

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION OF REGULATIONS) ADMINISTRATIVE
TO COMPLY WITH KRS 278.023) CASE NO. 324

O R D E R

On July 27, 1988, the Commission submitted to the Legislative Research Commission proposed regulations to implement the provisions of KRS 278.023. This statute was passed by the 1988 General Assembly and became effective July 15, 1988. The statute requires the Commission to approve any construction project by water districts formed under KRS Chapter 74 and water associations formed under KRS Chapter 273 when financed by either Farmers Home Administration or the U.S. Department for Housing & Urban Development. The statute further specifies that approval must be given within 30 days of satisfactory completion of certain filing requirements which are to be set out by regulation.

It is the Commission's intent in this matter to implement the regulation required by KRS 278.023 and comply with the necessary provisions of KRS Chapter 13A setting out the procedural steps to be followed by administrative bodies in promulgating administrative regulations.

IT IS HEREBY ORDERED that:

1. This case be and it hereby is established to promulgate regulations to carry out the statutory intent of KRS 278.023.
2. The proposed regulation set out in Appendix A be and it hereby is made part of the record.

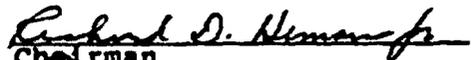
3. Pursuant to the requirements of KRS Chapter 13A, a public hearing on the proposed regulation be and it hereby is scheduled on September 21, 1988 beginning at 1:30 p.m., Eastern Daylight Time, in Hearing Room #1 at the Commission's offices at Frankfort, Kentucky.

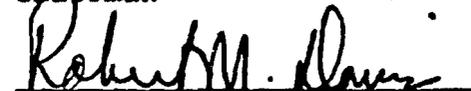
4. Persons desiring to be heard at this hearing shall notify Forest M. Skaggs, Executive Director, Public Service Commission, P. O. Box 615, Frankfort, Kentucky 40602, in writing of their desire to appear and testify no later than September 16, 1988. Persons wishing to make written comments on the proposed regulation shall submit an original and 3 copies to Mr. Skaggs, no later than September 16, 1988. A copy of these comments shall be available for public inspection at the Commission's office.

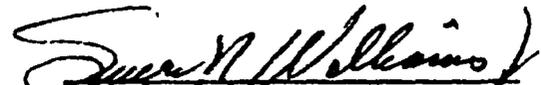
5. Notice of the proposed regulation and hearing shall be published in the September 1988 issue of the Kentucky Administrative Register.

Done at Frankfort, Kentucky, this 9th day of August, 1988.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

EXECUTIVE DIRECTOR

FILED

7-27-88 @ 9 a.m.
TO ADMINISTRATIVE REGULATIONS

APPENDIX "A"

Susan C. Wunderlich
REGULATIONS COMPLIER

Public Protection and Regulation Cabinet
Public Service Commission
Executive Director's Office

807 KAR 5:069 Water District and Water Association Construction Cases

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.023

NECESSITY AND FUNCTION: This regulation sets out minimum filing requirements and procedures a water district or water association shall follow when seeking Commission approval of a construction project financed in whole or in part by Farmers Home Administration or the U.S. Department of Housing and Urban Development.

Section 1. Commission Responsibility. The Commission shall approve an application within 30 days from the time the utility meets minimum filing requirements. Approval shall be by Order granting a certificate of public convenience and necessity to construct proposed systems and authorizing any financing or revisions in customer rates necessary to the proposal and which are set out in the financing documents.

Section 2. Utility Responsibility. The utility shall file its application in proper form and include discussion of minimum filing requirements set out herein. Any deviation to the minimum filing requirements shall be clearly identified in the application and supported by an appropriate motion to deviate. The 30 day

period for Commission review shall not begin until the minimum filing requirements are met or an order granting the motion to deviate is entered.

Section 3. Minimum Filing Requirements. An application filed under this regulation shall include the following.

(1) A formal application, signed by a utility official and counsel, consistent with requirements of 807 KAR 5:001, Section 8. An original and 10 copies of the application, including all exhibits, shall be submitted. The application shall clearly state reasons for filing and statutes under which Commission approval is needed.

