

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Amended at ARRS Committee)

807 KAR 5:078. Alternative rate adjustment for electric cooperatives.

RELATES TO: KRS Chapter 278, Chapter 279

STATUTORY AUTHORITY: KRS 278.030(1), (2), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the Public Service Commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.030(1) requires all rates received by an electric utility subject to the jurisdiction of the Public Service Commission to be fair, just, and reasonable. KRS 278.030(2) requires every utility to provide adequate, efficient, and reasonable service. This administrative regulation establishes a simplified and less expensive procedure for rural electric cooperatives 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) "Attorney General" means the Attorney General, Office of Rate Intervention.
- (3) "General rate adjustment" means an adjustment in rates received pursuant to an application filed pursuant to 807 KAR 5:001, Section 16.
- (4) "Base rate adjustment" mean a general rate adjustment or an adjustment in rates received pursuant to an application filed pursuant to Section 2 of this administrative regulation.
- (5) "Cooperative" means any rural electric cooperative corporation formed under KRS Chapter 279 that distributes electricity.
- (6) "OTIER" means the operating times interest earned ratio for the cooperative.
- (7) "Rate" is defined by KRS 278.010(12).
- (8) "TIER" means the times interest earned ratio for the cooperative.

Section 2. Increase in Rates. A cooperative may apply for an adjustment of rates using the procedure established in this administrative regulation if:

- (1) Ten (10) or fewer years have elapsed since the effective date of new rates resulting from a cooperative's most recent base rate adjustment;
- (2) At least twelve (12) months have elapsed since the effective date of the cooperative's most recent base rate adjustment;
- (3) The cooperative requests a rate increase not exceeding one (1) percent per twelve (12) month period since the cooperative's last base rate adjustment;
- (4) The cooperative requests an increase that does not exceed 1.85 OTIER;
- (5) Aggregating multiple twelve (12) month periods in the application, the overall cumulative rate increase does not exceed five (5) percent;
- (6) The cooperative's most recent embedded class cost of service study was completed within the five (5) years prior to the submission of the cooperative's application under this section;
- (7) The cooperative's application includes only request for:
 - (a) Adjustments in revenue requirements;
 - (b) Changes to rate design; and
 - (c) Changes to the cooperative's tariff necessary to reflect changes in rates;
- (8) The proposed rate increase is based upon a historical test year that corresponds with the most recent annual report filed with the commission;

- (9) The cooperative's application is filed electronically pursuant to the requirements of 807 KAR 5:001, Section 8;
- (10) The cooperative has notified the commission in writing of the cooperative's intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing an application; and
- (11) Upon filing the notice of intent with the commission, the cooperative mailed to the Attorney General a copy of the notice of intent or sent by electronic mail in a portable document format, to rateintervention@ag.ky.gov.

Section 3. An application filed pursuant to Section 2 of this administrative regulation shall include:

- (1) A narrative statement discussing any changes materially affecting the cooperative's rates or service that have occurred since the effective date of its last base rate adjustment and stating the reasons for the proposed adjustment;
- (2) If five (5) or more years have elapsed since the cooperative's most recent general rate adjustment, a detailed explanation of why the cooperative did not seek a general rate adjustment in that period;
- (3) New or revised tariff sheets, if applicable, in a format that complies with 807 KAR 5:011, Section 3, with an effective date not less than thirty (30) days from the date the application is filed;
- (4) New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:
 - (a)
 1. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or
 2. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and
 - (b) A statement that notice has been given in compliance with Section 7 of this administrative regulation with a copy of the notice;
- (5) A general statement identifying any electric property or plant held for future use;
- (6) All current agreements related to vegetation management, as well as a statement identifying any changes that occurred since the cooperative's base rate adjustment to the cooperative's policies on vegetation management, indicating the effective date and reason for these changes;
- (7) A statement identifying any changes that occurred during the test year to the cooperative's written policies on the compensation of its attorneys, auditors, and all other professional service providers, indicating the effective date and reason for these changes;
- (8) A statement explaining whether or not the depreciation rates reflected in the application are identical to those most recently approved by the commission.
 - (a) If the depreciation rates are identical, the application shall identify the case in which they were approved.
 - (b) If the depreciation rates are different, the application shall include a depreciation study that supports the rates reflected in the application;
- (9) The estimated dates for drawdowns of unadvanced loan funds at test year end and the proposed uses of these funds;
- (10) A schedule of the cooperative's standard directors' fees, per diems, and any other compensation in effect during the test year. The schedule shall:
 - (a) Include a description of any changes that occurred during the test year to the cooperative's written policies, including the compensation of directors; and
 - (b) Indicate the effective date and explanation for any change;
- (11) A schedule reflecting the salaries and other compensation of each executive officer for the test year and two (2) preceding calendar years. The schedule shall include:

