

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SUBMISSION OF KENERGY CORP.)	
FOR A DETERMINATION OF WHETHER)	
CERTAIN LETTER AGREEMENTS STATING)	CASE NO.
SUPPLEMENTAL TERMS FOR A MARKET)	2012-00270
ENERGY TRANSACTION PURSUANT TO)	
ITS WHOLESALE AGREEMENT REQUIRE)	
PRIOR COMMISSION APPROVAL)	

ORDER

On June 4, 2012, Kenergy Corp. (“Kenergy”) submitted a letter requesting Commission Staff to issue a legal opinion (“Staff Opinion”) stating that no approval is needed for two Letter Agreements: one between Kenergy and its wholesale electric supplier, Big Rivers Electric Corporation (“Big Rivers”); and the other between Kenergy and one of its smelter customers, Alcan Primary Products, Inc. (“Alcan”). Alternatively, Kenergy requests that if approval is needed for the Letter Agreements, an Order be issued prior to July 1, 2012 approving the Agreements.

The Letter Agreements set forth supplemental terms for a Market Energy purchase by Alcan from Kenergy and a corresponding purchase by Kenergy from Big Rivers. The Market Energy purchase is being made pursuant to the terms of the Retail Electric Service Agreement (“Retail Agreement”) dated July 1, 2009 between Kenergy and Alcan, and a corresponding and substantially identical Wholesale Agreement of the same date between Kenergy and Big Rivers. The Retail Agreement and the Wholesale Agreement were previously approved by the Commission in conjunction with Big Rivers’

request to terminate its generation lease agreement in Case No. 2007-00455.¹

The Retail Agreement essentially flows through to Alcan the costs under the Wholesale Agreement and provides for a retail adder to be retained by Kenergy. Kenergy is of the opinion that the supplemental terms for a Market Energy transaction, as provided in the Letter Agreements, do not now require approval because the Retail Agreement and Wholesale Agreement which establish the framework for the transaction were previously approved by the Commission. Kenergy seeks a Staff Opinion concurring with its view. In the alternative, should the Commission determine that the supplemental terms for Market Energy require prior approval, Kenergy requests that the Commission shorten the notice period from 30 days to 20 days pursuant to KRS 278.180 and approve the Letter Agreements prior to their proposed effective dates of July 1, 2012.

The Letter Agreements set forth the specific details for a Market Energy purchase by Kenergy from Big Rivers for resale to Alcan. In particular, the Letter Agreements require, among other things, that Alcan submit a schedule no later than 3:00 p.m. on the second business day prior to the day of the scheduled delivery for up to 10 MW in integral multiples of one MW per hour. The Letter Agreements are to be in effect for one year, from July 1, 2012 through June 30, 2013, and they include a schedule of prices to be charged in each of the 12 months covered by the agreements.

¹ Case No. 2007-00455, *The Applications of Big Rivers Electric Corporation For: (1) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (2) Approval of Transactions, (3) Approval to Issue Evidences of Indebtedness, and (4) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing, Inc. for Approval of Transactions* (Ky. PSC Mar. 6, 2009).

In addition to the two Letter Agreements, the June 4, 2012 Kenergy letter also included as attachments, among other things: (1) a letter from Kenergy to the Rural Utilities Service ("RUS") dated June 1, 2012 requesting RUS' concurrence that review of the Letter Agreements is not required under the RUS loan contracts; (2) a letter from Big Rivers to RUS dated May 31, 2012 requesting RUS' concurrence that review of the Letter Agreements is not required under Big Rivers' loan contracts with RUS; and (3) a copy of the Wholesale Agreement.

In its June 4, 2012 letter, Kenergy points out that the Commission approved the Wholesale Agreement and Retail Agreement along with a myriad of other transactions in connection with the unwinding and termination of the generation lease transaction involving Big Rivers and E.ON U.S., LLC.² Those agreements set forth a comprehensive arrangement for the provision of various types of electric service to Alcan. Kenergy notes that Section 2.3.2 of the Wholesale Agreement establishes a classification of electric services titled "Supplemental Energy," which consists of three types of service: (1) Interruptible,³ (2) Buy-Through,⁴ and (3) Market Energy.⁵ The

² *Id.*

³ "Interruptible Energy" is defined in Section 2.3.2(a) of the Wholesale Agreement as being energy purchased by Kenergy from Big Rivers on a system firm basis up to 10 MW per hour of energy for resale to Alcan, subject to certain conditions.

⁴ "Buy-Through Energy" is defined in Section 2.3.2(b) of the Wholesale Agreement as firm energy purchased by Big Rivers from third-party suppliers and sold to Kenergy for resale to Alcan in lieu of the interrupted scheduled Interruptible Energy.

⁵ "Market Energy" is defined in Section 2.3.2(c) of the Wholesale Agreement as Supplemental Energy other than Interruptible Energy and Buy-Through Energy acquired by Kenergy from either Big Rivers or one or more third-party suppliers for resale to Alcan, upon the request of Alcan specifying (i) the requested amount and duration of such energy, and (ii) all requested prices and material terms and conditions.

methodologies for calculating the charges associated with each of the three types of Supplemental Energy are contained in Section 4.3 of the Wholesale Agreement. Kenergy further notes that Supplemental Energy transactions, as contemplated under the Wholesale Agreement and Retail Agreement, can be called for and executed on very short notice, sometimes in a matter of hours. For example, a Market Energy transaction would require only the precise, current scheduling and pricing information to complete a transaction. Kenergy asserts that the Letter Agreements demonstrate how a Market Energy transaction would be carried out and it maintains that this is how the Wholesale Agreement and the Retail Agreement were intended to function.

