

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR CERTIFICATES OF)	
PUBLIC CONVENIENCE AND NECESSITY)	CASE NO. 2016-00026
AND APPROVAL OF ITS 2016 COMPLIANCE)	
PLAN FOR RECOVERY BY)	
ENVIRONMENTAL SURCHARGE)	

PETITION FOR APPROVAL TO DEVIATE FROM ORDER

Kentucky Utilities Company (“KU”) petitions the Kentucky Public Service Commission (“Commission”) to grant KU approval pursuant to 807 KAR 5:001 Section 22 to deviate from Ordering Paragraph Number 2 of the Commission’s Order dated May 2, 2016 in this proceeding because KU has substantially complied with the Commission’s hearing-notice requirements. In support of this petition, KU states as follows:

1. On January 29, 2016, KU filed an application with the Commission under KRS 278.183 for an order granting certain Certificates of Public Convenience and Necessity (“CPCN”) and approving an amended compliance plan for purposes of recovering the costs of new pollution control facilities through its Environmental Surcharge tariff.

2. By Order dated May 2, 2016, the Commission scheduled a hearing in this proceeding to be held on Tuesday, June 14, 2016, at 9:00 a.m. Eastern Daylight Time, at the Commission’s offices. The Commission further ordered KU to give notice of the hearing in accordance with 807 KAR 5:001 Section 9(2)(b).

3. On May 10, 2016, KU delivered to the Kentucky Press Service, Inc., (“Kentucky Press”) an agency that acts on behalf of newspapers of general circulation throughout the Commonwealth of Kentucky in which customers affected reside, the notice of the hearing for

publication in newspapers in KU's service area in accordance with 807 KAR 5:001 Section 9(2)(b)(2). This regulation requires notice of the hearing be published at least one time, and not less than seven nor more than twenty-one days prior to the hearing, in a newspaper of general circulation in the areas that will be affected. Kentucky Press selected the newspapers of general circulation in KU's service area and directed each newspaper in writing to publish the notice once no earlier than Tuesday, May 24, 2016 and no later than Tuesday, June 7, 2016. See KU's Certificate of Completed Notice

4. Through Kentucky Press, KU caused notice to be published in more than 90 newspapers in the Commonwealth, including the statewide editions of the *Lexington Herald-Leader* and *Louisville Courier-Journal*, the two newspapers with the largest circulation in the Commonwealth. All but one of the newspapers published in accordance with the Commission's notice-publication requirements.

5. Although the Commission's notice-publication requirements require publication only in one newspaper of general circulation per publication area, KU caused notice to be published in two newspapers of general circulation in Harlan County. Through Kentucky Press, KU directed both the *Cumberland Tri City News* and the *Harlan Daily Enterprise* to publish notice of the hearing. Based on information and belief, both newspapers are newspapers of general circulation; the Cumberland Tri City News has 1,654 paid subscribers and Harlan Daily Enterprise has 2,794 paid subscribers. Although *Harlan Daily Enterprise* has more paid subscribers and therefore is likely the proper newspaper of general circulation for notice-publication requirements pursuant to KRS 424.120, KU directed Kentucky Press to publish notice in both newspapers out of an abundance of caution.

6. The *Harlan Daily Enterprise* published notice as scheduled on May 25, 2016. The Cumberland Tri City News did not publish the notice until June 8, 2016, one day past the deadline required by the Commission's notice-publication requirements.

7. The purpose of the Commission's notice regulation is to ensure that the public has sufficient notice of the hearing and to respond accordingly. Notwithstanding this minor deviation, notice was published in each county, including in Harlan County in the newspaper with the largest paid subscription. KU's substantial compliance with the Commission's regulation has met the purpose of the notice requirement. 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.¹

8. The Commission has authority to permit KU to deviate from the publication requirements pursuant to 807 KAR 5:001 Section 22. Because KU is in substantial compliance with the applicable notice-publication requirements, good cause exists for the Commission to permit KU to deviate from the requirement of its Order and regulations and to accept the publication of notice of the hearing as sufficient.

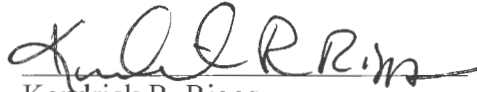
WHEREFORE, Kentucky Utilities Company respectfully requests that the Commission grant it approval pursuant to 807 KAR 5:001 Section 22 to deviate from the applicable notice-publication requirements the Commission's Order dated May 2, 2016 and 807 KAR 5:001, and

¹ *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 (Ky. 1950)). 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).

to accept the publication of notice of the hearing scheduled in the above-captioned proceeding as sufficient.

Dated: June 13, 2016

Respectfully submitted,



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Counsel for Kentucky Utilities Company

CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001 Section 8, this is to certify that Kentucky Utilities Company's June 13, 2016 electronic filing of the Petition for Approval to Deviate from Order 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 June 13, 2016; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of this Petition will be mailed to the Commission by first class United States mail, postage prepaid, on June 13, 2016.


Counsel for Kentucky Utilities Company