

1 ENERGY AND ENVIRONMENT CABINET

2 Public Service Commission

3 (Amendment)

4 807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

5 RELATES TO: KRS Chapter 278.

6 STATUTORY AUTHORITY: KRS 278.030; KRS 278.040; KRS 278.160; KRS 278.180;  
7 KRS 278.185; KRS 278.190; KRS 278.310; KRS 278.380.

8 NECESSITY, FUNCTION AND CONFORMITY: This administrative regulation  
9 provides a simplified and less expensive procedure ~~for [by which]~~ small utilities ~~to [may]~~  
10 apply to the commission for rate adjustments ~~[increases]~~. A small utility may apply for  
11 rate adjustments using the formal procedure outlined in 807 KAR 5:001, Section 10  
12 ~~[Chapter 5]~~ or by using the procedure prescribed in this administrative regulation which  
13 is intended to minimize the need for formal hearings, to reduce filing requirements, and  
14 ~~in many cases~~ to shorten the time period between application and commission order.

15 Section 1. Utilities Permitted to File Application. Any utility with ~~[500 or fewer]~~  
16 ~~customers or~~ \$1,500,000 ~~[\$300,000]~~ or less gross annual revenue in the immediate  
17 past calendar year may apply for an adjustment of rates using the procedure in this  
18 regulation ~~[described below]~~. The applicant shall have maintained adequate financial  
19 records fully separated from any commonly-owned enterprise and shall have on file with  
20 the commission fully completed annual reports for the immediate past year and for the  
21 two (2) prior years if the applicant has been in existence that long.

22 Section 2. The Record upon which Decision Will Be Made. Unless a hearing is  
23 held the commission shall make its decision based on the:

1           (1) [(a)]       Annual reports of the applicant for the immediate past year and for  
2 the two (2) prior years, if the applicant has been in existence that long;

3           (2) [(b)]       Application;

4           (3) [(c)]       Information supplied by the applicant in response to requests for  
5 information submitted by other parties to the proceeding or [the intervenors and] the  
6 commission; ~~[and]~~

7           (4) [(d)]       Written reports submitted by commission staff ~~[subsequent to field~~  
8 ~~review, if one (1) is conducted]~~;

9           (5)       Stipulations and agreements between the parties and commission staff;  
10 and

11           (6)       Written comments and information that the parties to the proceeding  
12 submitted in response to the findings and recommendations contained in any written  
13 report that commission staff submitted.

14           Section 3. Application. (1) The applicant shall obtain the alternative rate  
15 adjustment application form from the Executive Director of the Public Service  
16 Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, or from the Public  
17 Service Commission's website at [www.psc.ky.gov](http://www.psc.ky.gov) ~~[the alternative rate adjustment~~  
18 ~~application form. The applicant shall complete the form, attach any documents~~  
19 ~~requested and a copy of the notice of the proposed rate change that it provided to its~~  
20 ~~customers, and submit one (1) original and ten (10) copies to the executive director of~~  
21 ~~the commission and one (1) copy to the Public Service Litigation Branch, Office of the~~  
22 ~~Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, together with one~~

1 ~~(1) copy of each of the three (3) annual reports. An applicant may, in writing, request~~  
2 ~~commission assistance in preparing the application.]~~

3 (2) An application for alternative rate adjustment shall consist of:

4 (a) A completed alternative rate adjustment application form;

5 (b) A copy of all outstanding evidences of indebtedness, such as mortgage  
6 agreements, promissory notes, and bond resolutions;

7 (c) A depreciation schedule of utility plant in service;

8 (d) A copy of the most recent state and federal tax returns of the applicant, if  
9 applicant is required to file returns;

10 (e) A copy of the notice of the proposed rate change that is provided to  
11 customers of the applicant; and,

12 (f) If the applicant is a corporation or a limited liability company, a certified  
13 copy of its articles of incorporation and all amendments thereto, or a written statement  
14 attesting that its articles and all amendments thereto have been filed with the  
15 commission in a prior proceeding and referencing the style and case number of the prior  
16 proceeding.

17 (3) Unless electronic filing procedures are used, the applicant shall submit  
18 one (1) original and five (5) paper copies of its application to the executive director of  
19 the commission.

20 (4) When submitting its application to the commission, the applicant shall also  
21 deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the  
22 Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-

1 8204 or transmit by electronic mail an electronic copy in portable document format to  
2 the Office of Rate Intervention at rintervention@ag.ky.gov.