Because of the nature of the Supplemental Energy transactions and the short notice required to effectuate such transactions, Kenergy stressed its need to be able to execute those transactions expeditiously. Otherwise, Kenergy believes it would be unable to timely respond to the demands of Alcan for periodic additional energy requirements. As such, Kenergy is of the opinion that the terms of the Letter Agreements provide specific details of a formula rate that has already been approved by the Commission and do not require further Commission approval.

Having reviewed the June 4, 2012 Kenergy letter and the documents attached thereto, and being otherwise sufficiently advised, the Commission finds that the Letter Agreements extending for terms of one year constitute special contracts that are required to be filed with the Commission pursuant to KRS 278.160(1) and 807 KAR 5:011, Section 13. KRS 278.160(1) provides that the Commission shall prescribe rules under which each utility shall file schedules showing all rates and conditions established by it and collected or enforced. 807 KAR 5:011, Section 13, requires a utility to file

copies of all special contracts which set forth rates, charges or conditions of service not contained in its general tariff. The Commission finds that the Letter Agreements contain rates, charges or conditions of service that are not set forth in Kenergy's filed tariff. The Letter Agreements, therefore, should be filed with the Commission. For this reason, the Commission will grant Kenergy's request for alternative relief in the form of approval of the Letter Agreements since there is no basis to support a Staff Opinion that approval of the one-year special contracts is not needed.

The Commission further finds that, because the retail customer has consented in writing to all the terms of the Letter Agreements, Kenergy has established good cause to shorten the notice period from 30 days to 20 days, as provided under KRS 278.180(1), prior to implementing the terms of the Letter Agreements. Consequently, the Commission will reduce the notice period to 20 days pursuant to KRS 278.180(1) and accept the Letter Agreements to become effective on July 1, 2012.

The Commission recognizes the need for Kenergy and Big Rivers to be able to effectively process the Supplemental Energy transactions, including Market Energy, in an expeditious manner in light of the short-term characteristics of such transactions. Although Kenergy was able to submit the Letter Agreements in this instance in a timely manner, Kenergy may often not be able to meet the reduced 20-day notice period for submission of special contracts transactions involving Supplemental Energy. To alleviate this dilemma, the Commission will require Kenergy to file a tariff to implement the provisions of the Retail Agreement relating to Supplemental Energy. Although Big Rivers did not join in the June 4, 2012 Kenergy letter, Big Rivers should consider filing a

similar tariff to implement the provisions of the Wholesale Agreement, rather than filing for prior approval of each special contract to sell Supplemental Energy.

Upon the Commission's acceptance of Kenergy's tariff (and Big Rivers' tariff, should it choose to file one), future Supplemental Energy transactions will be authorized pursuant to the terms of the tariff. This will obviate the need for prior Commission approval of each future Supplemental Energy transaction. The tariff should set forth the terms, conditions, and characteristics of the Supplemental Energy classification and the three types of service available under the Supplemental Energy classification. In addition, the tariff should include a provision for Kenergy to file with the Commission by the 15th of each month a schedule identifying the details of any and all Supplemental Energy transactions for the prior monthly period. The schedule should identify the category, duration, price, quantity, and supplier of each Supplemental Energy transaction for the prior month. Kenergy should also file for informational purposes any special contract relating to Supplemental Energy transactions whose duration is 30 days or more. For those Supplemental Energy transactions with a duration of less than 30 days, Kenergy need not file the contracts, but should include the transaction details in the schedule to be filed on the 15th of each month.

IT IS THEREFORE ORDERED that:

1. The Letter Agreements are considered to be special contracts in the absence of tariffs implementing Section 2.3.2 of the Wholesale Agreement and Section 2.3.2 of the Retail Agreement, and the Letter Agreements are required to be filed with the Commission pursuant to KRS 278.160(1) and 807 KAR 5:011, Section 13.

2. The Letter Agreements setting forth the terms of Market Energy transactions pursuant to the Retail Agreement and the Wholesale Agreement are accepted for service effective July 1, 2012.

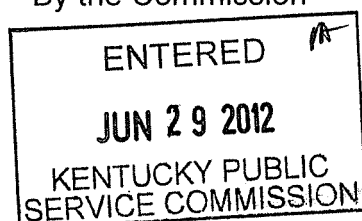
3. Within 30 days of the issuance of this Order, Kenergy shall file a tariff setting forth the terms, conditions, and characteristics of the Supplemental Energy classification and the three types of service available under the Supplemental Energy classification consistent with the provisions of the Retail Agreement.

4. Kenergy shall file with the Commission on August 15, 2012 and on the 15th of each month thereafter a schedule identifying all Supplemental Energy transactions for the prior month. The schedule shall identify the category, duration, price, quantity and supplier of each Supplemental Energy transaction for the prior month.

5. Kenergy shall file with the Commission for informational purposes only each special contract involving Supplemental Energy transactions with a duration of 30 days or more.

6. Kenergy shall identify on the schedule of Supplemental Energy transactions to be filed with the Commission on the 15th of each month the transaction details of each special contract with a duration less than 30 days.

By the Commission



ATTEST:


Executive Director

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