

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION **RECEIVED**

In the Matter of:

MAR 14 2012

**JOINT APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY AND KENTUCKY)
UTILITIES COMPANY FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY)
AND SITE COMPATIBILITY CERTIFICATE)
FOR THE CONSTRUCTION OF A COMBINED)
CYCLE COMBUSTION TURBINE AT THE)
CANE RUN GENERATING STATION AND THE)
PURCHASE OF EXISTING SIMPLE CYCLE)
COMBUSTION TURBINE FACILITIES FROM)
BLUEGRASS GENERATION COMPANY, LLC)
IN BUCKNER, KENTUCKY)**

PUBLIC SERVICE
COMMISSION

CASE NO. 2011-00375

PETITION FOR APPROVAL TO DEVIATE FROM RULE

Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, the “Companies”) petition the Kentucky Public Service Commission (“Commission”) to grant the Companies approval pursuant to 807 KAR 5:011 § 14 to deviate from the Notice of Public Hearing requirement in the above-captioned proceedings because the Companies have substantially complied with the Commission’s notice regulations.¹ In support of this Petition, the Companies state as follows:

1. Pursuant to KRS 424.300, newspaper publication of rate change hearings must be in accordance with the Commission’s regulations.

2. The Commission’s regulations prescribe that newspaper publication of a rate change hearing must occur in a newspaper of general circulation in the areas to be affected “one time not less than seven nor more than twenty-one days prior to the hearing.” 807 KAR 5:011 § 8 (5).

¹ 807 KAR 5:011 § 8 (5).

3. The purpose of the Commission's rate change notice regulations is to ensure that members of the public have sufficient notice and a meaningful opportunity to participate, individually or through representative agencies, in this proceeding. As stated by the Kentucky Supreme Court:

Substantial compliance in regard to publication requirements has been authorized. The purpose of the statute is to allow the public an ample opportunity to become sufficiently informed on the public question involved.²

Publication of Notice

4. On January 30, 2012, the Commission issued an Order setting a public hearing in this proceeding on March 20, 2012.

5. In accordance with the Commission's notice regulations, the Companies contacted Kentucky Press Service, Inc. ("Kentucky Press") on February 15, 2012, to arrange for a Notice of Public Hearing to be published in the appropriate newspapers in their respective service areas. The Companies' instructions to Kentucky Press stated, "This notice must be published once in all applicable newspapers in KU's service territory and also in LG&E's **electric service territory only no earlier than Tuesday, February 28th, nor later than Tuesday, March 13th.**" (Emphasis in original.) In addition to the newspapers in LG&E's service area, the notice was to be published in 94 newspapers in KU's service area during the time period February 28, 2012, to March 13, 2012.

6. The *Flemingsburg Gazette* is the only newspaper in which KU publishes notices for its customers in Fleming County. (LG&E does not serve Fleming County.) The paper publishes only on Wednesday, so it scheduled publication of the Notice of Hearing in Case No.

² *Conrad v. Lexington-Fayette Urban County Government*, 659 S.W.2d 190, 195 (1983) (citing *Queenan v. City of Louisville*, 233 S.W.2d 1010 (1950)). See also *Lyon v. County of Warren*, 325 S.W.2d 302 (1959) (publishing notice of bond referendum outside statutory time limits, accompanied by media attention and other means, held sufficient notice to public).

2011-00375 for February 29. But instead of publishing the correct notice that day, the paper published notice of the KU Fuel Adjustment Clause hearing in Case No. 2011-00484, which took place on March 9. The paper's staff sought to remedy the situation by rescheduling publication of the notice of the correct hearing for March 7, but they again published notice of the KU Fuel Adjustment Clause hearing in Case No. 2011-00484 instead. They notified Kentucky Press of the situation on March 12, and Kentucky Press notified the Companies that afternoon.

7. The staff of the *Flemingsburg Gazette* has informed Kentucky Press that they will try to publish the correct notice on Wednesday, March 14, which will be outside the prescribed time period to publish the notice.

Request for Deviation from Rule

8. In view of the timely published notice the Companies have provided throughout the vast majority of the newspapers in their service areas—including the two newspapers of largest circulation in the Commonwealth, the *Lexington Herald-Leader* and the *Louisville Courier-Journal*—and the efforts made by the Companies to ensure that timely notice was received, the Companies respectfully request a deviation from the Commission's Notice of Public Hearing regulation with respect to the one instance of non-conformity cited above. Ninety-three newspapers published timely notice in KU's service area, and all of the required newspapers in LG&E's electric service area timely published the notice.

9. As noted at the beginning of this Petition, the Kentucky Supreme Court has stated, "Substantial compliance in regard to publication requirements has been authorized. The purpose of the statute is to allow the public an ample opportunity to become sufficiently informed on the public question involved."³ The Companies respectfully submit that they have

³ *Conrad v. Lexington-Fayette Urban County Government*, 659 S.W.2d 190, 195 (1983) (citing *Queenan v. City of Louisville*, 233 S.W.2d 1010 (1950)). See also *Lyon v. County of Warren*, 325 S.W.2d 302 (1959) (publishing

substantially complied with the Commission's notice regulations, therefore achieving their purpose, namely ensuring that the public has sufficient notice of the proceeding and a meaningful opportunity to participate, individually or through representative agencies. The Companies therefore respectfully request the Commission to grant a deviation from its Notice of Public Hearing regulation, deeming the Companies' substantial compliance to be sufficient compliance with the regulation in this proceeding.

WHEREFORE, Kentucky Utilities Company and Louisville Gas and Electric Company respectfully request that, pursuant to 807 KAR 5:011 § 14, the Commission grant a deviation from its Notice of Public Hearing regulation, deeming their substantial compliance to be sufficient compliance with the regulation in this proceeding.

Dated: March 14, 2012

Respectfully submitted,



Lindsey W. Ingram, III
W. Duncan Crosby III
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
(859) 231-3000

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
(502) 627-2088

*Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company*

notice of bond referendum outside statutory time limits, accompanied by media attention and other means, held sufficient notice to public).

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CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading has been served by mailing a copy of same, postage prepaid, to the following persons on the 14th day of March 2012:

Dennis G. Howard II
Lawrence W. Cook
Office of the Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

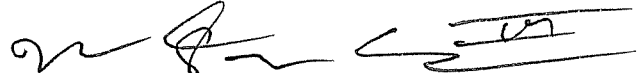
Michael L. Kurtz
Kurt J. Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Edward George Zuger III
Zuger Law Office PLLC
P.O. Box 728
Corbin, KY 40702

Kristin Henry
Staff Attorney
Sierra Club
85 Second Street
San Francisco, CA 94105

Shannon Fisk
Senior Attorney
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60660

Joe F. Childers
Attorney at Law
201 West Short Street
Suite 310
Lexington, Kentucky 40507



*Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company*