

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF INTER-COUNTY ENERGY	)	CASE NO.
COOPERATIVE CORPORATION FOR A GENERAL	)	2018-00129
ADJUSTMENT OF EXISTING RATES	)	

ORDER

On July 13, 2018, Inter-County Energy Cooperative Corporation (Inter-County Energy) filed a motion for a deviation from certain customer notice requirements established by 807 KAR 5:001, Section 17. Inter-County Energy requested deviation based on its failure to post notice on its website within five days of filing the application, and its failure to properly publish notice to certain customers on or before the date it tendered its application herein. Inter-County Energy stated that it would not object to extending the suspension period by an additional 60 days, based on an approximate 60-day delay in providing proper customer notice, if the Commission granted the requested deviation. On August 6, 2018, Inter-County Energy filed proof that it provided notice as it indicated it would in the motion for deviation.<sup>1</sup> Having reviewed Inter-County Energy's motion and being otherwise sufficiently advised, the Commission grants Inter-County Energy's motion in part and denies it in part.

If a utility has a website, 807 KAR 5:001, Section 17(1)(b), requires that the utility post notice of a request for a general adjustment of rates on its website within five

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<sup>1</sup> Inter-County also filed screenshots of the notice it posted on its website as part of its response to Commission Staff's Third Request for Information on August 14, 2018.

business days of submitting the request to the Commission.<sup>2</sup> Additionally, 807 KAR 5:001, Section 17(2)(b)(4) requires that a utility with 20 or more customers provide notice to those customers by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;
2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;
3. Publishing 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 no later than the date the application is submitted to the commission; or
4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.<sup>3</sup>

Inter-County Energy tendered its application for a general adjustment of rates to the Commission on May 29, 2018, along with tariff sheets indicating that the rates would go into effect on June 28, 2018.<sup>4</sup> The application also indicated that Inter-County Energy had provided customer notice to the extent required by Commission regulations and that Inter-County Energy had posted notice on its website.<sup>5</sup> Based on representations by Inter-County Energy, the Executive Director had a letter issued stating that there were no deficiencies and that the application was accepted for filing as of May 29, 2018. However,

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<sup>2</sup> 807 KAR 5:001, Section 17(1)(b), (“A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites: 1. A copy of the public notice; and 2. A hyperlink to the location on the commission's web site where the case documents are available.”).

<sup>3</sup> 807 KAR 5:001, Section 17(2)(b)(4), (indicating that a utility may provide required customer notice by “[p]ublishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.”).

<sup>4</sup> Application at 1, Exhibit 4 (Exhibit 4 contains the revised tariff sheets showing the effective date of the proposed rates as of June 28, 2018).

<sup>5</sup> *Id.* at Exhibit 5 (filed May 29, 2018) (stating that notice was provided or would be provided per the regulations).

Inter-County Energy now acknowledges that it failed to provide customer notice to all of its members until July 27, 2018, and that it failed post notice on its website until July 2, 2018.<sup>6</sup>

Inter-County Energy did publish notice in *The Lebanon Enterprise* and in *The Advocate-Messenger* in a timely manner. However, out of over 26,000 customers, approximately 17,000 are located outside the general circulation areas of *The Lebanon Enterprise* and *The Advocate-Messenger*.<sup>7</sup> For that reason, Inter-County Energy sought to provide customer notice to the majority of its members by publishing notice in *Kentucky Living* magazine and causing that magazine to be sent to its members on or before the date it tendered its application. However, Inter-County Energy has now reported that notice was not published in *Kentucky Living* magazine until July 27, 2018.<sup>8</sup> Inter-County Energy also acknowledged that it failed to post notice on its website until July 2, 2018. Thus, Inter-County Energy failed to provide adequate notice to all of its customers until at least July 27, 2018.<sup>9</sup>

The Commission may grant a utility a deviation from the notice requirements imposed by its administrative regulations in special cases upon a showing of good cause by the utility.<sup>10</sup> However, the Commission may also reject or dismiss an application for a

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<sup>6</sup> Motion for Deviation at 1 (filed July 13, 2018).

<sup>7</sup> See Application, Exhibit 23, Attachment 2 (indicating that Inter-County Energy has 26,245 total accounts and that 5,530 are in Marion County and 3,598 are in Boyle County); see also Affidavit of Publication (filed July 3, 2018) (indicating that the relevant newspapers have a general circulation in Marion and Boyle counties).

