

## **807 KAR 5:001. Rules of procedure.**

RELATES TO: KRS 61.870-884, 61.931-934, 65.810, Chapter 74, 278.010, 278.020(3), 278.100, 278.180, 278.300, 278.410, 322.340, 365.015, 369.102, 424.300, 45 C.F.R. 160.103, 47 C.F.R. 36, 20 U.S.C. 1232g

STATUTORY AUTHORITY: KRS 278.040(3), 278.260(2), 278.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310 requires that all hearings and investigations before the commission shall be governed by rules promulgated by the commission. This administrative regulation establishes requirements with respect to formal and informal proceedings before the commission.

### **Section 1. Definitions.**

- (1) "Affiliate" means an entity:
  - (a) That is wholly owned by a utility;
  - (b) In which a utility has a controlling interest;
  - (c) That wholly owns a utility;
  - (d) That has a controlling interest in a utility; or
  - (e) That is under common control with the utility.
- (2) "Case" means a matter coming formally before the commission.
- (3) "Commission" is defined by KRS 278.010(15).
- (4) "Controlling interest in" and "under common control with" mean a utility or other entity if the utility or entity:
  - (a) Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of another entity; and
  - (b) Exercises that power:
    1. Alone or through one (1) or more intermediary companies;
    2. In conjunction with, or pursuant to an agreement;
    3. Through ownership of ten (10) percent or more of the voting securities;
    4. Through common directors, officers, stockholders, voting or holding trusts, or associated companies;
    5. By contract; or
    6. Through direct or indirect means.
- (5) "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more telecommunication devices, computers, or electronic devices capable of receiving electronic messages.
- (6) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a reference to an Internet domain.
- (7) "Electronic signature" is defined by KRS 369.102(8).
- (8) "Executive director" means the person appointed to the position established in KRS 278.100 or a person that he or she has designated to perform a duty or duties assigned to that position.
- (9) "Paper" means, regardless of the medium on which it is recorded, an application, petition, or other initiating document, motion, complaint, answer, response, reply, notice, request for information, or other document that this administrative regulation or the commission directs or permits a party to file in a case.
- (10) "Party" means a person who:
  - (a) Initiates action through the filing of a formal complaint, application, or petition;
  - (b) Files a tariff or tariff sheet with the commission pursuant to KRS 278.180 and 807 KAR 5:011 that the commission has suspended and established a case to investigate or

review;

(c) Is named as a defendant in a formal complaint filed pursuant to Section 20 of this administrative regulation;

(d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation; or

(e) Is joined to a commission proceeding.

(11) "Person" is defined by KRS 278.010(2).

(12) "Signature" means a manual, facsimile, conformed, or electronic signatures.

(13) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(14) "Utility" is defined by KRS 278.010(3).

(15) "Water district" means a special district formed pursuant to KRS 65.810 and Chapter 74.

(16) "Web site" means an identifiable site on the internet, including social media, which is accessible to the public.

Section 2. Hearings. The commission shall provide notice of hearing in a case by order except if a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. A verbal announcement made by the presiding officer shall be deemed proper notice of the continued hearing.

### Section 3. Duties of Executive Director.

(1) Upon request, the executive director shall:

(a) Advise as to the form of a paper desired to be filed;

(b) Provide general information regarding the commission's procedures and practices; and

(c) Make available from the commission's files, upon request, a document or record pertinent to a matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.

(2) The executive director shall reject for filing a document that on its face does not comply with 807 KAR Chapter 5.

### Section 4. General Matters Pertaining to All Cases.

(1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

(2) Case numbers and styles. Each case shall receive a number and a style descriptive of the subject matter. The number and style shall be placed on each subsequent paper filed in the case.

(3) Signing of papers.

(a) A paper shall be signed by the submitting party or attorney and shall include the name, address, telephone number, facsimile number, and electronic mail address, if any, of the attorney of record or submitting party.

(b) A paper shall be verified or under oath if required by statute, administrative regulation, or order of the commission.

(4) A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) if appearing before the commission.

(5) Amendments. Upon motion of a party and for good cause shown, the commission shall allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper.

(6) Witnesses and subpoenas.

(a) Upon the written request of a party to a proceeding or commission staff, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission or a commissioner, upon written request, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena form with its written request as necessary.

(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on a person whose information is being requested.

(e) Copies of all documents received in response to a subpoena shall be filed with the commission and furnished to all other parties to the case, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be made available for inspection by the commission and all other parties to the action.

(7) Computation of time.

(a) In computing a period of time prescribed or allowed by order of the commission or by 807 KAR Chapter 5 or KRS Chapter 74 or 278, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders service upon a party and the party's attorney, service shall be made upon the party's attorney if the party is represented by an attorney.

