

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

**In the Matter of:**

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

**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 5:001 Section 22 and 807 KAR 5:011 Section 15 to deviate from the notice requirements 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. On January 29, 2016, KU filed an application with the Kentucky Public Service Commission (“Commission”) seeking an order granting KU Certificates of Public Convenience and Necessity (“CPCN”) for the construction of Phase II of the landfill at the E.W. Brown Generating Station, and to conduct surface-impoundment-related construction necessary to comply with the U.S. Environmental Protection Agency’s Coal Combustion Residuals Final Rule and construct new process water systems at the Ghent, Trimble County, and E.W. Brown Generating Stations; declaring that the proposed surface impoundment closures at the Green River, Pineville, and Tyrone Generating Stations do not require CPCNs, or in the alternative granting a CPCN for each generating station for which the Commission determines a CPCN is required; and approving an amended compliance plan for purposes of recovering the costs of new pollution control facilities through its Environmental Surcharge tariff.

2. On January 12, 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, a notice of the filing of its application for publication in newspapers in KU’s service area, once a week for three consecutive weeks, with the first publication to be made prior to the filing of KU’s application, as required by 807 KAR 5:011 Section 8(2)(b)(3). *See* KU’s Certificate of Completed Notice. Kentucky Press selected the newspapers of general circulation in KU’s service area and directed each newspaper in writing to publish the notice once a week for three consecutive weeks beginning on January 22, 2016.

3. Through Kentucky Press, KU caused notice to be published in more than 90 newspapers in the Commonwealth, including the two newspapers with the largest circulation, the *Lexington Herald-Leader* and *Louisville Courier-Journal*. More than 75 of the required newspapers published in accordance with the Commission’s notice-publication requirements.

4. A newspaper in which KU did not initially publish notice, the *Hickman County Times*, contacted KU after publication began and asserted that, although KU’s notice was being published in the *Hickman County Gazette*, the legal notice should be published in the *Hickman County Times* based on a resolution enacted by the Hickman County Fiscal Court. Although the *Hickman County Gazette* properly published notice and, based on information and belief, is a newspaper of general circulation with comparable circulation to that of the *Hickman County Times*, KU published notice in the *Hickman County Times* out of an abundance of caution once a week for three consecutive weeks beginning on February 3, 2016.

5. Certain of the newspapers that were to publish notice of the filing of KU’s application omitted to publish the notice for the three consecutive weeks KU instructed. As a

result, the notice was not published for three consecutive weeks in thirteen newspapers. With two exceptions, the publication of the notice occurred in every newspaper prior to the date on which KU filed its application with the Commission on January 29, 2016.

6. KU contacted Kentucky Press to ascertain why the newspapers failed to print the notice properly. Unless specifically noted below, Kentucky Press indicated that the newspapers simply overlooked the fact that the notice was to be published for three consecutive weeks, despite having received explicit written and timely instructions regarding same.

(a) The *Barbourville Mountain Advocate* published the notice as scheduled on January 28, 2016. The newspaper failed to publish the second consecutive notice on February 4, 2016, but did publish the second and third notice on February 11, 2016, and February 18, 2016.

(b) The *Bardwell Carlisle County News* published the notice as scheduled on January 28, 2016. The newspaper failed to publish the second consecutive notice on February 4, 2016, but did publish the second and third notice on February 11, 2016, and February 18, 2016.

(c) The *Berea Citizen* failed to publish the notice as scheduled on January 28, 2016, prior to the date on which KU filed its application with the Commission on January 29, 2016. But the newspaper did publish the notice on February 4, 2016, and then published the second and third consecutive notice on February 11, 2016, and February 18, 2016.

(d) The *Central City Times-Argus* published the notice as scheduled on January 27, 2016. The newspaper failed to publish the second consecutive notice on February 3, 2016, but did publish the second and third notice on February 10, 2016, and February 17, 2016.

(e) The *Cumberland Tri City News* published the notice as scheduled on January 27, 2016, and February 3, 2016. The newspaper failed to publish the third consecutive notice on February 10, 2016, but did publish the third notice on February 17, 2016.

(f) The *Flemingsburg Gazette* published the notice as scheduled on January 27, 2016. The newspaper failed to publish the second consecutive notice on February 3, 2016, but did publish the second and third notice on February 10, 2016, and February 17, 2016.

