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HAND DELIVERED AND BY E-MAIL

Gerald E. Wuetcher
Public Service Commission of Kentucky
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: Comments Of Kentucky Power Company Regarding Proposed Changes To Title 807 Of The Kentucky Administrative Regulations

Dear Mr. Wuetcher:

Kentucky Power Company appreciates the opportunity to offer comments on the proposed changes to 807 KAR 5:001, 807 KAR 5:006, and 807 KAR 5:011. The proposed regulations evidence the significant work and thought that went into the revisions. The Company also appreciates the Staff's willingness to conduct the August 27, 2012 and August 31, 2012 hearings, as well as the modifications to the originally proposed regulations discussed at the hearings. Finally, Kentucky Power commends the Commission and its staff for implementing electronic filing.

Kentucky Power Company's comments broadly fall into two categories: (1) statements of concern; and (2) suggestions. The statements of concern identify those provisions of the proposed regulation Kentucky Power believes should be modified to ensure the regulations comport with the Commission's statutory authority. Also listed under statements of concern are provisions that raise significant issues regarding the fairness or workability of the proposed provision. The suggestions identify places where the language might be modified to make the Commission's intent clearer, or which involve relatively minor concerns. Under each category the comments are further subdivided by the specific regulation being addressed. Where appropriate and possible, Kentucky Power Company has set forth suggested amended language

<u>Statements Of Concern</u>

<u>807 KAR 5:001</u>

- 807 KAR 5:001, Section 4(11)(d) – Kentucky Power suggests that the following sentence be added to the end of the provision: "Persons filing such written comments shall not be deemed parties to the proceeding and need not be named as parties to any appeal." The

statement is intended to address the lack of clarity in Kentucky case law and KRS 278.410 concerning the need to name as parties to an appeal those persons who participate in Commission proceedings in some form other than as parties.

- 807 KAR 5:001, Section 5(3) – provides in part that: "The reply shall be limited to the matters initially raised in the responses to the party's motion." Although Kentucky Power anticipates the Commission will apply this limitation with reason, the term "matter" is ambiguous enough that it could lead to needless motion practice. For example, consider this scenario: Party A files a motion seeking certain relief. Party B in its response cites *Doe v. Schmidlap* in opposition to the requested relief. In fact, strong arguments exist for distinguishing *Doe v. Schmidlap* on the point it was cited for by B. Depending on how broadly the term "matter" is construed, Party B could argue credibly that the matter for which *Doe v. Schmidlap* was cited was first raised in Party A's motion and not the response, and thus Party A is precluded from distinguishing the case in its reply.

Kentucky Power suggests that unnecessary motion practice could be avoided, and further clarity achieved, if the Commission were to adopt the following sentence from CR 76.12(4)(e) in lieu of the final sentence of the provision: "Reply briefs shall be confined to points raised in the briefs to which they are addressed, and shall not reiterate arguments already presented."

- 807 KAR 5:001, Section 4(8)(b) – provides in part that "[s]ervice shall be complete upon mailing or electronic transmission, but electronic transmission shall not be effective if the serving party learns that it did not reach the person to be served." Kentucky Power suggests the provision be amended to provide that service is complete and effective for service by electronic transmission and mail upon electronic transmission or mailing. First, it seems contradictory to described an act as complete but ineffective. Second, as an act required by the Commission's regulations, service should not be deemed ineffective in instances where the reasons for the non-delivery are beyond the serving party's control. For example, as proposed, the regulation would deem service ineffective even when the reason for non-receipt is that the receiving party's mailbox is full and hence the message is not received. Third, deeming service ineffective may raise questions as to whether a party who timely files and serves a document, but subsequently learns that service was ineffective, has complied with the relevant statute, regulation, or order of the Commission, including procedural schedules.

Kentucky Power suggests it would be preferable to delete the language about ineffective service in the case of non-delivery by electronic transmission and instead include a provision requiring that a serving party take steps to re-serve a filing immediately upon discovering non-receipt. Moreover, Kentucky Power recommends that the provision be made applicable to all forms of service. These objectives could be achieved by substituting the following for the final sentence of the provision. "Service shall be complete upon mailing or electronic transmission. If a serving party learns that the mailing or electronic transmission did not reach the person to be

served, the serving party shall take reasonable steps to immediately re-serve the party to be served."