(b) Service upon an attorney or upon a party by the commission shall be made by sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation and shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site.

(c) If good cause exists, and upon the filing of a motion by a party to excuse a party from receiving service by electronic mail from the commission, the commission shall order service of papers on the party to be made in accordance with paragraph (d)1. or 2. of this subsection.

(d) Service upon an attorney or upon a party by the parties in a case shall be made by:

1. Delivering a copy to the attorney or party;
2. Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or
3. Sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation.

(e) 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, unless service is refused, in which case the serving party shall not be required to take additional action.

(9) Filing.

(a) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a paper shall not be deemed filed with the commission until the paper:

1. Is physically received by the executive director at the commission's offices during the commission's official business hours; and

2. Meets all applicable requirements of KRS Chapter 278 and KAR Title 807.

(b) The executive director shall endorse upon each paper or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the paper or document.

(10) Privacy protection for filings.

(a) If a person files a paper containing personal information, the person shall encrypt or redact the paper so that personal information cannot be read. Personal information shall include a business name; an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

1. The digits of a Social Security number or taxpayer identification number;

2. The month and date of an individual's birth;

3. The digits of an account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;

4. A driver's license number, state identification card number, or other individual identification number issued by any agency;

5. A passport number or other identification number issued by the United States government;

6. "Individually identifiable health information" as defined by 45 C.F.R. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; or

7. The address, phone number, or email address of an individual who is not a party and has not requested to be a party.

(b) To redact the paper, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark that so obscures the identifiers that the identifiers cannot be read.

(c) The responsibility to review for compliance with this section and redact a paper shall rest with the party that files the paper.

(11) Intervention and parties.

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

1. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

2. The motion may include a request by movant for delivery of commission orders by United States mail and shall state how good cause exists for that means of delivery to movant.

(b) The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) Unless electronic filing procedures established in Section 8 of this administrative regulation are used in the case, a party shall serve a person granted leave to intervene

with all papers that the party submits in the case after the order granting intervention, but the party is not required to provide any papers submitted prior to the issuance of that order unless the commission otherwise orders.

(d) Unless the commission finds good cause to order otherwise, a person granted leave to intervene in a case shall, as a condition of his or her intervention, be subject to the procedural schedule in existence in that case when the order granting the person's intervention is issued.

(e) A person who the commission has not granted leave to intervene in a case may file written comments regarding the subject matter of the case.

1. These comments shall be filed in the case record.

2. A person filing written comments shall not be deemed a party to the proceeding and need not be named as a party to an appeal.

(12) Requests for information.

(a) If permitted by administrative regulation or by order of the commission, a party may in accordance with this section request information from another party to the case. The requesting party shall serve its request upon the party from which it seeks the requested information and shall also file its request with the commission.

(b) Commission staff, through the commission's executive director, may request information from any party to a case on the commission's behalf.

(c) Unless otherwise established in administrative regulation, the commission shall establish by order in a case the time for parties to issue and to respond to requests for information.

(d) Responses to requests for information.

1. Responses to requests for information shall be appropriately bound, tabbed, and indexed.

2. Each response shall:

a. Include the name of the witness responsible for responding to the questions related to the information provided; and

b. Be answered under oath or, for representatives of a public or private corporation, a partnership, an association, or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the person that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

3. If the requested information has previously been provided in the case, a responding party may, in lieu of providing the requested information, provide a reference to the specific location of the requested information in the case record.

4. A responding party shall make timely amendment to its prior response if the party obtains information that indicates that the response was incorrect when made or, though correct when made, is subsequently incorrect in any material respect.

5. If a party served with a request for information fails or refuses to furnish all or part of the requested information, the party shall provide a written explanation of the specific grounds for the failure to completely and precisely respond.

6. The responding party shall file with the commission the party's response to a request for information and shall serve it upon all parties to a case.

(e) A party shall compel compliance with the party's request for information by motion to the commission, which shall include:

1. A description of the information requested;

2. The reasons why it is relevant to the issues in the case; and

3. The efforts taken to resolve any disagreement over the production of the requested information.

(13) Each report, specification, drawing, and plan that a professional engineer or professional land surveyor prepared and that is filed with the commission shall contain the seal or stamp and signature of that professional engineer or land surveyor in accordance with KRS 322.340.

(14) Consolidation of cases.

(a) The commission may order two (2) or more proceedings involving a similar question of law or fact to be consolidated if rights of the parties or the public interest will not be prejudiced.

(b) Upon ordering the consolidation of cases, the commission shall specify into which case the other case shall be consolidated.

