

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 REVIEW,)	
MODIFICATION, AND CONTINUATION OF)	CASE NO. 2017-00441
CERTAIN EXISTING DEMAND-SIDE)	
MANAGEMENT AND ENERGY EFFICIENCY)	
PROGRAMS)	

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 LG&E and KU approval, pursuant to 807 KAR 5:001, Section 22, to deviate from the publication of notice requirement¹ 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. Pursuant to 807 KAR 5:011, Section 8, utilities must publish notice of rates, terms or conditions changes in newspapers of general circulation in their service territories.

2. The Commission's regulations prescribe that newspaper publication must occur once a week for three (3) consecutive weeks in a prominent manner [...] the first publication to be made no later than the date the tariff filing is submitted to the commission." 807 KAR 5:011, Section 8(2)(b)3.

¹ 807 KAR 5:011, Section 8(2)(b)3.

3. The purpose of the Commission's notice requirements 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.²

Publication of Notice

4. In accordance with the Commission's notice regulations, LG&E and KU contacted the Kentucky Press Association on November 16, 2017 to arrange for a Notice of the Companies' Demand-Side Management filing to be published in 18 newspapers in LG&E's service areas and in 91 newspapers in KU's service areas during the time period from November 29, 2017 to December 19, 2017.

5. LG&E's and KU's efforts notwithstanding, the Cumberland Tri City News, a small weekly newspaper that publishes on Wednesday with a circulation of 1,657 in Harlan County, failed to publish the notice as requested, but it did timely run in the Harlan Daily Enterprise, which also serves Harlan County and has a circulation of 1,686. The notice also did not run as requested, prior to December 19, 2017, in the Manchester Enterprise, a small weekly newspaper that publishes on Wednesday with a circulation of 6,107 in Clay County, but it did run on December 20, 2017.

² *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).

6. In view of the timely published notice LG&E and KU have provided throughout the vast majority of the newspapers in their service territories – including the two newspapers of largest circulation in the Commonwealth, the *Lexington Herald-Leader* and the *Louisville Courier-Journal*, and the efforts made by LG&E and KU to ensure that timely notice was received, the Companies respectfully request a deviation from the Commission’s publication of notice requirements with respect to the limited instances of non-conformity cited above.

7. 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.”³ LG&E and KU respectfully submits 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. LG&E and KU therefore respectfully request the Commission to grant a deviation from its publication of notice regulation, deeming the Companies’ substantial compliance to be sufficient compliance with the regulation in this proceeding.

8. LG&E’s and KU’s request for deviation from the Commission’s publication of notice regulation is similar to requests made to, and granted by, the Commission in *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates*, Case No. 2008-00251, *In the Matter of: An Examination of the Application of the Fuel Adjustment Clause*

³ *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).

of Kentucky Utilities Company from November 1, 2006 through October 31, 2008, Case No. 2008-00520, and In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2014 through April 30, 2015, Case No. 2012-00320.

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 publication of notice requirements, deeming the Companies' substantial compliance to be sufficient compliance with the regulation in this proceeding.

Dated: January 19, 2018

Respectfully submitted,



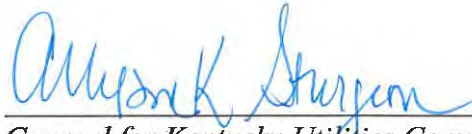
Kendrick R. Riggs
W. Duncan Crosby III
Joseph T. Mandlehr
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 333-6000
Fax: (502) 627-8722
kendrick.riggs@skofirm.com
duncan.crosby@skofirm.com
joseph.mandlehr@skofirm.com

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

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

CERTIFICATE OF COMPLIANCE

This is to certify that Kentucky Utilities Company and Louisville Gas and Electric Company's January 19, 2018, electronic filing of the Motion for Deviation 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 January 19, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and six copies in paper medium will be delivered to the Commission within two business days.



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