- 807 KAR 5:001, Section 4(11)(d) – provides that entities not granted intervention may file written comments that will be "filed in the case record." Because these written comments are not under oath, and not subject to cross-examination, Kentucky Power suggests that written comments be treated in the same fashion as oral public comments are now treated. In addition, the Company suggests that any ambiguity regarding the status of the comments could be resolved if the final sentence of Section 4(11)(d) were amended to provide: "These comments shall be filed in the case record but shall not be treated as evidence in the proceeding."

- 807 KAR 5:001, Section10(3) – provides for amicus briefs. Kentucky Power recognizes the Commission's need for whatever relevant and material information will aid its decision. Fundamental fairness to the parties, as well as ensuring the Commission receives the fullest explanation of whatever points are raised in the amicus brief, suggest that a party whose interests are affected by the arguments made in the amicus brief should have the opportunity to respond. The proposed regulation does not anticipate such responses, nor would the schedule set out in the proposed regulation allow any response in many cases. In addition, allowing a motion to file an amicus brief to be filed "within fifteen (15) days of the time fixed for the filing of the parties' briefs" may result in the amicus brief motion being filed at or after the time for the Commission's decision when, as occurred in Case No. 2011-00408, the parties' briefs are filed a short time prior to the statutory deadline for the Commission's decision. Finally, while simultaneous briefing is more common before the Commission than in the courts, the Commission frequently provides for *in seriatim* briefing. Where briefs are filed *in seriatim* it is unclear under the proposed regulation which brief triggers the 15-day period.

At the August 27, 2012 and August 31, 2012 hearings on the proposed regulation a question arose about the means whereby the Commission can seek industry-wide input in cases that involve a single utility. Kentucky Power concurs with the comments made by Mr. Riggs that industry-wide issues should be addressed only in Administrative Cases.

Kentucky Power recommends that 807 KAR 5:001, Section10(3) be deleted in its entirety. If the Commission nevertheless believes amicus briefs are useful, Kentucky Power suggests the final sentence of 807 KAR 5:001, Section 10(3) be deleted and the following be substituted: "This motion shall be filed fifteen days (15) prior to the time fixed for filing the first brief. Any party to the proceeding wishing to respond to an amicus brief shall do so in that party's first brief following the entry of the Order granting the motion for leave to file the amicus brief. " This should not hamper entities wishing to file amicus briefs and will allow a party affected by the brief to respond.

- 807 KAR 5:001, Section 11(3) – requires that each page and each line of each sheet of an exhibit consisting of more than one page be numbered. The current regulation requires numbering only where practicable.

Kentucky Power believes the current regulation has worked well and that the burdens associated with complying with the amended numbering requirement will far outweigh any benefits. Such a burden will disproportionately affect smaller parties and individuals with matters before the Commission. In addition, the requirement may make it impossible for a party to impeach a witness with a document not previously intended to be an exhibit, even if the witness veers into new or unanticipated matters. As a result, parties will spend inordinate time numbering the pages and lines of documents unlikely ever to be needed as an exhibit to protect against surprise. Kentucky Power suggests that the current "where practicable" exception of the current regulation be retained.

- 807 KAR 5:001, Section 13(5) – provides that "[i]f the petition, motion or request for confidential treatment of material is denied, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to seek any remedy afforded by law." Kentucky Power suggests two changes. First, Kentucky Power suggests the provision be modified to provide: "If the petition, motion or request for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted under KRS 278.410 for appeals." Second, the provision should be modified to make clear that the material in question will be afforded confidential treatment by the Commission while the petitioner prosecutes any remedy afforded by law. This second suggestion will allow parties to avoid injunction practice before the Franklin Circuit Court to protect the material in question from public disclosure while an appeal is pending.

