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October 16, 2007

TO ALL MUNICIPAL UTILITIES PROVIDING WHOLESALE UTILITY SERVICE TO JURISDICTIONAL PUBLIC UTILITIES

In Simpson County Water District v. City of Franklin, Kentucky, 872 S.W.2d 460 (Ky. 1994), the Kentucky Supreme Court held that the Public Service Commission has jurisdiction over contracts between municipal utilities and public utilities. For the last thirteen years, the Commission has attempted to execute the Supreme Court's directive. The purpose of this letter is to provide guidance on the procedures that a municipal utility must follow when changing its rates for utility service to public utilities.

A municipal utility has two methods for changing its rates for utility service to a public utility:

- Filing A New Rate Schedule. KRS 278.180 and Public Service Commission Regulation 807 KAR 5:011, govern this method. A municipal utility files a rate schedule that contains the new or revised rate. (If the new rate is part of a new contract with a public utility, then the contract is filed.) The rate schedule must be filed with the Public Service Commission not less than 30 days before the proposed rate is scheduled to take effect.¹ A copy of the form on which the proposed rate schedule should be filed is enclosed. **Any filing which does not use this form will be rejected.** When filing its rate schedule, a municipal utility must notify its public utility customers of the proposed rate change. This notice should be in writing and should generally conform to the requirements of Administrative Regulation 807 KAR 5:001, Section 10(3). Proof of notice to the public utility should be submitted when the rate schedule is filed. The Commission requests, but does not require, that the municipal utility also submit a copy of the municipal ordinance that authorizes the new or revised rate and a copy of any rate study upon which the new or revised rate is based. If the new or revised rate is not based upon a rate study, the municipal utility should set forth the reasons for the proposed rate adjustment. In those cases where the public utility does not object to the proposed rate adjustment, the Commission recommends that the municipal utility provide written evidence of the wholesale customer's lack of objection.²

¹ KRS 278.180(1) permits the Commission to shorten this notice period to 20 days if the municipal utility demonstrates good cause for the shortened period.

² Such evidence is not required, but may expedite the Commission's review and increase the possibility that the proposed adjustment will be permitted to become effective without a formal investigation.

- Formal Application For Public Service Commission Approval. Public Service Commission Regulation 807 KAR 5:001 governs this filing. Under this method, the municipal utility makes a formal application to the Public Service Commission for approval of its proposed rates. The application must be filed with the Public Service Commission not less than 30 days before the proposed rates are to become effective. The application must include information about the municipal utility's past operations. Public Service Commission Regulation 807 KAR 5:001, Section 10, a copy of which is enclosed, identifies all required information. When it files its application for rate adjustment, a municipal utility shall notify its public utility customers of the proposed rate changes in the same manner as municipal utilities that file new rate schedules.

Please note that a municipal utility must comply with one of these procedures even when its wholesale customers have agreed to the proposed rate adjustment. Failure to follow these procedures will prevent the proposed rates from becoming effective.

The Public Service Commission has 30 days from the filing of a rate schedule or an application for rate adjustment to suspend the rate for further review. When a municipal utility files a new rate schedule and the Public Service Commission suspends the proposed rate for further review, the municipal utility will likely be requested to provide much of the information that Public Service Commission Regulation 807 KAR 5:001, Section 10, requires. If the proposed rate is suspended, it may not be placed into effect for five months. If the Public Service Commission has not approved the proposed rate within this five-month period, then the municipal utility may place the proposed rate into effect subject to refund. The Public Service Commission must rule on the proposed rate within ten months of the filing of the rate schedule or application.

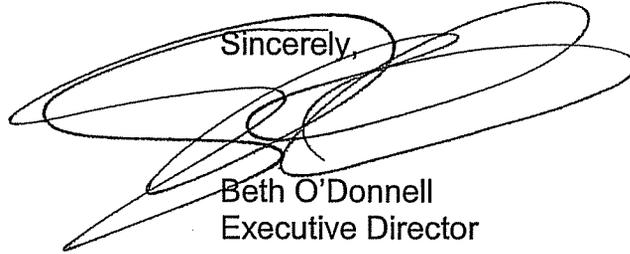
Please also note that a municipal utility that provides wholesale water service to a public utility must maintain its current wholesale rate on file with the Public Service Commission. KRS 278.160(1) expressly provides that a utility subject to the Commission's jurisdiction may only charge and collect the rates that it has filed with the Commission. If a municipal utility attempts to assess or collect a rate that is not on file with the Commission, it is collecting an unlawful rate and any monies collected in excess of the filed rate **are subject to refund.**

For your reference, a copy of the pertinent statutes and administrative regulations, a sample notice and sample rate schedule is enclosed. An electronic copy of these documents can be found at the Commission's website at www.psc.ky.gov. Recognizing that most municipal utilities are unfamiliar with its rules and procedures, the Public Service Commission will schedule a training seminar for municipal utilities before the end of this year and has instructed its Staff to assist municipal utilities whenever possible.³ Municipal utilities are encouraged to contact the Commission's

³ Additional instructional materials on the Commission's jurisdiction over municipal utilities may be found at http://psc.ky.gov/agencies/psc/training/prev_trg.htm

Staff for information about filing procedures and related matters. Your questions should be directed to Gerald Wuetcher at (502) 564-3940, Extension 259, or Brent Kirtley at (502) 564-3940, Extension 269.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Beth O'Donnell
Executive Director

Enclosures

1. 872 S.W.2d 460
2. 807 KAR 5:001
3. 807 KAR 5:011
4. KRS 278.160
5. KRS 278.180
6. KRS 278.190
7. Sample Notice
8. Sample Rate Schedule
9. Tariff Sheet Forms

cc: All Public Water Utilities

Supreme Court of Kentucky.

SIMPSON COUNTY WATER DISTRICT, Appellant,
v.
CITY OF FRANKLIN, Kentucky, Appellee.

No. 93-SC-47-DG.

Jan. 31, 1994.
Rehearing Denied April 21, 1994.

City sued water district seeking damages for delinquent payments under contract to supply water and declaratory judgment that three water purchase agreements were void. The Circuit Court, Simpson County, dismissed action on ground that it lacked subject matter jurisdiction. City appealed. The Court of Appeals rendered split decision reversing and remanding case to circuit court. Water district appealed. The Supreme Court, Reynolds, J., held that under Public Service Commission Act, city waived its exemption from Public Service Commission (PSC) regulation by contracting to supply water to PSC- regulated utility, and thus, PSC had exclusive jurisdiction over city's action.

Court of Appeals reversed; Circuit Court affirmed.

Wintersheimer, J., dissented and filed opinion joined by Leibson and Spain, JJ.

West Headnotes

[1] Waters and Water Courses [§203\(7\)](#)
[405k203\(7\) Most Cited Cases](#)

[1] Waters and Water Courses [§203\(15\)](#)
[405k203\(15\) Most Cited Cases](#)

Under Public Service Commission Act, city waived its exemption from Public Service Commission (PSC) regulation by contracting to supply water to PSC- regulated utility; thus, PSC had exclusive jurisdiction over city's claim for damages for delinquent payments under three water purchase agreements and declaratory judgment that agreements were void; although city, through its enhanced water sale ordinances, did not direct setting of any particular rate schedule, its action profoundly and directly impacted district's general revenue level, which was one of the first steps in rate making, so that city's action was improper engagement in rate making and was within PSC jurisdiction. [KRS 74.010 et seq.](#), [96.320-96.510](#), [278.010 et seq.](#), [278.010\(3\)](#), [278.015](#), [278.020\(1\)](#), [278.040\(2\)](#), [278.200](#).

[2] Public Utilities [§121](#)
[317Ak121 Most Cited Cases](#)

Rates and service exception to city's exemption from Public Service Commission (PSC) regulatory jurisdiction is not

avoidable by contract; thus, where contracts have been executed between utility and city, statute prohibiting change of rate or service standard, or any contract franchise or agreement affecting it, until hearing has been had before PSC is applicable and requires that by so contracting city relinquishes PSC exemption and is rendered subject to PSC rates and service regulation. [KRS 278.010\(3\)](#), [278.040\(2\)](#), [278.200](#).

[3] Public Utilities [§119.1](#)
[317Ak119.1 Most Cited Cases](#)

There is nothing in Public Service Commission Act intended or to be construed to limit police jurisdiction, contract rights, or powers of municipalities or political subdivisions, except as to regulation of rates and service, exclusive jurisdiction over which is lodged in Public Service Commission. [KRS 278.010\(3\)](#), [278.015](#).

[4] Public Utilities [§111](#)
[317Ak111 Most Cited Cases](#)

Statutory definition of "utility" in Public Service Commission Act is not to serve as impenetrable shield to afford city immunity from Public Service Commission jurisdiction. [KRS 278.010\(3\)](#), [278.040\(2\)](#), [278.200](#).

[5] Public Utilities [§119.1](#)
[317Ak119.1 Most Cited Cases](#)

Manifest purpose of Public Service Commission is to require and insure fair and uniform rates, prevent unjust discrimination, and prevent ruinous competition.

[6] Waters and Water Courses [§201](#)
[405k201 Most Cited Cases](#)

Once established by contract, city's supplying of water to utility can only be abrogated or changed after hearing before Public Service Commission. [KRS 278.020\(1\)](#), [278.040\(2\)](#), [278.200](#).

