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March 13, 2009

RECEIVED

MAR 16 2009

PUBLIC SERVICE
COMMISSION

Jeffrey DeRouen
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

**Re: *An Examination Of The Application Of The Fuel Adjustment Clause
Of Kentucky Utilities Company From November 1, 2006 Through
October 31, 2008
Case No. 2008-00520***

Dear Mr. DeRouen:

Enclosed please find an original and ten copies of Kentucky Utilities Company's Petition for Approval to Deviate from Rule in the above captioned case. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copy and return it to me in the enclosed self-addressed stamped envelope.

Sincerely,

Sarah K. M. Adams

SKMA: jms
Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**AN EXAMINATION OF THE APPLICATION)
OF THE FUEL ADJUSTMENT CLAUSE OF)
KENTUCKY UTILITIES COMPANY FROM) **CASE NO. 2008-00520**
NOVEMBER 1, 2006 THROUGH)
OCTOBER 31, 2008)**

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 requirement¹ 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. Pursuant to KRS 424.200, newspaper publication of rate change hearings must be in accordance with the Commission’s regulations.

2. 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).

3. 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:

¹ 807 KAR 5:011 § 8 (5).
400001.133319/569082.1

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

4. On January 23, 2009, the Commission ordered KU to submit to an examination on the application of its fuel adjustment clause (“FAC”) from November 1, 2006 through April 30, 2008. The hearing will be held on March 17, 2009.

5. In accordance with the Commission’s notice regulations, KU contacted the Kentucky Press Association on February 12, 2009 to arrange for a Notice of Public Hearing to be published in 95 newspapers in KU’s service areas during the time period February 24, 2009 to March 10, 2009.

6. KU’s efforts notwithstanding, *The Liberty Casey County News*, a small weekly newspaper published in Liberty, Kentucky, published the notice on February 18, 2009, six days before the time period specified by the rule. At KU’s request, notice was republished. Because the *Liberty Casey County News* only publishes on Wednesdays, the notice was republished on March 11, 2009, one day outside of the rule.³

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

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).

³ See Affidavit of the Kentucky Press Service attached as Exhibit 1. The *Cumberland Tri-City News*, a weekly newspaper serving Harlan County with a circulation of 1,783, also ran the Notice on February 18, 2009 and, at KU’s request, republished on March 11, 2009, one day outside of the rule. However, *The Harlan Daily Enterprise*, a newspaper with a circulation of 5,982 and also serving Harlan County, ran the notice within the time period of the rule.

circulation in the Commonwealth, the *Lexington Herald-Leader* and the *Louisville Courier-Journal*, and the 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 one instance of non-conformity cited above. Ninety-three newspapers,⁴ whether the legally required newspapers or not, published timely notice. At KU's insistence, the one legally required newspaper that failed to publish timely notice ultimately published within one day 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 informed on the public question involved."⁵ 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.

9. KU's request for deviation from the Commission's notice of public hearing regulation is similar to a request made to the Commission on January 9, 2009 and granted by the Commission on January 16, 2009 in the *Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates*, Case No. 2008-00251.

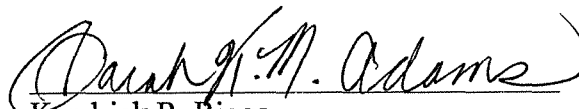
⁴ The *Cumberland Tri-City News*, a weekly newspaper serving Harlan County with a circulation of 1,783, also ran the Notice on February 18, 2009 and, at KU's request, republished on March 11, 2009, one day outside of the rule. However, *The Harlan Daily Enterprise*, a newspaper with a circulation of 5,982 and also serving Harlan County, ran the notice within the time period of the rule.

⁵ *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).

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: March 13, 2009

Respectfully submitted,



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Counsel for Kentucky Utilities Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Motion was dispatched for filing with the Kentucky Public Service Commission, via overnight courier on the 13th day of March 2009.


Counsel for Kentucky Utilities Company

EXHIBIT 1

NOTARIZED PROOF OF PUBLICATION

COMMONWEALTH OF KENTUCKY

COUNTY OF Franklin

Before me, a Notary Public, in and for said county and state, this 12th day of MARCH, 2009, came RACHEL MCCANN, personally known to me, who, being duly sworn, states as follows: that she is the Advertising Assistant of the Kentucky Press Service, Inc.; that she has personal knowledge of the contents of this Affidavit; that the newspapers shown on Attachment No. 1 to this Affidavit published the Notice of Public Hearing, on the dates shown thereon at the request of Kentucky Press Service, Inc. for Kentucky Utilities Company; that the form and content of the Notice submitted for publication to each paper is shown in Attachment No. 2 to this Affidavit; and that the Kentucky Press Service, Inc. has presented to Kentucky Utilities Company proof of these publications in the form of "tear sheets" for retention in its files. Said Notice pertains to the Public Hearing scheduled for March 17, 2009, as ordered by the Kentucky Public Service Commission in Case Nos. 2008-00520.