- 807 KAR 5:001, Section 13(6)(b) – authorizes the Commission to order disclosure to a petitioning party of information determined by the Commission to be confidential where the parties cannot reach agreement on the terms of a non-disclosure agreement. As an initial matter, Kentucky Power notes that it is unaware of any instance in any of its proceedings where the parties have been unable to reach agreement on the terms of a non-disclosure agreement. Thus, based on Kentucky Power's experience, there seems to be little or no need for the provision.

More fundamentally, Kentucky Power respectfully submits that the Commission is not authorized under the provisions of the Open Records Act to order, even under limited circumstances, the disclosure of information exempted from disclosure by KRS 61.878. Specifically, Subsection (1) of that statute exempts from inspection, except upon the order of a court of competent jurisdiction, records that meet the requirements of KRS 67.878(1)(a) - KRS 61.878(1)(n). Because the Commission is not a court, to the extent 807 KAR 5:001, Section

13(6)(b) permits such inspection it seemingly violates KRS 13A.130(1) and would be unenforceable under KRS 13A.130(2) and well-established principles of agency rule-making.

- 807 KAR 5:001, Section 13(10)(a) – limits confidential protection to two years. It is unclear whether the two year period runs from the date the information is filed with the Commission or the date of the Order granting confidential treatment to the records. At a minimum, the provision should be amended to provide that the two year period runs from the date of the Commission's Order granting confidential treatment.

More fundamentally, KRS 61.878(1)(a) – KRS 61.878(1)(e) and KRS 61.878(1)(i) – KRS 61.878(1)(n) do not place temporal limits on the exemption from public disclosure of material meeting the requirements of those provisions. On the other hand, KRS 61.878(1)(f) – KRS 613878(1)(h) do place such limits, suggesting the General Assembly was capable of limiting the confidentiality period when it deemed as a matter of public policy the importance of doing so. That it did not do so with the majority of the exemptions under KRS 61.878 strongly suggests that the General Assembly intended that the exemption not be temporally or otherwise limited with respect to exemptions arising under KRS 61.878(1)(a) – KRS 61.878(1)(e) and KRS 61.878(1)(i) – KRS 61.878(1)(n). As a result, Kentucky Power respectfully submits that for the same reasons described immediately above, 807 KAR 5:001, Section 13(10)(a) seemingly violates KRS 13A.130(1) and would be unenforceable under KRS 13A.130(2) and well-established principles of agency rule-making.

Kentucky Power was present at the August 27, 2012 hearing and heard the alternative proposed by Mr. Riggs. While a decided improvement on the two-year limit found in the proposed regulation, Kentucky Power believes Mr. Riggs' alternative may be subject to being challenged on the same grounds as the proposed regulation.

- 807 KAR 5:001, Section 16(3)(b) – sets forth the three methods that may be used to provide customers with notice of applications for general rate adjustment. Individual notices delivered to customers is one but not the only method for providing notice. 807 KAR 5:051, Section 2(1) is applicable only to electric utilities and requires individual customer notification of proposed changes in rate schedules. It is unclear whether this notification is in addition to that required by 807 KAR 5:001, Section 16(3)(b). Duplicate notification seems unnecessary and a needless expense to be borne by the customers. In addition, while 807 KAR 5:051, Section 2 requires individual notice <u>after</u> the application is filed, 807 KAR 5:001, Section 16(3)(b)(1) requires individual notice (if that is the option chosen) <u>prior to</u> the filing of the application. Kentucky Power suggests that an additional sentence be added to 807 KAR 5:001, Section 16(3)(b) as follows: "Notice given pursuant to this regulation shall satisfy the requirements of 807 KAR 5:051, Section 2."

- 807 KAR 5:001, Section 16(14) – governs the procedure to be followed when the Commission finds deficiencies in a utility's Application for General Adjustment in Existing Rates. The regulation provides: "The commission shall notify the utility of any deficiencies in the application within thirty (30) days of receiving it. For the application to be considered filed with the commission, the utility shall cure any deficiencies within thirty (30) days of the commission giving notice of any deficiencies." Kentucky Power suggests the provision be amended to make clear that, subject to a Commission order to the contrary in those instances where the deficiency materially impairs the ability of the Commission or any party to review and investigate to the application, cured deficiencies will relate back to the original filing date so that all statutory timing deadlines, including those contained in KRS 278.190, will continue to run from the original filing date. This could be accomplished by adding the following sentence to the end of the proposed provision: "Unless the Commission orders to the contrary upon finding that the deficiency materially impairs the ability of the Commission or any party to review and respond to the application, the cure shall relate back to the initial filing of the application."

