility safety yellow |
| (f) Telecommunication systems and cable television | Safety alert orange |
| (g) Temporary survey markings | Safety pink |
| (h) Police and fire communications | Safety alert orange |
| (i) Water systems | Safety precaution blue |
| (j) Sewer and storm drainage systems | Safety green |
| (k) Proposed excavation or construction boundaries | White |
| (l) Reclaimed water, slurry, and irrigation facilities | Purple |
| (m) Fiber optic and critical telecommunication | Safety alert orange |
- (11) If extraordinary circumstances exist, an operator shall notify the excavator of the operator's inability to comply with this section. Notification under this subsection shall temporarily relieve the operator of complying with subsections (5) and (6) of this section until the operator can recover from the extraordinary circumstances. Extraordinary circumstances include weather that makes it impossible for any combination of facility markers identified in subsection (10) of this section to be used, extreme weather conditions, force majeure, disasters, or civil unrest that make timely response difficult or impossible.
- (12) All underground facilities installed after January 1, 2013, shall include a means to accurately identify and locate the underground facilities from the surface. This subsection does not apply to the repair of existing facilities.

Effective: July 15, 2024

History: Amended 2024 Ky. Acts ch. 21, sec. 2, effective July 15, 2024. -- Amended 2021 Ky. Acts ch. 80, sec. 2, effective January 1, 2022. -- Amended 2018 Ky. Acts ch. 70, sec. 3, effective July 14, 2018. -- Amended 2015 Ky. Acts ch. 31, sec. 2, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 100, sec. 2, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 137, sec. 3, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 180, sec. 2, effective July 15, 2008. -- Amended 2000 Ky. Acts ch. 222, sec. 2, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 5, effective January 1, 1995.

367.4911 Excavator or person responsible for excavation to notify operator's notification center of work schedule -- Duties of entities responsible for excavation and demolition.

- (1) (a) Each excavator, or person responsible for an excavation, planning excavation, or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, unless a future start date is agreed upon as provided in KRS 367.4917(7), notify each affected operator's designated protection notification center of the excavator's intended work and work schedule.
 - (b) The two (2) full working days provided for in paragraph (a) of this subsection have elapsed if all affected operators have notified the person.
- (2) Locate requests are valid for twenty-one (21) calendar days from the day of the initial request.
- (3) Each excavator shall provide each applicable protection notification center with adequate information regarding:
 - (a) Name and phone number of the excavator or person requesting the underground facility locate;
 - (b) Approximate location and type of work being performed by the excavator, including if the request involves a fiber-to-the-premises broadband deployment excavation;
 - (c) Name and phone number of work site contact;
 - (d) Estimated start date and start time of excavation; and
 - (e) The excavation or demolition site location or locations, each of which shall not exceed five thousand (5,000) feet in length unless the excavator and operator agree to a larger area, the city or community, county and street address, including the nearest cross street.
- (4) If more than one (1) excavator will operate at the same site, each excavator shall notify the protection notification centers individually. Notification by an excavator will serve as notification for any of that excavator's employees. Failure by an excavator to notify the protection notification center does not relieve individual employees of responsibility.
- (5) The excavator shall inform and provide to excavation or demolition site employees:
 - (a) The underground facility location provided by each operator;
 - (b) Any related safety information provided by each operator; and
 - (c) The locate request identification number assigned by each protection notification center.
- (6) The excavator shall protect and preserve temporary underground facility markers until the scheduled excavation or demolition is completed.
- (7) If, after the response time provided by KRS 367.4909(5), the excavator finds evidence of an unmarked underground facility at the site, he or she shall immediately notify a protection notification center. When an excavator has complied with subsection (1) of this section and evidence of an unmarked

underground facility is uncovered, the operator shall have six (6) business hours to identify the underground facility.

