

**807 KAR 5:069. Filing requirements and procedures for a federally funded construction project of a water association, a water district, or a combined water, gas, or sewer district.**

RELATES TO: KRS 65.810, Chapter 74, 273, 278.010(15), 278.020(1), 278.023, 278.190, 278.300

STATUTORY AUTHORITY: KRS 278.020(1), 278.023, 278.040(3), 278.190, 278.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.020(1) authorizes the commission to issue a certificate of public convenience and necessity for utility construction. KRS 278.300 authorizes the commission to approve the issuance or assumption of an obligation, liability, or evidence of indebtedness by a utility. KRS 278.190 authorizes the commission to approve proposed changes in rates. KRS 278.023 requires that the commission review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) requires the commission to prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water utility and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273. This administrative regulation establishes filing requirements and procedures a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273 shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15).

(2) "Construction project" means activity involving the construction or installation of facilities, plant, or equipment to provide, extend, or enhance the quality of water or sewer service within the geographical area that a water utility has the responsibility to serve.

(3) "Federal lending agency" means the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

(4) "Water utility" means:

(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of a public water supply or the collection or treatment of sewage for the public;

(b) A water district formed as a special district pursuant to KRS 65.810 and KRS Chapter 74; or

(c) A combined water, gas, or sewer district formed as a special district pursuant to KRS 65.810 and KRS Chapter 74.

Section 2. Filing Requirements. A water utility proposing a construction project financed in whole or in part under the terms of an agreement between the water utility and a federal lending agency shall file with the commission:

(1) All documents and information required by 807 KAR 5:001, Sections 7, 8, and 14;

(2) A copy of the documents from the federal lending agency stating approval of the project and including all terms and conditions of the agreement, including all amendments;

(3) A copy of the letter of concurrence in contract award;

- (4) A copy of the preliminary and final engineering reports and bid tabulations;
- (5) One (1) copy of each set of plans and specifications on electronic storage medium in portable document format;
- (6) A certified statement from an authorized water utility official confirming:
  - (a) That the proposed plans and specifications for the construction project have been designed to meet the minimum construction and operating requirements established in:
    - 1. If the construction project involves facilities to treat or distribute water, 807 KAR 5:066, Section 4(3) and (4), Section 5(1), Sections 6 and 7, Section 8(1) through (3), Section 9(1) and Section 10; or
    - 2. If the construction project involves facilities to collect or treat sewage, 807 KAR 5:071, Section 5 and Sections 7(1) through (3);
  - (b) That all other state approvals or permits have been obtained;
  - (c) That the proposed rates, if any, shall produce the total revenue requirements recommended in the engineering reports; and
  - (d) The dates upon which construction will begin and end;
  - (7) If applicable, a statement that notice meeting the requirements of Section 3 of this administrative regulation has been given, together with a copy of the notice; and
  - (8) If applicable, a motion requesting approval to deviate from a minimum construction standard or operating condition required by subsection (6)(a) of this section, together with supporting evidence to identify and explain the reasons that the minimum requirements cannot be met.

Section 3. Notice. Upon filing for a change in rates as a result of a construction project, a water utility shall provide notice as established in this section. (1) Public postings.

(a) A water 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 water 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 water 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 water 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 in a prominent manner in a newspaper of general circulation in the water utility's service area 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 water utility that provides service in more than one (1) county and is not proposing to increase its rates for sewer service may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of notice. A water utility shall file with the commission no later than fifteen (15) 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 water 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 water 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 water 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 brief description of the construction project and shall also contain:

(a) The proposed effective date of the proposed rate adjustment;

(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 (water utility name) located at (water 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 its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; and

(h) A statement that the proposed rates are required under the terms of an agreement between (water utility name) and (federal lending agency name) and that KRS 278.023 does not grant the Public Service Commission any discretionary authority to modify or reject any portion of the agreement between (federal lending agency) and (water utility name), or to defer the issuance of all necessary orders to implement the terms of that agreement.

Section 4. Additional Construction Activity. If surplus project funds remain after the approved construction project has been completed, the water utility may construct additional facilities without prior commission approval if no change in existing rates will result. The water utility shall notify the commission in writing of additional construction proposed under this section, and shall attach to the notice a statement of the federal lending agency authorizing the water utility to use the remaining project funds in the manner proposed.

Section 5. System Maps and Records. Within thirty (30) days after completion of construction authorized under this administrative regulation, the utility shall revise its system maps and records maintained pursuant to 807 KAR 5:006, Section 23, to include all required information regarding the new construction. (15 Ky.R. 900; eff. 11-4-1988; 24 Ky.R. 1774; 2122; eff. 4-13-1998; TAm 1-30-2013; 40 Ky.R. 700; 1282; eff. 1-3-2014; 41 Ky.R.150; 779; eff. 10-31-2014; Crt eff. 3-27-2019.)