



STOLL
KEENON
OGDEN

300 WEST VINE STREET
SUITE 2100
LEXINGTON, KY 40507-1801
MAIN: (859) 231-3000
FAX: (859) 253-1093

RECEIVED

MAY 09 2012

PUBLIC SERVICE
COMMISSION

MONICA H. BRAUN
DIRECT DIAL: (859) 231-3903
DIRECT FAX: (859) 253-1093
Monica.Braun@skofirm.com

May 9, 2012

Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: Case No. 2012-00155, *In the Matter of: Tariff Filing of Kentucky-American Water Company to Establish a Late Payment Fee*

Dear Mr. Derouen:

Enclosed please find and accept for filing the original and ten copies of Kentucky-American Water Company's Petition for Approval to Deviate from Rule in the above-referenced proceeding, pursuant to Section 807 KAR 5:011, Section 14.

Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our office courier.

Sincerely,

Stoll Keenon Ogden PLLC

Monica H. Braun

010311.003026/4060356.1

RECEIVED

MAY 09 2012

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF KENTUCKY-AMERICAN)
WATER COMPANY TO ESTABLISH A) CASE NO. 2012-00155
LATE PAYMENT FEE)

PETITION FOR APPROVAL TO DEVIATE FROM RULE

Kentucky-American Water Company (“Kentucky American”) petitions the Kentucky Public Service Commission (“Commission”) to grant Kentucky American approval, pursuant to 807 KAR 5:011, Section 14, to deviate from the notice requirements in the above-captioned proceeding because Kentucky American has substantially complied with the Commission’s notice regulations with regard to the *Bourbon County Citizen*. In support of this petition, Kentucky American states as follows:

1. On March 30, 2012, Kentucky American filed its Application to implement a late payment fee, a non-recurring charge pursuant to 807 KAR 5:011, Section 10. Section 10 of the regulation requires applicants to comply with the notice requirements of 807 KAR 5:011, Section 8. See 807 KAR 5:011, Section 10(1)(b).

2. Prior to filing its Application, Kentucky American delivered notice of the filing of its Application for publication in newspapers in Kentucky American’s service area, once a week for three consecutive weeks, with the first publication to be made prior to the filing of Kentucky American’s Application, as required by 807 KAR 5:011, Section 8(2)(c).

3. Despite having received explicit written and timely instructions regarding same, the *Bourbon County Citizen*, which is one of the newspapers that was to publish notice of Kentucky American’s Application, failed to publish the notice for the three consecutive weeks.

While the *Bourbon County Citizen* published the first notice as instructed on March 28, 2012, which was before the filing of Kentucky American's Application, it failed to publish the notice in the following two weeks. Once Kentucky American learned of the issue, it immediately contacted the newspaper and learned that the omission was the result of the illness of an employee. The *Bourbon County Citizen* proceeded to publish the second and third notice of Kentucky American's Application on April 25, 2012 and May 2, 2012.

4. Because the Commission has suspended the proposed effective date of the tariff, the notice was published in the *Bourbon County Citizen* three times while the tariff was under consideration. Additionally, the notice was published for three consecutive weeks in all other newspapers of general circulation in Kentucky American's service area, including the *Lexington Herald-Leader*, which is one of the largest newspapers in the Commonwealth.

5. The purpose of the Commission's regulation is to ensure that the public has sufficient notice of Kentucky American's Application and to respond accordingly. Despite the deviation noted above, notice was published in each county three times while the tariff was under consideration. Kentucky American's substantial compliance with the Commission's regulation has met the purpose of the notice requirement. 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.¹

6. The Commission has authority to permit Kentucky American to deviate from the publication requirements pursuant to 807 KAR 5:011, Section 14.

¹ *Conrad v. Lexington-Fayette Urban County Government*, 659 S.W.2d 190, 195 (Ky. 1983) (citing *Queenan v. City of Louisville*, 233 S.W.2d 1010 (Ky. 1950)). See also *Lyon v. County of Warren*, 325 S.W.2d 302 (Ky. 1959) (publishing notice of bond referendum outside statutory time limits, accompanied by media attention and other means, held sufficient notice to public).

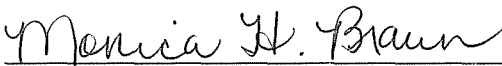
7. Because Kentucky American is in substantial compliance with the publication requirements of 807 KAR 5:011, Section 8(2)(c), good cause exists for the Commission to permit Kentucky American to deviate from the requirement of the regulation and to accept the publication of notice of Kentucky American's Application in the *Bourbon County Citizen* as sufficient.

WHEREFORE, Kentucky-American Water Company respectfully requests that the Commission grant it approval pursuant to 807 KAR 5:011, Section 14 to deviate from the notice requirements of 807 KAR 5:011, Section 8(2)(c) and to accept the publication of notice of its Application in the *Bourbon County Citizen* as sufficient.

Date: May 9, 2012

Respectfully submitted,

STOLL KEENON OGDEN PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3000

By: 

Lindsey W. Ingram III
Monica H. Braun

Attorneys for Kentucky-American Water Company

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Petition for Approval to Deviate from Rule has been served by U.S. Mail delivery, postage prepaid, to the following parties on this 9th day of May 2012:

Jennifer Black Hans
David Edward Spenard, Esq.
Assistant Attorney General
Office of the Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

Iris G. Skidmore, Esq.
415 W. Main Street
Suite 2
Frankfort, Kentucky 40601

David J. Barberie, Esq.
Department of Law
200 East Main Street
Lexington, Kentucky 40507

By: Monica H. Braun
Attorney for Kentucky-American Water Company