

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF KENTUCKY UTILITIES)	
COMPANY'S AND LOUISVILLE GAS AND)	
ELECTRIC COMPANY'S RESPECTIVE NEED)	
FOR AND COST OF MULTIPHASE)	CASE NO. 2015-00194
LANDFILLS AT THE TRIMBLE COUNTY AND)	
GHENT GENERATING STATIONS)	

MOTION OF KENTUCKY UTILITIES COMPANY AND
LOUISVILLE GAS AND ELECTRIC COMPANY FOR A
DEVIATION FROM 807 KAR 5:001, SECTION 9(2)

Pursuant to 807 KAR 5:001, Section 22, Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, the “Companies”) move for authority to deviate from the hearing notice requirements of 807 KAR 5:001 Section 9(2)(b). Strictly speaking, the hearing-notice requirements of 807 KAR 5:001 Section 9(2)(b)(1) do not require the Companies to publish notice of the hearing in this proceeding because (1) the proceeding does not concern an application to change rates or to reduce or discontinue service and (2) the Commission did not order the Companies to publish such notice.¹ That notwithstanding, out of an abundance of caution the Companies sought to publish notice of the hearing in accordance with the requirements of 807 KAR 5:001 Section 9(2)(b). Out of a further abundance of caution the Companies are now petitioning the Commission because the notice was published in all required newspapers as prescribed by 807 KAR 5:001, Section 9(2)(b) with the exception one small

¹ 807 KAR 5:001 Section 9(2)(b)(1) states: “The commission may order an applicant to give notice to the public of any hearing on the applicant’s application, and shall order an applicant for a general adjustment of rates or reduction or discontinuance of service to give notice of any hearing on its application.”

newspaper, the *Lancaster Central Record*, which failed to publish at all. In support of this petition, the Companies state as follows:

1. Commission Regulation 807 KAR 5:001, Section 9(2)(b), provides that the Commission may order an applicant to give notice to the public of any hearing on the applicant's application, and, if such notice is by newspaper publication, to publish notice of the purpose, time, and date of the hearing at least one time and not less than seven nor more than 21 days prior to the hearing in a newspaper of general circulation in the areas that will be affected. The purpose of this regulation is to ensure public awareness of the scheduled hearing and to provide a meaningful opportunity for the public to view the hearing and to comment upon the applicant's application.² The Commission has not ordered the Companies to publish notice in this proceeding.

2. On August 21, 2015, the Commission ordered that a hearing in this matter begin on September 14, 2015. But as noted above, the Commission has not ordered the Companies to publish notice in this proceeding; the Companies nonetheless sought to publish notice in accordance with 807 KAR 5:001 Section 9(2)(b).

3. All newspapers that would be necessary to publish if such notice were required, except the *Lancaster Central Record*, published the required notice. The Companies had asked the *Lancaster Central Record* to publish on September 3, 2015, but it failed to do so. Subsequently, the Companies requested that *Lancaster Central Record* publish notice on September 10, 2015, but the newspaper did not do so.

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

4. The Companies did cause notice to be published in accordance with 807 KAR 5:001 Section 9(2)(b) in all other necessary newspapers, including the *Courier-Journal* and *Herald-Leader*, the newspapers with the largest statewide circulation in Kentucky.³ Due to these statewide circulations, this notice is, in fact, available to all of the Companies' customers.

5. Particularly because the Companies were not required to publish notice of this hearing, the Companies respectfully submit that publication in all but one required newspaper will ensure the public's awareness of the scheduled hearing and provide adequate opportunities for the public to view the hearing and comment upon the Companies' application.

6. Granting the requested deviation will not adversely affect development of evidentiary record. The parties to this proceeding have had notice of the scheduled hearing since August 21, 2015. Publication in all but one necessary newspaper will not impede, prejudice, or otherwise limit any party's right to participate in the development of the evidentiary record.⁴

7. Granting the requested deviation will allow this proceeding to continue in an orderly manner without any significant disruption or delay or waste of resources of the parties.

