

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**JOINT APPLICATION OF LOUISVILLE GAS )  
AND ELECTRIC COMPANY AND KENTUCKY )  
UTILITIES COMPANY FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND NECESSITY )  
FOR THE CONSTRUCTION OF A COMBINED )  
CYCLE COMBUSTION TURBINE AT THE )  
GREEN RIVER GENERATING STATION AND A )  
SOLAR PHOTOVOLTAIC FACILITY AT THE )  
E.W. BROWN GENERATING STATION )**

**CASE NO. 2014-00002**

**PETITION FOR APPROVAL TO DEVIATE FROM RULE**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (jointly, the “Companies”) petition the Kentucky Public Service Commission (“Commission”) to grant the Companies approval, pursuant to 807 KAR 5:001, Section 22, to deviate from the Notice of Public Hearing requirement<sup>1</sup> in the above-captioned proceeding because the Companies have substantially complied with the Commission’s notice regulations. In support of this petition, the Companies state as follows:

1. Pursuant to the Commission’s Order of October 6, 2014, in this proceeding, the Companies are required to give notice of the November 24, 2014 hearing in accordance with the provisions set out in 807 KAR 5:001, Section 9(2)(b).
2. The Commission’s regulations prescribe that newspaper publication must occur “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.” 807 KAR 5:001, Section 9(2)(b)2.

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<sup>1</sup> See Commission’s Order of October 6, 2014 in this proceeding and 807 KAR 5:001, Section 9(2).

3. The purpose of the Commission's 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.<sup>2</sup>

#### **Publication of Notice**

4. On February 6, 2014, the Commission issued an initial procedural schedule for this proceeding and, on October 6, 2014, scheduled a hearing to be held on November 24, 2014.

5. In accordance with the Commission's notice regulations, the Companies contacted the Kentucky Press Association on October 22, 2014 to arrange for a Notice of Public Hearing to be published in ninety-four (94) newspapers in LG&E's and KU's service areas during the time period from November 3, 2014 to November 17, 2014.

6. The Companies' efforts notwithstanding, one paper failed to publish the notice as requested. The *Owenton News Herald*, a Wednesday-only newspaper in the KU territory, failed to publish as requested, but, at the Companies' request, did publish the Notice of Hearing on November 19, 2014, ahead of the hearing scheduled for November 24, 2014. The *Owenton News Herald* is the only newspaper in which the Companies publish in Owen County, and has a circulation of approximately 2,354.

#### **Request for Deviation from Rule**

7. In view of the timely published notice the Companies have provided throughout the vast majority of the newspapers in their service areas – including the two newspapers of

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<sup>2</sup> *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).

largest circulation in the Commonwealth, the *Lexington Herald-Leader* and the *Louisville Courier-Journal*, and the efforts made by the Companies to ensure that timely notice was received, the Companies respectfully request a deviation from the Commission's Notice of Public Hearing regulation with respect to the one instance of non-conformity cited above. Ninety-three (93) newspapers, whether the legally required newspapers or not, published timely notice. At the Companies' insistence, the one legally required newspaper that failed 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 informed on the public question involved."<sup>3</sup> The Companies respectfully submit that they have 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. The Companies therefore respectfully request the Commission to grant a deviation from its Notice of Public Hearing regulation, deeming the Companies' substantial compliance to be sufficient compliance with the regulation in this proceeding.

9. The Companies' 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.

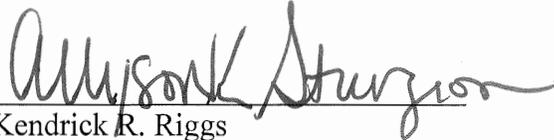
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<sup>3</sup> *Conrad v. Lexington-Fayette Urban County Government*, 659 S.W.2d 190, 195 (1983) (citing *Queenan v. City of Louisville*, 233 S.W.2d 1010 (1950)). See also *Lyon v. County of Warren*, 325 S.W.2d 302 (1959) (publishing notice of bond referendum outside statutory time limits, accompanied by media attention and other means, held sufficient notice to public).

**WHEREFORE**, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that, pursuant to 807 KAR 5:001, Section 22, the Commission grant a deviation from its Notice of Public Hearing regulation, deeming the Companies' substantial compliance to be sufficient compliance with the regulation in this proceeding.

Dated: November 21, 2014

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that Louisville Gas and Electric Company and Kentucky Utilities Company's November 21, 2014 electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing was transmitted to the Commission on November 21, 2014; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; that a copy of the filing in paper medium is being hand-delivered to the Commission within two business days of this filing; and that the following counsel for the parties should receive electronic notice of this filing from the Commission:

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