(c) All papers received after the order of consolidation has been issued shall be filed in the record of the designated case.

(d) Papers filed prior to the order of consolidation shall remain in their respective case files.

#### Section 5. Motion Practice.

(1) All requests for relief that are not required to be made in an application, petition, or written request shall be by motion. A motion shall state precisely the relief requested.

(2) Unless the commission orders otherwise, a party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion.

(3) Unless the commission orders otherwise, a party shall file a reply no later than five (5) days of the filing of the most recent response to the party's motion. The reply shall be confined to points raised in the responses to which they are addressed, and shall not reiterate an argument already presented.

#### Section 6. Proof of Service.

(1) Except as provided in Section 8 of this administrative regulation, all papers filed in a case shall contain proof of the date and manner of service of the papers on all parties.

(2) Proof shall be made by certificate of the filer's attorney, by affidavit of the person who served the papers, or by a comparable proof.

(3) The certificate or affidavit shall identify by name the person served and the date and method of service.

(4) Proof of electronic service shall state the electronic notification address of the person served.

#### Section 7. Filing Procedures.

(1) Unless the commission orders otherwise or the electronic filing procedures established in Section 8 of this administrative regulation are used, if a paper is filed with the commission, an original unbound and ten (10) additional copies in paper medium shall be filed.

(2) Each paper 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. Each filing shall be in type no smaller than twelve (12) point, except footnotes, which may be in type no smaller than ten (10) point.

(3) Except as provided for in Section 8 of this administrative regulation, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

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

#### Section 8. Electronic Filing Procedures.

(1) Upon an applicant's timely election of the use of electronic filing procedures or upon order of the commission in a case that the commission has initiated on its own motion, the procedures established in this section shall be used in lieu of other filing procedures established in this administrative regulation.

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of its election to use electronic filing procedures using the Notice of Election of Use of Electronic Filing Procedures form; and

(b) If the applicant does not have an account for electronic filing with the commission, register for an account at <http://psc.ky.gov/Account/Register>.

(3) All papers shall be filed with the commission by uploading an electronic version using the commission's E-Filing System at <http://psc.ky.gov>. In addition, the filing party shall file one (1) copy in paper medium with the commission as required by subsection (12)(a)2. of this section.

(4)

(a) Audio or video files.

1. A file containing audio material shall be submitted in MP3 format.

2. A file containing video material shall be submitted in MPEG-4 format.

(b) Except as established in paragraph (a) of this subsection, each file in an electronic submission shall be:

1. In portable document format;

2. Search-capable;

3. Optimized for viewing over the Internet;

4. Bookmarked to distinguish sections of the paper, except that documents filed in response to requests for information need not be individually bookmarked; and

5. If scanned material, scanned at a resolution of 300 dots per inch.

(c) If, pursuant to Section 4(12) of this administrative regulation, a party is requested to provide information in the form of an electronic spreadsheet, the file containing the spreadsheet shall be submitted in an Excel spreadsheet format.

(5)

(a) Each electronic submission shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;

2. A list of all material to be filed in paper or physical medium but not included in the electronic submission; and

3. A statement that the materials in the electronic submission are a true representation of the materials in paper medium.

(b) The "Read1st" file and any other material that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper medium filing may be substituted for a general description.

(6)

(a) An uploading session shall not exceed twenty (20) files or 100 megabytes.

(b) An individual file shall not exceed thirty (30) megabytes.

(c) If a submission exceeds the limitations established in paragraph (a) of this subsection, the filer shall make electronic submission in two (2) or more consecutive uploading sessions.

(7) If filing a paper with the commission, the filing party shall certify that:

(a) The electronic version of the paper is a true and accurate copy of each paper filed in paper medium;

(b) The electronic version of the paper has been submitted to the commission; and

- (c) A copy of the paper in paper medium has been mailed to all parties that the commission has excused from electronic filing procedures.
- (8)
- (a) Upon completion of an uploading session, the commission shall notify all parties of record by electronic mail that an electronic submission has been made.
- (b) Upon a party's receipt of this notification, each party shall be solely responsible for accessing the commission's Web site at <http://psc.ky.gov> to view or download the submission.
- (9) Unless a party objects to the use of electronic filing procedures in the party's motion for intervention, the party shall:
- (a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and
- (b) File with the commission within seven (7) days of the date of an order of the commission granting the party's intervention a written statement that the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.
- (10) In cases in which the commission has ordered the use of electronic filing procedures on its own motion, unless a party files with the commission an objection to the use of electronic filing procedures within seven (7) days of issuance of the order directing the use of electronic filing procedures, the party shall:
- (a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and
- (b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.
- (11) If a party objects to the use of electronic filing procedures and good cause exists to excuse the party from the use of electronic filing procedures, service of papers on and by it shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address.
- (12)
- (a) A paper shall be considered timely filed with the commission if:
1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements established in this administrative regulation and any order of the commission; and
  2. The paper, in paper medium, is filed at the commission's offices no later than the second business day following the successful electronic transmission.
- (b) Each party shall attach to the top of the paper medium submission a copy in paper medium of the electronic notification from the commission confirming receipt of its electronic submission.
- (13) Except as established in this section, a party making a filing in accordance with the procedures established in this section shall not be required to comply with Section 4(8) of this administrative regulation.