(2) Minimum filing requirements shall be defined as the following detailed information and shall be included with the application:

(a) Copy of FmHA Letter of Conditions. For projects financed with HUD funds, a copy of the appropriate agency approval letter, including all terms and conditions to be met, shall be included.

(b) Copy of FmHA Letter of Concurrence in bid award.

(c) Copy of preliminary and final engineering reports.

(d) Certified statement from an authorized utility official confirming:

1. That the proposed plans and specifications for the project have been designed to meet the minimum construction and operating requirements set out in 807 KAR 5:066, Section 5 (3-4), Section 6 (1), Sections 7-8, Section 9 (1-3), Section 10 (1) and Section 11;

2. That all other state approvals or permits have already been obtained;

3. That any proposed rates shall produce the total revenue requirements set out in engineering reports; and

4. Dates when construction will begin and end.

(e) That notice to the customers has been given in conformance with Section 4. A copy of the notice shall be included in the application.

(f) If necessary, a motion requesting approval to deviate from any minimum construction standard or operating condition set out in 2(d). The motion shall be sufficiently supported to identify reasons minimum requirements cannot be met.

Section 4. Notice to Customers of Rate Change. A utility shall give public notice to its customers of a proposed rate change made under this regulation in the following manner:

(1) Prior to or at the same time application is made a one-time notice shall be given by either direct mail to each customer or in newspaper of general circulation in local service area.

(2) The notice shall contain the current and proposed rates and a brief description of the construction project.

Section 5. Additional Construction Activity. In instances where surplus project funds remain, a utility may construct additional plant facilities as an ordinary extension of service without prior Commission approval if it results in no change in existing customer's rates. The utility shall notify the

Commission in writing of any additional construction and include appropriate borrower authorization statements.

Section 6. System Maps. Following completion of any construction authorized under this regulation, the utility shall maintain system maps consistent with 807 KAR 5:006, Section 18.

Richard D. Heman, Jr.
Richard D. Heman, Jr., Chairman

DATE 7-22-88

Robert M. Davis
Bob Davis, Vice Chairman

DATE 7/22/88

Squire N. Williams, Jr.
Squire N. Williams, Jr.
Commissioner

DATE 7-22-88

Theodore Colley
Theodore Colley, Secretary
Public Protection and Regulation Cabinet

DATE _____

Approved as to form and certified in conformity with KRS Chapter 13A.

Rebecca Woodside Goodman
Rebecca Woodside Goodman, Attorney

DATE 7/22/88

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, September 21, 1988 at 1:30 p.m., E.D.T., at the Commission's offices, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation.

Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

Forest M. Skaggs, Executive Director
Public Service Commission
730 Schenkel Lane, P.O. Box 615
Frankfort, Kentucky 40602
(502) 564-2473

REGULATORY IMPACT ANALYSIS

Reg. No. 807 KAR 5:069

Agency Contact Forest M. Skaggs

(1) Type and number of entities affected:

This regulation sets forth minimum filing requirements and procedures a water district, water association or combined water, gas, or sewer district shall follow when seeking commission approval of a construction project financed in whole or in part by FmHA or HUD funds. Commission records indicate there are 141 water districts, 30 water associations and 9 combined water, gas, or sewer districts affected by this regulation. The total number of water utilities required to seek commission approval of proposed construction projects will neither increase nor decrease.

Because this regulation prescribes the minimum filing requirements and because the statute authorizing its promulgation declares that the Commission shall approve such projects after the minimum filing requirements are met, this regulation may also affect directly or indirectly and in varying degrees, those persons or utilities who provide construction activity or support services in connection with proposed construction projects.

(a) Direct and indirect costs or savings to those affected:

1. **First Year:** This regulation initially reduces the costs associated with preparation of applications in connection with construction cases before the commission. Because the commission is statutorily mandated to approve the project within 30 days, savings will result to the utilities due to the decrease in both number and types of documents which will be filed pending commission investigation. Rate case expense will be reduced because the statute and the commission's authority in promulgating this regulation eliminate any possibility that a public hearing could or would be held. An additional savings will be realized by a reduction in costs associated with construction cases which are pending before the Commission on July 15, 1988. In addition, any costs associated with Commission recommended changes, revisions, or modifications under the former procedures are eliminated by this regulation.

