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September 28, 2012

VIA FEDEX

Mr. Jeff DeRouen
Executive Director
Public Service Commission
Post Office Box 615
Frankfort, Kentucky 40602

RECEIVED

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PUBLIC SERVICE
COMMISSION

Re: Case No. 2011-00036

Dear Mr. DeRouen:

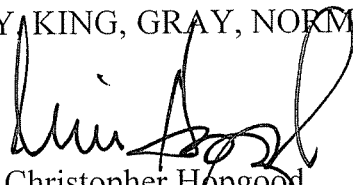
Enclosed you will find the original and 10 copies of Kenergy Corp.'s
brief on hearing in the above matter.

Your assistance in this matter is appreciated.

Respectfully,

DORSEY, KING, GRAY, NORMENT & HOPGOOD

By


J. Christopher Hopgood
Counsel for Kenergy Corp.

JCH/cds

Encls.

COPY/w/encls.: Service List

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
) **CASE NO. 2011-00036**
NOTICE AND APPLICATION OF BIG RIVERS)
ELECTRIC FOR AN ADJUSTMENT IN)
IN EXISTING RATES)

KENERGY CORP.’S BRIEF ON REHEARING

Intervenor, **KENERGY CORP.** (“Kenergy”) submits the following brief pursuant to the order of the Commission:

INTRODUCTION

Kenergy submits its brief on the issue of the proper apportionment among the rate classes of the rate increase awarded by the Commission. The issue is whether the Commission was correct in re-affirming the principle of gradualism in eliminating cost of service differentials.

FACTS

It is undisputed that the Unwind transaction came as a result of thousands of hours of negotiation. The smelter contracts arose as a result of the Unwind. Despite the resulting cost of service differentials that arose out of the smelter agreements, **KENTUCKY INDUSTRIAL UTILITY CUSTOMERS** (“KIUC”) continues to push for the immediate elimination of cost of service differentials between the rate payers under the **BIG RIVERS ELECTRIC CORPORATION** (“Big Rivers”) system.

The chief testimony on this issue at the rehearing came from John Wolfram's rebuttal testimony which can be summarized as follows:

- the "unique characteristics of the loads on Big Rivers system" as relied upon by Mr. Barron was well known to the Commission at the time of the hearing. Wolfram, rebuttal testimony, p. 5, lines 11-16
- the Rural Economic reserve was meant to offset the rural cases ratepayers' increased rates coming out of the Unwind and was not to be used as a vehicle for the rural class to absorb the smelter rate increases. Wolfram, rebuttal testimony, p. 7, lines 13-17;
- the smelters agreed to pay non-cost of service rates in the Unwind and are contractually prohibited from challenging the formula in the retail agreements. Wolfram, rebuttal testimony, p. 8, lines 3-22

The best summary of this issue arises from the following question asked of Mr. Barron by Commissioner Gardner at the rehearing:

Commissioner Gardner: Q. The subsidies are really embedded in the rates that came out of the Unwind?

Mr. Barron: A. . . . Yes, that established it . . . Rehearing 9-12-12; 15:21:49 – 15:22:49.

Commissioner Gardner followed up and asked Mr. Barron, "What has changed since the Unwind?" The only factor Mr. Barron knew of was that market prices for electricity from off system sales are lower than what was assumed at the time of the Unwind.

Of course, this is entirely consistent with the testimony of Kenergy witness Jack Gaines at the initial hearing. In fact, Mr. Gaines pointed out that there is no subsidy of the rural class in the base rates, and it is only through the contractual premiums agreed to by the smelters in the Unwind that any subsidy in the overall rates exists (Gaines Rebuttal testimony at p. 3).

ARGUMENT

I. Subsidies Among Rate Payers is Lawful in Kentucky

It is well settled that rate discrimination is not prohibited *per se*. In *National-Southwire v. Big Rivers Elec.*, 785 S.W. 2d 053, 514 (Ky. App. 1990):

Even if some discrimination actually exists, Kentucky law does not prohibit it *per se*. According to KRS 278.170(1), we only prohibit “unreasonable prejudice or disadvantage” or an unreasonable difference. KRS 278.030(3) allows reasonable classification for service, patrons, and rates by considering the “nature of the use, the quality used, the quantity used, the time when used . . . and any other reasonable consideration.”

Any discrimination in rates as to the smelters arose as a result of an arms-length transaction as a result of the Unwind. This certainly falls under “any other reasonable consideration” as noted in the above cited case.

II. The Principle of Gradualism is Proper

In the matter of Adjustment of Gas and Electric Rates of Louisville Gas & Electric Company, PSC Case No. 10064, and in the matter of Application of Meade County Rural Electric Cooperative Corporation to adjust rates, PSC Case No. 2010-00222, the Commission has supported the concept of gradualism among and between the rate classes. The Commission elected to eliminate 28% of the subsidy by its order of November 17, 2011. As shown by PSC Case No. 2012-

401, Big Rivers intends to file another rate case by the end of 2012. The principle of gradualism is on even greater footing when more frequent rate matters come before the Commission giving it the opportunity to eliminate subsidies more rapidly.

III. OTHER ISSUES

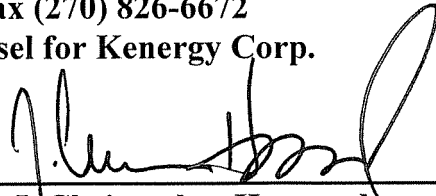
Kenergy has no opposition to Big Rivers' position on the other issues before the Commission in this matter.

CONCLUSION

The purpose of the rehearing is to address alleged errors, mistakes or omissions in the Commission's order of November 17, 2011. This fundamental rule allows any tribunal the opportunity to correct its findings prior to an appeal. Kenergy submits that there was no error in the Commission's decision on rate increase apportionment and gradualism. As such, the petition for rehearing as to those issues should be denied.

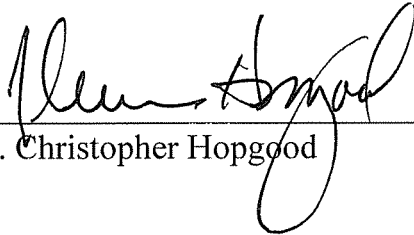
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By _____


J. Christopher Hopgood

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on this the 28th day of September, 2012, by mailing true and correct copies of same, postage prepaid, to those listed on the attached Service List.



J. Christopher Hopgood

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