- (a) The percentage of annual increase and the effective date of each salary increase;
 - (b) The job title, duty, and responsibility of each officer;
 - (c) The number of employees who report to each executive officer;
 - (d) To whom each executive officer reports; and
 - (e) For employees elected to executive officer status during the test year, the salaries for the test year for those persons whom they replaced;
- (12) The cooperative's TIER, OTIER, and debt service coverage ratio, as calculated by the Rural Utility Service, for the test year and the five (5) most recent calendar years, including the data used to calculate each ratio;
- (13) The cooperative's debt instruments;
- (14) A copy of all exhibits and schedules that were prepared for the rate application in Excel spreadsheet format with all formulas intact and unprotected and with all columns and rows accessible;
- (15) A schedule comparing balances for each balance sheet account or subaccount included in the cooperative's chart of accounts for each month of the test year to the corresponding month of the twelve (12)-month period immediately preceding the test year;
- (16) A schedule comparing each income statement account or subaccount included in the cooperative's chart of accounts for each month of the of the test year to the same month of the twelve (12)-month period immediately preceding the test year. The amounts shall reflect the income or expense activity of each month, and not the cumulative balances at the end of the particular month;
- (17) A schedule showing anticipated and incurred rate case expenses, with supporting documentation, which shall be updated every thirty (30) days during the proceeding.
- (18) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;
- (19) A statement of the effect upon the average bill for each customer classification to which the proposed rate change will apply;
- (20) A summary of the cooperative's determination of its revenue requirements based on return on TIER, OTIER, debt service coverage, and any metric required by the cooperative's current debt instruments, with supporting schedules;
- (21) If the cooperative had amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years:
- (a) A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;
 - (b) An explanation of how the allocator for the test period was determined; and
 - (c) All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;
- (22) A calculation of the normalized depreciation expense (test-year end plant account balance multiplied by depreciation rate);
- (23) An analysis of FERC Account No. 930, Miscellaneous General Expenses, for the test year. The analysis shall include:
- (a) A complete breakdown of this account by the following categories:
 - 1. Industry association dues;
 - 2. Debt-serving expenses;
 - 3. Institutional and conservation advertising;
 - 4. Rate department load studies;
 - 5. Director's fees and expenses;
 - 6. Dues and subscriptions; and
 - 7. Miscellaneous; and

- (b) Detailed supporting workpapers that shall include for amounts over \$100, the date, vendor, reference, dollar amount, and a brief description of each expenditure;
- (24) An analysis of FERC Account No. 426, Other Income Deductions, for the test period. The analysis shall include:
 - (a) A breakdown of this account by the following categories:
 - 1. Donations;
 - 2. Civic activities;
 - 3. Political activities; and
 - 4. Other; and
 - (b) Detailed supporting workpapers that shall include for amounts over \$1,000, the date, vendor, reference, dollar amount, and a brief description of each expenditure;
- (25) A trial balance as of the last day of the test year showing account number, subaccount number, account title, subaccount title, and amount. The trial balance shall include:
 - (a) All asset, liability, capital, income, and expense accounts used by the cooperative; and
 - (b) All income statements accounts showing activity for twelve (12) months that includes the balance in each control account and all underlying subaccounts per the company books;
- (26) A schedule showing employee health, dental, vision, and life insurance premium contributions by coverage type, including the cost split of each identified premium between the employee and the cooperative;
- (27) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments; and
- (28) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

Section 4. Revenue Neutral Application. A cooperative may apply for a revenue neutral adjustment of rates using the procedure established in this section if:

- (1) It has been at least twelve (12) months since the effective date of the cooperative's last base rate adjustment;
- (2) The change in rates does not result in an increase in the revenue requirement used to determine the rates in the cooperative's most recent base rate adjustment case;
- (3) The cooperative's application includes only requests for:
 - (a) Adjustments in revenue allocations;
 - (b) Changes to rate design; and
 - (c) Changes to the cooperative's tariff necessary to reflect changes in rates;
- (4) The cooperative's most recent embedded class cost of service study was completed within the five (5) years prior to the submission of the cooperative's application under this section;
- (5) The cooperative's application is filed electronically pursuant to the requirements of 807 KAR 5:001, Section 8;
- (6) A cooperative has notified the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application; and
- (7) Upon filing the notice of intent with the commission, the applicant has mailed to the Attorney General Intervention, a copy of the notice of intent or sent by electronic mail in a portable document format, to rateintervention@ag.ky.gov.

