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November 6, 2008

RE: Case No. 2008-00285

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Stumbo".

Stephanie Stumbo  
Executive Director

SS/rs  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION OF THE )  
FUEL ADJUSTMENT CLAUSE OF KENTUCKY ) CASE NO.  
UTILITIES COMPANY FROM NOVEMBER 1, 2007 ) 2008-00285  
THROUGH APRIL 30, 2008 )

AN EXAMINATION OF THE APPLICATION OF THE )  
FUEL ADJUSTMENT CLAUSE OF LOUISVILLE ) CASE NO.  
GAS AND ELECTRIC COMPANY FROM ) 2008-00286  
NOVEMBER 1, 2007 THROUGH APRIL 30, 2008 )

O R D E R

On October 6, 2008, Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively "the Utilities") each filed a Petition for Approval to Deviate from Rule in these cases. For the reasons set forth below, the Commission denies these petitions.

On August 22, 2008, the Commission ordered the Utilities to submit to an examination on the application of their fuel adjustment clauses ("FAC") from November 1, 2007 through April 30, 2008. In that Order, the Commission set a hearing for October 7, 2008. The hearing, at which KU and LG&E appeared, was held on that date.

KRS 424.300 requires newspaper publication of rate change hearings to be in accordance with Commission regulations. 807 KAR 5:011, Section 8(5), states that publication of a rate change hearing must occur in "a newspaper of general circulation

in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing.” According to applicable regulations, the Utilities were to cause the hearing notice to be published no later than September 30, 2008.

Out of 94 newspapers that publish in KU’s general service area and in which KU sought to have notice published, 5 newspapers did not publish notice within the proper time frame. The *Middlesboro Daily News*, serving Bell County, did not publish the notice; however, the *Pineville Sun*, which also serves Bell County, ran the notice inside the period of the rule. Four other newspapers—*Carlisle Mercury*, *Liberty Casey County News*, *Morganfield Union County Advocate*, and *Princeton Times Leader*—published notice on October 1, 2008, which is one day outside the required time period. The *Sturgis News*, a newspaper serving Union County in addition to the *Morganfield Union County Advocate*, published timely notice of the hearing. Additionally, the *Lexington Herald-Leader* and the *Courier-Journal*, two newspapers with circulations that span the Commonwealth, published timely notice.

LG&E sought to have its hearing notice published in 20 newspapers in its general area of service. Of those 20 newspapers, only the *Springfield Sun* failed to publish timely notice of the hearing. It published the notice on October 1, 2008, one day outside of the regulated period. The *Courier-Journal*, which also has a circulation base in Washington County along with the *Springfield Sun*, published timely notice.

The Utilities are seeking a deviation from 807 KAR 5:011, Section 8(5), and argue that they have substantially and sufficiently complied with the regulation. 807 KAR 5:011, Section 14, permits deviations from the regulation for good cause.

The publication requirements of KRS 424.300 and 807 KAR 5:011, Section 8, ensure that the public has an opportunity to become aware of rate hearings conducted by the Public Service Commission. Every public utility must give adequate notice of these rate hearings. A significant percentage of Kentucky's population lives in rural areas and receives its information on current events from its local newspaper. The failure of one newspaper to publish timely notice impairs the public's right to be informed of a rate hearing.

Although 113 newspapers published a hearing notice, the *Middlesboro Daily News* failed to publish any notice. The *Middlesboro Daily News* has a daily circulation base of 5,862, which is the largest circulation base of any newspaper published in Bell County.<sup>1</sup> The *Pineville Sun*, which also serves Bell County, has a circulation of 2,459.<sup>2</sup> Presumably, some residents of Bell County also receive the *Lexington Herald-Leader*. Nevertheless, the fact remains that the largest circulated newspaper in Bell County failed to publish notice of KU's FAC hearing. The Commission finds that failure to publish any notice in the largest circulated newspaper in a county to be critical, and as such, we cannot find good cause to deviate from 807 KAR 5:011, Section 8(5).

The regulation also serves to ensure that individuals have sufficient time to make arrangements to attend the hearing. Five other newspapers published notice one day outside of our requirements. If there had not been the failure of one newspaper to publish notice, the Commission would be more inclined to find that good cause exists to

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<sup>1</sup> The Kentucky Press Association, [http://www.kypress.com/directory/d/daily\\_member.asp?ID=18](http://www.kypress.com/directory/d/daily_member.asp?ID=18) (last visited Nov. 5, 2008).

<sup>2</sup> The Kentucky Press Association, [http://www.kypress.com/directory/w/weekly\\_member.asp?ID=93](http://www.kypress.com/directory/w/weekly_member.asp?ID=93) (last visited Nov. 5, 2008).

deviate from the rule for this error. In rare circumstances, 6 days' notice may be sufficient to tip the balance between the significant extra costs covered by the utility of holding a hearing and 1 extra day's notice to the public. Nevertheless, because the Commission shall require another hearing for failure to publish notice in the *Middlesboro Daily News*, there is relatively little extra expense in having notice published in the other 5 newspapers that published notice one day outside the regulatory requirements.<sup>3</sup> Accordingly, we find that the Utilities' requests for deviation should be denied.

IT IS THEREFORE ORDERED that:

1. The Utilities' Petitions for Approval to Deviate from Rule are denied.
2. The October 7, 2008 hearing in this matter shall resume on November 25, 2008 at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, in Frankfort, Kentucky, for the purpose of receiving public comment.
3. KU shall cause a notice of the November 25, 2008 hearing to be published in the *Middlesboro Daily News*, *Carlisle Mercury*, *Liberty Casey County News*, *Morganfield Union County Advocate*, and *Princeton Times Leader* in accordance with 807 KAR 5:011, Section 8.
4. LG&E shall cause a notice of the November 25, 2008 hearing to be published in the *Springfield Sun* in accordance with 807 KAR 5:011, Section 8.

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<sup>3</sup> Although the failure to publish notice in *Middlesboro Daily News* affects KU, we are requiring LG&E to publish notice and appear at the hearing. LG&E is owned by the same parent company as KU, and each is represented by the same counsel and experts. Because LG&E's representatives will appear at the hearing on behalf of KU, we find that the relatively low cost of an additional publication in the *Springfield Sun* as compared to the total cost of the FAC hearing warrants our decision.

5. The Utilities shall file with the Commission, no later than November 25, 2008, proof of publication of their notices for the hearing.


6. The official record of this proceeding shall be by video only, unless otherwise requested by a party to this proceeding.

Done at Frankfort, Kentucky, this 6th day of November, 2008.

By the Commission

Chairman Armstrong abstains.

ATTEST.

  
Executive Director

Case No. 2008-00285  
Case No. 2008-00286