- (8) The excavator shall contact the protection notification center to request remarking two (2) working days in advance of the expiration of each twenty-one (21) day period while excavation or demolition continues or if:
 - (a) The markings of any underground facility have been removed or are no longer visible; or
 - (b) The excavator has changed the work plan or location previously filed.
- (9)
 - (a) Each excavator who conducts or is responsible for any excavation or demolition that results in underground facility damage shall cease excavation or demolition activities and notify all affected operators of the location and nature of the underground facility damage immediately upon discovery of the damage.
 - (b) Any individual or entity that is otherwise exempt from the requirements of KRS 367.4901 to 367.4917 under KRS 367.4915, who conducts or is responsible for any excavation or demolition that results in underground facility damage to an underground facility or system used for producing, storing, conveying, transmitting, or distributing gas, petroleum, petroleum products, or hazardous liquids, shall cease excavation or demolition activities and notify all affected operators of the location and nature of the underground facility damage immediately upon discovery of the damage.
 - (c) If the underground facility damage causes concern for public or workplace safety, the excavator, or the individual or entity that is otherwise exempt from the requirements of KRS 367.4901 to 367.4917 under KRS 367.4915, shall notify appropriate public safety agencies of the location and nature of the safety concern.
 - (d) If the underground facility damage results in the escape or suspected escape of any flammable, toxic, or corrosive gas or liquid, the excavator, or the individual or entity that is otherwise exempt from the requirements of KRS 367.4901 to 367.4917 under KRS 367.4915, shall cease excavation or demolition activities and immediately report to the appropriate authorities by calling 911 emergency telephone number.
- (10) When excavation or demolition is necessary within the tolerance zone, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility, except that mechanized equipment may be used:
 - (a) To remove the pavement or other manmade hard surface if used during the initial penetration only to the depth necessary and if an individual other than the equipment operator visually monitors the excavation activity;
 - (b) To remove indigenous rock if used during the initial penetration only to the extent necessary, if an individual other than the equipment operator visually monitors the excavation activity, and if the excavation is planned to avoid damage to the underground facility. However, if the underground facility contains flammable, toxic, corrosive, or hazardous products, the excavator

shall notify the facility owner of the excavator's intent prior to removing indigenous rock;

- (c) To remove materials that are more than twelve (12) inches in any direction from the outer edge of the located facility if the excavator visually identifies the precise location of the underground facility or visually confirms that no facility is present within the depth of the excavation, if an individual other than the equipment operator visually monitors the excavation activity, and if the excavation is planned to avoid damage to the underground facility; and
 - (d) To place shores into an existing excavation or remove shores from an existing excavation.
- (11) Upon request by an operator or when the proposed excavation location cannot be accurately identified, an excavator shall mark the boundaries of the location to be excavated using the procedure set forth in KRS 367.4909(10)(k). After marking the boundaries, the excavator shall contact the protection notification center or centers. The requirements of KRS 367.4909(5) to (11) are reestablished upon the operator receiving notification of this marking from the protection notification center or centers. This marking shall not alter, or relieve the excavator from complying with, the requirements of KRS 367.4905 to 367.4917.
- (12) If an operator has failed to give a positive response within the timeframes provided in KRS 367.4909(5), the excavator shall submit a second notice to the protection notification center. If one (1) working day after receiving a second notice request as provided in KRS 367.4909(6), the operator has still failed to give a positive response, an excavator that has fully complied with this section shall not be deemed liable for any damages to an underground facility that would have been located if the operator had complied with the operator's duties under KRS 367.4909, except for damages to a person or an underground facility due to negligence or intentional misconduct of an excavator. This subsection shall not apply to any underground facility used to transport gas or hazardous liquid subject to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq.

Effective: January 1, 2022

History: Amended 2021 Ky. Acts ch. 80, sec. 3, effective January 1, 2022; and ch. 105, sec. 1, effective June 29, 2021. -- Amended 2018 Ky. Acts ch. 70, sec. 4, effective July 14, 2018. -- Amended 2015 Ky. Acts ch. 31, sec. 3, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 100, sec. 3, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 137, sec. 4, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 180, sec. 3, effective July 15, 2008. -- Amended 2000 Ky. Acts ch. 222, sec. 3, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 6, effective January 1, 1995.

Legislative Research Commission Note (1/1/2022). This statute was amended by 2021 Ky. Acts chs. 80 and 105, which do not appear to be in conflict and have been codified together.

