



STOLL · KEENON · OGDEN  
P L L C

2000 PNC PLAZA  
500 WEST JEFFERSON STREET  
LOUISVILLE, KY 40202-2828  
MAIN: (502) 333-6000  
FAX: (502) 333-6099  
www.skofirm.com

**W. DUNCAN CROSBY III**  
DIRECT DIAL: (502) 560-4263  
DIRECT FAX: (502) 627-8754  
duncan.crosby@skofirm.com

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 Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge**  
**Case No. 2009-00198**

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of Louisville Gas and Electric 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)

400001.132871/600801.1

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**THE APPLICATION OF LOUISVILLE GAS AND )  
ELECTRIC COMPANY FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND NECESSITY )  
AND APPROVAL OF ITS 2009 COMPLIANCE ) CASE NO. 2009-00198  
PLAN FOR RECOVERY BY ENVIRONMENTAL )  
SURCHARGE )**

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

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 § 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. LG&E 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, LG&E 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 LG&E will provide notice under 807 KAR 5:011 § 8(5). In support of this petition, LG&E states as follows:

1. The purpose of the Commission’s notice regulations is to ensure that the public has sufficient notice of LG&E’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.<sup>1</sup>

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, LG&E contacted the Kentucky Press Association to request that it arrange for notice of the hearing to be published with all possible speed in 11 newspapers in LG&E’s service territory. Kentucky Press Association confirmed to LG&E that the newspaper of largest circulation in the Commonwealth and in LG&E’s service territory, the *Louisville Courier-Journal*, 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 11 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, LG&E 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>)

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<sup>1</sup> *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 newspaper of largest circulation in the Commonwealth and in LG&E's service territory, the *Louisville Courier-Journal*, and the majority of the remaining newspapers will have published prior to the hearing in this proceeding, LG&E respectfully petitions the Commission to grant LG&E 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 LG&E recognizes the value and importance of receiving whatever comment its customers and the public would like to offer, LG&E further moves the Commission to schedule an additional public comment hearing in this proceeding on a day convenient to the Commission. LG&E will make every reasonable effort to cause notice of such a hearing to be timely published in the same 11 newspapers, via the Kentucky Press Association, in accordance with 807 KAR 5:011 § 8(5).

**WHEREFORE**, Louisville Gas and Electric Company respectfully requests that: (1) pursuant to 807 KAR 5:011 § 14, the Commission grant a deviation from its notice regulations, deeming LG&E'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 LG&E shall make every reasonable effort to be published in full accordance with 807 KAR 5:011 § 8(5).

Dated: October 28, 2009

Respectfully submitted,



Kendrick R. Riggs  
W. Duncan Crosby III  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202-2828  
Telephone: (502) 333-6000

Allyson K. Sturgeon  
Senior Corporate Attorney  
E.ON U.S. LLC  
220 West Main Street  
Louisville, Kentucky 40202  
Telephone: (502) 627-2088

Counsel for Louisville Gas and Electric 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

A handwritten signature in black ink, appearing to read "M. L. Kurtz", written over a horizontal line.

Counsel for Louisville Gas and Electric Company