

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	
CLAUSE OF KENTUCKY UTILITIES)	CASE NO. 2021-00055
COMPANY FROM NOVEMBER 1, 2018)	
THROUGH OCTOBER 31, 2020)	

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 5:011, Section 14, to deviate from the Notice of Public Hearing 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 KRS 424.300, newspaper publication of rate change hearings must be in accordance with the Commission’s regulations.

2. The Commission’s regulations prescribe its newspaper publication requirements when ordering public notice of a hearing, specifically that publication must occur in a newspaper of general circulation in the areas to be affected “one (1) time and not less than seven (7) nor more than twenty-one (21) days prior to the hearing.” 807 KAR 5:001, Section 9(2)(b)2.

¹ 807 KAR 5:011, Section 8(5).

3. The purpose of the notice regulations 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. On March 4, 2021, the Commission ordered KU to submit to an examination on the application of its fuel adjustment clause (“FAC”) from November 1, 2018 through October 31, 2020. The hearing will be held on May 18, 2021.

5. In accordance with the Commission’s notice regulations, KU sent the notice to the Kentucky Press Association on April 19, 2021 for publication in 91 newspapers in KU’s service areas, including the *Lexington Herald-Leader* and the state-wide edition of the *Courier-Journal*. The Kentucky Press Association sent the request to the newspapers on April 21, 2021 to run the notice beginning April 27, 2021.

6. KU’s efforts notwithstanding, the Kentucky Press Association inadvertently missed requesting the *Courier-Journal* to run the notice, but has since requested the *Courier-Journal* to run the notice at the next earliest opportunity, which is on May 15, 2021. The notice ran as requested in the 90 other newspapers of general circulation in KU’s service territory, including in the *Lexington Herald-Leader*. The statewide edition of the *Courier Journal* is essentially included

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).

for “belts and suspenders” purposes because KU believes that many of its customers are subscribers of that publication.

7. In view of the timely published notice KU has provided throughout the vast majority of the newspapers in its service territory, including the *Lexington Herald-Leader*, and the efforts made by KU to ensure that timely notice was received, KU respectfully requests a deviation from the Commission’s Notice of Public Hearing regulation with respect to the limited instance of non-conformity cited above. Ninety newspapers, whether the legally required newspapers or not, published timely notice. In addition, the one newspaper that did not publish the notice timely will ultimately publish prior to the date of the hearing.

8. 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 KU respectfully submits that it has 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. KU therefore respectfully requests the Commission to grant a deviation from its regulation, deeming KU’s substantial compliance to be sufficient compliance with the regulation in this proceeding.

9. KU’s request for deviation from the Commission’s notice of public hearing regulation is similar to requests made to, and granted by, the Commission in *In the Matter of:*

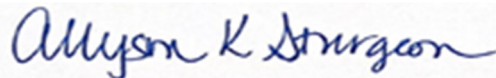
³ *Conrad v. Lexington-Fayette Urban County Government*, 659 S.W.2d 190, 195 (1983) (citing *Queenan v. City of Louisville*, 233 S.W.2d 1010 (1950)). See also *Lyon v. County of Warren*, 325 S.W.2d 302 (1959) (publishing notice of bond referendum outside statutory time limits, accompanied by media attention and other means, held sufficient notice to public).

Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates, Case No. 2008-00251 and In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2006 through October 31, 2008, Case No. 2008-00520.

WHEREFORE, Kentucky Utilities Company respectfully requests that, pursuant to 807 KAR 5:011, Section 14, the Commission grant a deviation from its Notice of Public Hearing regulation, deeming KU's substantial compliance to be sufficient compliance with the regulation in this proceeding.

Dated: May 13, 2021

Respectfully submitted,

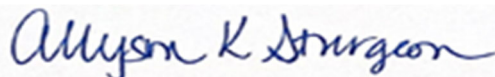


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CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001 Section 8(7), this is to certify that Kentucky Utilities Company's May 13, 2021 electronic filing is a true and accurate copy of the documents to be filed in paper medium; that the electronic filing has been transmitted to the Commission on May 13, 2021; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a true and correct copy in paper medium will be delivered to the Commission within 30 days of the lifting of the State of Emergency.

A handwritten signature in blue ink that reads "Allyson K. Sturgeon". The signature is written in a cursive, flowing style.

Counsel for Kentucky Utilities Company