

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF)	
KENTUCKY UTILITIES COMPANY FOR)	CASE NO. 2022-00371
APPROVAL OF AN ECONOMIC)	
DEVELOPMENT RIDER SPECIAL)	
CONTRACT WITH BITIKI-KY, LLC)	

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 to deviate from the hearing notice requirements in the above-captioned proceeding because KU has substantially complied with the Commission’s hearing notice regulation. In support of this motion, KU states as follows:

1. On April 10, 2023, the Commission issued an Order scheduling the formal hearing in this proceeding to occur on May 31, 2023 and directing KU to publish notice of the hearing in accordance with 807 KAR 5:001, Section 9(2)(b).
2. In accordance with the Commission’s Order, 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, the notice to be published for this hearing in accordance with 807 KAR 5:001, Section 9(2)(b). Kentucky Press directed each newspaper in writing to publish the hearing notice in accordance with the Commission’s regulation.
3. KU requests a deviation because one newspaper, despite clear instructions from the Kentucky Press, failed to publish the notice. Specifically, the *Middlesboro Daily News*, a

newspaper of general circulation in Bell County, Kentucky (circulation: 2,475), failed to publish the hearing notice.¹

4. Although the *Middlesboro Daily News* failed to publish the notice, the *Pineville Sun*, another newspaper of general circulation in Bell County, Kentucky (circulation: 1,648), did publish the hearing notice on May 17, 2023.² Also, the two newspapers with the largest circulation in Kentucky, the *Lexington Herald-Leader* and *The Courier-Journal*, published the notice correctly on May 17, 2023.³

5. The purpose of the Commission's notice regulation is to ensure that the public has sufficient notice of the hearing. Despite the deviation noted above, notice was published in each county (a total of 85 newspapers published correctly), including in a newspaper of general circulation in Bell County and in the two newspapers of largest circulation in Kentucky. 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

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

¹ See Affidavit of Hearing Notice Publication (May 25, 2023).

² *Id.*

³ *Id.*

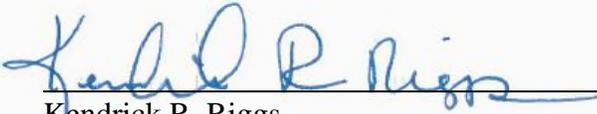
⁴ *Conrad v. Lexington-Fayette Urban County Government*, 659 S.W.2d 190, 195 (Ky. 1983) (citing *Queenan v. City of Louisville*, 233 S.W.2d 1010 (Ky. 1950)). See also *Lyon v. County of Warren*, 325 S.W.2d 302 (Ky. 1959) (publishing notice of bond referendum outside statutory time limits, accompanied by media attention and other means, held sufficient notice to public).

7. Because KU is in substantial compliance with the publication requirements of 807 KAR 5:001, Section 9(2)(b), good cause exists for the Commission to permit KU to deviate from the requirement of the regulations and to accept the publication of the 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 to accept the publication of hearing notice as sufficient.

Dated: May 26, 2023

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on May 26, 2023; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



Counsel for Kentucky Utilities Company