

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BLUE GRASS ENERGY)	
COOPERATIVE CORPORATION FOR AN)	CASE NO.
ADJUSTMENT OF ITS SECURITY DEPOSIT)	2010-00185
AND CABLE TELEVISION ATTACHMENT)	
RATES)	

O R D E R

On June 1, 2010, Blue Grass Energy Cooperative Corporation (“Blue Grass Energy”) tendered its application requesting revisions to its cable television (“CATV”) attachment tariff and its residential customer security deposit tariff. The application was deemed deficient. Blue Grass Energy cured the deficiencies and, on July 9, 2010, the Commission accepted Blue Grass Energy’s application for filing.

By Order of July 28, 2010, the Commission stated that, pursuant to KRS 278.180(1), a utility must give the Commission 30 days’ notice prior to implementing any new rates. Therefore, since Blue Grass Energy’s application was accepted July 9, 2010, the earliest possible date its proposed rates could be effective is August 8, 2010. Pursuant to KRS 278.190(2), the Commission suspended the effective date of the proposed rates for five months, from August 8, 2010 up to and including January 7, 2011.

The Kentucky Cable Telecommunications Association (“KCTA”) was granted full intervention by Order of June 24, 2010.

Pursuant to the Commission's statutes and regulations, a utility is required to notify all affected customers of its proposed rate adjustments.

807 KAR 5:001, Section 10(4)(c), requires:

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.

KRS 424.120(3) states:

If a publication area consists of a district, other than a city, which extends into more than one (1) county, the part of the district in each county shall be considered to be a separate publication area for the purposes of this section, and an advertisement for each separate publication area shall be published in a newspaper qualified under this section to publish advertisements for the area.

On August 3, 2010, Blue Grass Energy filed its Affidavit of Publication in the above-referenced matter which indicated it had published notice of its proposed CATV rate increase in the Lexington Herald-Leader on May 28, 2010, June 4, 2010, and June 11, 2010, and of its proposed residential security deposit increase in the Lexington Herald-Leader on July 13, 2010, July 20, 2010, and July 27, 2010.

The service area of Blue Grass Energy includes the following counties: Anderson, Bourbon, Bracken, Estill, Fayette, Franklin, Garrard, Grant, Harrison, Henry, Jackson, Jessamine, Madison, Mercer, Nelson, Nicholas, Pendleton, Robertson, Scott, Shelby, Spencer, Washington, and Woodford.

On October 27, 2010, a telephonic informal conference was held to discuss:

1. The newspaper notice published by Blue Grass Energy at the time it filed this case;

2. The requirements of KRS 424.120(1)(a) and KRS 424.120(3); and
3. Whether the Lexington Herald-Leader qualifies under KRS 424.120(1)(a) for publishing notice in each of the 23 counties served by Blue Grass Energy, or whether publication is required in other newspapers that qualify under KRS 424.120(1)(a) and have their principal offices in the counties served by Blue Grass Energy.

At the telephonic informal conference, it was agreed that Blue Grass Energy had up to and including November 5, 2010 in which to brief the issue of why it maintains that the Lexington Herald-Leader qualifies under KRS 424.120(1)(a) for publishing notice in its entire service area. KCTA did not request a time to respond to the brief of Blue Grass Energy and indicated that it did not have a position in regard to the notice given by Blue Grass Energy.

BLUE GRASS ENERGY ARGUMENT

Blue Grass Energy maintains that the Lexington Herald-Leader is a qualified newspaper pursuant to KRS 424.120(1)(a). In its brief, Blue Grass Energy correctly states that “in order for a newspaper to be ‘qualified’ under the statute, it must be published in the ‘publication area.’”¹

KRS 424.110 defines “publication area.” That statute states:

‘Publication area’ means the city, county, district, or other local area for which an advertisement is required by law to be made. An advertisement shall be deemed to be for a particular city, county, district, or other local area if it concerns an official activity of the city, county, district, or

¹ Blue Grass Energy Cooperative Corporation’s Brief In Response to the Kentucky Public Service Commission’s Inter-Agency Memorandum Of October 28, 2010, filed November 5, 2010, at 1.

other area or of any governing body, board, commission, officer, agency, or court thereof, or if the subject of the advertisement concerns particularly the people of the city, county, district, or other area;

Blue Grass Energy states that “[i]n the present case, the area in which the advertisement is required to be made is the twenty-three (23) county service area of BGE.”² Blue Grass Energy maintains that the Herald-Leader “is a qualified newspaper . . . for each of the twenty-three counties in the BGE service area.”³ Blue Grass Energy states that the Herald-Leader is a qualified newspaper in which to publish the notices for each of the 23 counties in the Blue Grass Energy service area and that the Blue Grass Energy service district within a particular county is within the publication area for which the Herald-Leader is a qualified publication under the statute.

