

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF KENTUCKY)	
UTILITIES COMPANY FOR APPROVAL OF AN)	CASE NO.
ECONOMIC DEVELOPMENT RIDER SPECIAL)	2022-00371
CONTRACT WITH BITIKI-KY, LLC)	

ORDER

On May 26, 2023, Kentucky Utilities Company (KU) filed a motion for a deviation from 807 KAR 5:001E, Section 9(2)(b)(2) hearing notice requirements for notice by publication, which state

If notice of a hearing is published by the applicant in a newspaper, it shall be published at least one (1) time and not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.

Under 807 KAR 5:001E, Section 22, “[i]n special cases, for good cause shown, the commission may permit deviations from these rules.”

The Commission issued an Order on April 10, 2023 rescheduling a hearing for May 31, 2023, pertaining to an Economic Development Rate tariff for a special contract with Bitiki-KY, LLC. On April 14, 2023, KU provided to Kentucky Press Service, Inc. (Kentucky Press), an organization that acts on behalf of newspapers of general circulation throughout Kentucky, the form of notice required by the rescheduling Order, and

requested that the notice be published in all newspapers of general circulation in KU's service territory.¹

Kentucky Press certified that notice was published in each of 86 newspapers in the affected regions, provided a list of the 86 newspapers and dates of publication ranging from May 16, 2023, to May 20, 2023,² and certified that it provided tear sheets to KU for proof of publication.

However, KU discovered that one newspaper in the service territory did not publish the notice. KU filed its motion for deviation on May 26, 2023, after discovering that notice had not been published in the *Middlesboro Daily News*. KU noted that another newspaper in Bell County, the *Pineville Sun*, as well as the *Louisville Courier-Journal* and *Lexington Herald-Leader*, the two newspapers with the largest circulation in Kentucky, all published timely notice. KU asked for a deviation from 807 KAR 5:001E, Section 9(2)(b)(2) requiring KU to publish notice of the hearing in a newspaper of general circulation in each affected area, specifically the Middlesboro area. The remaining newspapers all published notice within the time required by 807 KAR 5:001E, Section 9(2)(b)(2). The hearing was held as scheduled on May 31, 2023.

Having reviewed the motion and the record, the Commission finds that KU's motion for deviation should be granted. The evidence of record demonstrates that KU provide timely notice to Kentucky Press Service and that KU used its best efforts to obtain publication of hearing notice consistent with the time period established in 807 KAR 5:001E, Section 9(2)(b)(2). Notice was still published in a newspaper in the same county

¹ Notice of Public Hearing (filed May 2, 2023).

² Affidavit of Hearing Notice Publication (filed May 25, 2023).

and in the two most widely circulated newspapers in the state, meaning that many Middlesboro and Bell County residents had an opportunity to be aware of the hearing despite the lack of publication in the local newspaper. Rescheduling the hearing would have been onerous to the Commission and the parties, and on KU to publish notice of a rescheduled hearing in 86 newspapers again. The Commission granted a deviation in a similar case in which two of 92 newspapers failed to run notice but other newspapers in the same counties did run notice.³ Good cause has been shown to grant the deviation.

IT IS THEREFORE ORDERED that KU's motion for deviation from 807 KAR 5:001E, Section 9(2)(b)(2), requiring publication of notice of the May 31, 2023 hearing in a newspaper of general circulation in the areas affected by the tariff filing is granted for notice to the Middlesboro service area.

³ Case No. 2015-00234, *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2014 Through April 30, 2015* (Ky. PSC Dec. 4, 2015), Order.

PUBLIC SERVICE COMMISSION



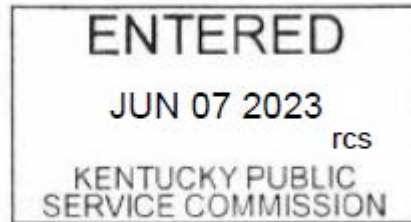
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