#### Section 9. Hearings and Rehearings.

- (1) Unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest, the commission shall conduct a hearing if:
- (a) An order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint; or
- (b) A request for hearing has been made.
- (2) Publication of notice.
- (a) Upon the filing of an application, the commission may order an applicant to give notice on all persons who may be affected by serving a copy of the application upon



those persons or by publishing notice of the filing.

1. The applicant shall bear the expense of providing the notice.
2. If the notice is provided by publication, the commission may designate the contents of the notice, the number of times and the time period in which the notice shall be published, and the newspaper in which the notice shall be published.

(b)

1. The commission may order an applicant to give notice to the public of any hearing on the applicant's application, and shall order an applicant for a general adjustment of rates or reduction or discontinuance of service to give notice of any hearing on its application.
2. If notice of a hearing is published by the applicant in a newspaper, it shall be published at least one (1) time and not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.
3. Notice by mail shall be mailed not less than fourteen (14) days nor more than twenty-one (21) days prior to the hearing.
4. Notice of hearing shall state the purpose, time, place, and date of hearing.
5. The applicant shall bear the expense of providing the notice.
6. Proof of publication shall be filed at or before the hearing.

(3) Investigation on commission's own motion.

(a) The commission may, on its own motion, conduct investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission believes is in violation of an order of the commission or KRS Chapters 74 or 278 or 807 KAR Chapter 5.

(b) The commission may, through its own experts, employees, or otherwise, obtain evidence the commission finds necessary or desirable in a formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a motion of a party, may convene a conference in a case for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case. Unless the commission directs otherwise or the parties otherwise agree, participation in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

(5) Conduct of hearings. Hearings shall be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to a case may agree among themselves or with commission staff upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission shall be given under oath or affirmation.

(8) Objections and exceptions. A party objecting to the admission or exclusion of evidence before the commission shall state the grounds for objection. Formal exceptions shall not be necessary and shall not be taken to rulings on objection.

(9) Record of evidence.

(a) The commission shall cause to be made a record of all hearings. Unless the commission orders otherwise, this record shall be a digital video recording.

1. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a qualified reporter.
2. The commission shall grant the motion.

3. The requesting party shall bear the cost of the stenographic transcript and shall file a copy of the transcript with the commission within a reasonable time after completion of the hearing.

(b) The executive director shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(c) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 10. Briefs. Each brief shall be filed within the time fixed. A request for extension of time to file a brief shall be made to the commission by written motion.

Section 11. Documentary Evidence.

(1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified or otherwise authenticated copies of the documents or relevant portions, or may require evidence to be entered as a part of the record.

(2)

(a) If relevant and material matter offered in evidence by any party is part of a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered.

(b) If immaterial matter unnecessarily encumbers the record, the book, paper, or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record.

(3)

(a) The sheets of each exhibit shall be numbered.

(b) If practical, the lines of each sheet shall also be numbered.

(c) If the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit.

(d) Rate comparisons and other evidence shall be condensed into tables.

(4) Unless so ordered by the commission, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of a party to a proceeding, or upon the commission's own motion, the record of a case in the commission's files or any document on file with the commission may be made a part of the record by "reference only."

(a) The case or document made a part of the record by reference only shall not be physically incorporated into the record.

(b) Upon action in the Franklin Circuit Court, excerpts from the record of a case or part of a document may be made a part of the record before the court, at the request of a party.

Section 12. Financial Exhibit.