Next, Blue Grass Energy argues that it substantially complied with 807 KAR 5:001, Section 10(3) and (4). It states that “[t]he purpose of these regulations is to ensure that affected members of the public—those in the publication area—have sufficient notice and a meaningful opportunity to participate in the proceeding.”⁴ It cites Conrad v. Lexington-Fayette Urban County Government, 659 S.W.2d 190, 195 (1983), in which the Supreme Court stated that “[t]he purpose of the statutes is to allow the public ample opportunity to become sufficiently informed on the public questions involved.”

² Id., at 2.

³ Id., at 3.

⁴ Id.

The facts of that case involved a sanitary sewer project affecting eight neighborhoods in Lexington-Fayette County. Among other allegations, the property owners alleged inadequate notification due to the erroneous selection of the newspaper in which public notice was published. In that case, notice of a public hearing concerning the matter had been mailed to the property owners. Notice of the matter had been published in the Lexington Leader, which was owned and published by the same corporation that owned and published the Lexington Herald. The Court said:

Here there was considerable publicity about the initiation of the sewer project by means of radio, television as well as newspaper coverage. Consequently, the purpose of the statutory requirements of notification by publication was achieved.⁵

DISCUSSION

The issue presented here is whether the 23 counties in the Blue Grass Energy service area for which it must publish notice of its proposed rate adjustments are only one “publication area” for which publication in the Lexington Herald-Leader is sufficient; or whether each of the 23 counties in the Blue Grass Energy service area for which it must give notice of its proposed rate adjustments is a separate “publication area” that “consists of a district, other than a city, which extends into more than one (1) county.”

The General Assembly has set forth an explicit determination at KRS 424.120(3) that, if the “publication area” is a district other than a city which extends into more than one county, the part of the district in each county “shall be considered to be a separate publication area for the purposes of this section, and an advertisement for each separate publication area shall be published in a newspaper qualified under this section

⁵ Conrad at 195.

to publish advertisements for the area.” A newspaper qualified to publish advertisements for the area, pursuant to KRS 424.120(1)(a), is deemed to be published in the area if it maintains its principal office in the area for the purpose of gathering news and soliciting advertisements and other general business of newspaper publications, and has a periodicals-class mailing permit issued for that office.

KRS 424.120(2)(a) states that, in the case of a publication area smaller than the county in which it is located, if there is no newspaper published in the area, the publication shall be made in a newspaper published in the county that is qualified to publish advertisements for the county.

Under the facts here, Blue Grass Energy is not in substantial compliance with the statutory requirements of KRS 424.120. While the Lexington Herald-Leader is a qualified newspaper pursuant to KRS 424.120 for publication in Blue Grass Energy’s Fayette County service area, for the remaining 22 counties in the service area of Blue Grass Energy, KRS 424.120(2)(a) directs publication “in a newspaper published in the county that is qualified under this section to publish advertisements for the county.”

The Commission finds that Blue Grass Energy published notice of its proposed rate increases in its Fayette County service area. The Commission also finds that each of the 23 counties served by Blue Grass Energy is a separate district under KRS 424.120(3) and each county is a publication area. Here, Blue Grass Energy published notice of its proposed rate increases in its Fayette County service area, but not in the 22 other counties in which service is provided. Blue Grass Energy is not in compliance with the publication requirements set forth in 807 KAR 5:001 and KRS 424.120, and supplemental notices should be published in the service areas of Anderson, Bourbon,

Bracken, Estill, Franklin, Garrard, Grant, Harrison, Henry, Jackson, Jessamine, Madison, Mercer, Nelson, Nicholas, Pendleton, Robertson, Scott, Shelby, Spencer, Washington, and Woodford counties.

IT IS THEREFORE ORDERED that:

1. Blue Grass Energy shall publish once a week for three consecutive weeks, in newspapers that meet the requirements of KRS 424.120, notice of its proposed revisions to its residential security deposit rate in its service areas of Anderson, Bourbon, Bracken, Estill, Franklin, Garrard, Grant, Harrison, Henry, Jackson, Jessamine, Madison, Mercer, Nelson, Nicholas, Pendleton, Robertson, Scott, Shelby, Spencer, Washington, and Woodford counties.

2. Blue Grass Energy shall file with the Commission, by December 7, 2010, an affidavit from each publisher verifying that the aforementioned notice was published, including the dates of publication, with an attached copy of the published notices.

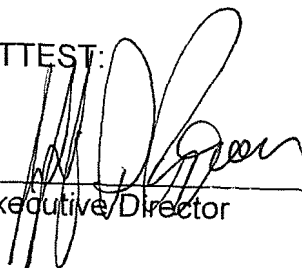
3. KCTA shall have until November 17, 2010 in which to notify the Commission in writing of whether it desires an informal conference to discuss the rate application of Blue Grass Energy, whether the issues presented in this rate application may be submitted on the record, and whether the necessity of a formal hearing exists.

4. Blue Grass Energy shall have until November 17, 2010 in which to notify the Commission in writing of whether it desires an informal conference to discuss its rate application, whether the issues presented in the rate application may be submitted on the record, and whether the necessity of a formal hearing exists.

By the Commission

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KENTUCKY PUBLIC
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ATTEST:



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