

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

PUBLIC SERVICE
COMMISSION

AN EXAMINATION OF THE APPLICATION)
OF THE FUEL ADJUSTMENT CLAUSE OF)
KENTUCKY UTILITIES COMPANY FROM)
NOVEMBER 1, 2011 THROUGH)
APRIL 30, 2012)

CASE NO. 2012-00320

PETITION FOR APPROVAL TO DEVIATE FROM RULE

Kentucky Utilities Company (“KU”) petitions the Kentucky Public Service Commission (“Commission”) to grant KU approval, pursuant to 807 KAR 5:011, Section 14, to deviate from the Notice of Public Hearing requirement¹ in the above-captioned proceeding because KU has substantially complied with the Commission’s notice regulations. In support of this petition, KU states as follows:

1. Pursuant to KRS 424.300, newspaper publication of rate change hearings must be in accordance with the Commission’s regulations.

2. 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, Section 8(5).

3. 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,

¹ 807 KAR 5:011, Section 8(5).

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.²

Publication of Notice

4. On August 22, 2012, the Commission ordered KU to submit to an examination on the application of its fuel adjustment clause (“FAC”) from November 1, 2011 through April 30, 2012. The hearing will be held on October 11, 2012.

5. In accordance with the Commission’s notice regulations, KU contacted the Kentucky Press Association on September 10, 2012 to arrange for a Notice of Public Hearing to be published in ninety-four (94) newspapers in KU’s service areas during the time period September 20, 2012 to October 4, 2012.

6. KU’s efforts notwithstanding, the *Providence Journal Enterprise*, a small weekly newspaper with a circulation of 4,164 in Webster County failed to publish the notice as requested, but it did timely run in the *Sebree Banner*, which also serves Webster County and has a circulation of 3,364. The *Providence Journal Enterprise* has been requested to run the notice in its next publication on October 11, 2012. The notice also did not run as requested in the *Morganfield Union County News*, a small weekly newspaper with a circulation of 3,929 in Union County, but it did timely run in the *Sturgis News*, which also serves Union County and has a circulation of 2,700. As *Morganfield Union County News* only publishes on Wednesdays, KU

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).

has requested the notice to be run in the next publication of that newspaper on October 10, 2012. Finally, KU's notice did not run in the *Russell Springs Times Journal*, a small newspaper that is published on Thursdays and Saturdays with a circulation of 4,651 in Russell County, and it is the only newspaper in Russell Springs. KU has requested the notice to be run in the next publication of that newspaper on October 11, 2012.

Request for Deviation from Rule

7. In view of the timely published notice KU has provided throughout the vast majority of the newspapers in its service territory – including the two newspapers of largest circulation in the Commonwealth, the *Lexington Herald-Leader* and the *Louisville Courier-Journal*, and the efforts made by KU to ensure that timely notice was received, KU respectfully requests a deviation from the Commission's Notice of Public Hearing regulation with respect to the limited instances of non-conformity cited above. Ninety-one (91) newspapers, whether the legally required newspapers or not, published timely notice. At KU's insistence, the few legally required newspapers that failed to publish timely notice will ultimately publish by the date of the hearing.

8. 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 KU 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

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).

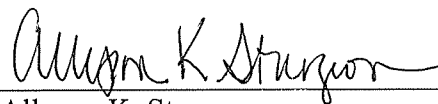
participate, individually or through representative agencies. KU therefore respectfully requests the Commission to grant a deviation from its Notice of Public Hearing regulation, deeming KU's substantial compliance to be sufficient compliance with the regulation in this proceeding.

9. KU'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: 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.

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

Dated: October 8, 2012

Respectfully submitted,

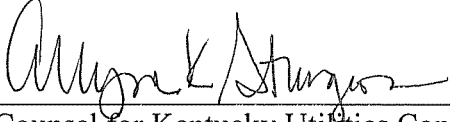


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion was dispatched for filing with the Kentucky Public Service Commission, via hand-delivery on the 8th day of October, 2012.



Counsel for Kentucky Utilities Company