

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	
CLAUSE OF LOUISVILLE GAS AND ELECTRIC)	CASE NO. 2023-00011
COMPANY FROM NOVEMBER 1, 2020)	
THROUGH OCTOBER 31, 2022)	

PETITION FOR APPROVAL TO DEVIATE FROM RULE

Louisville Gas and Electric Company (“LG&E”) petitions the Kentucky Public Service Commission (“Commission”) to grant LG&E approval, pursuant to 807 KAR 5:011, Section 15, to deviate from the Notice of Public Hearing requirement¹ in the above-captioned proceeding because LG&E has substantially complied with the Commission’s notice regulations. In support of this petition, LG&E 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 LG&E 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, LG&E sent the notice to the Kentucky Press Association on November 21, 2023, with additional revisions requested on November 22, 2023, for publication in 9 newspapers in LG&E’s service area, including 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. LG&E’s and Kentucky Press’s efforts notwithstanding, one newspaper, the *Bedford Trimble Banner*, did not publish the notice as requested. The notice ran as requested in the 8 other newspapers of general circulation in LG&E’s service territory, including in the *Courier-Journal*. The state-wide edition of the *Courier Journal* is essentially included for “belts and suspenders” purposes because LG&E believes that many of its customers may be subscribers of that publication.

6. In view of the substantially timely published notice LG&E provided throughout the vast majority of the newspapers in its service territory, including the *Courier-Journal*, and the efforts made by LG&E to ensure that timely notice was received, LG&E respectfully requests a

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).

deviation from the Commission’s Notice of Public Hearing regulation with respect to the limited instance of non-conformity cited above. Eight 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 LG&E 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. LG&E therefore respectfully requests the Commission to grant a deviation from its regulation, deeming LG&E’s substantial compliance to be sufficient compliance with the regulation in this proceeding.


8. LG&E’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.

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).

WHEREFORE, Louisville Gas and Electric 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 LG&E'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 with a horizontal line underneath it.

Counsel for Louisville Gas and Electric
Company