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February 14, 2014

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FEB 17 2014

PUBLIC SERVICE
COMMISSION

VIA FEDEX

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

Re: Case No. 2013-00199

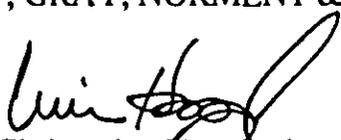
Dear Mr. Derouen:

Enclosed you will find the original and 10 copies of Brief of Kenergy Corp., Jackson Purchase Electric Cooperative and Meade County Rural Electric Cooperative.

Very truly yours,

DORSEY, GRAY, NORMENT & HOPGOOD

By


J. Christopher Hopgood
Attorney for Kenergy Corp.

JCH/cds

COPY:

Hon. Melissa Yates
Hon. Thomas Brite
Hon. Michael L. Kurtz
Hon. James M. Miller
Attorney General – Utility Intervention and Rate Division
Hon. Shannon Fisk

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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FEB 17 2014

PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION FOR)
GENERAL ADJUSTMENT IN RATES)

CASE NO. 2013-00199

BRIEF OF KENERGY CORP., JACKSON PURCHASE ELECTRIC
COOPERATIVE
AND MEADE COUNTY RURAL ELECTRIC COOPERATIVE

Intervenors **KENERGY CORP.** ("Kenergy"), **JACKSON PURCHASE
ELECTRIC COOPERATIVE ("JPEC")** and **MEADE COUNTY RURAL ELECTRIC
COOPERATIVE CORPORATION ("Meade County")**, (collectively "members")
submit the following brief on the proposed use of the Rural Economic Reserve.

INTRODUCTION

The members support **BIG RIVERS ELECTRIC CORPORATION's**
("Big Rivers") use of the reserves as stated in its application. The members oppose the
proposed use of the reserves as submitted by **KENTUCKY INDUSTRIAL UTILITIES
COMPANY ("KIUC")**.

FACTS

In the application of Big Rivers in Case No. 2007-00455, Big Rivers
proposed the transaction known as the Unwind. The details of the Unwind are well

known to the Commission and the parties. The facts relating to the establishment of the reserve funds merit reiteration in this brief.

As consideration for the Unwind Big Rivers received "\$157 million in an economic reserve account to offset wholesales power cost increases for non-smelter customers due to increases in fuel, environmental, and other costs." 2009-00455 Order dated March 6, 2009, at p. 11 ("Unwind Order"). Big Rivers proposes to use the Economic Reserve to offset the base rate increase sought in this application. No one, including the members, objects to this use of the Economic Reserve to temporarily hold harmless all rate payees from the effect of the rate increase sought in this matter.

The Rural Economic Reserve was not a product of the Unwind negotiations. It came about by virtue of the Unwind order. As stated in the order:

Unfortunately, under the Unwind Transaction, a combination of higher fuel costs and exhaustion of the Economic Reserve account in 2013 will result in rate increases for Rural Customers that are simply too high. Thus, Big Rivers' reacquisition of control of its generating units will be consistent with the public interest only if some mitigation is provided to offset the projection of higher rates for the Rural Customers.

Since the Applicants have indicated that time is of the essence in completing the Unwind Transaction, the Commission finds that, rather than delaying this case to allow the Applicants time to fashion a remedy,

we will create a reasonable remedy and condition this Order upon the Applicants' acceptance thereof. The E.ON Entities have agreed to reimburse Big Rivers for one-half of the cost of the PMCC buy-out, amounting to approximately \$60.9 million. The Commission finds that the E.ON Entities should reimburse Big Rivers 100 percent of that cost, with the additional \$60.9 million being held by Big Rivers in a new reserve account to be known as the Rural Economic Reserve. This account will be recorded as a regulatory liability and used over 24 months only as a credit against the rates of the Rural Customers upon exhaustion of the Non-Smelter Economic Reserve. This additional \$60.9 million should be invested in interest-bearing U.S. Treasury securities, with all interest credited to the Rural Economic Reserve. Big Rivers will need to revise its tariffs to include a new rate mechanism, to be known as the Rural Economic Reserve, to flow back to the Rural Customers the funds in the Rural Economic Reserve Account.

 KIUC proposes to move a portion of the Rural Economic Reserve dollars attributable to the non-residential members of the Rural Class to the Large Industrial Class. Naturally, this would benefit the three (3) KIUC members as the power usage of Domtar, Aleris and Kimberly Clark dwarfs these non-residential

members, thereby giving the big three (3) KIUC members a larger share of these transported reserve dollars.

KRS 278.030(3) states that, “[e]very utility may employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates. The classifications may, in the proper case, take into account the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and any other reasonable consideration.” This is a codification of a well established case law rule. *Louisville & Jefferson Co. M.S.D. v. Joseph E. Seagram’s*, 211 S.W.2d 122 (Ky. 1948)

The members established classes of customers long ago. The cost of service of different classes varies, resulting in different demand charges and energy charges between classes. There is no question that the business members of the rural class have a higher cost of service and thus pay higher rates than the direct serves. As such, there is a reason for inclusion of these commercial members in the Rural Class.

KIUC’s proposal would effectively create a business subclass of Rural customers who would be forced to give some their share of the Rural Economic Reserve, which the Commission determined in the Unwind Order was necessary to offset future rate increases for the Rural customers, to the Large Industrials, who already have lower rates than the Rural business customers. KIUC’S basis for its proposal is that some Rural business customers use more

energy than some Large Industrials. KIUC does not identify the Rural business customers that it references, but does identify Alcoa and KMMC as the small usage Large Industrials. As pointed out in the cross-examination of Stephen Baron, these two (2) customers are idled plants that are still served directly but have a very low demand.

Nonetheless, the point is that there is a reasonable justification for allowing Rural business customers to benefit from the rate mitigation provided by the Rural Economic Reserve while not allowing the Large Industrials access to that fund. That justification is that in the Unwind order, where the Commission established the Rural Economic Reserve to mitigate future rate increases to the Rural customers (both residential and business) which the Commission determined would otherwise be unreasonable. Since the Large Industrials already enjoy lower rates than the Rural business customers and the Commission did not find in the Unwind Order that any additional mitigation was necessary to offset future rate increases to the Large Industrials, there is no reasonable justification to rewrite the Unwind Order or to create another class of Rural business customers for the financial benefit of a few Large Industrial members.

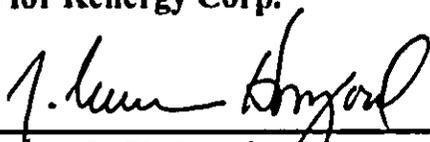
CONCLUSION

For the foregoing reasons the three (3) member cooperatives support Big Rivers' proposed use of the Rural Reserve and opposed KIUC's proposed use.

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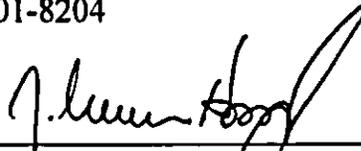
By 
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The foregoing was served by mailing a true and correct copy, postage paid, upon the following, on this 14th day of February, 2014:

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