

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILINGS OF)	
LOUISVILLE GAS AND ELECTRIC)	
COMPANY AND KENTUCKY)	
UTILITIES COMPANY TO REVISE)	
PURCHASE RATES FOR SMALL)	
CAPACITY AND LARGE CAPACITY)	CASE NO. 2023-00404
COGENERATION AND POWER)	
PRODUCTION QUALIFYING)	
FACILITIES AND NET METERING)	
SERVICE-2 CREDIT RATES)	

KENTUCKY UTILITIES COMPANY’S
MOTION FOR APPROVAL TO DEVIATE FROM RULE

Kentucky Utilities Company (“KU”) moves the Kentucky Public Service Commission (“Commission”) to grant KU approval pursuant to 807 KAR 5:011 Section 15 to deviate from the customer notice requirements regarding the above-captioned tariff filing because KU has substantially complied with the Commission’s applicable notice regulation, 807 KAR 5:011 Section 8(2).¹ In support of this motion, KU states as follows:

1. On October 31, 2023, KU filed with the Commission revised sheets of its Tariff P.S.C. No. 20 Original Sheet Nos. 55, 55.1, 56, 56.1, and 58, to be effective with service rendered on and after January 1, 2024. KU made the filing to revise the Energy and Capacity rates for both Small Capacity Cogeneration and Small Power Production Qualifying Facilities (“SQF”) and Large Capacity Cogeneration and Large Power Production Qualifying Facilities (“LQF”), as well as the dollar-denominated bill credit rate for Net Metering Service-2 (“NMS-2”).

¹ Louisville Gas and Electric Company is not joining this Motion because all of its customer notice publication occurred in compliance with 807 KAR 5:011 Section 8(2).

2. To comply with the customer notice requirements of 807 KAR 5:011 Section 8(2), on October 12, 2023 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 once a week for three consecutive weeks, with the first publication to be made no later than October 31, 2023. Kentucky Press directed each newspaper in writing to publish the customer notice in accordance with the Commission’s regulation.

3. KU requests deviations from the requirements of 807 KAR 5:011 Section 8(2) for the following:

(a) Due to an error by Kentucky Press, *The Advocate Messenger* (circulation: 2,110), which serves the Danville, Kentucky area, incorrectly published the notice for Louisville Gas and Electric Company (“LG&E”) for three consecutive weeks. KU directed Kentucky Press to cause *The Advocate Messenger* to publish the correct KU notice, which occurred on November 28, 2023.²

(b) The *Columbia Adair County Community Voice* (circulation: 2,614) failed to publish the notice the first week, though it subsequently published the notice on three consecutive weeks (November 2, 9, and 16).³ In the same county, a local newspaper of larger circulation, the *Columbia Adair Progress* (circulation: 4,062) successfully published for three consecutive weeks as required (October 26 and November 2 and 9).

(c) The *Harlan Enterprise* (circulation: 2,276) failed to publish the notice the first week, though it subsequently published the notice on three consecutive weeks (November 1, 8, and

² See Affidavit of Notice Publication (November 29, 2023).

³ See *id.*

15).⁴ In the same county, another local newspaper, the *Cumberland Tri-City News* (circulation: 1,965) successfully published for three consecutive weeks as required (October 25 and November 1 and 8).

(d) Due to an error by Kentucky Press, the *Lexington Herald-Leader* incorrectly published the notice for Louisville Gas and Electric Company the first week, though it subsequently published the correct KU notice on three consecutive weeks (November 8, 15, and 22).⁵

(e) The *Middlesboro Daily News* (circulation: 2,475) failed to publish the notice the first week, though it subsequently published the notice on three consecutive weeks (November 1, 8, and 15).⁶ In the same county, another local newspaper, the *Pineville Sun* (circulation: 1,528) successfully published for three consecutive weeks as required (October 25 and November 1 and 8).

(f) Due to an error by Kentucky Press, the *Winchester Sun* (circulation: 1,629), incorrectly published the LG&E notice for three consecutive weeks. KU directed Kentucky Press to cause the *Winchester Sun* to publish the correct KU notice, which occurred on November 28, 2023.⁷

4. The purpose of the Commission's notice regulation is to ensure that the public has sufficient notice of the proposed rates. Despite the deviations noted above, notice was published in each county, including for three consecutive weeks in the newspaper of largest circulation in KU's service territory, as well as in the newspaper of largest circulation in Kentucky, the *Louisville Courier-Journal*. 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

⁴ See *id.*

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

an ample opportunity to become sufficiently informed on the public question involved.⁸

5. The Commission has authority to permit KU to deviate from the publication requirements pursuant to 807 KAR 5:011 Section 15.

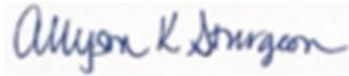
6. Because KU is in substantial compliance with the publication requirements of 807 KAR 5:011 Section 8(2), good cause exists for the Commission to permit KU to deviate from the requirement of the regulations and to accept the publication of notice as sufficient.

WHEREFORE, Kentucky Utilities Company respectfully requests that the Commission grant it approval pursuant to 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 of notice as sufficient.

⁸ *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).

Dated: December 15, 2023

Respectfully submitted,



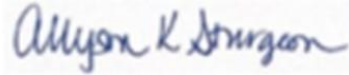
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CERTIFICATE OF COMPLIANCE

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 December 15, 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