367.4913 Duties of protection notification center -- Board of directors of Kentucky Contact Center -- Kentucky Contact Center to serve all counties.

- (1) All protection notification centers shall:
 - (a) Provide locate request services during working days and provide an emergency contact number for incidents occurring outside the working day;
 - (b) Provide a positive response system for excavators, locators, operators, and other interested parties to determine the status of locating an underground facility;
 - (c) Provide any excavation request with an identification number and the names of the facility owners or operators who will be notified for each locate request;
 - (d) Promptly after receiving an excavation or demolition work notification from an excavator, provide to each of its affected operator members the excavator information required by KRS 367.4911(3);
 - (e) Maintain a list of all its operator members, their business addresses and their business and emergency telephone numbers and provide this information in accordance with KRS 64.012 with the county clerk of each county where the operator member has underground facilities. The county clerk shall provide this information upon request for the actual cost of providing a copy, to be paid by the requesting party to the county clerk. The county clerk shall assume no liability associated with the receipt of this information from the protection notification center or for subsequent provision of this same information to the requesting party;
 - (f) Make the operator members information list available to any person for inspection at its place of business without charge or provide a copy of the list to any person for any county upon request for a fee not to exceed the actual cost of providing a copy;
 - (g) Define and adopt policies and procedures for processing design information requests;
 - (h) Provide the person making a design information request a list of identified operators that will receive notification and notify those operators;
 - (i) Maintain the following information provided by excavators for all requests to locate facilities for at least five (5) years from the date of the request:
 1. Name and phone number of the excavator or person requesting the underground facility locate;
 2. Location and type of work being performed by the excavator;
 3. Name and phone number of work site contact;
 4. Name, address, and phone number of underground facility operators; and
 5. Estimated start date and start time of excavation;
 - (j) Provide contact information for the protection notification center on its Web site or pursuant to paragraph (e) of this subsection; and

- (k) Provide public awareness education and damage prevention programs in the manner and amount determined by each protection notification center.
- (2) The Kentucky Contact Center shall be governed by a board of directors who are elected by the membership. Board seats shall be composed of no more than twenty-one (21) voting members and six (6) nonvoting members and may be filled by representatives of the following:
 - (a) A natural gas provider;
 - (b) An electric provider;
 - (c) A telecommunications provider;
 - (d) A water/sewer provider;
 - (e) An interstate pipeline operator;
 - (f) A municipal utility operator;
 - (g) A commercial excavator;
 - (h) An oil and gas operator; and
 - (i) At least one (1) but not more than six (6) advisory, nonvoting members representing the following:
 - 1. Public Service Commission;
 - 2. Kentucky Transportation Cabinet;
 - 3. Home Builders Association of Kentucky;
 - 4. National Electrical Contractors Association;
 - 5. Associated General Contractors of Kentucky; or
 - 6. Kentucky Association of Master Contractors.
- (3) Nonvoting members shall be elected by a majority of the voting members and shall serve for one (1) year terms which expire on December 31. Nonvoting members are eligible for reappointment by a majority of the voting members.
- (4) The Kentucky Contact Center's board of directors shall establish the method to calculate the cost of service provided by the center.
- (5) The Kentucky Contact Center shall serve all Kentucky counties.

Effective: January 1, 2022

History: Amended 2021 Ky. Acts ch. 80, sec. 4, effective January 1, 2022. -- Amended 2015 Ky. Acts ch. 31, sec. 4, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 100, sec. 4, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 137, sec. 5, effective July 12, 2012. -- Amended 2000 Ky. Acts ch. 222, sec. 4, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 7, effective January 1, 1995.

Legislative Research Commission Note (7/12/2012). Under the authority of KRS 7.136(1), the Reviser of Statutes has changed the internal format of this statute from the way it appeared in 2012 Ky. Acts ch. 137, sec. 5, to correct a manifest clerical or typographical error. The words in the text were not changed.

