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January 9, 2008

RECEIVED

JAN 09 2009

PUBLIC SERVICE
COMMISSION

Mr. Jeff Derouen
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

**RE: *Application Of Kentucky Utilities Company For An Adjustment Of Base Rates
Case No. 2008-00251
and
Application Of Kentucky Utilities Company To File Depreciation Study
Case No. 2007-00565***

Dear Ms. Derouen:

Enclosed please find and accept for filing the original and ten copies of the Petition for Approval to Deviate from Rule in the above-referenced matter. 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 runner.

Should you have any questions please contact me at your convenience.

Yours very truly,

Sarah K. M. Adams

SKA:jms
Enclosures
cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY)	
UTILITIES COMPANY FOR AN)	CASE NO. 2008-00251
ADJUSTMENT OF BASE RATES)	

In the Matter of:

APPLICATION OF KENTUCKY)	
UTILITIES COMPANY TO FILE)	CASE NO. 2007-00565
DEPRECIATION STUDY)	

PETITION FOR APPROVAL TO DEVIATE FROM RULE

Kentucky Utilities Company (“KU”) petitions the Kentucky Public Service Commission (“Commission”) to grant KU approval, pursuant to 807 KAR 5:011 § 14, to deviate from the *Notice of Public Hearing requirement*¹ in the above-captioned proceeding because KU has substantially complied with the Commission’s notice regulations. In support of this petition, KU states as follows:

1. On July 29, 2008, KU filed its Application with the Commission for approval of an adjustment of its existing rates, terms, and conditions for gas and electric services. In connection with that proceeding, on December 15, 2008 the Commission issued an Order setting the dates for public meetings to be held in: (1) Madisonville, Kentucky on January 6, 2008, (2) Middlesboro, Kentucky on January 8, 2008, and (3) Lexington, Kentucky on January 12, 2008.

2. Pursuant to KRS 424.200, newspaper publication of rate change hearings must be in accordance with the Commission’s regulations.

¹ 807 KAR 5:011 § 8 (5).

3. 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).

4. 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

5. In accordance with the Commission's notice regulations, KU contacted the Kentucky Press Association on December 4, 2008 to arrange for a Notice of Public Hearing to be published in 94 newspapers in KU's service areas. On December 15, 2008, in response to a Commission Order issued the same day, KU revised its Notice of Public Hearing and contacted the Kentucky Press Association to arrange for publication within the period of the rule.

6. KU's efforts notwithstanding, the following two small local newspapers did not publish notice within the statutory time period:

a. *The Manchester Enterprise*, a weekly paper serving Clay County, did not publish notice in its January 1, 2009 circulation as requested due to administrative

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).

error.³ The notice did, however, appear on the newspaper's website during that week. Upon KU's request, the notice was published in the next available circulation on January 8, 2009.⁴

b. Despite timely notice, the *Barbourville Advocate Messenger*, a weekly paper serving Knox County, also inadvertently failed to publish the Notice of Public Hearing inside the time period of the rule. Upon KU's request, this paper also published the notice in its January 8, 2009 circulation.⁵

Request for Deviation from Rule

7. In view of the timely published notice KU has provided throughout the vast majority of the newspapers in its service territory – including the two newspapers of largest circulation in the Commonwealth, the *Lexington Herald-Leader* and the *Louisville Courier-Journal*, and the significant efforts made by KU to ensure that timely notice was received, KU respectfully requests a deviation from the Commission's Notice of Public Hearing regulation with respect to the two instances of non-conformity cited above. Ninety-two newspapers, whether the legally required newspapers or not, published timely notice. At KU's insistence, the two small newspapers inadvertently failing to publish timely notice ultimately published within two days of the rule.

8. 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

³ See letter from The Manchester Enterprise attached as Exhibit 2.

⁴ See Affidavit of the Kentucky Press Service attached as Exhibit 1.

⁵ *Id.*

informed on the public question involved.”⁶ KU respectfully submits that it has 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. KU therefore respectfully requests the Commission to grant a deviation from its Notice of Public Hearing regulation, deeming KU’s substantial compliance to be sufficient compliance with the regulation in this proceeding.

WHEREFORE, Kentucky Utilities Company respectfully requests that, pursuant to 807 KAR 5:011 § 14, the Commission grant a deviation from its Notice of Public Hearing regulation, deeming KU’s substantial compliance to be sufficient compliance with the regulation in this proceeding.

Dated: January 9, 2009

Respectfully submitted,

By 

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⁶ *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).

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Approval to Deviate From Rule was served via U.S. mail, first-class, postage prepaid, this 7th day of January 2009 upon the following persons:

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