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August 27, 2010

HAND DELIVERED

Hon. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

RECEIVED

AUG 27 2010

PUBLIC SERVICE
COMMISSION

Re: Delta Natural Gas Company, Inc.
Case No. 2010-00116

Dear Mr. Derouen:

Please find enclosed for filing an original and ten (10) copies of the Petition of Delta Natural Gas Company, Inc. for Approval to Deviate from Rule in the above-captioned case. We would appreciate your placing this Petition with the other papers in the case and promptly bringing it to the attention of the Commission. Thanks in advance for your assistance.

Sincerely,

Robert M. Watt, III

rmw:

Enclosure

cc: Parties of Record (w/ encl.)
Anita Mitchell, Esq. (w/encl.)

005522.136948/3916386.1

RECEIVED

AUG 27 2010

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DELTA NATURAL)
GAS COMPANY, INC. FOR) CASE NO. 2010-0011
AN ADJUSTMENT OF RATES)

ORIGINAL

* * * * *

PETITION OF DELTA NATURAL GAS COMPANY, INC.
FOR APPROVAL TO DEVIATE FROM RULE

Delta Natural Gas Company, Inc. ("Delta") respectfully petitions the Commission to grant Delta approval, pursuant to 807 KAR 5:011 § 14, to deviate from the Notice of Public Hearing requirement¹ in the above-captioned proceeding because Delta has substantially complied with the Commission's regulation.

Pursuant to KRS 424.200, newspaper publication of rate change hearings must be in accordance with the Commission's regulations. The Commission's regulations prescribe that newspaper publication of a rate change hearing must occur in a newspaper of general circulation in the areas to be affected "one time not less than seven nor more than twenty-one days prior to the hearing." 807 KAR 5:011 § 8 (5). The purpose of the Commission's rate change notice regulations is to ensure that members of the public have sufficient notice and a meaningful opportunity to participate 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

¹ 807 KAR 5:011 § 8 (5).

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

Publication of Notice

On July 13, 2010, the Commission scheduled the hearing in this proceeding to be held on August 31, 2010, and directed Delta to publish notice of the hearing in compliance with KRS 424.300. In accordance with the Commission's notice regulations, on August 9, 2010, Delta contacted the Kentucky Press Association to arrange for a Notice of Public Hearing to be published, prior to August 24, 2010, in 26 newspapers in Delta's service areas.

Unfortunately, while the advertisements were delivered in a timely fashion, three small local newspapers did not publish notice prior to August 24, 2010. The *Flemingsburg Gazette* did not publish the notice until August 25, 2010, one day outside of the "not less than seven (7)... days prior to the hearing" requirement. The *Irvine Citizen Voice and Times* did not publish the notice until August 26, 2010, two days outside of the "not less than seven (7)... days prior to the hearing" requirement. The *Clay City Times* still has not published the notice, despite having the notice in time for two successive publications of that newspaper.³ Timely published notice was provided throughout the vast majority of Delta's service territory in the 23 other newspapers, including in the newspaper with the second largest circulation in the Commonwealth, the *Lexington Herald-Leader*.

Request for Deviation from Rule

In view of the timely published notice Delta has provided throughout the vast majority of the newspapers in its service territory – including the newspapers with the second largest

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).

³ An apologetic representative of the newspaper advised the undersigned that she had the notice, but forgot to include it in the newspaper twice.

circulation in the Commonwealth, the *Lexington Herald-Leader*, Delta respectfully requests a deviation from the Commission’s Notice of Public Hearing regulation with respect to the instances of non-conformity cited above. 23 newspapers published timely notice. Of the remaining three, one ran the notice one day outside of the rule and one ran the notice two days outside of the rule. The service territory of the third newspaper was reached by the timely notice in the *Lexington Herald-Leader*.

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.”⁴ Delta respectfully submits that it has substantially complied with the requirements of 807 KAR 5:011 § 8 (5), therefore achieving the purpose of the regulation, namely ensuring that the public has sufficient notice of the proceeding and a meaningful opportunity to participate. In Delta’s 1997 rate case, the Commission granted Delta’s motion for a deviation from the requirements of 807 KAR 5:011 § 8 as they relate to the publication of the notice of hearing in the *Berea Citizen*.⁵ In the 2008 depreciation case and rate case of Kentucky Utilities Company (“KU”), the Commission granted KU’s motion for a deviation from the requirements of 807 KAR 5:011 § 8 where two newspapers had published the notice of hearing only five days before the hearing, finding substantial compliance.⁶

⁴ *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).

⁵ *In the Matter of: An Adjustment of Rates of Delta Natural Gas Company, Inc.*, Case No. 97-066, Order dated September 12, 1997.

⁶ *In the Matter of: Application of Kentucky Utilities Company to File Depreciation Study*, Case No. 2007-00565, and *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates*, Case No. 2008-00251, Order dated January 16, 2009.

Delta is aware of the Commission's order in the 2008 fuel adjustment clause cases of KU and Louisville Gas and Electric Company ("LG&E") in which the Commission denied KU's and LG&E's Petition for Approval to Deviate from Rule after a failure of newspapers to publish notice of the hearing properly.⁷ Delta respectfully requests the Commission to reconsider its position regarding substantial compliance with the publication regulations as set forth in the KU and LG&E FAC order. The failure to publish is not the fault of the utilities involved. The utilities take all reasonable steps to cause the notice of hearing to be timely published. Yet, a forgetful newspaper employee can cause considerable expense and inconvenience to the parties and to the Commission by failing to publish as requested. Delta therefore respectfully requests the Commission to grant a deviation from its Notice of Public Hearing regulation, deeming Delta's substantial compliance to be sufficient compliance with the regulation in this proceeding.

WHEREFORE, Delta Natural Gas Company, Inc. respectfully requests that, pursuant to 807 KAR 5:011 § 14, the Commission grant a deviation from its Notice of Public Hearing regulation, deeming Delta's substantial compliance to be sufficient compliance with the regulation in this proceeding.

⁷ *In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2007, Through April 30, 2008*, Case No. 2008-00285, and *In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Louisville Gas and Electric Company from November 1, 2007, Through April 30, 2008*, Case No. 2008-00286, Order dated November 6, 2008.

Dated this 27th day of August 2010.

Respectfully submitted,

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Counsel for Delta Natural Gas Company,
Inc.

CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading has been served by e-mailing and mailing a copy of same, postage prepaid, to the following persons on this 27th day of August 2010:

Dennis Howard, II, Esq.
Lawrence W. Cook, Esq.
Paul Adams, Esq.
Assistant Attorneys General
Office of Rate Intervention
1024 Capital Center Drive
Frankfort, KY 40601



Counsel for Delta Natural Gas Company,
Inc.

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