

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 COMPANY)	CASE NO. 2023-00010
FROM NOVEMBER 1, 2020 THROUGH)	
OCTOBER 31, 2022)	

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 15, 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. 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 at least “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.

2. 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 the 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

¹ 807 KAR 5:001, Section 9(2)(b).

ample opportunity to become sufficiently informed on the public question involved.²

Publication of Notice

3. On September 6, 2023, the Commission ordered KU to submit to an examination on the application of its fuel adjustment clause (“FAC”) from November 1, 2020 through October 31, 2022. The hearing will be held on January 4, 2024.

4. In accordance with the Commission’s notice regulations, KU sent the notice to the Kentucky Press Association on November 21, 2023, with additional revisions requested on November 22, 2023, for publication in 88 newspapers in KU’s service territory, 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 December 11, 2023 to publish the notice beginning December 14, 2023.

5. KU’s and Kentucky Press’s efforts notwithstanding, a few newspapers were unable to publish the notice as requested. First, the *Williamstown Grant Co News* did not publish the notice at all. Second, the *Middlesboro Daily News* published the notice on December 13, 2023 which was one day earlier than the requested publication time frame. Even though the *Middlesboro Daily News* published the notice early, the *Pineville Sun*, which is a second publication with circulation in the same county, published the notice on December 20, 2023, which was during the requested publication time frame. Third, *Cumberland Tri City* did not publish the notice at all; however, the *Harlan Enterprise*, which is the other publication in the same county as *Cumberland Tri City*, published the notice on December 20, 2023. The notice ran as requested in the 85 other

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).

newspapers of general circulation in KU's service territory, including in the *Courier-Journal* and the *Lexington Herald-Leader*. The state-wide edition of the *Courier Journal* is essentially included for "belts and suspenders" purposes because KU believes that many of its customers may be subscribers of that publication.

6. In view of the substantially timely published notice KU provided throughout the vast majority of the newspapers in its service territory, including the *Courier-Journal* and *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 instances of non-conformity cited above. Eighty-five newspapers, whether the legally required newspapers or not, published timely notice.

7. 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.

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).

8. 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: An Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2018 through October 31, 2020*, Case No. 2021-00055; *In the Matter of: 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 15, 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: January 3, 2024

Respectfully submitted,

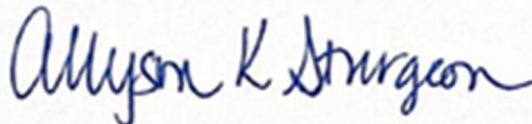


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CERTIFICATE OF COMPLIANCE

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 January 3, 2024 and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

A handwritten signature in blue ink that reads "Allyson K Sturgeon". The signature is written in a cursive style and is positioned above a horizontal line.

Counsel for Kentucky Utilities Company