3 (5) If the application contains certain personal data, including an individual's  
4 social security number or taxpayer identification number, or birth date, or a financial  
5 account number, the applicant shall redact the document so the following information  
6 cannot be read:

7 (a) the digits of the social security number or taxpayer identification number;

8 (b) the month and day of an individual's birth; and

9 (c) the digits of the financial account number.

10 Redaction may be made by any method, including but not limited to replacing the  
11 identifiers with neutral placeholders or covering the identifiers with an indelible mark,  
12 that so obscures the identifiers that they cannot be read.

13 (6) An applicant may make written request to the executive director for  
14 commission staff assistance in preparing the application.

15 Section 4. Notice to Customers of Proposed Rate Changes.

16 (1) If the applicant has twenty (20) or fewer customers or is a sewer utility, it  
17 shall mail written notice of the proposed rate changes [~~and the estimated amount of~~  
18 ~~increase per customer class~~] to each customer no later than the date on which the  
19 application is filed with the commission. In addition, the applicant shall post at its place  
20 of business no later than the filed date of the application a sheet containing the  
21 information provided in the written notice to its customers and shall keep this notice  
22 posted until the commission has issued a final decision on the application.

1           (2) An ~~[Except for sewer utilities, which must give notice pursuant to KRS~~  
2 ~~278.185, an]~~ applicant that has ~~[with]~~ more than twenty (20) customers and is not a  
3 sewer utility shall post at its place of business a sheet containing the information  
4 provided in the notice to its customers ~~[post a sheet stating the proposed rates and the~~  
5 ~~estimated amount of increase per customer class at its place of business;]~~ and shall:

6           (a) Include notice with customer bills mailed by the date the application is  
7 filed; or

8           ~~[(b) Publish notice in a trade publication or newsletter that will be received by~~  
9 ~~all customers by the date the application is filed; or]~~

10           (b) [(e)]Publish notice once a week for three (3) consecutive weeks in a  
11 prominent manner in a newspaper of general circulation in its service area, the first  
12 publication to be made by the date the application is filed.

13           (3) Each notice shall contain the following information:

14           (a) The amount of the change requested in both dollar amounts and  
15 percentage change for each customer classification to which the proposed rate change  
16 will apply;

17           (b) The present rates and the proposed rates for each customer class to which  
18 the proposed rates would apply;

19           (c) The effect upon the average bill for each customer class to which the  
20 proposed rate change will apply;

21           (d) A statement that the rates contained in this notice are the rates proposed by  
22 (name of utility) but that, the Public Service Commission may order rates to be charged  
23 that differ from the proposed rates contained in this notice;

1           (e) A statement that any corporation, association, or person with a substantial  
2 interest in the matter may, by written request, within thirty (30) days after publication or  
3 mailing of this notice of the proposed rate changes request to intervene; intervention may  
4 be granted beyond the thirty (30) day period;

5           (f) A statement that copies of the application may be obtained at no charge  
6 from (the name of the utility) at (the utility's address) and that the application and all  
7 documents filed with the Public Service Commission may be viewed and downloaded at  
8 the Public Service Commission's website - [www.psc.ky.gov](http://www.psc.ky.gov) [language: The rates  
9 contained in this notice are the rates proposed by (name of utility). However, the Public  
10 Service Commission may order rates to be charged that are higher or lower than the  
11 rates proposed in this notice. Any corporation, association, body politic or person may  
12 request leave to intervene by motion within thirty (30) days after notice of the proposed  
13 rate changes is given. A motion to intervene shall be in writing, shall be submitted to  
14 the Executive Director, Public Service Commission, 211 Sewer Boulevard, P.O. Box  
15 615, Frankfort, Kentucky, 40602, and shall set forth the grounds for the motion,  
16 including the status and interest of the party movant. Copies of the application may be  
17 obtained at no charge from (the applicant) at (the applicant's address). Upon request  
18 from an intervenor, the applicant shall furnish to the intervenor a copy of the application  
19 and supporting documents-"].

20           (4) Proof of notice. An applicant shall file with the commission no later than  
21 forty-five (45) days from the filed date of the application

1 (a) If its notice is published, an affidavit from the publisher verifying the notice  
2 was published, including the dates of the publication with an attached copy of the  
3 published notice;

4 (b) If the notice is mailed, a written statement signed by the utility's chief  
5 executive officer verifying the notice was mailed.