<sup>8</sup> Affidavit of Publication (filed August 6, 2018).

<sup>9</sup> Motion for Deviation at 1 (“Since customer notice was only published in the Danville Advocate-Messenger and the Lebanon Enterprise, notice of the rate increase has not been adequately given to all of Inter-County Energy’s customers.”).

<sup>10</sup> 807 KAR 5:001, Section 22.

rate increase if a utility fails to comply with the procedures for filing an application established pursuant to 807 KAR 5:001.<sup>11</sup>

Here, as noted above, Inter-County Energy failed to provide customer notice to the majority of its customers until at least July 27, 2018, when notice was published in *Kentucky Living* magazine and mailed to Inter-County Energy's members. The failure to provide timely customer notice was exacerbated by Inter-County Energy's failure to post notice on its website. In fact, as a result of Inter-County Energy's failures, the majority of Inter-County Energy's customers would have only received notice of Inter-County Energy's request for a rate increase if they went in person to Inter-County Energy's office and saw notice posted at the office.

The Commission observes that pursuant to the current procedural order that the deadline for intervention in this matter was June 26, 2018. It would be improper for the deadline for intervention to run on that date given the extent of the deficiencies in customer notice because notice is intended to inform customers of the proposed rate adjustment and alert them of the opportunity to request intervention. However, because of various statutory deadlines, it would also be difficult to grant the requested deviation and extend the procedural schedule in a manner that would allow adequate time for customers that received an untimely notice to request intervention. Thus, the

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<sup>11</sup> Case No. 2004-00459, *The Application of Louisville Gas and Electric Company for Approval of New Rate Tariffs Containing a Mechanism for the Pass-Through of MISO-Related Revenues and Costs Not Already Included in Existing Base Rates* (Ky. PSC Apr. 15, 2005) (dismissing LG&E's application for failing to file documents required by 807 KAR 5:001 with application); *see also City of Russellville v. Public Service Comm'n of Kentucky*, 2003-CA-002132, 2005 WL 385077, 2 (Ky. App. 2006) (where the court indicated that the failure to provide adequate notice of a rate increase to customers causing harm justified setting aside the rate).

Commission finds that Inter-County Energy's motion for a deviation with respect to the timing of the required notice should be denied.

Rather, because Inter-County Energy did not complete the required notice until July 27, 2018, the Commission finds that Inter-County Energy failed to comply with the requirements in 807 KAR 5:001, Section 17 until July 27, 2018. For that reason, Inter-County Energy's application was not in compliance with Commission regulations when tendered on May 29, 2018, and it should not have been accepted for filing until July 27, 2018, when customer notice was properly published. Thus, Inter-County Energy's proposed rates should be suspended until January 25, 2019.<sup>12</sup>

The Commission observes that there are also some slight discrepancies in the content of customer notices that actually were provided. Specifically, the notices indicate that Inter-County Energy proposed for the rate to go into effect on June 24, 2018, which is actually incorrect, because the tariff sheets filed with the application indicated that the rates would go into effect on June 28, 2018. However, the Commission had already suspended the effective date of rates when notice was provided. Moreover, the content of the notice should have permitted any customer to locate the case on the Commission's website and determine its status. Thus, the Commission does not believe that any minor discrepancy in the effective date listed in the customer notice should affect the validity of the notice, and therefore, finds that Inter-County Energy should be granted a deviation with respect to that requirement.

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<sup>12</sup> KRS 278.180(1) (indicating no change in utility rates is permitted except upon 30 days' notice to the Commission); KRS 278.190(2) (authorizing the Commission to suspend proposed rates for five months beyond the time they would otherwise go into effect when an historical test period is used).

IT IS THEREFORE ORDERED that:

1. Inter-County Energy's motion for a deviation is granted in part and denied in part as discussed in detail above.
2. Inter-County Energy's application is accepted for filing as of July 27, 2018.
3. The proposed rates are suspended up to and including January 25, 2019.
4. All requests for intervention shall be filed no later than September 7, 2018.
5. The Commission's June 13, 2018 Order in this matter, including the procedural schedule, shall remain in full force and effect to the extent that it does not conflict with this Order.

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By the Commission

ENTERED  
AUG 28 2018  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2018-00129

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