(1) If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall:

(a) For a utility that had \$5,000,000 or more in gross annual revenue in the immediate past calendar year, cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed; or

(b) For a utility that had less than \$5,000,000 in gross annual revenue in the immediate past calendar year, comply with paragraph (a) of this subsection or cover operations for the twelve (12) month period contained in the utility's most recent annual report on file with the commission, and contain a statement that:

1. Material changes have not occurred since the end of that twelve (12) month period; or
  2. Identifies all material changes that have occurred since the end of that twelve (12) month period.
- (2) The exhibit shall disclose the following information in the order indicated:
- (a) The amount and kinds of stock authorized;
  - (b) The amount and kinds of stock issued and outstanding;
  - (c) Terms of preference of preferred stock, cumulative or participating, or on dividends or assets or otherwise;
  - (d) A brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with sinking fund provisions, if applicable;
  - (e) The amount of bonds authorized and amount issued, giving the name of the public utility that issued the same, describing each class separately and giving the date of issue, face value, rate of interest, date of maturity, and how secured, together with amount of interest paid during the last fiscal year;
  - (f) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid during the last fiscal year;
  - (g) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of a portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year;
  - (h) The rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year; and
  - (i) A detailed income statement and balance sheet.

#### Section 13. Confidential Material.

- (1) All material on file with the commission shall be available for examination by the public unless the material is confidential.
- (2) Procedure for determining confidentiality of material submitted in a case.
  - (a) A request for confidential treatment of material shall be made by motion that:
    1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;
    2. States the time period for the material to be treated as confidential and the reasons for this time period; and
    3. Includes ten (10) copies of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that unless redacted would disclose confidential material.
      - a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.
      - b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.
  - (b) The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought redacted, shall be served on all parties.
  - (c) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the moving party.

- (d) Unless the commission orders otherwise, a party may respond to a motion for confidential treatment within seven (7) days after the motion is filed with the commission.
- (e) If the case is being conducted using electronic filing procedures established in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an unredacted copy of the material for which confidentiality is sought shall not be transmitted electronically.
- (3) Procedure for determining confidentiality of material submitted outside of a case.
  - (a) A person who requests confidential treatment of material filed with the commission outside of a case shall submit a written request to the executive director that:
    - 1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;
    - 2. States the time period for the material to be treated as confidential and the reasons for this time period; and
    - 3. Includes one (1) copy of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that unless redacted would disclose confidential material.
      - a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.
      - b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.
  - (b) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the person requesting confidential treatment.
  - (c) The executive director, as official custodian of the commission's records, shall determine if the material is within an exclusion established in KRS 61.878 and the time period for the material to be considered as confidential and shall advise the requestor of the determination by letter.
  - (d) A person whose request for confidential treatment is denied, in whole or in part, by the executive director may make application within twenty (20) days of the executive director's decision to the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section.
    - 1. The commission shall establish a case and shall review the application without regard to the executive director's determination and in the same manner as it would review a motion for confidential treatment made pursuant to subsection (2) of this section.
    - 2. The application shall comply with the requirements of subsection (2)(a) of this section.
  - (e) If the executive director denies a request for confidential treatment, the material for which confidential treatment was sought shall not be placed in the public record for twenty (20) days following the decision.
- (4) Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment.
- (5) If the motion for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted pursuant to KRS 278.410 to bring an action for review.
- (6) Procedure for a party to request access to confidential material filed in a case.

(a) A party to a case before the commission shall not fail to respond to a request for information by the commission, commission staff, or another party on grounds of confidentiality.

1. A party seeking confidential treatment for its response to information requests shall follow the procedures for requesting confidentiality established in this administrative regulation.

2. A party's response to requests for information shall be served upon all parties, with only those portions for which confidential treatment is sought redacted.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then a party may, by motion, request access to the material on the grounds that it is essential to the party's meaningful participation in the proceeding.

1. The motion shall include a description of efforts to enter into a protective agreement and unwillingness, if applicable, to enter into a protective agreement shall be fully explained.

2. A party may respond to the motion within seven (7) days after it is filed with the commission.

3. The commission shall determine if the movant is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(7) Requests for access to records pursuant to KRS 61.870 to 61.884.

(a) A time period prescribed in subsection (10)(a) of this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884.

(b) Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure established in KRS 61.880.

(8) Procedure for request for access to confidential material. A person denied access to records requested pursuant to KRS 61.870 to 61.884 or to material deemed confidential by the commission in accordance with the procedures established in this section, may obtain this information only pursuant to KRS 61.870 to 61.884 and other applicable law.

(9) Use of confidential material.

(a) A person who files any paper that contains material that has previously been deemed confidential or for which a request or motion for confidential treatment is pending shall submit one (1) copy of the paper with the adjudged or alleged confidential material underscored or highlighted, and ten (10) copies of the paper with those portions redacted; and

1. If the confidential status of the material has been determined previously, a written notice identifying the person who originally submitted the material, the date on which a determination on the materials confidentiality was made and, if applicable, the case number in which the determination was made; or

2. If a request for confidential treatment of the material is pending, a written notice identifying the person who made the request and the date on which the request was submitted.