367.4915 Activities exempt from KRS 367.4905 to 367.4917.

Except as provided in KRS 367.4911(9), the requirements of KRS 367.4905 to 367.4917 shall not apply to the following:

- (1) Excavation by an operator on its own easement except where that easement is crossed by another operator's facilities;
- (2) Routine road maintenance or railroad maintenance or repairs;
- (3) Tilling of soil for agricultural purposes;
- (4) Excavators excavating on private property, using nonmechanized equipment, if there is no encroachment on any operator's right-of-way or easement;
- (5) The opening of a grave in a cemetery;
- (6) A solid waste disposal site which is properly permitted;
- (7) Coal mining operations which are currently regulated under KRS Chapter 350;
- (8) A utility operator or utility operator subcontractor performing emergency work as defined in KRS 367.4903;
- (9) Leak migration testing using metal probes inserted by hand by an authorized representative of the operator;
- (10) Any nonintrusive excavating performed by an operator or his or her subcontractor to locate the operator's underground facilities in response to a notice of excavation from the notification center, if all reasonable precautions have been taken to protect the underground facilities;
- (11) Nonintrusive excavating to inspect or perform maintenance for an existing utility pole; or
- (12) Connection or disconnection of communications lines within a private or public easement or right-of-way by means of nonintrusive excavating when the depth of the excavations is not greater than twelve (12) inches and is completed within twelve (12) inches of a communications service provider's own communications network.

Effective: July 15, 2024

History: Amended 2024 Ky. Acts ch. 21, sec. 3, effective July 15, 2024. -- Amended 2021 Ky. Acts ch. 105, sec. 2, effective June 29, 2021. -- Amended 2012 Ky. Acts ch. 137, sec. 6, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 180, sec. 4, effective July 15, 2008. -- Amended 2000 Ky. Acts ch. 222, sec. 5, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 8, effective January 1, 1995.

367.4917 Penalties -- Payment and apportionment of civil penalties -- Enforcement by Public Service Commission -- Written agreement form -- Administrative regulations.

- (1) An excavator who fails to comply with any provision of KRS 367.4911, or an operator who fails to comply with any provision of KRS 367.4909 may be subject to a civil penalty of two hundred fifty dollars (\$250) for the first violation, no more than one thousand dollars (\$1,000) for the second violation and no more than three thousand dollars (\$3,000) for the third and any subsequent violation. A violation shall be considered a first violation under this subsection if more than three hundred sixty-five (365) days have elapsed since the last incident attributable to a person in violation of KRS 367.4909 or 367.4911. If a person commits a violation in the course and scope of employment, the penalties shall be imposed on the employer.
- (2) A protection notification center that fails to comply with any provision of KRS 367.4913 shall be subject to a civil penalty of one thousand dollars (\$1,000) for each violation.
- (3) A person that knowingly provides false notice to a utility notification center of an emergency as defined in KRS 367.4903 shall be subject to a civil penalty of one thousand dollars (\$1,000) for each violation.
- (4) Any person who violates any provision of the Underground Facility Damage Prevention Act of 1994, KRS 367.4901 to 367.4917, that involves damage to a facility containing any flammable, toxic, corrosive, or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material shall be subject to a civil penalty, in addition to the civil penalty in subsection (1) of this section, not to exceed one thousand dollars (\$1,000) for each violation. The penalties of this subsection are not in conflict with and are in addition to civil damages for personal injury or property damage.
- (5)
 - (a) Except as provided in subsection (6) of this section, all civil penalties recovered for a violation of this section shall be paid to the general fund of the state, county, city, or fire protection agency which issued the citation.
 - (b) In the event that more than one (1) government agency was involved, the court shall direct an apportionment of the civil penalties.
 - (c) Failure to comply with the provisions of the Underground Facility Damage Prevention Act of 1994, KRS 367.4901 to 367.4917, may be determined at the conclusion of an investigation and shall be based on evidence available to state, county, or city officials, law enforcement, or fire protection agencies which issue the citation.
- (6) The commission shall have statewide authority to enforce and assess civil penalties provided for in this section and to seek injunctive relief for any violation that results in damage to an underground facility used to transport gas or hazardous liquid subject to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq. Once the commission initiates an investigation or undertakes an enforcement action against a person for an alleged violation, no other state, county, city, or fire protection agency shall initiate or continue any enforcement action against the person for the same

alleged violation. Any action to recover penalties assessed pursuant to this subsection shall be brought in the Franklin Circuit Court. All penalties recovered by the commission shall be paid into the State Treasury and credited to the account of the commission.