6 (5) If an applicant maintains a website, the applicant shall post on its website  
7 within seven (7) days of the filed date of the application a notice containing the  
8 information provided in the written notice to its customers and a link to a copy of its  
9 application posted on the commission's website and shall keep both posted until the  
10 commission has finally determined the utility's rates.

11 Section 5. Except as provided in Section 11, no applicant shall be required to  
12 provide the commission with advance notice of its intent to file an application for rate  
13 adjustment using the procedure set forth in this administrative regulation.

14 Section 6. Effective Date of Proposed Rates. No applicant may place its  
15 proposed rates into effect until the commission has issued an order approving those  
16 rates or six (6) months from the date of filing of its application, whichever occurs first. If  
17 the commission has not issued its order within six (6) months from the date of filing of  
18 the application, the applicant may place its proposed rates in effect subject to refund  
19 upon providing the commission with written notice of its intent to place the rates into  
20 effect. The applicant shall maintain its records in a manner to enable it, or the  
21 commission, to determine the amounts to be refunded and to whom is due a refund if  
22 the commission orders a refund. ~~[Motion for Formal Hearing. Within ninety (90) days~~

1 ~~after the application has been filed, any party may file a written request for a formal~~  
2 ~~hearing setting forth grounds therefore].~~

3 Section 7. Discovery. Unless the commission otherwise directs, a party may  
4 serve written requests for information upon the applicant within twenty-one (21) days of  
5 an order permitting that party to intervene in the proceeding. At the time of serving its  
6 request upon the applicant, the party shall also file a copy of its request with the  
7 commission and serve a copy upon all other parties. Within twenty-one (21) days of  
8 service of timely requests for information from a party, the applicant shall serve its  
9 written responses upon each party and shall file with the commission one (1) original  
10 and five (5) copies. Nothing in this section shall preclude the commission from  
11 establishing different arrangements for discovery.

12 Section 8. Commission Staff Report. Commission staff shall prepare and file  
13 with the commission and serve a copy on all parties of record a report on the application  
14 that contains its findings and recommendations regarding the proposed rates. Unless  
15 the commission directs otherwise, each party shall file with the commission a written  
16 response to the report within fourteen (14) days of the filing of the report. This written  
17 response shall contain all objections to and other comments on the findings and  
18 recommendations of commission staff, any request for hearing or informal conference,  
19 and the reasons why a hearing or informal conference is necessary. If a party fails to  
20 file a written response with the commission within this time period, it shall be deemed to  
21 have waived any objections to the findings and recommendations contained in the  
22 report and any right to a hearing on the application.

1           Section 9 [6]. Notice of Hearing. If the commission orders a hearing, the  
2 applicant shall publish in a newspaper or mail to its customers notice of the hearing give  
3 ~~notice as required by KRS 424.300. The notice shall state the purpose, time, place, and~~  
4 date of the hearing. Newspaper notice shall be published once in a newspaper of  
5 general circulation in the applicant's service area no fewer than seven (7) and no more  
6 than twenty-one (21) days prior to the hearing. [~~The notice shall state the purpose,~~  
7 ~~time, place, and date of the hearing.~~]

8           Section 10. Utility Personnel Participation in Commission Proceedings.

9           (1) An authorized official or employee of the applicant who is not licensed to  
10 practice law in Kentucky may on behalf of an applicant that is a corporation, partnership  
11 or limited liability company file the application, responses to commission orders and  
12 requests for information, as well as appear at conferences related to the application.

13           (2) Any applicant that is a corporation, partnership, or limited liability company  
14 shall at any hearing conducted on the application be represented by an attorney who is  
15 authorized to practice law in Kentucky.

16           Section 11. Use of Electronic Filing Procedures in lieu of Submission of Paper  
17 Documents. An applicant may elect to use electronic filing procedures in lieu of  
18 submission of paper documents to the commission. At least seven (7) days prior to the  
19 submission of its application, an applicant shall file with the commission written notice of  
20 its election and, if it does not have an account for electronic filing with the Commission,  
21 register for an account at <http://psc.ky.gov/Account/Register>. Upon electing the use of  
22 electronic filing procedures, the following procedures shall be followed in the  
23 commission proceeding on the application unless the commission orders otherwise:

1           (1) All pleadings, documents, and exhibits shall be filed with the commission  
2 by uploading an electronic version of the document using the commission's E-Filing  
3 System at <http://psc.ky.gov>. In addition, the filing party shall file one (1) original and one  
4 (1) paper copy with the commission.