- 807 KAR 5:001, Section 18(2)(6) – requires applications, responses, and replies filed in connection with petitions for declaratory orders to be verified or supported by affidavit. These documents are likely to contain legal argument, which by its nature is not subject to verification. Kentucky Power suggests that the provision be amended to provide "All factual statements in applications ...."

- 807 KAR 5:001, Section 19(4) – provides that where the defendant offers to satisfy the complaint but the offer is rejected, the defendant must file its answer to the complaint within ten days of date specified in the order or any extension. There is, however, no period for a complainant to reject an offer of satisfaction, or for making a filing with the Commission noting that the offer has been rejected. This could lead to instances of default where the rejection is made after the initial ten day period, or require the filing of unnecessary "protective" answers to avoid such default. To address these issues, and to provide an orderly procedure, Kentucky Power suggests the first sentence of the provision be amended to provide: "If the complainant is not satisfied with the relief offered, the complainant shall file with the Commission a written notice of rejection of the offer with a certificate showing service on the defendant and other parties. The defendant shall file an answer to the complaint or motion to dismiss within ten days of the date of the filing of the complainant's written notice of rejection, with certificate of service ...."

<u>807 KAR 5:006</u>

- 807 KAR 5:006, Section 7(5)(c) – when read in conjunction with section 26 of the regulation, this provision requires that the meter registration on remotely read meters be recorded at intervals of no longer than two years. Kentucky Power joins in the comments made at the August 27, 2012 and August 31, 2012 hearings that this requirement is unnecessary,

impracticable, and will result in unnecessary costs being borne by the Company's customers. Kentucky Power estimates that the requirement will increase the Company's costs by at least $200,000 a year.

At the August 31, 2012 hearing, Staff indicated that the provision was intended as a means of documenting that inspections were being made to the point of service. If that is the intent, the Company suggests that the August 31, 2012 proposal be further modified to allow utilities to document the inspection in other ways.

- 807 KAR 5:006, Section 8(3)(d) – provides for refunds following the recalculation of deposits, except where the customer's bill is delinquent when the deposit is recalculated. Kentucky Power suggests that the term "account" be substituted for the "term" bill in the proposed regulation because there are instances where an account is delinquent but not the current bill. In addition, Kentucky Power suggests that the provision be amended to except from the refund obligations those instances where the account is delinquent at the time the refund would otherwise be paid or applied. This is consistent with the thrust of the provision and would protect against making refunds where the account becomes delinquent between the time the deposit is recalculated and the refund is paid or applied.

- 807 KAR 5:006, Section 9(3)(c)(3) – Kentucky Power suggests this provision be deleted. There are instances where a utility is required to make more than one termination or field collection visit in a single billing period. Indeed, 807 KAR 5:006, Section 14(c)(2) anticipates partial payment plans, which could be negotiated at the time of the field collection visit, of less than 30 days. The costs associated with these additional visits should be borne directly by the customer necessitating the visits and not the customers at large.

- 807 KAR 5:006, Section 14(c)(2) – Kentucky Power agrees with the suggestion made at the August 27, 2012 hearing to delete the requirement that partial payment plans be signed by a utility representative. At the August 31, 2012 hearing Staff indicated that the proposed regulation would be further modified so that a recording of the call during which the partial payment was agreed upon could be substituted for a signed agreement. Although Kentucky Power supports this modification, and believes it is an important improvement, the Company suggests that the regulation be further modified to allow the use of unsigned letter where the Company's records reveal the identity of the customer representative who negotiated the partial payment plan.

Kentucky Power also endorses the modification suggested by Staff at the August 31, 2012 hearing. That modification provided that the failure of the customer to sign and return the partial payment plan in five days would void the partial payment plan.