[7] Public Utilities [§146](#)
[317Ak146 Most Cited Cases](#)

Public Service Commission acts as quasi-judicial agency using its authority to conduct hearings, render findings of fact and conclusions of law, and using its expertise in area and to merits of rates and service issues. [KRS 278.020\(1\)](#), [278.040\(2\)](#), [278.200](#).

[8] Waters and Water Courses [§201](#)
[405k201 Most Cited Cases](#)

[8] Waters and Water Courses [§203\(10\)](#)
[405k203\(10\) Most Cited Cases](#)

(Cite as: 872 S.W.2d 460)

Rates and service exception from Public Service Commission (PSC) jurisdiction effectively insures, throughout Commonwealth, that any water district consumer/customer that has contracted and become dependent for its supply of water from city utility is not subject to either excessive rates or inadequate service. [KRS 74.010](#) et seq., [96.320-96.510](#), [278.010](#) et seq., [278.010\(3\)](#), [278.015](#), [278.020\(1\)](#), [278.040\(2\)](#), [278.200](#).

*[461 Charles E. English, Whayne C. Priest, Jr., D. Gaines Penn](#), English, Lucas, Priest & Owsley, Bowling Green, KY, for appellant.

[Timothy J. Crocker, Robert D. Wilkey](#), Crocker & Wilkey, Franklin, for appellee.

Christina A. Heavrin, City Law Director, [Joseph B. Helm, Charles S. Cassis](#), Brown, Todd & Heyburn, Louisville, [James Park, Jr., Katherine Randall](#), Brown, Todd & Heyburn, Lexington, amici curiae.

REYNOLDS, Justice.

The issue for decision is whether the Public Service Commission (PSC) has exclusive jurisdiction over the regulation of utility rates and service which extends to a city contracting for the sale and supply of water to a PSC-regulated county water district.

As background:

The Simpson County Water District (District) is a statutorily created public water district operated and regulated pursuant to [KRS Chapter 74](#) and is expressly subject to the Kentucky Public Service Commission, which is operative under [KRS Chapter 278](#). The City of Franklin (City) has heretofore established and now operates and maintains a municipal waterworks by virtue of the provisions of [KRS Chapter 96.320-96.510](#).

On April 5, 1967, both parties entered into and executed their first Water Purchase Agreement whereby the price for treated water to the District was at a rate of 21 1/2 cents per 1,000 gallons per month.

Thereafter two supplemental agreements (August 26, 1982 and April 3, 1986), were executed which increased the price of water to the District to the rate of 84.78 cents per 1,000 gallons per month. Subsequently, on June 25, 1990, the City adopted an ordinance which increased the water rate to all customers and specifically increased the water rate charged the District from 84.78 cents to \$1.3478 per 1,000 gallons. On May 13, 1991, the City passed a second ordinance which increased only the rate charged the District from \$1.3478 to \$1.68 per 1,000 gallons. The District, however, continued to pay only the 1986 rate.

The City filed this action seeking damages for delinquent payments and a declaratory judgment that the three water purchase agreements were void. The trial court dismissed the action and concluded that it lacked subject matter jurisdiction. A three-*[462](#) judge panel of the Court of Appeals rendered a split decision reversing and remanding the case to Simpson Circuit Court. The majority opinion reasoned that the city was not a utility nor did its relationship acting as a supplier to a PSC-regulated utility bring it within the PSC's jurisdiction.

[1] The appellee forthrightly states that cities are specifically exempted from regulation by the Public Service Commission under the definitional term of [KRS 278.010\(3\)](#) which provides as follows:

"Utility" means any person except a city, who owns, controls or operates or manages any facility used or to be used for or in connection with: ... (d) The diverting, developing, pumping, impounding, distributing or furnishing of water to or for the public, for compensation;

The City states that there are no exceptions to the exemption afforded a city under the foregoing statutory provision. However, the legislature provides a rates and service exception specifically set forth in [KRS 278.040\(2\)](#), which states:

The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

It is acknowledged by the parties that the PSC has only such authority that is granted to it by the legislature and it is clear that the legislature vested the PSC with exclusive control of rates and service of utilities. The legislature has conferred upon cities an exemption from the PSC's power to regulate local utilities in every area except as to rates and service.

Profoundly, reference to a "city" under the statutory scheme includes city- owned utilities. We give no validity to the argument that since the City is exempt from regulation by the PSC, [KRS 278.200](#) should be interpreted to apply only when the regulated utility is the provider, not the recipient, of the service. Simply put, the statute makes no such distinction. The statute has but one meaning--the City waives its exemption when it contracts with a regulated utility upon the subjects of rates and service.

Effective regulation of rates and service of public utilities resulted from the Kentucky General Assembly's passage of the Public Service Commission Act of 1934. The primary issue on appeal is whether, under the act, a city waives its

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exemption from PSC regulation by contracting to supply a commodity to a PSC-regulated utility. The section of the original act creating the rates and service exception appeared in Carroll's Code, 1936 Revised Version, Section 3952-27 which provided as follows:

Authority of the commission to change contract rates.--The commission shall have power, under the provisions of this act, to enforce, originate, establish, change and promulgate any rate, rates, joint rates, charges, tolls, schedules or service standards of any utility, subject to the provisions of this act, that are now fixed or that may in the future be fixed, by any contract, franchise or otherwise, between any municipality and any such utility, and all rights, privileges and obligations arising out of any such contracts and agreements regulating any such rates, charges, schedules or service standards, shall be subject to the jurisdiction and supervision of the commission; provided, however, that no such rate, charge, schedule or service standard shall be changed, nor any contract or agreement affecting same shall be abrogated or changed until and after a hearing has been had before the commission in the manner prescribed in this act.

Nothing in this section or elsewhere in this act contained is intended or shall be construed to limit or restrict the police jurisdiction, contract rights, or powers of municipalities or political subdivisions, except as to the regulation of rates and service, exclusive jurisdiction over which is lodged in the Public Service Commission.

Thus, any contract as to rates and service arising between a city and a utility required PSC authority. As the PSC, by express language, retained exclusive jurisdiction over regulation of rates and service, this simply *463 created the rates and service exception which the trial court found as vesting the PSC with exclusive jurisdiction over a city's attempt to affect utility rates or service. *Benzinger v. Union Light, Heat, & Power Co.*, 293 Ky. 747, 170 S.W.2d 38 (1943), acknowledged the legislative intent of the act as to place the regulation of rates and service under the exclusive jurisdiction of the PSC. The aforementioned Carroll's Code was revised and codified in 1942. The first paragraph resultantly appears in KRS 278.200, and the second paragraph reappears as KRS 278.040(2). Irrespective of subsequent codification, the effect and meaning of the rates and service exception continues to exist without modification. Simply put, both current sections of the statute are compatible.

The second sentence of KRS 278.040(2) is the "exception" to the general rule which exempts cities from PSC regulation. It provides:

The commission shall have *exclusive jurisdiction* over the regulation of *rates* and *service* of utilities, but with that *exception* nothing in this chapter is intended to limit or

restrict the police jurisdiction, contract rights or powers of *cities* or political subdivisions. (Emphasis added).

Thus, when a city is involved, the sentence reflects unequivocally the legislature's intent that the PSC exercise exclusive jurisdiction over utility rates and service.

Significantly, this sentence or subsection (2) of KRS 278.040 was addressed in *Peoples Gas Co. of Kentucky v. City of Barbourville*, 291 Ky. 805, 165 S.W.2d 567 (1942). As the initial sentence of KRS 278.040(2) directs that PSC jurisdiction extends to all utilities, there could be no reason to provide for the "exception" for the regulation of rates and service as pronounced in the second sentence of the statute if that exception were not intended to apply to cities which are otherwise plainly exempted from PSC jurisdiction by virtue of KRS 278.010(3) which has defined "utility" as "any person except a city."

[2] The rates and service exception to a city's exemption from PSC regulatory jurisdiction is not avoidable by contract because of the following provisions of KRS 278.200:

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter. (Emphasis added).

We find that where contracts have been executed between a utility and a city, such as between the City of Franklin and Simpson County Water District, KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption and is rendered subject to PSC rates and service regulation.

The City argues that the courts of the Commonwealth have jurisdiction to entertain the issues raised by appellee in this action. *Kentucky Utilities Co. v. Carter*, 296 Ky. 30, 176 S.W.2d 81 (1943), and *Louisville Extension Water Dist. v. Diehl Pump & Supply Co.*, Ky., 246 S.W.2d 585 (1952), are cited to demonstrate that there is no "exception to the exemption." Such authority produces scant support for such reasoning as neither case concerned a rates and service issue for the supplying of a utilitarian product. To the contrary, one action involved unsatisfactory work arising from an oral contract, and the other arose from the execution of a contract for the furnishing of materials and the repair of

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pumps.

[3] Neither do we accede to the City's interpretation of *Southern Bell Telephone & Telegraph Co. v. City of Louisville*, 265 Ky. 286, 96 S.W.2d 695 (1936), but rather determine that there is nothing in the act intended or to be construed to limit police jurisdiction, contract rights, or powers of municipalities or political subdivisions, except as to the regulation of rates and service, exclusive jurisdiction *464 over which is lodged in the Public Service Commission.

