

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

**In the Matter of:**

|  |   |                            |
|--|---|----------------------------|
| <b>APPLICATION OF LOUISVILLE GAS AND</b> | ) |                            |
| <b>ELECTRIC COMPANY AND KENTUCKY</b>     | ) |                            |
| <b>UTILITIES COMPANY FOR REVIEW,</b>     | ) | <b>CASE NO. 2014-00003</b> |
| <b>MODIFICATION, AND CONTINUATION OF</b> | ) |                            |
| <b>EXISTING, AND ADDITION OF NEW,</b>    | ) |                            |
| <b>DEMAND-SIDE MANAGEMENT AND</b>        | ) |                            |
| <b>ENERGY EFFICIENCY PROGRAMS</b>        | ) |                            |

**KENTUCKY UTILITIES COMPANY’S**  
**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 § 15, to deviate from the Notice of Public Hearing requirement in the above-captioned proceeding because KU has substantially complied with the Commission’s notice regulations.<sup>1</sup> In support of this petition, KU states as follows:

1. The Commission’s regulations prescribe that a utility using newspaper publication concerning a tariff change must publish notice “once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility’s service area, the first publication to be made no later than the date the tariff filing is submitted to the commission.”<sup>2</sup>

2. 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

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<sup>1</sup> 807 KAR 5:011 § 8(2).

<sup>2</sup> 807 KAR 5:011 § 8(2)(b)3.

an ample opportunity to become sufficiently informed on the public question involved.<sup>3</sup>

### **Publication of Notice**

3. On January 17, 2014, KU and its sister utility, Louisville Gas and Electric Company (“LG&E”), filed a Joint Application in the above case.

4. In accordance with the Commission’s notice regulations, KU contacted the Kentucky Press Association on January 9, 2014, to arrange for notice to be published in 94 newspapers in its service area once a week for three consecutive weeks, the first publication of which was to occur on or before January 17, 2014.

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

5. The *Oldham Era*, the only newspaper published in Oldham County, published the KU Notice on January 16, 2014, as KU had requested, but failed to publish the second and third weeks thereafter. The paper did publish the KU Notice on February 6 and 13, 2014. The *Oldham Era* is a once-per-week publication, appearing on Thursdays only. The paper’s failure to publish the notice as KU requested is odd because the paper successfully published LG&E’s Notice for this same proceeding on January 16, 23, and 30, 2014.

6. The *Leitchfield News Gazette* failed to publish the KU Notice before or on the day KU and LG&E filed their Joint Application with the Commission, but did publish on January 18, 2014, and for the next two consecutive weeks. The *Leitchfield News Gazette* is not the largest newspaper in Grayson County. The largest newspaper in Grayson County, the *Leitchfield Record*, did timely publish the KU Notice.

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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).

7. In addition to causing notice of the filing of its application in this case to be published in newspapers of general circulation in its service area, KU has posted the notice for public inspection at its office and place of business, as well as on its website.

8. In view of the timely published notice KU provided through 92 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 KU’s other efforts to ensure that its customers received adequate notice, 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.

9. 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>4</sup> 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 asks the Commission to grant a deviation from 807 KAR 5:011 § 8, deeming KU’s substantial compliance to be sufficient compliance with the regulation in this proceeding.

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<sup>4</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).

10. The Commission has repeatedly granted KU's petitions for deviations under similar circumstances.<sup>5</sup>

**WHEREFORE**, Kentucky Utilities Company respectfully requests that, pursuant to 807 KAR 5:011 § 15, the Commission grant a deviation from 807 KAR 5:011 § 8, deeming KU's substantial compliance to be sufficient compliance with the regulation in this proceeding.

Dated: February 21, 2014

Respectfully submitted,



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<sup>5</sup> See, e.g., *In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2011 through April 30, 2012*, Case No. 2012-00230, Order (Dec. 14, 2012); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2012-00221, Order (Aug. 22, 2012).

**CERTIFICATE OF SERVICE**

This is to certify that Kentucky Utilities Company's February 21, 2014 electronic filing of its Petition for Approval to Deviate from Rule is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on February 21, 2014; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and one copy in paper medium of the Petition are being hand delivered to the Commission on February 21, 2014.

A handwritten signature in blue ink, appearing to read "A. G. Smith", is written above a horizontal line.

*Counsel for Kentucky Utilities Company*