807 KAR 5:011

- 807 KAR 5:011, Section 8 – Kentucky Power believes the "PSC staff proposed language" discussed at the August 31, 2012 hearing resolved many of the ambiguities in the provision as originally proposed. It is Kentucky Power's understanding that Staff proposes to insert language in the regulation that will make clear that notice is required when "a rate is changed or a significant change is made to a condition of service" (approximate transcription of Mr. Kirtley's statement). Given the broad definition of rate contained in KRS 278.010(12), Kentucky Power suggests that the proposed language be further modified to provide: "A utility shall give notice to the public as provided in this section whenever an amendment, deletion, modification, or addition to a tariff changes a rate or results in a significant change to a condition of service." This clarification would make clear that rate changes resulting from computations under an unmodified formula rate (such the monthly changes to the per kWh or other rate computed under the fuel adjustment clause, environmental surcharge, Kentucky Power's system sales clause, and other formula rates) are not subject to the notice requirement of 807 KAR 5:011, Section 8.

More generally, Kentucky Power suggests that the cost of publishing notice three times outweighs any incremental benefit that might be gained beyond the initial publication. These costs are ultimately borne by the customers and the additional cost should at least be matched by the benefit received. In addition, as the Commission is aware, it is not uncommon for problems to arise because newspapers fail to publish a notice in accordance with the directions provided by the utility. This is a particular problem in Kentucky Power's service territory where many of the newspapers publish weekly. Kentucky Power believes these issues can be addressed if 807 KAR 5:011, Section 8(2)(b)(3) is amended to provide: "Publish notice in a prominent manner in a newspaper of general circulation in each county of the utility's service area. The notice shall be published within the period beginning 14 days prior to the date the filing is submitted and ending 14 days following the date the filing."

Suggestions

807 KAR 5:001

- *Passim* – the term "pleading" appears 15 times throughout the regulation, but it is not defined. The term is used in the regulation in contradistinction to the terms "document," "correspondence," "testimony," "exhibit," and "motion." By contrast, it appears by implication that the term "pleading" includes complaints, applications, and answers. *See* 807 KAR 5:001, Section 4(5). Although these meanings can be gleaned from a close study of the entirety of the regulation, it would aid persons new to Commission practice or unfamiliar with the regulation if the term were defined. The need for a definition increases if the issues with its use described below are not otherwise addressed.

- 807 KAR 5:001, Section 4 – Kentucky Power suggests that a subsection be added to this provision to require all final Commission orders to advise parties of their rights to rehearing under KRS 278.400 and appellate review under KRS 278.410. Kentucky Power further suggests that this notice provision also inform parties seeking judicial review of a Commission order of their obligation under KRS 278.420 to designate the record on appeal. This sort of notice is consistent with the requirements of Chapter 13B and will aid parties and practitioners new to practice before the Commission

- 807 KAR 5:001, Section 4(3) – the regulation requires only that pleadings be signed,. Current Commission practice, consistent with administrative and civil practice generally, requires that notices to the Commission or parties, motions, responses, replies, briefs, and objections to data requests be signed. Kentucky Power assumes the limitation in the proposed regulation of the signing requirement to pleadings is not intended to be a change in current practice. CR 11 utilizes the phrase "paper of a party" as a catch-all in connection with the requirement that filings be signed and might be used with this regulation.

- 807 KAR 5:001, Section 4(6) – provides for the use of an "application" to obtain a subpoena. The term "application" generally is used in Chapter 278 of the Kentucky Revised Statutes and in Commission practice to mean the filing that initiates a case. *See e.g.* KRS 278.300. Kentucky Power suggests that the use of the term "motion" would resolve this ambiguity, while conforming the regulation to proposed 807 KAR 5:001, Section 5.

- 807 KAR 5:001, Section 7(1) – requires parties to Commission proceedings to file ten copies of all original documents filed with the Commission in non-electronic cases. Kentucky Power suggests that the regulation recognize an exception for lengthy filings as the issue often arises in connection with responses to data requests. Specifically, Kentucky Power requests that parties filing data request responses containing 500 or more pages be permitted to file the original document in paper form, provide paper copies to all parties to the proceeding, and file ten copies with the Commission in electronic form on a compact disc or other appropriate medium. This approach is consistent with that taken by the Commission in its Order entered on April 24, 2012 in: *In the Matter of: Application of Kentucky Power Company for Approval of its 2011 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, and the Grant of a Certificate of Public Convenience and Necessity for the Construction and Acquisition of Related Facilities*, Case No. 2011-00401.