(b) Material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the procedure established in this paragraph.

1. The party seeking to address the confidential material shall advise the commission prior to the use of the material.

2. A person other than commission employees not a party to a protective agreement related to the confidential material shall be excluded from the hearing room during testimony directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) Except as provided for in paragraphs (c) and (d) of this subsection, confidential treatment shall be afforded to material for the period specified in the commission's order or executive director's written decision.

1. At the end of this period, the material shall be placed in the public record without notice to the person who originally requested confidential treatment.

2. The person who sought confidential treatment for the material may request that the material continue to be treated as confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

(b) The person who sought confidential protection shall inform the commission in writing if material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the person who sought confidential protection, giving ten (10) days to respond. If that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed to be publicly available and shall not be placed in the public record.

(d) If a request to inspect material granted confidential treatment is made during the period specified in the commission's order or executive director's written decision, the commission shall notify in writing the person who originally sought confidential treatment for the material and direct that party to demonstrate within twenty (20) days of receipt of the notice that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

1. If the party is unable to make the demonstration, the commission shall make the requested materials available for public inspection; or

2. If the party is able to make the demonstration, the commission shall deny the request for inspection.

(e) The material shall not be placed in the public record for twenty (20) days following an order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek a remedy afforded by law.

#### Section 14. Applications.

(1) Each application shall state the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for the information.

(2) If a corporation, the applicant shall identify in the application the state in which it is incorporated and the date of its incorporation, attest that it is currently in good standing in the state in which it is incorporated, and, if it is not a Kentucky corporation, state if it is authorized to transact business in Kentucky.

(3) If a limited liability company, the applicant shall identify in the application the state in which it is organized and the date on which it was organized, attest that it is in good standing in the state in which it is organized, and, if it is not a Kentucky limited liability company, state if it is authorized to transact business in Kentucky.

(4) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall be annexed to the application, or a written statement attesting that its partnership agreement and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

## Section 15. Applications for Certificates of Public Convenience and Necessity.

- (1) Application to bid on a franchise pursuant to KRS 278.020(3).
  - (a) Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by a governmental agency, the applicant shall submit with its application:
    1. The information required pursuant to Section 14 of this administrative regulation;
    2. The name of the governmental agency offering the franchise;
    3. The type of franchise offered; and
    4. A statement showing the need and demand for service.
  - (b) If an applicant is successful in acquiring the franchise, license, or permit, the applicant shall file a copy with the commission using the commission's electronic tariff filing system.
- (2) New construction or extension. Upon application for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit with its application:
  - (a) The facts relied upon to show that the proposed construction or extension is or will be required by public convenience or necessity;
  - (b) Copies of franchises or permits, if any, from the proper public authority for the proposed construction or extension, if not previously filed with the commission;
  - (c) A full description of the proposed location, route, or routes of the proposed construction or extension, including a description of the manner of the construction and the names of all public utilities, corporations, or persons with whom the proposed construction or extension is likely to compete;
  - (d) One (1) copy in portable document format on electronic storage medium and two (2) copies in paper medium of:
    1. Maps to suitable scale showing the location or route of the proposed construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities; and
    2. Plans and specifications and drawings of the proposed plant, equipment, and facilities;
  - (e) The manner in detail in which the applicant proposes to finance the proposed construction or extension; and
  - (f) An estimated annual cost of operation after the proposed facilities are placed into service.
- (3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.
- (4) Renewal applications. An application for a renewal of a certificate of convenience and necessity shall be treated as an original application.

## Section 16. Applications for General Adjustments of Existing Rates.

- (1) Each application requesting a general adjustment of existing rates shall:
  - (a) Be supported by:
    1. A twelve (12) month historical test period that may include adjustments for known and measurable changes; or

2. A fully forecasted test period; and

(b) Include:

1. A statement of the reason the adjustment is required;
2. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;
3. New or revised tariff sheets, if applicable in a format that complies with 807 KAR 5:011 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. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or
  - b. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and
5. A statement that notice has been given in compliance with Section 17 of this administrative regulation with a copy of the notice.

(2) Notice of intent. A utility with gross annual revenues greater than \$5,000,000 shall notify 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.

(a) The notice of intent shall state if the rate application will be supported by a historical test period or a fully forecasted test period.

(b) Upon filing the notice of intent, an application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon that may be used to obtain a copy from the applicant of the full schedule of increases or rate changes.

(c) Upon filing the notice of intent with the commission, the applicant shall mail to the Attorney General's Office of Rate Intervention a copy of the notice of intent or send by electronic mail in a portable document format, to [rateintervention@ag.ky.gov](mailto:rateintervention@ag.ky.gov).