9. Granting the requested deviation is not a departure from Commission precedent or practice. The Commission has on several instances where notice of the hearing was not published in a timely manner allowed the proceedings to continue, but scheduled additional hearings to ensure receipt of public comments.⁵

³ The *Courier-Journal* has a reported daily circulation of 114,719. The *Herald-Leader* has a reported daily circulation of 92,874.

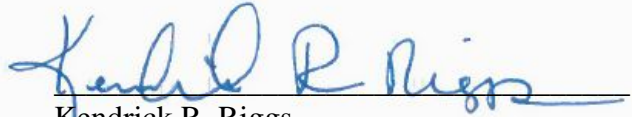
⁴ The Commission's Rules of Procedure and its Orders of December 12, 2014 effectively limited any intervention at this stage of the proceedings. 807 KAR 5:001, Section 4(11) requires a party to make a timely request for intervention. By its Orders of December 12, 2014, the Commission effectively found that a request for intervention after December 29, 2014 was untimely.

⁵ See, e.g., Case No. 2005-00494, *An Examination of the Application of the Fuel Adjustment Clause of American Electric Power Company From May 1, 2005 to October 31, 2005* (Ky. PSC Mar. 23, 2006); Case No. 2006-00209, *Application of Farmdale Development Corporation for a Certificate of Convenience and Necessity, Authority to Make Repairs and Surcharge For Same* (Ky. PSC Nov. 2, 2006); Case No. 2006-00262, *An Examination of the Application of the Fuel Adjustment Clause of American Electric Power Company From November 1, 2005 to April 30, 2006* (Ky.

WHEREFORE, the Companies respectfully request that the Commission authorize the Companies to deviate from 807 KAR 5:001, Section 9(2), and find that, the Companies have provided adequate and sufficient notice of the September 14, 2015 hearing, notwithstanding that no such notice publication was actually required.

Dated: September 11, 2015

Respectfully submitted,



Kendrick R. Riggs
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000
Fax: (502) 627-8722
kendrick.riggs@skofirm.com

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088
Fax: (502) 627-3367
allyson.sturgeon@lge-ku.com

PSC Sept. 26, 2006); Case No. 2007-00276, *An Examination of the Application of the Fuel Adjustment Clause of American Electric Power Company From November 1, 2006 to April 30, 2007* (Ky. PSC Nov. 7, 2007); Case No. 2007-00524, *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company From May 1, 2007 to October 31, 2007* (Ky. PSC Apr. 29, 2008); Case No. 2009-00197, *Application of Kentucky Utilities Company for A Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan For Recovery by Environmental Surcharge* (Ky. PSC Nov. 16, 2009); Case No. 2009-00197, *Application of Louisville Gas and Electric Company for A Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan For Recovery by Environmental Surcharge* (Ky. PSC Nov. 16, 2009); Case No. 2010-00490, *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company From November 1, 2008 to October 31, 2010* (Ky. PSC Apr. 6, 2011); Case No. 2011-00037, *Application of Owen Electric Cooperative Corporation For An Order Authorizing A Change in Rate Design for Its Residential and Small Commercial rate Classes, and The Proffering of Several Optional Rate Designs for the Residential Rate Classes* (Ky. PSC Feb. 29, 2012); Case No. 2012-00550, *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company From November 1, 2010 to October 31, 2012* (Ky. PSC May 3, 2013).

*Counsel for Louisville Gas and Electric Company
and Kentucky Utilities Company*

CERTIFICATE OF COMPLIANCE

This is to certify that Kentucky Utilities Company and Louisville Gas and Electric Company's September 11, 2015 electronic filing of the Motion 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 September 11, 2015; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original in paper medium of the Motion is being hand-delivered to the Commission on September 11, 2015.

A handwritten signature in blue ink, appearing to read "Kenneth R. Myers", is written over a horizontal line.

*Counsel for Louisville Gas and Electric Company
and Kentucky Utilities Company*