(g) The *Leitchfield News Gazette* published the notice as scheduled on January 27, 2016. The newspaper failed to publish the second consecutive notice on February 3, 2016, but did publish the second and third notice on February 10, 2016, and February 17, 2016.

(h) The *Leitchfield Record* published the notice as scheduled on January 28, 2016. The newspaper failed to publish the second and third consecutive notice on February 4, 2016, and February 11, 2016, but did publish the second and third notice on February 18, 2016, and March 3, 2016.

(i) The *New Castle Henry County Local* published the notice as scheduled on January 27, 2016. The newspaper failed to publish the second consecutive notice on February 3, 2016, but did publish the second and third notice on February 10, 2016, and February 17, 2016.

(j) The *Owingsville Bath Outlook* published the notice as scheduled on January 28, 2016. The newspaper failed to publish the second consecutive notice on February 4, 2016, but did publish the second and third notice on February 11, 2016, and February 18, 2016.

(k) The *Pineville Sun* published the notice as scheduled on January 28, 2016. The newspaper failed to publish the second consecutive notice on February 4, 2016, but did publish the second and third notice on February 11, 2016, and February 18, 2016.

(l) The *Russell Springs Times* published the notice as scheduled on January 27, 2016, and February 4, 2016. The newspaper failed to publish the third consecutive notice on February 11, 2016, but did publish the third notice on February 18, 2016.

(m) The *Smithland Livingston Ledger* published the notice as scheduled on January 28, 2016. The newspaper failed to publish the second consecutive notice on February 4, 2016, but did publish the second and third notice on February 11, 2016, and February 18, 2016.

(n) The *Hopkinsville Kentucky New Era* failed to publish the notice as scheduled on January 28, 2016, prior to the date on which KU filed its application with the Commission on January 29, 2016. But the newspaper did publish the notice on February 3, 2016, and then published the second and third consecutive notice on February 10, 2016, and February 18, 2016.

(o) The *Wickliffe Advance Yeoman* published the notice as scheduled on January 27, 2016. The newspaper failed to publish the second consecutive notice on February 3, 2016, but did publish the second and third notice on February 10, 2016, and February 17, 2016.

7. In addition to causing notice of the filing of its application in this case to be published in newspapers of general circulation in all of its service areas, including the two newspapers with the largest circulation in the state, the *Lexington Herald-Leader* and *Louisville Courier-Journal*, KU has posted the notice for public inspection at its office and place of business, as well as on its website. *See* Certificate of Completed Notice. Moreover, KU included a general statement explaining the application in this case with the bills for all Kentucky retail customers during the course of their regular monthly billing cycle beginning with bills issued after January 29, 2016.

8. The purpose of the Commission's notice regulation is to ensure that the public has sufficient notice of KU's application and to respond accordingly. Despite the deviations noted above, notice was published in each county three times, and that notice was further supplemented by posting at KU's offices and on its website, in addition to including an explanation in retail

customers' bills. 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.<sup>1</sup>

9. The Commission has authority to permit KU to deviate from the publication requirements pursuant to 807 KAR 5:001 Section 22 and 807 KAR 5:011 Section 15. 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 the regulations and to accept the publication of notice of KU's application as sufficient.

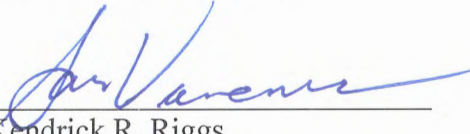
**WHEREFORE**, Kentucky Utilities Company respectfully requests that the Commission grant it approval pursuant to 807 KAR 5:001 Section 22 and 807 KAR 5:011, Section 15 to deviate from the applicable notice-publication requirements of 807 KAR 5:001 and 807 KAR 5:011, and to accept the publication of notice of its application as sufficient.

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<sup>1</sup> *Comrad 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).

Dated: March 10, 2016

Respectfully submitted,



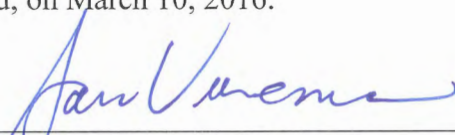
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**CERTIFICATE OF COMPLIANCE**

In accordance with 807 KAR 5:001 Section 8, this is to certify that Kentucky Utilities Company's March 10, 2016 electronic filing of the 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 March 10, 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 March 10, 2016.



*Counsel for Kentucky Utilities Company*