

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

**IN THE MATTER OF:** )  
 )  
**APPLICATION OF KENTUCKY-** )  
**AMERICAN WATER COMPANY TO** ) **CASE NO. 2022-00032**  
**AMEND TARIFF TO REVISE QUALIFIED** )  
**INFRASTRUCTURE PROGRAM CHARGE** )

**MOTION FOR APPROVAL TO DEVIATE FROM RULES  
AND NOTICE OF FILING OF PUBLICATION OF PUBLIC NOTICE**

Kentucky American Water (“KAW”) moves the Kentucky Public Service Commission (“Commission”) to grant KAW 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 KAW has substantially complied with the Commission’s notice regulations. In support of this motion, KAW states as follows:

1. On March 1, 2022, KAW filed its Application in this matter to revise its Qualified Infrastructure Program (“QIP”) Charge. At Paragraph 10 of that Application, KAW stated that it was in the process of providing notice to customers via newspaper publication pursuant to 807 KAR 5:011, Section 8 and that it would provide proof of that publication within 45 days of the Application as required by 807 KAR 5:011, Section 8(3).

2. On February 21, 2022, KAW 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 affected customers reside, for publication therein once a week for three consecutive weeks beginning no later than March 1, 2022, a notice to customers of the requested QIP Charge revision in the 14 newspapers located within KAW’s

service territory. A listing of those newspapers, a Kentucky Press affidavit, and the proof of publication in those newspapers is attached.

3. KAW requests a deviation because, although 13 of the 14 newspapers ran the notice at least one time prior to KAW's March 1, 2022 filing with the Commission, one newspaper, the *Owenton News Herald*, did not run the first notice until March 2, 2022 which was one day late. This newspaper did publish the notice three times, but the first publication was delayed by a day due to an inadvertent error. As soon as the error was realized, it was rectified by making sure the first notice ran no later than March 2, 2022 and that the notice ran a total of three times. The newspaper with the largest circulation in KAW's service territory, the *Lexington Herald-Leader*, published the notice correctly for three consecutive weeks beginning on February 25, 2022.

4. The purpose of the Commission's notice regulation is to ensure that the public has sufficient notice of KAW's requested revision and to respond accordingly. Despite the deviation noted above, notice was published in each county three times, and that notice was further supplemented by posting at KAW's offices and on KAW's website. KAW'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.<sup>1</sup>

5. The Commission has authority to permit KAW to deviate from the publication requirements pursuant to 807 KAR 5:001, Section 22 and 807 KAR 5:011, Section 15. Because KAW is in substantial compliance with the publication requirements of 807 KAR 5:011, Section

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<sup>1</sup> *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).

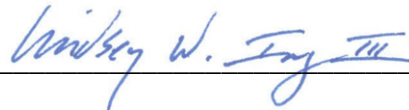
8(2), good cause exists for the Commission to permit KAW to deviate from the requirement of the regulations and to accept the publication of notice as sufficient.

**WHEREFORE**, KAW 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 5:011, Section 8(2) and to accept the publication described above as sufficient.

Date: April 15, 2022

Respectfully submitted,

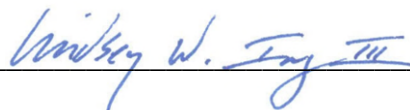
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BY:   
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**CERTIFICATE**

This certifies that Kentucky-American Water Company's electronic filing is a true and accurate copy of the documents in paper medium; that the electronic filing has been transmitted to the Commission on April 15, 2022; and that no party has been excused from participation by electronic means.

STOLL KEENON OGDEN PLLC

By   
Attorneys for Kentucky-American Water Company