The City claims that rates charged by a municipality to its customers, including water districts, fall outside the PSC regulatory jurisdiction and offers *McClellan v. Louisville Water Co., Ky.*, 351 S.W.2d 197 (1961), in support of its argument. This case and the additional cited authority involve the water rate charged by the municipally-owned utility to nonresident customers. The City's argument is not supported by *McClellan, supra*, insofar as a municipality was not selling water to a PSC-regulated utility. At the time the *McClellan* opinion was rendered, water districts were exempt from PSC regulation. This court subsequently expressed the need for PSC regulation in cases dealing with city utilities, and the legislature, by its amendment of [KRS 278.010\(3\)](#), brought water districts within the PSC's jurisdiction. Additionally, the legislature enacted [KRS 278.015](#) which, of itself, removes any doubt that water districts were subject to PSC regulation.

[4] The statutory exception applicable to rates and service as provided will prohibit cities from exercising control over rates charged and the service provided to customers of local utilities. Jurisdiction to regulate such rates and service has been exclusively vested in the PSC. The record in this case discloses a doubling of the wholesale water rates charged to the District within a two-year period, with a direct impact upon the District's utility rates and service. Added to the force which the City sought to apply was a call to terminate service by declaring the parties' contract null and void. It is apparent that the City, through its enhanced water sale ordinances, did not direct the setting of any particular rate schedule, but its action profoundly and directly impacts the District's general revenue level, which is one of the first steps in rate making. The City's action is an improper engagement in rate making and strongly supports PSC jurisdiction. The statutory definition of utility is not to serve as an impenetrable shield to afford the City immunity.

The City urges that the circuit court should bear the jurisdiction of this case for no other reason than it is one of contract interpretation. Were this the sole issue, we would state that matters of contract interpretation are well within the court's expertise and not that of utility regulatory agencies. *Texas Gas Transmission Corp. v. Shell Oil Co.*,

363 U.S. 263, 80 S.Ct. 1122, 4 L.Ed.2d 1208 (1960). But, again, the issue is whether Simpson Circuit Court has jurisdiction over the matters raised in the City's complaint or whether jurisdiction was vested within the province of the PSC by the legislature and with the authority to do so flowing from the exercise of the police power of the state. See *Southern Bell, supra*.

[5] The City's unilateral adoption of the two water-rate ordinances doubled the water charge and, in no uncertain terms, was an act that directly related to the rate charged by the water district. The City's declaration to hold the parties' contracts null and void constitutes a practice relating to the service of the water district. The City's analogy of comparing its sale of treated water to coal supplied to an electric utility bears little relationship to the issue herein. The manifest purpose of the Public Service Commission is to require and insure fair and uniform rates, prevent unjust discrimination, and prevent ruinous competition. *City of Olive Hill v. Public Service Commission*, 305 Ky. 249, 203 S.W.2d 68 (1947). Also, the service regulation over which the Commission was given jurisdiction refers clearly to the quantity and quality of the commodity furnished as contracted for with the facilities provided. *Peoples Gas Co. of Kentucky v. City of Barbourville, supra*.

While the city finds comfort in relying on *City of Georgetown v. Public Service Commission, Ky.*, 516 S.W.2d 842 (1974), in its argument against the rates and service exception, we clearly discern that there is no existing support. The parties were engaged in a dispute of territorial jurisdiction, between a private utility and a city utility and the issue therein affected neither rates or service as it does in this case. Additionally, jurisdiction over the city was rejected because it was a "person" as defined by [KRS 278.020\(1\)](#). Thus, secondly, the rates and service exception had no relationship to the issue raised in *City of Georgetown, supra*.

*465 [6][7] The City candidly admits that the Public Service Commission has expertise in resolving disputes over rates and service but that construction of [KRS 278.040\(2\)](#) and [KRS 278.200](#), as maintained by the District, creates a paradox and serves to illustrate that where no contract exists between a city and a regulated utility, the courts would be called upon to resolve rates and service disputes. However, from a practical point of view, there has always been a contract/agreement in place and in operation at the time a City supplied water to a utility. Once established by contract, such service can only be abrogated or changed after a hearing before the PSC. [KRS 278.200](#). *Fern Lake Co. v. Public Service Commission, Ky.*, 357 S.W.2d 701 (1962). The PSC acts as a quasi-judicial agency utilizing its authority to conduct hearings, render findings of fact and conclusions of law, and utilizing its expertise in the area and

to the merits of rates and service issues.

[8] The rates and service exception effectively insures, throughout the Commonwealth, that any water district consumer/customer that has contracted and become dependent for its supply of water from a city utility is not subject to either excessive rates or inadequate service.

The Court of Appeals' opinion is reversed and the opinion and order of Simpson Circuit Court is affirmed.

STEPHENS, C.J., and LAMBERT and STUMBO, JJ., concur.

WINTERSHEIMER, J., dissents by separate opinion in which LEIBSON and SPAIN, JJ., join.

WINTERSHEIMER, Justice, dissenting.

I respectfully dissent from the majority opinion because the Court of Appeals correctly determined that the Simpson Circuit Court had jurisdiction over a contract dispute between the City of Franklin and the water district. The Public Service Commission has jurisdiction only over the rates and services of a "utility," publicly or privately owned, as distinguished from city-owned.

KRS 278.010(3) clearly provides that "utility means any person except a city, who owns, controls or operates or manages any facility used or to be used in connection with ... the impounding, distribution or furnishing of water to or for the public for compensation." The majority opinion should not ignore the plain meaning of the statute.

Contrary to the argument of the water district, the PSC act was intended only to transfer the city's preexisting power over rates for services rendered by a utility within the city limits. The statute does not grant the PSC jurisdiction over the rates charged by a city-owned utility which is not a utility as defined in KRS 278.010(3).

Southern Bell Telephone & Telegraph Co. v. City of Louisville, 265 Ky. 286, 96 S.W.2d 695 (1936), held that the provisions of Section 4(n) of the PSC act did not conflict with Sections 163 and 164 of the Kentucky Constitution. The case carefully distinguished between the rights of city-owned utilities and publicly owned private utilities. The purpose of Section 4(n) of the original PSC act was not to grant the commission jurisdiction over the rates of city-owned utilities, rather the statute was intended to transfer jurisdiction to the commission over public utility rates which had been fixed initially by a city at the time a utility franchise was granted.

This exemption of city-owned water utilities from

commission regulation has been a part of the law for at least 58 years. 1936 Kentucky Acts, Chap. 92 § 1(c). *McClellan v. Louisville Water Company, Ky.*, 351 S.W.2d 197 (1961), held that the exemption provided for cities extends to all operations of a municipally-owned utility.

McClellan, supra, followed a line of cases including *City of Olive Hill v. Public Service Com'n*, 305 Ky. 249, 203 S.W.2d 68 (1947); *Louisville Water Co. v. Preston Street Road Water Dist., Ky.*, 256 S.W.2d 26 (1953) and *Louisville Water Co. v. Public Service Com'n, Ky.*, 318 S.W.2d 537 (1958). *McClellan* was followed in *City of Georgetown v. Public Service Com'n, Ky.*, 516 S.W.2d 842 (1974) in which the court stated, "We feel compelled to follow the clear language of KRS 278.010(3)."

The Court of Appeals decision does not leave the water district and its customers at *466 the complete mercy of the city. The circuit court has jurisdiction to adjudicate all issues arising out of the contract on the merits, including any claim that the rates charged by the city are arbitrary or unreasonable.

The rates and services exception has nothing to do with the rates charged by a city-owned utility. The history of the Public Service Commission Acts indicates that the rates and services exception is simply a statutory exception to the power of a city to fix by contract the rates charged by a utility for services inside the city limits. Prior to the adoption of the PSC Acts, cities regulated the rates charged by utilities for services inside the city limits. In exercising its power to grant a franchise to use the public streets pursuant to Sections 163 and 164 of the Kentucky Constitution, a city could establish a utility's initial rates in the franchise agreement. Cf. *Frankfort Natural Gas Co. v. City of Frankfort*, 204 Ky. 254, 263 S.W. 710 (1924). During the existence of the franchise agreement, the city and the utility were free to modify those rates by additional contractual agreement. *Johnson County Gas Co. v. Stafford*, 198 Ky. 208, 248 S.W. 515 (1923).

From a historical perspective, Chapter 278 was adopted in the early 1930's when many utilities had contracts with cities which obligated the utilities to furnish services to the citizens of the city under uniform rates and conditions. The utility was permitted to place its lines along the public ways, and in return, the utility paid an annual flat franchise fee or percentage of revenues to the city.

It is essential to recognize the fact that it is the City, which is not a private or public utility, that is furnishing the service and arbitrarily or by negotiation prescribing a rate. It is not the promulgated service rate of a resale customer of a city that would be an issue. It has been general policy that because the PSC has no jurisdiction over the former, it has no jurisdiction over its rate problems.

(Cite as: 872 S.W.2d 460)

[KRS 278.040\(2\)](#) gave the PSC exclusive jurisdiction over the regulation of rates and utilities, but by definition, excluded the city. There was a period of time when cities filed certain reports with the PSC. The remainder of [KRS 278.040\(2\)](#) reserves the rights of a city or other political subdivision, such as a county, to effectuate safety and environmental protection regulations.