5           (2) Each file in an electronic submission shall be:

6           (a) in portable document format;

7           (b) search-capable;

8           (c) optimized for viewing over the Internet;

9           (d) where appropriate, bookmarked to distinguish sections of the pleading or  
10 document; and,

11           (e) if a scanned document, scanned at a resolution of 300 dots per inch.

12           (3) All electronic submissions shall include an introductory file in portable  
13 document format that is named "Read1st" and that contains a general description of the  
14 filing, a list of all materials not included in the electronic filing, and a statement attesting  
15 that the electronically filed documents are a true representation of the original  
16 documents. The "Read1st" file and any other document that normally contains a  
17 signature shall contain a signature in the electronically submitted document. The  
18 electronic version of the cover letter accompanying the paper filing may be substituted  
19 for a general description. If the electronic submission does not include all documents  
20 contained in the paper version (e.g., confidential materials, materials that are too large  
21 or bulky to transfer by electronic medium), the absence of these documents shall be  
22 noted in the "Read1st" document.

1 (4) No electronic transmission or uploading session shall exceed 20 files. No  
2 individual file shall exceed 50 megabytes. If a filing party's submission will exceed these  
3 limitations, the filer shall make its electronic submission in two or more consecutive  
4 electronic transmission or uploading sessions.

5 (5) When filing any document with the Commission, the filing party shall  
6 certify that:

7 (a) The electronic version of the filing is a true and accurate copy of the  
8 document(s) filed in paper medium;

9 (b) The electronic version of the filing has been transmitted to the  
10 commission; and,

11 (c) A copy of the filing in paper medium has been mailed to all parties that the  
12 commission has excused from participation by electronic means.

13 (6) Upon completion of a party's uploading of an electronic submission, the  
14 commission shall cause an electronic mail message to be sent to all parties of record  
15 advising that an electronic submission has been made to the commission. Upon a  
16 party's receipt of this message, it shall be the receiving party's responsibility to access  
17 the commission's electronic file depository at <http://psc.ky.gov> and view or download a  
18 copy of the submission.

19 (7) Unless it states its objection to the use of electronic filing procedures in its  
20 motion for intervention, a party granted leave to intervene shall be deemed to have  
21 consented to the use of electronic filing procedures and the service of all documents  
22 and pleadings, including orders of the commission, by electronic means and shall file  
23 with the commission within seven (7) days of the date of an order of the commission

1 granting its intervention a written statement that it waives any right to service of  
2 commission orders by United States mail and that it, or its authorized agent, possesses  
3 the facilities to receive electronic transmissions.

4 (8) If a party objects to the use of electronic filing procedures and the  
5 commission determines that good cause exists to excuse that party from the use of  
6 electronic filing procedures, service of documents on that party and by that party shall  
7 be made in accordance with 807 KAR 5001.

8 (9) A document shall be considered timely filed with the commission if it has  
9 been successfully transmitted in electronic medium to the commission within the time  
10 allowed for filing. The original document, in paper medium, shall be filed at the  
11 commission's offices no later than the second business day following the electronic  
12 filing. Parties shall attach to the top of such submission a paper copy of the electronic  
13 mail message from the commission confirming transmission and receipt of its electronic  
14 submission.

15 Section 12. The provisions of 807 KAR 5:001 that do not conflict with the  
16 provisions of this administrative regulation shall apply to commission proceedings  
17 involving applications filed pursuant to this administrative regulation.

18 Section 13. Incorporation by Reference.

19 (1) "Application For Rate Adjustment Before The Public Service Commission  
20 For Small Utilities Pursuant to 807 KAR 5:076," June 15, 2011, is incorporated by  
21 reference.

1 (2) This material may be inspected, copied, or obtained at the commission's  
2 offices at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m.  
3 to 4:30 p.m., or through the commission's website at [psc.ky.gov](http://psc.ky.gov)

4 Section 14 [7]. Upon a showing of good cause, the commission may permit  
5 deviations from this administrative regulation.