Rachel McCann
Signature

Bernice J. Howard
Notary Public
My Commission Expires: 9-18-2012

(SEAL)

[Attachments: (1) List of publications and dates of publication; (2) sample published notice]

NOTICE OF PUBLIC HEARING

The Public Service Commission of Kentucky will hold a hearing on March 17, 2009, at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices, located at 211 Sower Boulevard in Frankfort, Kentucky, for the purpose of cross-examining witnesses in Case No. 2008-00520, which is an examination of the application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2006 through October 31, 2008.

**KENTUCKY UTILITIES COMPANY
One Quality Street
Lexington, Kentucky**

KENTUCKY PRESS SERVICE

**101 Consumer Lane
(502) 223-8821**

**Frankfort, KY 40601
FAX (502) 875-2624**

Rachel McCarty Advertising Dept.

List of newspapers running the Notice to Kentucky Utilities Company Customers. Attached tearsheets provide proof of publication:

Barbourville Mountain Advocate: 2-26
Bardstown KY Standard 2-25
Bardwell Carlilse Co. News: 2-25
Bardwell Carlilse Weekly: 2-25
Beattyville Enterprise: 2-26
Bedford Trimble Banner: 2-25
Berea Citizen: 2-26
Brooksville Bracken Co. News: 3-5
Brownsville Edmonson News: 2-26
Calhoun McLean Co. News: 2-26
Campbellsville Central KY News: 2-26
Carlisle Mercury: 3-4
Carrollton News Democrat: 2-25
Cave City Barren Co. Progress: 2-26
Central City Leader News: 2-25
Central City Times Argus: 2-25
Clinton Hickman Co. Gazette 2-25
Columbia Adair Progress 2-26
Corbin Times Tribune: 2-25
Cumberland Tri City News 3-11
Cynthiana Democrat 2-26
Dawson Springs Progress 2-26
Eddyville Herald Ledger 2-25
Elizabethtown Hardin Independent 2-26
Elizabethtown News Enterprise 2-24
Falmouth Outlook 2-24
Fleming Messenger 3-5
Flemingsburg Gazette 3-4
Florence Boone Co. 2-26
Frankfort State Journal 2-24
Fulton Leader 2-25
Georgetown Graphic 2-24
Glasgow Daily Times 2-24
Greensburg Record Herald 2-25
Harlan Enterprise 2-24
Harrodsburg Herald 2-26

Hartford Ohio Co. Times News: 2-26
Henderson Gleaner 2-24
Hickman Courier 2-26
Hodgenville Larue Herald 2-25
Hopkinsville KY New Era 2-24
Irvine Citizen Voice Times 3-5
Irvine Estill Co. Tribune 2-25
Lagrange Oldham Era 2-26
Lancaster Central Record 2-26
Lawrenceburg Anderson News 2-25
Lebanon Enterprise 2-25
Leitchfield News Gazette 2-25
Leitchfield Record 3-5
Lexington Herald Leader 2-24
Liberty Casey Co. News 3-11
London Sentinel Echo 2-25
Louisville Courier Journal 2-25
Madisonville Messenger 2-24
Manchester Enterprise 2-26
Marion Crittenden Press 2-25
Maysville Ledger Independent 2-24
Middlesboro Daily News--12-23
Morehead News 2-24
Morganfield Union Co. Advocate 3-24
Mt. Sterling Advocate 2-26
Mt. Vernon Signal 2-265
Munfordville Hart Co. News 2-26
New Castle Henry Co. Local 2-25
Nicholasville Jessamine Journal 2-26
Owensboro Messneger Inquirer 2-24
Owenton News Herald 2-25
Owingsville Bath Co. Outlook 3-5
Paducah Sun 2-24
Paris Bourbon Citizen 2-25
Pineville Sun 2-26
Princeton Times Leader 2-25
Providence Journal Enterprise 3-5
Richmond Register 2-24
Robertson Co. News 3-5
Russell Springs Times Journal 2-26

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Sebree Banner 2-26
Shelbyville Sentinel News 2-25
Shepherdsville Pioneer News 2-25
Smithland Livingston Ledger 2-25
Somerset Commonwealth Journal 2-24
Springfield Sun 2-25
Stanford Interior Journal 2-26
Sturgis News 2-25
Taylorsville Spencer Magnet 2-25
The Advocate Messenger 2-24
Three Forks Tradition 2-25
Versailles Woodford Sun 2-26
Warsaw Gallatin News 3-4
Whitley City McCreary Record 2-24
Whitley City McCreary Voice 2-26
Wickliffe Advance Yeoman 2-25
Williamsburg News Journal 2-25
Williamstown Grant Co. News 2-26
Wincheter Sun 2-24