Benzinger v. Union Light, Heat & Power Co., 293 Ky. 747, 170 S.W.2d 38 (1943), considered the intention of the legislature as stated in Section 4(n) of the PSC act to the effect that it was expressly stated that the intention was to confer jurisdiction only over the matter of rates and service. *Peoples Gas, supra*, and *Benzinger* indicate that the original Section 4(n), now [KRS 278.200](#) and [278.040\(2\)](#), created an exception to the authority of cities to regulate the rates of a utility for services rendered inside the city limits. There is nothing in the statutory language which creates an exception to the exemption of city-owned utilities from PSC jurisdiction. The PSC jurisdiction was limited to the rates and services of a utility.

By statutory definition, the City of Franklin is not a public utility subject to the jurisdiction of the PSC. [KRS 278.010\(3\)](#). However, the Simpson County Water District, which is organized under KRS Chapter 74 is considered to be a public utility subject to the jurisdiction of the PSC. [KRS 278.015](#).

The only public utility in this dispute is the Simpson County Water District. The wholesale rates for water sold by the city to the water district do not constitute a charge or other compensation for services rendered by the district. Accordingly, they are not rates within the statutory definition provided in [KRS 278.010\(11\)](#).

In addition, the rates charged by the water district do not relate to the "quality" or "quantity" of the water sold by the district so as to fall within the statutory definition of service. Cf. *Benzinger* 170 S.W.2d at page 41.

[KRS 278.200](#), which gives the PSC jurisdiction over rates of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city fails to consider that this contract does not purport to fix the rates charged by the District which is the only public utility in question. The contract sets only the rates *467 charged by a city-owned utility. [KRS 278.200](#) does not apply in this situation.

The legislative history of the regulatory acts indicates that sales by a city-owned utility to a water district are exempt from PSC regulation. From approximately 1936 to 1964, both cities and water districts were excepted from the definition of a "utility." In 1964, the General Assembly deleted the exception for water districts and expressly

provided that districts were public utilities subject to the jurisdiction of the PSC. *City of Georgetown v. Public Service Com'n, Ky.*, 516 S.W.2d 842 (1974). This Court held in the *McClellan* case that a city's exemption from PSC regulation extended to all operations of a city-owned utility, whether within or without city limits. Approximately three years later, in the 1964 amendments to the PSC act, the legislature did not attempt to overrule *McClellan* by subjecting any of the activities of a city-owned utility to commission regulation. The legislature only granted the PSC jurisdiction over rates charged by the water districts.

After that time, a water district could not pass on a wholesale rate increase to its customers without filing a rate case in which the imposition of the new rates by the district could be delayed for five months. [KRS 278.190\(2\)](#). Again, in 1986, the General Assembly considered the problem of regulatory lag by permitting a water district to pass on an increase in wholesale rates to its customers immediately without commission approval. [KRS 278.015\(2\)](#). Once again, in addressing the problem of regulatory lag, the General Assembly did not subject city-owned utilities to PSC regulation so that the commission could consider the increased wholesale rates of a city-owned utility simultaneously with new retail rates of a water district. There would be no necessity for the 1986 legislation if the wholesale rates of a city-owned utility had been subject to PSC regulation.

[KRS 278.200](#) recognizes the fact that at the time of the enactment of Chapter 278 some utilities had contracts with cities for the rendition of utility services. This section prevents a sudden arbitrary abrogation of a utility contract with a city until a hearing has been held before the PSC in the manner prescribed by the statute. Consequently, the commission could change any rate that has been fixed by contract between the utility and the city for services by a utility within the city as to its citizens but only after a public hearing. In this manner it appears that a legal issue of constitutional proportions, the abrogation of contracts affecting the public, would be avoided by reason of affording due process. The days of city control over public utilities are long past.

Under Section 200, it is clear that because the commission is not bound by any contract, franchise or agreement for service between a utility and the city in which it operates, it can prescribe reasonable rates for a utility to charge within a city. However, because the city itself is not a utility as defined in [KRS 278.010\(3\)](#), a municipal water plant sets its own rates. Accordingly, the city no longer has the power to regulate rates of privately-owned utilities. It has been superseded by the PSC.

A city does retain inherent police power under [KRS](#)

(Cite as: 872 S.W.2d 460)

278.040(2) over all public utility lines within the city limits and it has statutory jurisdiction by exclusion as a utility under KRS 278.010(3) over any utility plant owned and operated by itself. Therefore it can set its own rates without PSC approval, but not the rates of privately-owned utilities. Moreover, city-owned water or electric plants are not subject to PSC safety or health regulations. Such is the regulatory province of the Kentucky Division of Water (DOW), EPA and other agencies. Cities file no reports with the PSC. Neither can the PSC be an arbitrator of city matters.

In this situation, the city as a supplier is expressly excluded from the definition of a utility in KRS 278.010(3). In view of the fact that the city is specifically excluded from the definition of a utility in the statute, there is no ambiguity or conflict giving the courts a vehicle to construe the city as subject to PSC regulation and exclude its right to file in circuit court to determine the contractual obligations if any to the Simpson County Water District.

In my view the circuit court, and not the PSC, is the proper forum for the adjudication *468 of the merits of this dispute. I would affirm the Court of Appeals and reverse the trial court.

LEIBSON and SPAIN, JJ., join in this dissent.

END OF DOCUMENT

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.310(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.310(2) provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission. This administrative regulation prescribes requirements with respect to formal and informal proceedings before the commission.

Section 1. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.

(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner or hearing examiner of an adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.

Section 2. Secretary to Furnish Information. (1) Upon request, the secretary will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.

(2) The secretary may reject for filing any document which on its face does not comply with the rules and administrative regulations of the commission.

Section 3. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."

(2) Case numbers and styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.

(3) Form of papers filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.

(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.

(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.

(6) Witnesses and subpoenas.

(a) Upon the application of any party to a proceeding, 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, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be produced.

(7) Service of process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.

(a) Each person granted leave to intervene shall be considered as making a limited intervention unless he submits to the secretary a written request for full intervention. A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.

(b) If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party 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, such person shall be granted full intervention.

Section 4. Hearings and Rehearings. (1) When hearings will be granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.

(b) When application has been made in a formal proceeding.

(2) Publication of notice. Upon the filing of any application the commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared by the secretary, and a proof of the publication thereof must be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by the public utility, which the commission may believe is in violation of any provision of law or of any order or administrative regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. In order to provide opportunity for settlement of a proceeding or any of the issues therein, an informal conference with the commission staff may be arranged through the secretary of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party.

(5) Conduct of hearings. Hearings will 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 secretary, the parties to any proceeding or investigation by the commission may agree 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 will be given under oath or affirmation.

(8) Objections and exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.

(9) Transcript of evidence. The commission will cause to be made a stenographic record of all public hearings, and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefor.

(10) Briefs and petitions for rehearing. All briefs and petitions for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.

(11) Filing of briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Applications for extensions of time to file briefs must be made to the commission in writing.

(12) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.

Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant the party must plainly designate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will 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, or if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and 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. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instances, the commission will not receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part of any document may be made a part of the record before such court, at the instance of any party.

Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve (12) month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized.

(2) Amount and kinds of stock issued and outstanding.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.

(4) 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 thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(8) 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.

(9) Detailed income statement and balance sheet.

Section 7. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential as provided herein.

(2) Procedure for determining confidentiality.

(a) Any person requesting confidential treatment of any material shall file a petition which:

1. Sets forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential; and

2. Attaches one (1) copy of the material which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless deleted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification.

(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with those portions obscured for which confidentiality is sought, shall be filed with the commission.

(c) The petition and a copy of the material, with only those portions for which confidentiality is sought obscured, shall be served on all parties. The petition shall contain a certificate of service on all parties.

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.870 et seq., shall be upon the person requesting confidential treatment.

(e) Any person may respond to the petition for confidential treatment within ten (10) days after it is filed with the commission.

(3) Pending commission action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the commission denies the petition for confidential treatment of material, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to seek any remedy afforded by law.

(5) Procedure for any party to request access to confidential material filed in any proceeding.

(a) No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then any party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding. The petition shall include a description of efforts to enter into a protective agreement and any unwillingness to enter into a protective agreement shall be fully explained. Any party may respond to the petition within ten (10) days after it is filed with the commission. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Requests for access to records pursuant to KRS 61.870-884. No time period prescribed in this section shall limit the right of any person to request access to commission records pursuant to KRS 61.870-884. Upon a request filed pursuant to KRS 61.870-884, the commission shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for request for access to confidential material. Any person denied access to records requested pursuant to KRS 61.870-884 or to material deemed confidential by the commission in accordance with the procedures set out in this section, may obtain this information only pursuant to KRS 61.870-884, and other applicable law.

(8) Use of confidential material during formal proceedings. Any material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the following procedure:

(a) The person seeking to address the confidential material shall advise the commission prior to the use of such material.

(b) All persons other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(c) The court reporter shall produce a sealed transcript of that portion of the record directly related to the confidential material.

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

(a) The petitioner who sought confidential protection shall inform the commission in writing at any time when any material granted confidentiality becomes publicly available.

(b) 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 petitioner who sought confidential protection, giving ten (10) days to respond. If the commission finds that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, such information shall not be deemed or considered to be publicly available and shall not be placed in the public record.

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

Section 8. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must 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 provision of law requiring or providing for same.

(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.

(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.

Section 9. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation (see Section 8(3) of this administrative regulation).

(b) The name of the governmental agency offering the franchise.