2. **Continuing costs or savings:** Savings enumerated above will continue each year thereafter.

3. **Additional factors increasing or decreasing costs (note any effects upon competition):** No effects on competition and no additional factors.

(b) **Reporting and paperwork requirements:** This regulation will result in a significant decrease in the documentation and verification necessary to show compliance with commission

regulations regarding minimum construction and operating requirements (807 KAR 5:066, Section 5(3-4), Section 6(1), Sections 7-8, Section 9(1-3), Section 10(1), and Section 11 and the filing of rate schedules (807 KAR 5:011, Section 4-9, 807 KAR 5:001, Section 9-10). Under this regulation an authorized utility representative verifies compliance by filing a certified statement to that effect.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. **First year:** This regulation will reduce staff man-hours and agency expense associated with investigation and review of construction projects funded by FmHA or HUD. Because the possibility of public hearings is effectively eliminated due to the 30 day review process the commission should realize a reduction in hearing related expenses.

2. **Continuing costs or savings:** Savings enumerated above will continue each year thereafter.

3. **Additional factors increasing or decreasing costs:** There are no additional factors.

(b) Reporting and paperwork requirements: Internally generated documents and correspondence directed to utilities with respect to requests for additional information or clarification of the information provided within or to supplement the application will be reduced and no field audit reports will be prepared. Significant reductions in the amount of documentation available for staff review will be reduced and replaced by a certified statement issued by an authorized utility official.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods that could have been used to implement this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation conflicts with KRS 278.190 wherein it states the commission may suspend a proposed rate schedule for up to 5 months after the date it was to become effective. The statute further provides that the commission may hold hearings and at those hearings the utility shall bear the burden of proof. Under this regulation and the statute authorizing its promulgation, the commission has no discretion to suspend a rate schedule filed in conjunction with an application for public convenience and necessity where funds provided by FmHA or HUD are involved. Further, the commission may not modify or reject any portion of the application and therefore, the utility carries no burden of proof to show the

rates are just and reasonable or that construction is needed and in the public interest.

(a) **Necessity of proposed regulation if in conflict:** This regulation is promulgated by the agency to comply with changes to KRS 278.023.

(b) **If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:** Efforts were made to harmonize the regulation with conflicting provisions of KRS 278.020 by requiring customers of a utility be notified of a proposed rate change. On the burden of proof question the utility must at a minimum certify certain facts to the agency; however, since hearings will not be held and no facts will be in dispute the utility carries no burden to show the rates proposed are reasonable or that construction is needed and in the public interest.

(6) **Any additional information or comments:**

None.

TIERING: Was tiering applied? Yes No X
If no, explain why tiering was not applied.

The statute authorizing the promulgation of this regulation affects only one class of regulated utilities and provides no agency discretion to tailor the regulation as to size of the utility, number of customers or on any other basis.

FISCAL NOTE ON LOCAL GOVERNMENT

Reg. No. 807 KAR 5:069

Agency Contact Forest M. Skaggs

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

This regulation will affect a division of those county governments with water districts created under Chapter 65 and 74 of Kentucky Revised Statutes.

3. State the aspect or service of local government to which this administrative regulation relates.

This regulation will impact water district construction projects which are financed by either of two federal agencies, FmHA or HUD. Promulgation of this regulation is authorized by KRS 278.023 and the regulation will affect only those local governments administering water districts or combined water gas or sewer districts created under Chapter 74, KRS. The only impact on water districts is that filing requirements and documentation necessary for approval of construction projects financed by FmHA or HUD will be reduced to a minimum.

4. How does this administrative regulation affect the local government or any service it provides?

The regulation sets forth minimum filing requirements and procedures a water district, water association, or combined water, gas, or sewer district shall follow when seeking Commission approval of a construction project financed in whole or in part by FmHA or HUD funds. Compliance with the regulation is a preliminary step in beginning water construction projects which will provide necessary water or sewer service or an increase in the quality of existing service to the residents of the geographical area to be served by the district.

There will be no increase or decrease in state government revenues or expenses. The impact on county government would be reflected in decreasing expenses for professional fees and reduced paperwork requirements. These reductions are impossible to estimate because they depend solely upon the type and number of projects proposed in the future.