DRAFT

\_\_\_\_\_  
David L Armstrong, Chairman  
Public Service Commission

DATE: \_\_\_\_\_

\_\_\_\_\_  
Leonard K. Peters, Secretary  
Energy and Environment Cabinet

DATE: \_\_\_\_\_

DRAFT

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on, \_\_\_\_\_, 2011, at 9:30 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by \_\_\_\_\_, 2011, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

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

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

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

Gerald E. Wuetcher  
Executive Advisor  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, Kentucky 40602  
Tel: (502)564-3940  
Fax: (502)564-7279

## REGULATORY IMPACT ANALYSIS

Administrative Regulation #: 807 KAR 5:076

Contact Person: Gerald E. Wuetcher, Executive Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a simplified and less expensive procedure by which small utilities may apply to the commission for rate increases. A small utility may apply for rate adjustments using the formal procedure outlined in 807 KAR 5:001 or by using the procedure prescribed in this administrative regulation, which is intended to minimize the need for formal hearings, to reduce filing requirements, and to shorten the time period between application and commission order.

(b) The necessity of this administrative regulation: This regulation will assist the Public Service Commission in timely reviewing applications for rate adjustment, will reduce the expense of rate case proceedings, and is necessary to the Public Service Commission's authority to regulate the rates of small utilities. It provides a structural framework for using electronic filing procedures for small utility rate cases.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and simplified means for small utilities to apply for rate adjustments. It provides clear guidance to small utilities on the documents necessary for a rate adjustment and simplifies the procedures necessary for a rate adjustment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will expand eligibility to use simplified filing procedures from 109 utilities to 187 utilities. Eligibility requirements, which have been unchanged for more than 25

years, have been revised to reflect the effects of inflation. Elimination of the eligibility provisions related to the number of customers will prevent two electric cooperatives, each of which has annual revenues in excess of \$340,000,000, from using the simplified filing procedures. The amendment clarifies the record upon which the Public Service Commission should base its decision. It specifies actions that applicants should take to protect sensitive personal information that may be contained in such applications. It amends the notice requirements for rate adjustments to conform with the notice requirements in 807 KAR 5:001 and 807 KAR 5:011. It clarifies when a small utility using alternative rate filing procedures may place its proposed rates into effect if the commission fails to make a timely decision. It provides a formal framework for the use of electronic filing procedures and establishes a schedule for discovery and responses to commission staff reports. The regulation eliminates the need for an applicant to include within its application, copies of its annual reports, which are currently on file with the Public Service Commission, and reduces the number of copies of the application that must be filed.

(b) The necessity of the amendment to this administrative regulation: Eligibility requirements for alternative rate filing procedures had not been adjusted for the effects of inflation for 25 years. Current Public Service Commission regulations make no provision for the use of electronic procedures. Provisions related to discovery and the record upon which the Commission will base its decision are not addressed in existing regulation and incorporate Public Service Commission practices developed since the regulation's last amendment in 1996.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service. The proposed amendment eliminates inefficiencies in the rate adjustment process and reduces transactional costs for small utilities that are less able to afford large rate case expenses and that have less expertise in the ratemaking process than larger utilities.

(d) How the amendment will assist in the effective administration of the statutes: Amendment expands the eligibility of alternative rate filing procedures and will allow 78 additional utilities to take advantage of simplified and less costly review procedures. It implements new measures for the protection of sensitive personal information contained in applications, reduces the documents that must be filed with the Public Service Commission and served upon other parties, and allows for the use of electronic filing and notification procedures that are expected to decrease the time and expense

necessary to adjudicate rate adjustment applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 187 water, natural gas, and sewer utilities whose annual gross revenues are \$1.5 million or less and their customers.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The proposed Amendment will reduce the time necessary for review of rate case applications and the cost of rate case proceedings and thus lessen or reduce rate adjustments. It should enhance public awareness of utility rate adjustment applications made by small utilities. It provides greater certainty and stability in the ratemaking process that the Public Service Commission uses for small utilities. The proposed amendment generally reflects ad hoc practices with which the Public Service Commission has employed over several years and which it found to improve and shorten the review process.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary. No new fees or funding will be required.

(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(8) TIERING: Is tiering applied? To the extent that the regulation establishes simplified procedures for utilities with annual revenues of less than \$1.5 million, tiering has been applied. The Public Service Commission believes that tiering is appropriate because the operations of smaller utilities are less complex, their recordkeeping practices are simpler, and amount of documentary evidence to verify their financial operations is not as great as those of larger utilities. Moreover, given the smaller number of customers that small utilities have to spread rate case expenses, the use of the same procedures as used for larger utilities will result in a much larger per customer increase for

customers of smaller utilities than those of larger utilities.

DRAFT