

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 AND ORDER

Kentucky Utilities Company (“KU” or the “Company”) moves the Kentucky Public Service Commission (“Commission”) to grant approval, pursuant to 807 KAR 5:001, Section 22, to deviate from the hearing notice requirements and Ordering Paragraph Number 2 of the Commission’s August 26, 2020 Order in the above-captioned proceeding because the Company has substantially complied with the Commission’s hearing notice requirements. In support of this motion, KU states as follows:

1. 807 KAR 5:001, Section 9(2)(b) states that the Commission may order an applicant to give notice to the public of any hearing on its application, and, if such notice is by newspaper publication, to publish notice of the purpose, time, place, and date of the hearing “at least one (1) time and not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.”
2. On August 26, 2020, the Commission ordered that a hearing in this matter take place on September 10, 2020 and that KU give notice of the hearing in compliance with 807 KAR 5:001, Section 9(2)(b).
3. On August 27, 2020, the Company 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

hearing for publication therein one time. KU requested the publication to occur as soon as possible and by September 3, 2020, as required by 807 KAR 5:001, Section 9(2)(b). Kentucky Press promptly directed each newspaper in writing to publish the hearing notice one time by September 3, 2020. The hearing notice publication request and the related notice were filed with the Commission in this case on August 31, 2020.

4. KU requests a deviation because seven newspapers, despite clear instructions from Kentucky Press, failed to publish the hearing notice during the time prescribed in 807 KAR 5:004, Section 9(2)(b).

5. First, *The Advocate-Messenger*, a newspaper of general circulation in Boyle County, Kentucky, failed to publish the hearing notice by September 3, 2020 as requested. Instead, *The Advocate-Messenger* published the hearing notice on September 4, 2020, albeit less than 7 days prior to the hearing.

6. Second, *The Winchester Sun*, a newspaper of general circulation in Clark County, Kentucky, failed to publish the hearing notice by September 3, 2020 as requested. Instead, *The Winchester Sun* published the hearing notice on September 4, 2020, albeit less than 7 days prior to the hearing.

7. Third, the *Greensburg Record-Herald*, a newspaper of general circulation in Green County, Kentucky, failed to publish the hearing notice by September 3, 2020 as requested. The *Greensburg Record-Herald* inadvertently published the Company's IRP hearing notice for Case No. 2018-00348 on September 2, 2020 instead of the Company's hearing notice in this case. The *Greensburg Record-Herald* published the hearing notice for this case on September 9, 2020, albeit less than 7 days prior to the hearing.

8. Fourth, the *Garrard Central Record*, a newspaper of general circulation in Garrard County, Kentucky, failed to publish the hearing notice by September 3, 2020 as requested. The *Garrard Central Record* inadvertently published the Company's IRP hearing notice for Case No. 2018-00348 on September 3, 2020 instead of the Company's hearing notice in this case. The *Garrard Central Record* cannot publish notice before the September 10, 2020 hearing because it only publishes on Thursdays.

9. Fifth, the *Barren County Progress*, a newspaper of general circulation in Barren County, Kentucky, failed to publish the hearing notice by September 3, 2020 as requested. The *Barren County Progress* cannot publish notice before the September 10, 2020 hearing because it only publishes on Thursdays.

10. Sixth, the *Falmouth Outlook*, a newspaper of general circulation in Pendleton County, Kentucky, failed to publish the hearing notice by September 3, 2020 as requested. The *Falmouth Outlook* inadvertently published the Company's IRP hearing notice for Case No. 2018-00348 on September 1, 2020. KU learned of this omission on September 9, 2020 and therefore did not have an opportunity to publish the correct notice before the September 10, 2020 hearing.

11. Seventh, the *Bourbon County Citizen*, a newspaper of general circulation in Paris County, Kentucky, failed to publish the hearing notice by September 3, 2020 as requested. The *Bourbon County Citizen* inadvertently published the Company's IRP hearing notice for Case No. 2018-00348 on September 2, 2020. KU learned of this omission on September 9, 2020 and therefore did not have an opportunity to publish the correct notice before the September 10, 2020 hearing.

12. The purpose of the Commission's notice 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.¹ Notwithstanding the deviations noted above, notice of the hearing was published in 87 of 91 newspapers of general circulation in the Company's service area. See the attached list of newspapers and affidavit. In addition, two of these newspapers with the largest circulation in the state, the *Lexington Herald-Leader* and *The Courier-Journal*, timely published the hearing notice by September 3, 2020 in their statewide editions. The Company'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.²

13. Furthermore, the Commission recently addressed the difficulty in timely publishing hearing notices in accordance with 807 KAR 5:001, Section 9(2)(b) when short notice of the hearing is given. In the Commission's August 17, 2020 Order in Case No. 2020-00228,³ the Commission set a hearing for September 1, 2020. The Order stated "[t]he expedited nature of this hearing to take evidence on the issues of the asset transfer is good cause to deviate from the publication frequency requirements of 807 KAR 5:001, Section 9(2)(b). The Commission finds that Southern District should make a good faith effort to give notice of the hearing to the public..."⁴

¹ The Company's hearing notice included the following statements, as required by the August 26, 2020 Order: "This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov" and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listed on the PSC website, psc.ky.gov".

² *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).

³ *Electronic Investigation into Transfer of Ownership to Prestonsburg City Utilities Commission of the Wastewater System and Certain Portions of the Water System of Southern Water and Sewer District Pursuant to KRS 278.250 and KRS 278.390*, Case No. 2020-00228.

⁴ Case No. 2020-00228, Order at 2 (Ky. PSC Aug. 17, 2020).

14. The Commission has authority to permit KU to deviate from the publication requirements pursuant to 807 KAR 5:001, Section 22.

15. Because KU is in substantial compliance with the publication requirements of KAR 5:001, Section 9(2)(b) and made a good faith effort to give notice of the hearing to the public, good cause exists for the Commission to permit the Company to deviate from the requirement of the regulations and to accept the publications of hearing notice 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 notice requirements of 807 KAR 5:001, Section 9(2)(b) and Ordering Paragraph Number 2 of the Commission's August 26, 2020 Order in this case and to accept the publications of hearing notice as sufficient.

Dated: September 9, 2020

Respectfully submitted,



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Counsel for Kentucky Utilities Company

CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001 Section 8(7), this is to certify that Kentucky Utilities Company's September 9, 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 September 9, 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 with the Commission consistent with the COVID-19 Orders.

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

Counsel for Kentucky Utilities Company