(3) Notice given pursuant to Section 17 of this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

(4) Each application supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for proposed changes in price or activity levels, if applicable, and other factors that may affect the adjustment;

(b) If the utility has gross annual revenues greater than \$5,000,000, the written testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than \$5,000,000 the written testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit written testimony;

(d) 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;

(e) If the utility provides electric, gas, water, or sewer service, the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is an incumbent local exchange company, the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) A detailed analysis of customers' bills whereby revenues from the present and proposed rates can be readily determined for each customer class;



- (h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;
- (i) A reconciliation of the rate base and capital used to determine its revenue requirements;
- (j) A current chart of accounts if more detailed than the Uniform System of Accounts;
- (k) The independent auditor's annual opinion report, with written communication from the independent auditor to the utility, if applicable, which indicates the existence of a material weakness in the utility's internal controls;
- (l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;
- (m) The most recent FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No. 2, or Public Service Commission Form T (telephone);
- (n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;
- (o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:
  - 1. Each software, program, or model;
  - 2. What the software, program, or model was used for;
  - 3. The supplier of each software, program, or model;
  - 4. A brief description of the software, program, or model; and
  - 5. The specifications for the computer hardware and the operating system required to run the program;
- (p) Prospectuses of the most recent stock or bond offerings;
- (q) The annual report to shareholders or members and statistical supplements covering the two (2) most recent years from the utility's application filing date;
- (r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;
- (s) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters updated as current information becomes available;
- (t) If the utility 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, the utility shall file:
  - 1. 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;
  - 2. An explanation of how the allocator for the test period was determined; and
  - 3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;
- (u) If the utility provides gas, electric, water, or sewage utility service and has annual gross revenues greater than \$5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and
- (v) Local exchange carriers with more than 50,000 access lines shall file:
  - 1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000 except local exchange access:

- a. Based on current and reliable data from a single time period; and
- b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(5) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just, and reasonable rates based on the historical test period. The following information shall be filed with each application requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions, the following information:

1. The starting date of the construction of each major component of plant;
2. The proposed in-service date;
3. The total estimated cost of construction at completion;
4. The amount contained in construction work in progress at the end of the test period;
5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;
6. The original cost and the cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;
7. An explanation of differences, if applicable, in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and
8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments; and

(e) 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.

(6) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the requirements established in this subsection.

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless the revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as

the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(7) Each application requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The written testimony of each witness the utility proposes to use to support its application, which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in written testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period, and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations, which shall provide:

1. That the forecast is reasonable, reliable, made in good faith, and that all basic assumptions used in the forecast have been identified and justified;

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for differences that exist, if applicable; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project that constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast, the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects that constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;
  10. Labor cost changes;
  11. Capital structure requirements;
  12. Rate base;
  13. Gallons of water projected to be sold (water);
  14. Customer forecast (gas, water);
  15. Sales volume forecasts in cubic feet (gas);
  16. Toll and access forecast of number of calls and number of minutes (telephone);  
and
  17. A detailed explanation of other information provided, if applicable;
- (i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;
  - (j) The prospectuses of the most recent stock or bond offerings;
  - (k) The most recent FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No.2, or Public Service Commission Form T (telephone);
  - (l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;
  - (m) The current chart of accounts if more detailed than the Uniform System of Accounts chart;
  - (n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;
  - (o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;
  - (p) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;
  - (q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility that indicates the existence of a material weakness in the utility's internal controls;
  - (r) The quarterly reports to the stockholders for the most recent five (5) quarters;
  - (s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;
  - (t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:
    1. Each software, program, or model;
    2. What the software, program, or model was used for;
    3. The supplier of each software, program, or model;
    4. A brief description of the software, program, or model; and
    5. The specifications for the computer hardware and the operating system required to run the program;
  - (u) If the utility had amounts charged or allocated to it by an affiliate or a general or home office or paid monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:
    1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;
  3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and
  4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the base period is reasonable;
- (v) If the utility provides gas, electric, sewage, or water utility service and has annual gross revenues greater than \$5,000,000 in the division for which a rate adjustment is sought, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and
- (w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:
1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and
  2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000 except local exchange access:
    - a. Based on current and reliable data from a single time period; and
    - b. Using generally recognized fully allocated, embedded, or incremental cost principles.
- (8) Each application seeking a general adjustment in rates supported by a forecasted test period shall include:
- (a) A jurisdictional financial summary for both the base period and the forecasted period that details how the utility derived the amount of the requested revenue increase;
  - (b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules, which include detailed analyses of each component of the rate base;
  - (c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules, which provide breakdowns by major account group and by individual account;
  - (d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;
  - (e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;
  - (f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;
  - (g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;
  - (h) A computation of the gross revenue conversion factor for the forecasted period;
  - (i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;
  - (j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