- 807 KAR 5:001, Section 4(8)(b) – Kentucky Power believes the Commission's adoption of electronic filing will aid the Commission and the parties in the prompt and efficient resolution of matters before the Commission. The degradation of mail service, which is only expected to worsen, can substantially hamper the ability of a party receiving a pleading or other filing to respond in a timely fashion if service is made by mail. It is not uncommon for mail

delivery between two Frankfort addresses, for example, to require ten days. Kentucky Power recognizes that some parties may not have the ability to use, or otherwise may possess legitimate reasons to elect not to use, electronic filing. In those, instances, however, the responding party should be afforded the opportunity, in a fashion similar to CR 6.05, an additional three days to file its response.

- 807 KAR 5:001, Section 4(8)(b) – Kentucky Power suggests that, consistent with current practice, the provision be amended to recognize delivery by overnight courier as an appropriate means of service.

- 807 KAR 5:001, Section 7(1) – continues the practice of filing ten copies of any original document filed with the Commission. Kentucky Power requests that the Commission consider whether some lesser number of copies would suffice. The requirement that ten copies be filed was imposed prior to the Commission's practice of posting all public filings on its website. It may be that a fewer number of copies will be sufficient for the purposes of Staff and the Commissioners, while lessening the cost ultimately borne by the customers, reducing the demand for storage space at the Commission, and saving natural resources. If the Commission determines that a lesser number of copies would be adequate, Kentucky Power suggests that the requirement under 807 KAR 5:001, Section 13(2)(b) for filing ten copies of the redacted version of any document for which confidential treatment is sought be amended in a like fashion.

The proposed regulation refers only to "an original document." Although parties that regularly practice before the Commission understand that the requirement is equally applicable to any filing, including electronic spreadsheets. To aid persons unfamiliar with Commission practice the Company suggests that the phrase "when a filing in any medium is made with the commission" be substituted for the phrase "when an original document is filed with the commission..."

- 807 KAR 5:001, Section 8 – The electronic filing procedures seem somewhat unclear as they relate to persons filing documents or wishing to be served with filings in electronic cases. In addition, they seem needlessly burdensome for the Commission. It may be these issues will be addressed through the implementation of the electronic filing system, but Kentucky Power suggests the Commission consider the following modifications:

  - ¤ The system should be administered on an opt-out basis. While Kentucky Power recognizes there may be instances where electronic filing is not possible or appropriate, these are likely to be infrequent and can be handled by Commission order or motion by the party seeking exemption.

  - ¤ Making electronic filing mandatory except where the filing entity opts-out also will simplify the Commission's electronic filing procedures and reduce the complexity of

the regulation. In particular, it would allow parties, their counsel and representatives to register once with the Commission's electronic filing system, waive service by mail, certify that they possess the facilities required to use the system, and thereafter be able to file electronically, and receive electronic notices of filings in all future cases involving the party without further certification and waiver.

- It is unclear on the face of the regulation how representatives and counsel of a party will become associated with the party in the Commission's electronic filing system so that the representative and counsel receive electronic notices of filing in a case. Kentucky Power suggests that the regulation be amended to require that a party or an entity seeking intervention identify in its initial filing in the case its counsel and authorized representative. If the counsel or authorized representative were previously registered they would thereafter receive electronic notification of all filings in the case.

- 807 KAR 5:001, Section 8(1) provides that the electronic filing procedures will be used "upon motion of the commission...." This may be a typographical error as it is unclear to whom the Commission would make its motion or even the necessity for the Commission to do so. Kentucky Power suggests that the term "order" be substituted for "motion" in the provision.