(c) The type of franchise offered.

(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.

(2) New construction or extension. When application is made by the utility, person, firm, or corporation 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 8 of this administrative regulation, shall submit the following data, either in the application or as exhibits attached thereto:

(a) The facts relied upon to show that the proposed new construction 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 new construction or extension, if not previously filed with the commission.

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.

(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.

(e) The manner in detail in which it is proposed to finance the new construction or extension.

(f) An estimated cost of operation after the proposed facilities are completed.

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. No certificate of public convenience and necessity will 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 area in which the utility renders service or contiguous thereto, 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. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.

Section 10. Applications for General Adjustments in Existing Rates. (1) All applications requesting a general adjustment in existing rates shall be supported by:

(a) A twelve (12) month historical test period which may include adjustments for known and measurable changes; or

(b) A fully forecasted test period and shall include:

1. A statement of the reason the adjustment is required;

2. A statement that the utility's annual reports, including the annual report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1);

3. If the utility is incorporated, a certified copy of the utility's articles of incorporation and all amendments thereto or out-of-state documents of similar import. If the utility's articles of incorporation and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;

4. If the utility is a limited partnership, a certified copy of the limited partnership agreement and all amendments thereto or out-of-state documents of similar import. If the utility's limited partnership agreement and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;

5. If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;

6. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that such a certificate is not necessary;

7. The proposed tariff in a form which complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

8. The utility's proposed tariff changes, identified in compliance with 807 KAR 5:011, shown either by:

a. Providing the present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. Providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

9. A statement that customer notice has been given in compliance with subsections (3) and (4) of this section with a copy of the notice.

10. For the purposes of this administrative regulation, an affiliate is an entity that:

a. Is wholly owned by a utility; or

b. In which a utility has a controlling interest; or

c. That wholly owns a utility; or

d. That has a controlling interest in a utility; or

e. That is under common control with the utility.

11. For the purposes of this administrative regulation, a utility, or other entity, shall be deemed to have a controlling interest in, or be under common control with, an entity or utility if it:

a. Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of any entity; and

b. Exercises such power:

(i) Through one (1) or more intermediary companies, or alone; or

(ii) In conjunction with, or pursuant to an agreement; or

- (iii) Through ownership of ten (10) percent or more of the voting securities; or
- (iv) Through common directors, officers, stockholders, voting or holding trusts, associated companies; or
- (v) Contract; or
- (vi) Any other direct or indirect means.

(2) Notice of intent. Utilities with gross annual revenues greater than \$1,000,000 shall file with the commission a written notice of intent to file a rate application at least four (4) weeks prior to filing their application. The notice of intent shall state whether the rate application will be supported by a historical test period or a fully forecasted test period. This notice shall be served upon the Attorney General, Utility Intervention and Rate Division.

(3) Form of notice to customers. Every utility filing an application pursuant to this section shall notify all affected customers in the manner prescribed herein. The notice shall include the following information:

- (a) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;
- (b) The present rates and the proposed rates for each customer class to which the proposed rates would apply;
- (c) Electric, gas, water and sewer utilities shall include the effect upon the average bill for each customer class to which the proposed rate change will apply;
- (d) Local exchange companies shall include the effect upon the average bill for each customer class for the proposed rate change in basic local service;
- (e) A statement that the rates contained in this notice are the rates proposed by (name of utility); however, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

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

(g) A statement that any person who has been granted intervention by the commission may obtain copies of the rate application and any other filings made by the utility by contacting the utility through a name and address and phone number stated in this notice;

(h) A statement that any person may examine the rate application and any other filings made by the utility at the main office of the utility or at the commission's office indicating the addresses and telephone numbers of both the utility and the commission; and

(i) The commission may grant a utility with annual gross revenues greater than \$1,000,000, upon written request, permission to use an abbreviated form of published notice of the proposed rates provided the notice includes a coupon which may be used to obtain all of the information required herein.

(4) Manner of notification.

(a) Sewer utilities shall give the required typewritten notice by mail to all of their customers pursuant to KRS 278.185.

(b) Applicants with twenty (20) or fewer customers affected by the proposed general rate adjustment shall mail the required typewritten notice to each customer no later than the date the application is filed with the commission.

(c) Except for sewer utilities, applicants with more than twenty (20) customers affected by the proposed general rate adjustment shall give the required notice by one (1) of the following methods:

1. A typewritten notice mailed to all customers no later than the date the application is filed with the commission;

2. Publishing the notice in a trade publication or newsletter which is mailed to all customers no later than the date on which the application is filed with the commission;

or

3. Publishing the 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 within seven (7) days of the filing of the application with the commission.

(d) If the notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice, shall be filed with the commission no later than forty-five (45) days of the filed date of the application.

(e) If the notice is mailed, a written statement signed by the utility's chief officer in charge of Kentucky operations verifying the notice was mailed shall be filed with the commission no later than thirty (30) days of the filed date of the application.

(f) All utilities, in addition to the above notification, shall post a sample copy of the required notification at their place of business no later than the date on which the application is filed which shall remain posted until the commission has finally determined the utility's rates.

(g) Compliance with this subsection shall constitute compliance with 807 KAR 5:051, Section 2.

(5) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.300.

(6) All applications 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 any proposed changes in price or activity levels, and any other factors which may affect the adjustment;

(b) If the utility has gross annual revenues greater than \$1,000,000, the prepared testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than \$1,000,000, the prepared testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit any prepared testimony;

(d) A statement estimating the effect that the new rate(s) 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 a local exchange company the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) An analysis of customers' bills in such detail that 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 prescribed by the commission;

(k) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility 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 Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Automated Reporting Management Information System Report (telephone) and 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 and style will 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 each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; 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) 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) Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued within the past two (2) years, and Form 10-Qs issued during the past six (6) quarters updated as current information becomes available;

(t) If the utility had any amounts charged or allocated to it by an affiliate or general or home office or paid any 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 or water 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 fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission.

Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; 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.

(7) 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 applications 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 provide 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, 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 any differences 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;

(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.

(8) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the following requirements:

- (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 such 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.

(9) All applications 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 prepared 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 minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in prefiled 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; and
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 any differences that exist; and

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

(f) For each major construction project which 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 which 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. MCF sales forecasts (gas);
16. Toll and access forecast of number of calls and number of minutes (telephone); and
17. A detailed explanation of any other information provided;
 - (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 Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or the Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);
 - (l) The annual report to shareholders or members and the statistical supplements covering the most recent five (5) years from the application filing date;
 - (m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;
 - (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) The Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued during the prior two (2) years and any Form 10-Qs 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 which 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 and style will 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 each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;
 - (u) If the utility had any amounts charged or allocated to it by an affiliate or a general or home office or paid any 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 or water 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
 - (w) Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:
 1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; 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.
- (10) All applications seeking a general adjustment in rates supported by a forecasted test period shall include the following data to be submitted using schedule forms hereby incorporated by reference and which may be inspected, copied or obtained at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday between the hours of 8 a.m. and 4:30 p.m., local time. The commission shall notify the utility of any deficiencies in the application within thirty (30) days of receiving it. The utility may cure such filing deficiencies within thirty (30) days' written notice from the commission.
 - (a) A jurisdictional financial summary for both the base period and the forecasted period which 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.
- (11) A request for waiver of any of the provisions of these filing requirements must set forth the specific reasons for the request. The commission shall grant the request for waiver upon good cause shown by the utility. In determining whether good cause has been shown, the commission may consider:
 - (a) Whether other information which the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;
 - (b) Whether the information which is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information which it maintains; and
 - (c) The expense to the utility in providing the information which is the subject of the waiver request.

Section 11. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 8 of this administrative regulation, shall contain:

- (a) A general description of 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 such impossibility shall be stated.

(b) The amount and kinds of stock, if any, which the utility 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 utility desires to issue, with terms, rate of interest and whether and how to be secured.

(c) The use to be made of the proceeds of the issue of such 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.

(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of 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. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.

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

(f) Such other facts as may be pertinent to the application.

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

(a) Financial exhibit (see Section 6 of this administrative regulation).

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

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

Section 12. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of 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 thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired (see Section 15(1) of this administrative regulation).

(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

(3) Number of copies required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this administrative regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this administrative regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person 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 such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.

(6) Answer to complaint. If satisfaction be not made as aforesaid, the corporation or person complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground (see Section 15(2) of this administrative regulation).

Section 13. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.

(3) 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 is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.

Section 14. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 15. Forms. (1) In all practice before the commission the following forms shall be followed insofar as practicable:

(a) Formal complaint.

(b) Answer.

(c) Application.

(d) Notice of adjustment of rates.

(2) Forms of formal complaint.

Before the Public Service Commission

(Insert name of complainant))

Complainant)

vs.)

(Insert name of each defendant))

Defendant)

No. _____
(To be inserted by the
secretary)

COMPLAINT

The complaint of (here insert full name of each complainant) respectfully shows:

- (a) That (here state name, occupation and post office address of each complainant).
(b) That (here insert full name, occupation and post office address of each defendant).
(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at _____, Kentucky, this ____ day of ____, 19__.

(Name of each complainant)
(Name and address of attorney, if any)

(3) Form of answer to formal complaint.

