

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|--|---|----------------------------|
| ELECTRONIC APPLICATION OF |) | |
| KENTUCKY UTILITIES COMPANY FOR |) | |
| APPROVAL OF ITS 2020 COMPLIANCE |) | CASE NO. 2020-00060 |
| PLAN FOR RECOVERY BY |) | |
| ENVIRONMENTAL SURCHARGE |) | |

MOTION FOR APPROVAL TO DEVIATE FROM RULES

Kentucky Utilities Company (“KU”) moves 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 motion, KU states as follows:

1. On February 28, 2020, KU filed its Notice of Intent to file an application under KRS 278.183 for an amended environmental compliance plan and a revised surcharge to recover the costs of the amended plan. KU subsequently filed its application on March 31, 2020.

2. On March 18, 2020, KU delivered to the Kentucky Press Service, Inc. (“Kentucky Press”), an organization that acts on behalf of newspapers of general circulation throughout the Commonwealth of Kentucky in which customers affected reside, a notice of its application for publication therein once a week for three consecutive weeks beginning on March 24, 2020, as required by 807 KAR 5:011 Section 8(2)(b)(3). Kentucky Press directed each newspaper in writing to publish the notice once a week for three consecutive weeks, with the first publication to be made beginning on March 24, 2020.¹

¹ See Certificate of Notice and Publication.

3. KU requests a deviation because three newspapers, despite clear instructions from Kentucky Press, failed to publish the notice for three consecutive weeks beginning on March 24, 2020. These newspapers did, however, publish the notice three times.

4. First, the *Taylorsville Spencer Magnet*, a newspaper of general circulation in Spencer County, Kentucky, failed to publish the notice on March 25, 2020. Instead, the *Taylorsville Spencer Magnet* published the notice for the first time a week later, on April 1, 2020. The *Taylorsville Spencer Magnet* then published the second and third notices on April 8, 2020, and April 15, 2020. Therefore, the notice was published in the *Taylorsville Spencer Magnet* for three consecutive weeks beginning on April 1, 2020.

5. Second, the *Princeton Times Leader*, a newspaper of general circulation in Caldwell County, Kentucky, failed to publish the notice on March 25, 2020. Instead, the *Princeton Times Leader* published the notice for the first time a week later, on April 1, 2020. The *Princeton Times Leader* then published the second and third notices on April 8, 2020, and April 15, 2020. Therefore, the notice was published in the *Princeton Times Leader* for three consecutive weeks beginning on April 1, 2020.

6. Third, the *Beattyville Enterprise*, a newspaper of general circulation in Lee County, Kentucky, failed to publish the notice correctly for three consecutive weeks. Instead, the newspaper published the first and third notices correctly (on March 25, 2020 and April 8, 2020, respectively), but failed to publish the second notice on April 1, 2020 as directed. An additional notice was published in the *Beattyville Enterprise* on April 15, 2020.

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 areas, KU has posted the full customer

notice for public inspection on its website.² 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 March 31, 2020.³ Finally, the two newspapers with the largest circulation in the state, the *Lexington Herald-Leader* and *The Courier-Journal* published the notice correctly.

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 posted on KU’s website, in addition to including an explanation in retail customers’ bills. KU’s substantial compliance with the Commission’s regulations 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.⁴

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.

10. Because KU is in substantial compliance with the publication requirements of 807 KAR 5:001, Section 17(2) and 807 KAR 5:011, Sections 8(2) and 9, good cause exists for the Commission to permit KU to deviate from the requirement of the regulations and to accept the publications of notice of KU’s application as sufficient.

² See Certificate of Completed Notice.

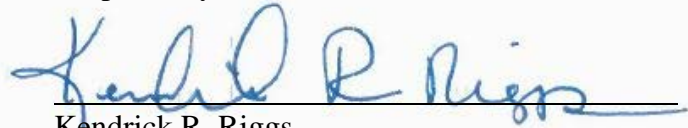
³ *Id.*

⁴ *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).

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 notice requirements of 807 KAR 5:001, Section 17(2) and 807 KAR 5:011, Sections 8(2) and 9 and to accept the publications of notice of its application as sufficient.

Dated: May 15, 2020

Respectfully submitted,

A handwritten signature in blue ink that reads "Kendrick R. Riggs". The signature is written in a cursive style and is positioned above a horizontal line.

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CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001 Section 8(7), this is to certify that Kentucky Utilities Company's May 15, 2020 electronic filing is a true and accurate copy of the documents that will be filed in paper medium subject to the terms of the Commission's March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19) ("COVID-19 Orders"); that the electronic filing was transmitted to the Commission on May 15, 2020; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original of the filing will be filed by hand-delivery with the Commission consistent with the COVID-19 Orders.



Counsel for Kentucky Utilities Company