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October 28, 2009

VIA HAND DELIVERY

RECEIVED

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

OCT 28 2009

PUBLIC SERVICE
COMMISSION

RE: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge
Case No. 2009-00197

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of Kentucky Utilities Company's Petition for Approval to Deviate From Rule and Motion to Modify Procedural Schedule in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions please contact me at your convenience.

Yours very truly,

W. Duncan Crosby III

WDC:ec
Enclosures
cc: Michael L. Kurtz (w/ encl)

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR CERTIFICATES OF)	
PUBLIC CONVENIENCE AND NECESSITY)	CASE NO. 2009-00197
AND APPROVAL OF ITS 2009 COMPLIANCE)	
PLAN FOR RECOVERY BY)	
ENVIRONMENTAL SURCHARGE)	

PETITION FOR APPROVAL TO DEVIATE FROM RULE
AND MOTION TO MODIFY PROCEDURAL SCHEDULE

Kentucky Utilities Company (“KU”) petitions the Kentucky Public Service Commission (“Commission”) to grant KU approval pursuant to 807 KAR 5:011 § 14 to deviate from the hearing notice requirements in the above-captioned proceeding to allow the currently scheduled hearing to take place on Tuesday, November 3, 2009. KU so petitions the Commission because the required notice of hearing will not be complete within the time prescribed by 807 KAR 5:011 § 8(5). To ensure that all public comment is heard, KU further moves the Commission to modify the procedural schedule in this proceeding to provide another opportunity for such comment, to be held at the Commission at a time it prescribes, of which hearing KU will provide notice under 807 KAR 5:011 § 8(5). In support of this petition, KU states as follows:

1. The purpose of the Commission’s notice regulations is to ensure that the public has sufficient notice of KU’s application and a meaningful opportunity to participate, individually or through representative agencies, in this 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 ample opportunity to become sufficiently informed on the public question involved.¹

2. By Order dated August 6, 2009, the Commission set the date for the public hearing in this proceeding as November 3, 2009.

3. The regulation pertaining to notice of such public hearings is 807 KAR 5:011 § 8(5), which states that notice “shall be published in a newspaper of general circulation in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place and date of hearing.”

4. On October 26, 2009, KU contacted the Kentucky Press Association to request that it arrange for notice of the hearing to be published with all possible speed in 95 newspapers in KU’s service territory. Kentucky Press Association confirmed to KU that the two newspapers of largest circulation in the Commonwealth and in KU’s service territory, the *Louisville Courier-Journal* and the *Lexington Herald-Leader*, published the notice on Wednesday, October 28, with all other papers to print the notice in the days to follow, according to their ordinary publishing schedules. Therefore, all 95 newspapers should publish before or on Tuesday, November 3, with the possible exception of the papers that publish only on Wednesdays, which may not be able to publish before the hearing.

5. To provide even greater notice, KU posted notice of the hearing on its website on Monday, October 26. The link is prominently displayed on the homepage of the E.ON U.S. website under the heading, “Environmental Initiatives,” in the same location as other information related to this proceeding is posted. (<http://www.eon-us.com/home.asp>)

¹ *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).

6. In view of the fact that the two newspapers of largest circulation in the Commonwealth and in KU's service territory, the *Louisville Courier-Journal* and the *Lexington Herald-Leader*, and the majority of the remaining newspapers will have published prior to the hearing in this proceeding, KU respectfully petitions the Commission to grant KU deviation under 807 KAR 5:011 § 14 from the hearing notice requirements of 807 KAR 5:011 § 8(5) to allow the currently scheduled November 3 hearing to take place.

7. Because KU recognizes the value and importance of receiving whatever comment its customers and the public would like to offer, KU further moves the Commission to schedule an additional public comment hearing in this proceeding on a day convenient to the Commission. KU will make every reasonable effort to cause notice of such a hearing to be timely published in the same 95 newspapers, via the Kentucky Press Association, in accordance with 807 KAR 5:011 § 8(5).

WHEREFORE, Kentucky Utilities Company respectfully requests that: (1) pursuant to 807 KAR 5:011 § 14, the Commission grant a deviation from its notice regulations, deeming KU's substantial compliance with 807 KAR 5:011 § 8(5) to be sufficient compliance to allow the November 3, 2009 hearing in this proceeding to go forward as scheduled; and (2) the Commission modify the procedural schedule in this proceeding to provide for a public comment hearing, notice of which hearing KU shall make every reasonable effort to be published in full accordance with 807 KAR 5:011 § 8(5).

Dated: October 28, 2009

Respectfully submitted,



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Counsel for Kentucky Utilities Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Petition for Approval to Deviate from Rule and Motion to Modify Procedural Schedule was served on the following persons on the 28th day of October, 2009, United States mail, postage prepaid:

Michael L. Kurtz
Boehm Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OH 45202



Counsel for Kentucky Utilities Company