- (7) The commission shall make available on its Web site a written agreement form for an operator and an excavator to agree to a date or series of dates by which time the locate request must be completed if different from those dates established in KRS 367.4909. The form shall contain but is not limited to the parties' names, the locate request number, the date requested, and the location. The parties shall make the executed agreement form available upon request of the commission.
- (8) The commission may promulgate administrative regulations in accordance with KRS Chapter 13A to enforce the Underground Facility Damage Prevention Act of 1994. The commission shall exercise its authority under the Underground Facility Damage Prevention Act of 1994 in accordance with the rules and procedures set forth in KRS Chapter 278 and all applicable administrative regulations promulgated by the commission.

Effective: January 1, 2022

History: Amended 2021 Ky. Acts ch. 80, sec. 5, effective January 1, 2022. -- Amended 2018 Ky. Acts ch. 70, sec. 5, effective July 14, 2018. -- Amended 2015 Ky. Acts ch. 31, sec. 5, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 100, sec. 5, effective July 15, 2014; and ch. 116, sec. 1, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 137, sec. 7, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 180, sec. 5, effective July 15, 2008. -- Amended 2000 Ky. Acts ch. 222, sec. 6, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 9, effective January 1, 1995.

Legislative Research Commission Note (7/15/2014). This statute was amended by 2014 Ky. Acts chs. 100 and 116. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 116, which was last enacted by the General Assembly, prevails under KRS 446.250.

Kentucky Public Service Commission Jurisdiction

278.230 Access to property, books and records of utilities -- Reports and information may be required.

- (1) The commissioners and the officers and employees of the commission may, during all reasonable hours, enter upon the premises of any utility subject to its jurisdiction for the purpose of examining any books or records, or for making any examination or test, or for exercising any power provided for in this chapter, and may set up and use on such premises apparatus and appliances necessary for any such examination or test. The utility shall have the right to be represented at the making of any such examination, test or inspection.
- (2) The books, accounts, papers and records of the utility shall be available to the commission for inspection and examination. If the books, accounts, papers and records are not within the state, the commission may, by notice and order, require their production or the production of verified copies at such time and place as it designates, any expense incurred to be borne by the utility so ordered.
- (3) Every utility, when required by the commission, shall file with it any reports, schedules, classifications or other information that the commission reasonably requires. The commission shall prepare and distribute to the utilities blank forms for any information required under this chapter. All such reports shall be under oath when required by the commission.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 28, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 30, effective April 11, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-13, 3952-20, 3952-23.

278.250 Investigation of condition of utility.

Whenever it is necessary in the performance of its duties, the commission may investigate and examine the condition of any utility subject to its jurisdiction. In conducting such investigation, the commission may proceed with or without a hearing as it deems best, but shall make no order without giving a hearing to the parties affected thereby.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 30, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 32, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-21.

278.260 Jurisdiction over complaints as to rates or service -- Investigations -- Hearing.

- (1) The commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion. No order affecting the rates or service complained of shall be entered by the commission without a formal public hearing.
- (2) The commission shall fix the time and place for each hearing held by it, and shall serve notice thereof upon the utility and the complainant not less than twenty (20) days before the time set for the hearing. The commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest or for the protection of substantial rights.
- (3) The complainant and the person complained of shall be entitled to be heard in person or by an attorney and to introduce evidence.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 242, sec. 3, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 33, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-33.

278.240 Certified copies of commission's records -- Use as evidence.

Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner, or by the executive director under the seal of the commission, to be true copies of the originals, shall be evidence in like manner as the originals in all matters before the commission and in courts of competent jurisdiction.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 166, sec. 2, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 29, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 31, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-41.