- (k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;
  - (l) A narrative description and explanation of all proposed tariff changes;
  - (m) A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and
  - (n) A typical bill comparison under present and proposed rates for all customer classes.
- (9) The commission shall notify the applicant of any deficiencies in the application within thirty (30) days of the application's submission. An application shall not be accepted for filing until the utility has cured all noted deficiencies.
- (10) A request for a waiver from the requirements of this section shall include the specific reasons for the request. The commission shall grant the request upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:
- (a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;
  - (b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and
  - (c) The expense to the utility in providing the information that is the subject of the waiver request.

Section 17. Notice of General Rate Adjustment. Upon filing an application for a general 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, the utility 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 the 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 proposed effective date and 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, except for local exchange companies, which shall include the effect upon the average bill for each customer classification for the proposed rate change in basic local service;
  - (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 its 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.
- (5) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates, provided the notice includes a coupon that may be used to obtain all of the required information.

**Section 18. Application for Authority to Issue Securities, Notes, Bonds, Stocks, or Other Evidences of Indebtedness.**

- (1) An application for authority to issue securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof shall contain:
- (a) The information required by Section 14 of this administrative regulation;
  - (b) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant.

If it is impossible to state the original cost, the facts creating the impossibility shall be stated;

(c) The amount and kinds of stock, if any, which the applicant desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds, or other evidences of indebtedness, if any, which the applicant desires to issue, with terms, rate of interest, and if and how to be secured;

(d) The use to be made of the proceeds of the issue of securities, notes, bonds, stocks, or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;

(e) The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the application;

(f) If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the application shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(g) If the applicant is a water district, a copy of the applicant's written notification to the state local debt officer regarding the proposed issuance.

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if applicable, unless they have already been filed with the commission, in which case reference shall be made by case number to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the commission-prescribed uniform system of accounts for the various classes of utilities.

#### Section 19. Application for Declaratory Order.

(1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

(a) Be in writing;

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(c) Fully disclose the applicant's interest;



- (d) Identify all statutes, administrative regulations, and orders to which the application relates; and
- (e) State the applicant's proposed resolution or conclusion.
- (3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.
- (4) Unless the commission orders otherwise, responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission and shall be served upon the applicant.
- (5) A reply to a response shall be filed with the commission within fourteen (14) days after service.
- (6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.
- (7) The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.
- (8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials, and may extend the time for the filing of a reply or response under this section.

#### Section 20. Formal Complaints.

- (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:
  - (a) The full name and post office address of the complainant;
  - (b) The full name and post office address of the defendant;
  - (c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and
  - (d) The relief sought.
- (2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.
- (3) Number of copies required. Upon the filing of an original complaint, the complainant shall also file two (2) more copies than the number of persons to be served.
- (4) Procedure on filing of complaint.
  - (a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.
    - 1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a specified time.
    - 2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.
  - (b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may require the answer to be

filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time specified in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

#### Section 21. Informal Complaints.

(1) An informal complaint shall be made to the commission's division of consumer services in a manner that specifically states the complainant's concerns and identifies the utility.

(2) The commission's division of consumer services shall address by correspondence or other means the complaint.

(a) If an informal complaint is referred to a utility, the utility shall acknowledge to the commission's division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(b) If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission's division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 22. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

#### Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "FERC Financial Report FERC Form No. 1", March 2007;

(b) "FERC Financial Report FERC Form No. 2", December 2007;

(c) "Notice of Election of Use of Electronic Filing Procedures", June 2014;

(d) "PSC Form-T (telephone)", August 2005;

(e) "Form 8-K", January 2012;

(f) "Form 10-K", January 2012;

(g) "Form 10-Q", January 2012; and

(h) "Subpoena Form", August 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located 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. 786; eff. 4-7-1982; 10 Ky.R. 831; eff. 1-4-1984; 11 Ky.R. 1301; 12 Ky.R. 127; eff. 7-9-1985; 18 Ky.R. 191; 1025; eff. 9-24-1991; 19 Ky.R. 1142; 1604; 2044; eff. 3-12-1993; 39 Ky.R. 295; 995; 1117; eff. 1-4-2013; 40 Ky.R. 686; 1109; 1269; eff. 1-3-2014; 41 Ky.R. 131; 476; 763; 983; eff. 10-31-2014; Crt eff. 3-27-2019.)