Section 5. An application filed pursuant to Section 4 of this administrative regulation shall include:

- (1) A narrative statement discussing any changes that have occurred for the cooperative since the effective date of its last change in rate design or revenue allocation and stating the reasons for the proposed adjustment;
- (2) If more than five (5) years has elapsed since cooperative's most recent general rate adjustment, a detailed explanation of why the cooperative has not sought a general rate adjustment;
- (3) New or revised tariff sheets, if applicable, in a format that complies with 807 KAR 5:011, Section 3, with an effective date not less than thirty (30) days from the date the application is filed;
- (4) New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:
 - (a)
 1. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or
 2. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and
 - (b) A statement that notice has been given in compliance with Section 7 of this administrative regulation with a copy of the notice;
- (5) A general statement identifying any electric property or plant held for future use;
- (6) All current agreements related to vegetation management, as well as a statement identifying any changes that occurred since the cooperative's most recent base rate adjustment to the cooperative's policies on vegetation management, indicating the effective date and reason for these changes; and
- (7) A statement identifying any changes that occurred during the test year to the cooperative's written policies on the compensation of its attorneys, auditors, and all other professional service providers, indicating the effective date and reason for these changes.

Section 6. Exclusions for Ratemaking Purposes. The following shall be excluded for ratemaking purposes and from the pro forma test year income statement and supporting documentation included in an application made pursuant to Section 2 of this administrative regulation:

- (1) The contribution made for the least generous plans for employer retirement contributions for employees participating in multiple benefit packages;
- (2) If employee health care insurance premium contribution is zero, the difference between the amount contributed by the cooperative and the healthcare insurance premiums contributions by employees based on the national average for coverage type;
- (3) Life insurance premiums for coverage above an employee's annual salary or \$50,000, whichever is less;
- (4) Advertising expenses prohibited from rate recovery by 807 KAR 5:016, Section 4;
- (5) All fuel adjustment clause and environmental surcharge revenues and expenses;
- (6) Charitable and political contribution both in cash and services;
- (7) Salary and all company-paid or reimbursed expenses or allowances for lobbying on the local, state, or national level. If any amounts are allocated, show a calculation of the factor used to allocate each amount;
- (8) Any non-regulated activities;
- (9) All non-utility property and related property taxes; and
- (10) For board of directors:
 - (a) Per diems for attending industry association meetings;
 - (b) Costs of health insurance coverage;
 - (c) Costs of post-retirement benefits;
 - (d) Costs of gifts;
 - (e) Cost of insurance for spouses or dependents of deceased directors; and

(f) Any costs for a director's spouse.

Section 7. Notice. Upon filing an application pursuant to this administrative regulation, a cooperative shall provide notice as established in this section.

(1) Public postings.

(a) A cooperative shall post at the cooperative's place of business, a copy of the notice required by 807 KAR 5:001, Section 17, no later than the date the application is submitted to the commission.

(b) Within five (5) business days of the date the application is submitted to the commission, the cooperative shall conspicuously post on the cooperative's Web sites and social media accounts:

1. A copy of the public notice; and

2. A hyperlink to 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 cooperative shall provide public notice by:

(a) Including the notice with customer bills mailed no later than the date on which the application is submitted to the commission;

(b) Mailing a written notice to each customer no later than the date on which the application is submitted to the commission;

(c) Publishing the notice in a newspaper of general circulation, with the first publication being no later than the date on which the application is submitted to the commission, for at least three (3) consecutive weeks inclusive of the first publication; or

(d) Publishing the notice in a trade publication or newsletter received by all cooperative members, delivered no later than the date on which the application is submitted to the commission.

(3) Proof of notice. A cooperative shall file with the commission no later than thirty (30) 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 cooperative verifying:

1. The contents of the notice;

2. That notice was mailed to all customers; and

3. The date of the mailing;

(b) If notice is published in a newspaper of general circulation in the cooperative's service area, an affidavit from the publisher verifying:

1. The contents of the notice;

2. That the notice was published; and

3. 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 cooperative verifying:

1. The contents of the notice;

2. The mailing of the trade publication or newsletter;

3. That notice was included in the publication or newsletter; and

4. The date of mailing.

(4) Notice content.

(a) The notice required by subsection (1) of this section shall include the notice contents required by 807 KAR 5:001, Section 17(4), except for the statement required by 807 KRS 5:001, Section 17(4)(j).