Before the Public Service Commission

(Insert name of complainant))
COMPLAINANT)
vs.) No. _____
) (To be inserted by the
) secretary)
(Insert name of each defendant))
DEFENDANT)

ANSWER

The above-named defendant, for answer to the complaint in the proceeding, respectfully states:

That (here follow specific denials of such material, allegations as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue lettering each succeeding paragraph).

WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).

(Name of defendant)
(Name and address of attorney, if any)

(4) Form of application.

Before the Public Service Commission

In the matter of the application of)
(here insert name of each)
applicant) for (here insert desired) No. _____
order, authorization, permission) (To be inserted by the
or certificate, thus: "Order) secretary)
authorizing issue of stocks)
and bonds"))

APPLICATION

The petition of (here insert name of each applicant) respectfully shows:

- (a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).
(b) That the post office address of each applicant is _____.
(c) That (here state fully and clearly the facts required by these rules, and any additional facts which applicant desires to state).

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).

Dated at _____, Kentucky, this ____ day of ____, 19__.

(Name of applicant)
(Name and address of attorney, if any)

(5) Form of notice to the commission of adjustment of rates.

Before the Public Service Commission

In the matter of adjustment) No. _____
of rates of the (state name) (To be inserted by the
of corporation).) the secretary)

The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the ____ day of ____, 19__, in conformity with the attached schedule.

(See Section 9 of this administrative regulation for required information.)

(Name and address of company)
(Name and address of attorney)

(8 Ky.R. 786; eff. 4-7-82; Am. 10 Ky.R. 831; eff. 1-4-84; 11 Ky.R. 1301; 12 Ky.R. 127; eff. 7-9-85; 18 Ky.R. 191; 1025; eff. 9-24-91; 19 Ky.R. 1142; 1604; 2044; eff. 3-12-93.)

807 KAR 5:011. Tariffs.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) provides that the commission shall prescribe rules under which each utility shall file schedules showing all rates and conditions established by it and collected or enforced.

Section 1. Definitions. For purpose of this administrative regulation: "Commission" means the Public Service Commission.

Section 2. General. All utilities under the jurisdiction of the commission shall file with the secretary two (2) cover letters and four (4) complete copies of a tariff containing schedules of all its rates, charges, tolls and maps or plats of the area in which it offers service and all its rules and administrative regulations and shall keep a copy of said tariff open to public inspection in its offices and places of business, as required by KRS 278.160, in substantially the form and manner hereinafter set out. If a utility furnishes more than one (1) kind of service (water and electricity for example), a separate tariff must be filed for each kind of service. For the purpose of the commission's rules and administrative regulations, the utility's office or place of business shall be deemed a location at which the utility regularly employs and stations one (1) or more employees and is open to the public.

Section 3. Form and Size of Tariffs. (1) All tariffs must be printed from type not smaller than six (6) point or typewritten, mimeographed or produced by similar process, on hard calendared paper of good quality.

(2) The pages of a tariff shall be eight and one-half (8 1/2) by eleven (11) inches in size.

(3) Utilities shall publish tariffs in loose-leaf form using one (1) side of the paper only, with not more than one (1) schedule to the page.

(4) The front cover page of a tariff shall contain the following:

(a) Name of the utility and location of principal office.

(b) Statement of kind of service offered.

(c) General statement of territory served.

(d) Date of issue and date tariff is to become effective.

(e) Signature of the officer of the utility authorized to issue tariffs.

(f) Identifying designation in the upper right-hand corner as required by Section 5 of this administrative regulation.

(5) The second and succeeding pages shall contain:

(a) All the rules and administrative regulations of the utility.

(b) Rate schedules showing all rates and charges for the several classes of service.

(c) Signature of the officer of the utility authorized to issue tariffs.

(d) Date of issue and date tariff is to become effective.

(e) Identifying designation in upper right-hand corner as required by Section 5 of this administrative regulation.

(6) In that portion of the tariff dealing with rates, the desired information shall be shown under the following captions in the order listed:

(a) Applicable: show territory covered by tariff.

(b) Availability of service: show classes of customers affected, such as domestic, commercial, etc.

(c) Rates: list all rates covered by tariff.

(d) Minimum charge: state amount of charge and quantity allowed.

(e) Delayed payment charge: state if penalty or discount.

(f) Term: if contracts are made for certain periods, give length of term.

(g) Special rules: if any special rules and administrative regulations are in effect covering this tariff, list same hereunder.

(7) The secretary of the commission will furnish standard forms of tariffs on request.

Section 4. Contents of Schedules. (1) Each rate schedule in addition to a clear statement of all rates thereunder must state the city, town, village or district in which rates are applicable; provided, however, that schedules applicable in a large number of communities must be accompanied by an accurate index by which each community in which the rates are applicable may be readily ascertained, in which case the applicability of a schedule may be indicated by reference to the index sheet. (Example: Applicable within the corporate limits of the City of _____, or see Tariff Sheet No. 2B for applicability.)

(2) Each rate schedule must state that class of service available under the rates stated therein. (Example: Available for domestic lighting, or available for all purposes, etc.)

(3) For a tariff in which a number of schedules are shown available for various uses, each schedule shall be identified by a number or by a group of letters, and if by a group of letters, the designation shall be indicative of the class of service for which the schedule is available. (Example: Schedule No. 1 or Tariff D.U.R. indicating that the schedule states domestic utility rates.)

(4)(a) Each page of the tariff shall bear the Commission Number of the tariff, the date issued and effective, the signature of the issuing officer, and in the upper right-hand corner, a further designation, such as "Original Sheet No. 1," "Original Sheet No. 2," etc.

(b) In the case of a change in the text of any page as hereinafter provided the further designation shall be "First Revised Sheet No. 1, cancelling Original Sheet No. 1," etc.

(c) Tariffs may be further divided into sections, and so designated if required by their size and contents.

(5) All schedules shall state whether a minimum charge is made, and if so, they shall set out all such charges, and further state whether such minimum charge is subject to prompt payment discount or delayed payment penalty.

Section 5. Designation of Tariffs. All tariffs must bear in the upper right-hand corner of the front cover page the commission number thereof. Subsequent tariffs filed as provided by Sections 6 and 9 of this administrative regulation, must continue such designation in consecutive numerical order. Any subsequent tariff must also show the commission number of the tariff cancelled, changed or modified by it.

Section 6. Change or Withdrawal of Rate Schedules Administrative Regulations. (1) No tariff, or any provision thereof, may be changed, cancelled or withdrawn except upon such terms and conditions as the commission may impose and in compliance with KRS 278.180 and Sections 6 and 9 of this administrative regulation.

(2)(a) All revisions in tariff sheets shall contain a symbol in the margin indicating the change made. These symbols are as follows:

(C) To signify changed administrative regulation.

(D) To signify discontinued rate, administrative regulation or test.

(I) To signify increase.

(N) To signify new rate and/or new test.

(R) To signify reduction.

(T) To signify a change in text.

(b) In the case of a change in the text of any tariff sheet where the rate remains the same, the effective date shall remain the same as that on the amended sheet. The issued date of the change shall be the date the filing is made with the commission.

(c) All tariff filings which involve the furnishing of equipment or services to the customer by the utility shall be accompanied by a description of the equipment or service involved in the filing and a cost of service study justifying the proposed charges.

(3) New tariffs stating changes in any provision of any effective tariff may be issued and put into effect by either of the two (2) following methods:

(a) By order of the commission upon formal application by the utility, and after hearing, as provided by Section 7 of this administrative regulation.

(b) By issuing and filing on at least twenty (20) days' notice to the commission and the public a complete new tariff (or revised sheet of an existing tariff) stating all the provisions and schedules proposed to become effective as provided by Sections 7 and 9 of this administrative regulation.

(4) The provisions or rates stated on any sheet or page of a tariff may be modified or changed by the filing of a revision of such sheet or page in accordance with the provisions of this administrative regulation. Such revisions must be identified as required herein.

Section 7. Adjustment of Rates on Application. Upon the granting of authority for a change in rates, the utility shall file a tariff setting out the rate, classification, charge, or rule and administrative regulation authorized by the commission to become effective the order may direct, and each page of the tariff so filed shall state that it is "Issued by authority of an order of the Public Service Commission in Case No. _____ dated _____, 19____."

Section 8. Notices. Notices shall be given by the utility in the following manner:

(1) Advance notice, abbreviated newspaper notice. Utilities with gross revenues greater than \$1,000,000 shall notify the commission in writing of Intent to File Rate Application at least four (4) weeks prior to filing. At or about this time 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 which may be used to obtain a copy from applicant of the full schedule of increases or rate changes.

(2) Notice to customers of proposed rate changes. If the applicant has twenty (20) or fewer customers, typewritten notice of the proposed rate changes and the estimated amount of increase per customer class shall be placed in the mail to each customer no later than the date on which the application is filed with the commission and, in addition, a sheet shall be posted at its place of business containing such information. Except for sewer utilities which must give a notice by mail to all of their customers pursuant to KRS 278.185, all applicants with more than twenty (20) customers shall post a sheet stating the proposed rates and the estimated amount of increase per customer class at their place of business and, in addition, notice thereof:

(a) Shall be included with customer billings made on or before the application is filed with the commission; or

(b) Shall be published by such date in a trade publication or newsletter going to all customers; or

(c) Shall be published once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in their service area, the first publication to be made prior to the filing of the application with the commission. Each such notice shall contain the following language:

The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for consumers other than the rates in this notice.