- 807 KAR 5:001, Section 8(3) – Kentucky Power has no objection to the suggestion made by Mr. Riggs at the August 31, 2012 hearing that the Commission retain the flexibility to dispense with the requirement that an original be filed with the Commission in electronic filing cases. The Company believes that the regulation, and not the Statement of Consideration, should set forth any filing requirements. Although reasonable persons perhaps could disagree whether Chapter 13A would permit a substantive requirement, or an exception thereto, to be set forth in a Statement of Consideration, the regulations should rest on their own bottom. Persons not familiar with Commission practice should be able to rely upon the regulations and not be required to consult other documents. Moreover, as time passes, and it has been almost 20 years since 807 KAR 5:001 was last amended, the Statement of Consideration will become less accessible, and the need to consult it, less well known.

- 807 KAR 5:001, Section 8(4)(e) – requires that electronically filed documents be "bookmarked to distinguish sections." As applied to data request responses the requirement may hinder the ability of filing parties to meet the deadlines established by procedural schedules. It is becoming increasingly common for parties to request all documents relating to a particular issue. The resulting response may include hundreds of individual documents totaling thousands of pages. In addition, there oftentimes are other sorts of voluminous responses. Kentucky Power believes that in many instances it could not timely meet a typical procedural schedule if it were required to bookmark each document comprising such a response. The Company thus suggests that 807 KAR 5:001, Section 8(4)(e) be amended as

follows to make clear that while individual data request responses must be bookmarked in a fashion akin to the tabs now used, that voluminous attachments need not be bookmarked: "Bookmarked to distinguish sections of the pleading or document, except that documents produced in response to data requests need not be individually bookmarked."

- 807 KAR 5:001, Section 13(2)(a)(2) – provides that one copy of the material for which confidential treatment is sought, with the confidential portions highlighted, is to be filed with the motion for confidential treatment. Kentucky Power suggests that where the entire document is confidential a filer be permitted to include with the confidential document a statement that the entire document is confidential in lieu of highlighting the entire document. This could be accomplished by adding the following sentence to the end of 807 KAR 5:001, Section 13(2)(a)(2): "If confidential treatment is sought for an entire document, unambiguous written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting." In addition, the Commission may want to include a further sentence that any confidential material shall be included in a sealed envelope stamped "confidential."

- 807 KAR 5:001, Section 13(2)(b) – provides for the filing of ten redacted copies of confidential material. Kentucky Power suggests that where the entire document is confidential a filer be permitted to include with a statement that the entire document is confidential in lieu of redacting the entire document. This could be accomplished by adding the following sentence to the end of 807 KAR 5:001, Section 13(2)(b): "If confidential treatment is sought for an entire document, the filer may file a sheet noting that the entire document is confidential in lieu of redacting the document."

In addition, please see the Company's comments above regarding 807 KAR 5:001, Section 7(1).

- 807 KAR 5:001, Section 15(2)(f) – The proposed regulation requires that an application for a certificate of public convenience and necessity include "an estimated cost of operation ..." but does not specify the period to be reflected in the estimate. Kentucky Power suggests the provision be amended to make clear that the utility should file the estimated annual cost of operation instead of some longer period, including the life of the asset. To that end, Kentucky Power suggests the following substitute: "An estimated annual cost of operation beginning thirty (30) days after the proposed facilities are completed."

- 807 KAR 5:001, Section 19(4)(b) – provides that the Commission may shorten the ten-day period for answering a complaint. The Company suggests that the provision be amended to recognize the Commission's inherent authority to extend the period for an answer by amending the final sentence as follows: "...require the answer to be filed within a shorter or longer period."

807 KAR 5:006

- 807 KAR 5:006, Section 1(4) – defines customer to include "any person … receiving service from any utility." The definition appears unchanged from the current provision. Although uncommon, there are instances where there are multiple tenants in a building but service is in the name of the building owner only. Under this definition, each tenant would be deemed a customer. This causes difficulty in the application of certain of the notice requirements of 807 KAR 5:006, Section 14. Kentucky Power suggests that the phrase "person contracting for service" be substituted for customer in 807 KAR 5:006~~, Section 15(1)(d) and~~ 807 KAR 5:006, Section 15(1)(f).

Very truly yours,

Mark R. Overstreet

MRO