(b) The customer notice required by subsection (2) of this section shall include:

1. The case number for the proceeding;

2. The proposed effective date and the date the proposed rates are expected to be filed with the commission;
 3. The present rates and proposed rates for each customer classification to which the proposed rates will apply;
 4. The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;
 5. The cooperative's business address where a copy of the notice required by subsection (1) of this section may be viewed;
 6. A link to Web site notifications where a copy of the notice required by subsection (1) of this section may be viewed;
 7. Links or references to social media posts where a copy of the notice required by subsection (1) of this section (or link thereto) may be viewed;
 8. 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, or emailed to PSCED@ky.gov, establishing the grounds for the request including the status and interest of the party;
 9. A statement that the commission is required to take action within seventy-five (75) days of the date the application is accepted for filing; and
 10. A summary of proposed changes to lighting and other miscellaneous rates.
- (c) Customer notice required by subsection (2) of this section may omit from the notice any rates under which no customers are receiving service at the time the application is submitted to the commission.

Section 8. Procedure.

- (1) Upon submission of the application, the commission shall issue an order that:
 - (a) Grants the Attorney General intervention;
 - (b) Allows seven (7) days for the Attorney General to file a written statement that the Attorney General, or the Attorney General's authorized agent, possesses the facilities to receive electronic transmissions or notify the commission in writing that the Attorney General will not participate in the proceeding; and
 - (c) Allows seven (7) days to file comments regarding the cooperative's application and whether or not it should be accepted for filing pursuant to this administrative regulation or treated as an application file pursuant to 807 KAR 5:001, Section 16.
- (2) Within ten (10) business days of the filing of the application, the commission shall complete its initial review of the application and issue an order either accepting or rejecting the application for filing under this administrative regulation.
- (3) The commission may only reject an application submitted pursuant to this administrative regulation based on a finding that the:
 - (a) Application does not comply with the relevant administrative regulations and statutes; or
 - (b) Proposed rates will not provide the cooperative sufficient revenue to provide the service required by KRS 278.030(2).
- (4) If the commission rejects the application for processing under this administrative regulation, the application shall be deemed submitted pursuant to KRS 278.190 and 807 KAR 5:001, Section 16.
- (5) An order rejecting the application for the processing under this administrative regulation shall, at minimum, include:
 - (a) Findings explaining the reason the application was not accepted under this administrative regulation;
 - (b) An opportunity for the cooperative to amend its application if it wants to proceed for a general rate adjustment pursuant to KRS 278.190 and 807 KAR 5:001, Section 16;

- (c) A schedule for the processing of the application, including a deadline by which the cooperative shall amend its application if seeking reconsideration; and
 - (d) A list of any additional evidence necessary to support reconsideration that the cooperative shall provide in an amended application.
- (6) If the commission rejects the cooperative's application for processing under this administrative regulation, the cooperative may, with written notice to the commission, withdraw its application.
- (7) An order accepting the cooperative's application for processing under this administrative regulation shall incorporate into the record the two (2) most recent annual reports of the cooperative on file with the commission.
- (8) An order accepting the cooperative's application for processing under this regulation shall establish a procedural schedule that includes deadlines for:
- (a) Filing of one written set of requests for intervention by parties and commission staff;
 - (b) Parties' submission of written comments upon the conclusion of the filing of evidence; and
 - (c) The submission of the case to the commission for a final decision.
- (9) Commission staff may issue written requests for information at any time.
- (10) The commission shall notify the cooperative of any deficiencies in the application within fourteen (14) days of the application's submission. An application shall not be accepted for filing until the cooperative has cured all noted deficiencies.
- (11) The commission shall issue a final order within seventy-five (75) days after an application is filed with the commission, unless it is necessary for good cause to continue the application for longer time than seventy-five (75) days, in which case the order making the continuance shall state fully the facts that make it necessary. Any continuance shall not exceed fourteen (14) days.

Section 9. Communication with Parties.

- (1) The cooperative may state in its application that members of commission staff may contact the cooperative's witnesses directly, without counsel present, to seek clarification of certain factual information contained in the application or in responses to requests for information.
- (2) Following a communication as established for in subsection (1) of this section, commission staff shall file in the record a memorandum detailing the content and subject of the communication.
- (3) In cases in which there are intervenors, commission staff shall not have direct communication with the cooperative's witnesses unless the intervenor participates or has waived participation.

Section 10. Exceptions.

- (1) A utility may submit a written request to the commission to obtain an exception, based on good cause, for a requirement established in this administrative regulation. The utility shall attach supporting evidence of good cause to the written request.
- (2) Once the request is received, the commission shall, based on the evidence in the written request and as established in subsection (3) of this section, determine if good cause exists. The commission shall notify the utility, in writing, of:
- (a) The decision of whether or not good cause is determined to exist; and
 - (b) If good cause is determined to exist:
 - 1. The scope and duration of any exception granted; and
 - 2. Any conditions that the utility shall meet to maintain the exception.
- (3) In determining if good cause exists, the commission shall consider whether or not the evidence shows that compliance with the requirement would be impracticable or contrary to the public interest.

(50 Ky.R. 2118; 51 Ky.R. 44; eff. 7-18-2024.)

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