(3) Notice as to intervention. The notice made in compliance with subsection (2) of this section shall include a statement to the effect:

(a) That any corporation, association, body politic or person may by motion within thirty (30) days after publication or mailing of notice of the proposed rate changes request leave to intervene;

(b) That the motion shall be submitted to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, and shall set forth the grounds for the request including the status and interest of the party; and

(c) That intervenors may obtain copies of the application and testimony by contacting the applicant at a name and address to be stated in the notice. A copy of the application and testimony shall be available for public inspection at the utility's offices.

(4) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. If notice is given by subsection (2)(a) or (b) of this section and if the notice contains a clear and concise explanation of the proposed change in the rate schedule applicable to each customer, no notice under Section 2 of 807 KAR 5:051 shall be required. Otherwise, such notice shall be given.

(5) Notice of hearing. Where notice pursuant to KRS 424.300 is published by the applicant in a newspaper, it shall be published in a newspaper of general circulation in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place and date of hearing.

(6) Extensions of time. Applications for extensions of time shall be made to the commission in writing and will be granted only upon a showing of compelling reason.

Section 9. Statutory Notice to the Commission. (1) When a new tariff has been so issued and notice thereof given to the commission and the public in all respects as hereinbefore provided, such tariff will become effective on the date stated therein unless the operation thereof be suspended and the rates and administrative regulations therein be deferred by an order of the commission pending a hearing concerning the propriety of the proposed rates and administrative regulations under KRS 278.190.

(2) All information and notice required by these rules shall be furnished to the commission at the time of the filing of any proposed revisions in rates or administrative regulations, and the twenty (20) days' statutory notice to the commission will not commence to run and will not be computed until such information and notice is filed if the commission determines that there was a substantial omission, which was prejudicial to full consideration by the commission or to an intervenor.

Section 10. Nonrecurring Charges. Nonrecurring charges are charges to customers due to a specific request for certain types of service activity for which, when the activity is completed, no additional charges may be incurred. Such charges are intended to be limited in nature and to recover the specific cost of the activity. Nonrecurring charges include reconnection charges, late payment fees, service order changes and hook-on or tap fees. This section allows a utility to seek a rate revision for a nonrecurring charge outside a general rate proceeding. In addition to the specific information required pursuant to the above sections, the following information must be submitted to the commission when a utility makes a filing to increase miscellaneous or nonrecurring service charges outside a general rate case:

(1) Each requested rate revision must be accompanied by:

(a) A specific cost justification for the proposed rates and a full description of the equipment or service provided under tariff (807 KAR 5:001, Section 6(2)(c)). The proposed rates should at least cover incremental costs, and a reasonable contribution to overhead. Incremental costs are defined as those costs which would be specifically incurred in the provision of this service.

(b) A copy of the public notice of each requested rate revision and verification that it has been made pursuant to Section 8 of this administrative regulation. In addition to the notice requirements contained in Section 8 of this administrative regulation, the utility shall also mail a copy of its filing to the Attorney General's Consumer Protection Division. The Attorney General will then have ten (10) days to notify the commission in writing if it requests a hearing in a particular case.

(c) A detailed statement explaining why the proposed changes could not have been included in the most previous general rate case, and why current conditions prevent deferring the proposed changes until the next general rate request.

(d) An impact statement identifying the group of customers affected by the proposed tariff. The impact statement shall identify potential as well as existing customers.

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period.

(2) If the additional revenue to be generated from the proposed tariff revisions exceeds by five (5) percent the total revenues provided by all miscellaneous and nonrecurring charges for a recent twelve (12) month period, the utility must file, in addition to the information set out in subsection (1)(a) of this section, the following: An absorption test showing that the additional net income generated by the tariff filing will not result in an increase in

the rate of return (or other applicable valuation methods) to a level greater than that which was allowed in the most recent rate case. Any general rate increases received during the twelve (12) month period must be annualized. Any significant cost changes may be included but must be documented as part of the filing.

(3) No more than two (2) such tariff filings under this procedure shall be made between general rate cases. Additional tariff filings for nonrecurring charges will be processed according to general rate case procedures.

When these requirements are met, such a filing may be made by letter with supporting documentation and will not require the information normally required pursuant to the commission's general rate case administrative regulation, 807 KAR 5:001, Section 9.

Section 11. Change of Ownership; Adoption Notice. (1) In case of change of ownership or control of a utility, or when a utility or a part of its business is transferred from the operating control of one company to that of another, or when its name is changed, the company which will thereafter operate the utility business must use the rates, classifications and administrative regulations of the former operating company (unless authorized to change by the commission), and shall issue, file and post an adoption notice, on a form furnished by the commission, adopting, ratifying and making its own all rates, rules, classifications and administrative regulations of the former operating utility, on file with the commission and effective at the time of such change of ownership or control.

(2) Adoption notices must likewise be filed by receivers and trustees assuming possession and operation of utilities. Adoption notices may be filed and made effective without previous notice.

(3) Adoption notices filed with the commission by each utility shall be in consecutive numerical order, beginning with Public Service Commission Adoption Notice No. 1.

(4) Within ten (10) days after the filing of an adoption notice as aforesaid by a public utility which then had no tariffs on file with the commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Sections 2 through 5 of this administrative regulation with proper identifying designation. (Example: Public Service Commission No. 1 cancels Public Service Commission Adoption Notice No. 1.)

(5) Within ten (10) days after the filing of an adoption notice, as required by subsection (2) of this section, by a public utility which then had other tariffs on file with the commission said utility shall issue and file in its own name rate schedules and administrative regulations (on additional or revised sheets to its existing tariff, or by a complete reissue of its existing tariff, or otherwise), which shall set out the rates and administrative regulations of the predecessor utility then in effect and adopted by it, or such other rates and administrative regulations as it proposes to put into effect in lieu thereof, in accordance with the provisions of these rules with proper identifying designation. (Example: First Revision of Original Sheet No. 2A, Public Service Commission, No. 11, cancels Original Sheet No. 2A, also cancels Public Service Commission Adoption Notice No. 6; or Public Service Commission No. 12 cancels Public Service Commission No. 11, also cancels Public Service Commission Adoption Notice No. 6.)

(6) When a tariff or revision is issued by a utility in compliance with these rules which states the rates, rules and administrative regulations of the predecessor utility without change in any of the provisions thereof, the same may be filed without notice; but when such tariff or revision states any change in the effect of the rates, rules and administrative regulations of the predecessor utility, such tariff or revision shall be subject to Sections 9 and 10 of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations and Statutes. Every utility shall provide a suitable table or desk in its office and place of business, on which shall be available to the public at all times the following:

(1) A copy of all effective tariffs and supplements setting out its rates, classifications, charges, rules and administrative regulations, together with forms of contracts and applications applicable to the territory served from that office or place of business.

(2) Copies of the Kentucky Revised Statutes applicable to the utility.

(3) A copy of the administrative regulations governing such utility adopted by the commission.

(4) A suitable placard, in large type, giving information to the public that said tariffs, rules and administrative regulations and statutes are kept there for public inspection.

Section 13. Special Contracts. Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this administrative regulation applicable to tariffs containing rates, rules and administrative regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.

Section 14. Deviations from Rules. In special cases, for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

Section 15. Forms. In submitting to the commission information required by these rules the following forms shall be followed where applicable:

(1) Form of cover sheet for tariffs.

(2) Form for filing rules and administrative regulations.

(3) Form for filing rate schedules.

(4) Form of certificate of notice to the public of change in tariff where no increase of charges results.

(5) Form of certificate of notice to the public of change in tariff which results in increased charges.

(6) Form of adoption notice.

FORM OF COVER SHEET FOR TARIFFS

P.S.C. NO. _____
CANCELS P.S.C. NO. _____

(NAME OF COMPANY)

(LOCATION OF COMPANY)

Rates, Rules and Administrative Regulations for Furnishing
(SERVICE RENDERED)
at
(LOCATION SERVED)

FILED WITH PUBLIC SERVICE COMMISSION
OF KENTUCKY

Issued _____, 19__ Effective _____, 19__

Issued by: (Name of Utility)

By:

ADMINISTRATIVE REGULATIONS
(Page 2 of Tariff)

Name of Utility:

RULES & ADMINISTRATIVE REGULATIONS

Date of Issue:

Effective Date:

Issued by:

Name:

Title:

FORM FOR FILING RATE SCHEDULES
(Page 3 of Tariff)

For: (Community, Town or City)

P.S.C. NO.:

____(Original) Sheet No. _____

____(Revised)

Name of Issuing Corporation:

Cancelling P.S.C. No.:

____(Original) Sheet No. _____

____(Revised)

CLASSIFICATION OF SERVICE

APPLICABLE: (Show territory covered by tariff.)
AVAILABILITY OF (Show classes of customers affected, such
SERVICE: as domestic, commercial, etc.)
RATES: (List all rates covered by tariff.)
MINIMUM CHARGE: (State if penalty or discount.)

DATE OF ISSUE: (Month, Day, Year)

DATE EFFECTIVE: (Month, Day, Year)

ISSUED BY: (Name of Officer, Title, Address)

ISSUED BY AUTHORITY OF P.S.C. ORDER NO.:

FORM OF CERTIFICATE OF NOTICE TO THE
PUBLIC OF CHANGE IN TARIFF WHERE NO
INCREASE OF CHARGES RESULTS
(2 Copies Required)

To the Public Service Commission, Frankfort, Ky.

