

65.8919 Commission to provide services to member entities and other parties on wholesale contract basis -- Mandatory contract provisions -- Rates and charges -- Contract to manage existing wastewater facility.

- (1) The commission shall provide all services on a wholesale contract basis and shall have no retail customers. The commission shall not be deemed a utility under KRS 278.010(3), but any contract between a commission and a utility that is regulated by the Public Service Commission regarding provision of services that would result in an increase in the rates paid by customers of that utility shall be subject to review and approval by the Public Service Commission in accordance with KRS Chapter 278. Contracts entered into between the commission and its member entities or other parties shall include covenants for the establishment of rates and charges as provided in subsection (5) of this section.
- (2) In addition to providing services to its member entities by contract, the commission may contract with cities, city-owned utilities, urban-county governments, consolidated local governments, sanitation districts, metropolitan sewer districts, joint sewer agencies, water districts, and agencies of local, state, and federal government that are not members of the commission. The commission may contract to provide services to wastewater entities in neighboring states that are not members of the commission under terms mutually agreed upon by the respective parties.
- (3) The commission shall not enter into a service contract with any entity that is obtaining the same wastewater collection, transportation, or treatment services by agreement with another wastewater service provider that has incurred debt obligations or any costs attributable to the agreement that are to be retired in whole or in part from revenue generated from providing the service to the entity, unless the wastewater service provider releases the entity from its wastewater service agreement.
- (4) All services provided by the commission to member entities or other parties shall be set out in contracts that shall contain, at a minimum, the following elements:
 - (a) A comprehensive description of any type of services to be provided;
 - (b) A statement of term, with beginning and ending times, dates, and a specific delineation of automatic term extensions of the contract, if any;
 - (c) A provision that the commission shall be the exclusive service provider for all or a designated geographic portion of a member entity's wastewater collection system;
 - (d) Statements that:
 1. All service shall be metered at each point of service and that the contractee shall be responsible for initial capital costs and construction of metering stations subject to the commission's specifications;
 2. The commission shall take ownership and provide security for all metering stations for purposes of management;
 3. The commission shall arrange for testing of all meters according to manufacturer's recommended schedule;

4. Testing and metering station maintenance costs shall be shared equally between the commission and the contractee;
 5. Metering stations shall be accessible to both parties; and
 6. Meters shall be read at least monthly or more often according to a mutually agreed upon schedule;
- (e) A statement setting out allowed minimum volumes, if any, and allowed maximum volumes expressed in gallons per minute for each meter;
 - (f) Identification of collected wastewater sources and allowed quality of influent to commission facilities at each meter;
 - (g) A statement of rates and charges for access to services, for allowed minimum volumes, if any, expressed in dollars per thousand gallons, and for allowed maximum volumes, expressed in dollars per thousand gallons;
 - (h) A statement that all rates or charges are subject to adjustment based on periodic cost-of-service analyses and an associated cost-allocation plan funded equitably between the commission and contractees, and a statement that any rates and charges adjustment that may occur in the interim between the times of full cost-of-service analyses with cost-allocation plans, if any, are subject to clauses citing time frames, volumes of influent, or other triggering elements tied to designated indexing method and proper notice;
 - (i) A requirement that either party provide immediate notification to the other party regarding changes in volume or the quality of influent, instances of mechanical failure, or other critical circumstance affecting operations when and as changes are known or can be reasonably anticipated;
 - (j) A statement regarding any modifications or restrictions in service by either the commission or the contractee during emergencies;
 - (k) A statement delineating any special condition binding one (1) or both parties, or citation of a particular action that, if taken by either party or if either party allows a third party to take, will constitute a breach of contract or invoke specifically identified penalties;
 - (l) A statement requiring both parties to provide current contact information of the respective parties' agents for both administrative matters and for emergencies; and
 - (m) A statement that the commission and the governing body of the contractee agree to meet at least annually to review any contract issues, assess service delivery, and plan for future service needs.
- (5) Any contract entered into by the commission to supply designated wastewater services to either a member entity or other party shall provide that charges assessed by the commission and payments made by the entity or party shall be fair, just, and reasonable and shall be sufficient to cover all costs associated with the service. The commission's rates and charges may be modified to compensate for increased operating costs, pursuant to covenants set forth in contract. Contracts for services shall be fully binding on the parties, but shall not be construed to be a debt of the

commission member entities within the meaning of any statutory or constitutional limitations.

- (6) If a commission contracts for management of a wastewater facility owned by a member entity or other party, the commission shall become a signatory on any federal, state, or local wastewater-related permits issued to and held by that member entity or other party.

Effective: June 8, 2011

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