

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE FILING BY KENERGY CORP.	)	
FOR APPROVAL OF A FRANCHISE BILLING	)	CASE NO.
PLAN AND FOR PERMISSION TO DEVIATE	)	2002-00402
FROM THE PUBLIC NOTICE REQUIREMENTS	)	
OF 807 KAR 5:011	)	

O R D E R

On October 2, 2002, the Commission received a filing from Kenergy Corp. ( Kenergy ) proposing revisions to its tariff to make local government franchise payments determined in accordance with its proposed Franchise Billing Plan effective December 20, 2002. Kenergy proposed to flow through a franchise fee of one percent of gross revenues from the customers in the city of Owensboro effective December 20, 2002, and to reserve the right to waive a franchise fee in any city, town, or urban county area when administratively prudent to do so.

To determine the reasonableness of Kenergy's proposal, the Commission suspended the tariff for 5 months. On January 3, 2003, the Commission granted Kenergy's motion to flow through the one-percent franchise fee to the customers of the city of Owensboro, subject to refund, effective January 3, 2003.

On May 9, 2003, Kenergy filed with the Commission a revised tariff proposal in which it eliminated its general reservation concerning a flow through and proposed that it be allowed to flow through any franchise fee that is \$5,000 or higher.

Kenergy states that it has franchise agreements with four cities: Hawesville, Lewisport, Whitesville, and Owensboro. Each of these franchise agreements requires Kenergy to pay a franchise fee.<sup>1</sup> Kenergy states that in negotiating the franchise fee with each of these cities, the issue of whether the fee would be recovered from the customers was discussed. Kenergy states that it was the goal in negotiating the agreements with Hawesville, Lewisport, and Whitesville to agree on a fee that was fair and reasonable to the city and one that could be absorbed by the utility.<sup>2</sup> Kenergy does not propose to flow through these fees to its customers.

Kenergy estimates that the franchise fee to the city of Owensboro will be approximately \$50,000 per year initially and that the fee will increase as the number of customers and usage amounts increase. It proposes to flow through this fee to its city of Owensboro customers and to list the fee as a separate item on the customers bills. Kenergy states that the officials of the city of Owensboro fully understood in negotiating its fee that the utility would be unable to absorb the fee and would have to seek approval from the Commission for recovery from the city of Owensboro customers.<sup>3</sup>

In previous cases the Commission has held that franchise fees should be borne by the utility's consumers residing within the municipality that receives the payment. However, after reviewing Kenergy's proposal and being otherwise sufficiently advised,

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<sup>1</sup> The franchise agreements with Hawesville and Lewisport require a fixed annual franchise fee of \$5,000. The franchise agreement with Whitesville requires a fixed annual franchise fee of \$2,000. The city of Owensboro franchise agreement requires Kenergy to pay one percent of annual gross revenues.

<sup>2</sup> Kenergy's Response to the Commission Staff's First Data Request dated February 13, 2003, Item 1.

<sup>3</sup> Id.

we find that a franchise fee of \$5,000 or less will have a *de minimis* effect on Kenergy s customers. Therefore, we find that Kenergy s amended proposal of May 9, 2003 is reasonable and should be approved.

IT IS THEREFORE ORDERED that Kenergy s proposed tariff filed May 9, 2003 is approved.

Done at Frankfort, Kentucky, this 13<sup>th</sup> day of June, 2003.

By the Commission

ATTEST:

  
Executive Director