Pursuant to the Rules Governing Tariffs (effective _____), I hereby certify that I am (Title of Officer) _____ of the (Name of Utility) _____ a utility furnishing (Kind of Service) _____ service within the Commonwealth of Kentucky, which on the _____ day of _____, 19____, issued *Tariff P.S.C. No. _____, cancelling Tariff P.S.C. No. _____, to become effective _____, 19____, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:

On the _____ day of _____, 19____, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.

I further certify that the proposed changes in tariff of said utility will not result in an increase in the rates or charges to any customer.

Given under my hand this _____ day of _____, 19____.

Address:

*If a revised sheet, or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as _____ Revision of Original Sheet No. _____ P.S.C. No. _____, cancelling _____ P.S.C. Adoption Notice No. _____.

FORM OF CERTIFICATE OF NOTICE TO THE
PUBLIC OF CHANGE IN TARIFF WHICH
RESULTS IN INCREASED RATES
(2 Copies Required)

To the Public Service Commission, Frankfort, Ky.

Pursuant to the Rules Governing Tariffs (effective _____), I hereby certify that I am (Title of Officer) _____ of the (Name of Utility) _____ a utility furnishing _____ service within the Commonwealth of Kentucky, which on the _____ day of _____, 19____, issued its *Tariff P.S.C. No. _____, cancelling Tariff P.S.C. No. _____ to become effective _____, 19____, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:

On the _____ day of _____, 19____, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.

**On the _____ day of _____, 19____, typewritten or printed notice of the proposed rates or administrative regulations was mailed to each of the _____ customers of the company whose rates or charges will be increased thereby, a copy of said notice being attached thereto.

Given under my hand this _____ day of _____, 19____.
Address:

*If a revised sheet or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as Revision of Original Sheet No. _____ P.S.C. No. _____, or Original Sheet No. _____ P.S.C. No. _____ cancelling _____ P.S.C. Adoption Notice No. _____.

**If Notice is given by publication as provided in Section 8, use the following:

That more than 20 customers will be affected by said change by way of an increase in their rates or charges, and on the _____ day of _____, 19____, there was delivered to the _____, a newspaper of general circulation in the community in which the customers affected reside, for publication therein once a week for three consecutive weeks prior to the effective date of said change, a notice of the proposed rates or administrative regulations, a copy of said notice being attached hereto. A certificate of the publication of said notice will be furnished the Public Service Commission upon the completion of the same in accordance with Section 9(2), of said administrative regulation.

FORM OF ADOPTION NOTICE
P.S.C. Adoption Notice No.
ADOPTION NOTICE

The undersigned (Name of Utility) _____ of _____ hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs and supplements containing rates, rules and administrative regulations for furnishing (Nature of Service) _____ service at _____ in the Commonwealth of Kentucky, filed with the Public Service Commission by (Name of Predecessor) _____ of _____, and in effect on the _____ day of _____, 19____, the date on which the public service business of the said (Name of Predecessor) _____ was taken over by it.

This notice is issued on the _____ day of _____, 19____, in conformity with Section 10 of P.S.C. Tariff administrative regulations adopted by the Public Service Commission.

By:
(8 Ky.R. 797; Am. 1148; eff. 6-2-82; 11 Ky.R. 69; eff. 8-4-84.)

278.160 Utilities to file and display general schedules of rates and conditions for service -- Adherence to schedules -- Exclusion from disclosure of confidential or proprietary provisions in special contracts.

- (1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.
- (2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.
- (3) The provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS 61.878(1)(c)1.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 138, sec. 1, effective July 14, 2000. -- Amended 1986 Ky. Acts ch. 300, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 20, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 22, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-30, 3952-31.

278.180 Changes in rates, how made.

- (1) Except as provided in subsection (2) of this section, no change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. The commission may order a rate change only after giving an identical notice to the utility. The commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations.
- (2) The commission, upon application of any utility, may prescribe a less time within which a reduction of rates may be made.

Effective: July 15, 1986

History: Amended 1986 Ky. Acts ch. 300, sec. 2, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 22, effective July 15, 1982; and ch. 242, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 24, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 12, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-15.

278.190 Procedure when new schedule of rates filed -- Suspension of new rate schedule -- Burden of proof -- Refunds.

- (1) Whenever any utility files with the commission any schedule stating new rates, the commission may, upon its own motion, or upon complaint as provided in KRS 278.260, and upon reasonable notice, hold a hearing concerning the reasonableness of the new rates.
- (2) Pending the hearing and the decision thereon, and after notice to the utility, the commission may, at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service, but not for a longer period than five (5) months beyond the time when it would otherwise go into effect if an historical test period is used, or longer than six (6) months if a forward-looking test period is used, pursuant to KRS 278.192; and after such hearing, either completed before or after the rate, charge, classification, or service goes into effect, the commission may make those orders with reference thereto as it deems proper in the matter. If the proceeding has not been concluded and an order made at the expiration of five (5) months, or six (6) months, as appropriate, the utility may place the proposed change of rate, charge, classification, or service in effect at the end of that period after notifying the commission, in writing, of its intention so to do. Where increased rates or charges are thus made effective, the commission may, by order, require the interested utility or utilities to maintain their records in a manner as will enable them, or the commission, or any of its customers, to determine the amounts to be refunded and to whom due in the event a refund is ordered, and upon completion of the hearing and decision may, by further order, require such utility or utilities to refund to the persons in whose behalf the amounts were paid that portion of the increased rates or charges as by its decision shall be found unreasonable. Provided, however, if the commission, at any time, during the suspension period, finds that the company's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the period, the commission may, after any hearing or hearings, permit all or a portion of the rates to become effective under terms and conditions as the commission may, by order, prescribe.
- (3) At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility, and the commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible, and in any event not later than ten (10) months after the filing of such schedules.
- (4) If the commission, by order, directs any utility to make a refund, as hereinabove provided, of all or any portion of the increased rates or charges, the utility shall make the refund within sixty (60) days after a final determination of the proceeding by an order of the court or commission with or without interest in the discretion of the commission. If the utility fails to make the refund within sixty (60) days after the final determination, any party entitled to a refund may, after ten (10) days' written demand, bring an action in any court of competent jurisdiction of this state,

and may recover, in addition to the amount of the refund due, legal interest, court costs, and reasonable attorney's fees. No such action may be maintained unless instituted within one (1) year after the final determination. Any number of persons entitled to refunds may join in as plaintiffs in a single action and the court shall render a judgment severally for each plaintiff as his interest may appear.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 308, sec. 2, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 111, sec. 123, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 82, sec. 24, effective July 15, 1982; and ch. 242, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 26, effective April 1, 1979. -- Amended 1952 Ky. Acts ch. 46, sec. 2, effective March 5, 1952. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-16.

NOTICE

(City Utility Name) will file a proposed rate schedule which will **(increase/decrease)** by **(percentage of increase)** percent the rate(s) it currently charges to **(name of utility)** for **(water/sewer)** service. **(City Utility Name)** currently charges **(current rate)** for **(water/sewer)** service. It proposes to charge **(proposed rate)** for water service effective **(proposed effective date of proposed rate)**. The Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice. Any corporation, association, or person with a substantial interest in this matter may, within thirty (30) days after mailing of this notice, file a written request to intervene. Any person may examine **(City Utility Name)**'s application and other filings at **(City Utility's address)** or at the Public Service Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky."

FOR _____
Community, Town or City

P.S.C. KY. NO. _____

_____ SHEET NO. _____

CANCELLING P.S.C. KY. NO. _____

_____ SHEET NO. _____

City of Daniel Boone Kentucky
(Name of Utility)

RATES AND CHARGES

WHOLESALE WATER SERVICE

Mingo County Water District

\$2.50 per 1,000 gallons

Screaming Eagle Water Association

\$2.50 per 1,000 gallons

DATE OF ISSUE June 6, 1944
Month / Date / Year

DATE EFFECTIVE July 6, 1944
Month / Date / Year

ISSUED BY _____
(Signature of Officer)

TITLE Mayor, City of Daniel Boone, Ky.

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION
IN CASE NO. _____ DATED _____

FOR _____
Community, Town or City

P.S.C. KY. NO. _____

_____ SHEET NO. _____

CANCELLING P.S.C. KY. NO. _____

_____ SHEET NO. _____

(Name of Utility)

RATES AND CHARGES

SAMPLE

DATE OF ISSUE June 6, 1944
Month / Date / Year

DATE EFFECTIVE July 6, 1944
Month / Date / Year

ISSUED BY _____
(Signature of Officer)

TITLE Mayor, City of Daniel Boone, Ky.

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION
IN CASE NO. _____ DATED _____

FOR _____
Community, Town or City

P.S.C. KY. NO. _____

_____ SHEET NO. _____

CANCELLING P.S.C. KY. NO. _____

_____ SHEET NO. _____

(Name of Utility)

RULES AND REGULATIONS

SAMPLE

DATE OF ISSUE June 6, 1944
Month / Date / Year

DATE EFFECTIVE July 6, 1944
Month / Date / Year

ISSUED BY _____
(Signature of Officer)

TITLE Mayor, City of Daniel Boone, Ky.

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION
IN CASE NO. _____ DATED _____

SAMPLE