

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENERGY CORP. )  
FOR APPROVAL OF RETAIL TARIFF RIDERS )  
AND REVISED TARIFFS, APPROVAL OF ) CASE NO 2008-00009  
SMELTER AGREEMENTS, AND APPROVAL OF )  
AMENDMENT TO WHOLESALE AGREEMENT )

ORDER

On February 15, 2008 Kenergy Corp. ("Kenergy") filed an application requesting: (1) approval of certain revisions to its tariff on file with the Commission; (2) approval of new service agreements with Alcan Primary Products Corporation ("Alcan") and Century Aluminum of Kentucky General Partnership ("Century") (collectively "Smelters"); and (3) approval of a wholesale power supply agreement with Big Rivers Electric Corporation ("Big Rivers"). The Commission granted intervention to Kentucky Industrial Utility Customers, Inc.; Alcan; Century; and the Office of the Attorney General. A procedural schedule was established providing for discovery and the opportunity for the parties to file comments. A public hearing was conducted in this matter on December 2, 2008.

BACKGROUND

Kenergy is a distribution cooperative serving approximately 54,337 customers in the Kentucky counties of Breckinridge, Caldwell, Crittenden, Davis, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean, Muhlenburg, Ohio, Union, and

Webster.<sup>1</sup> Kenergy is a member-owner of Big Rivers and purchases wholesale power from Big Rivers.

In Case No. 2007-00455,<sup>2</sup> Big Rivers, E.ON US, LLC ("E.ON"), and certain E.ON subsidiaries are requesting Commission approval of the early termination of a 25-year lease of Big Rivers' generating units to an E.ON subsidiary. The lease agreement and related transaction documents were approved by the Commission in Case No. 1997-00204.<sup>3</sup> The lease termination transaction is commonly referred to as the "Unwind Transaction" and is currently pending before the Commission. As part of Case No. 2007-00455, Big Rivers is proposing:

- 1) Tariff revisions that directly affect Kenergy;
- 2) Approval of wholesale and retail service agreements through which Big Rivers will sell power to Kenergy for resale by Kenergy to the Smelters ("Smelter Agreements") after the closing of the Unwind Transaction;<sup>4</sup> and

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<sup>1</sup> See Kenergy 2007 Annual Financial Report on file with the Kentucky Public Service Commission.

<sup>2</sup> The Applications of Big Rivers Electric Corporation for: (I) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (II) Approval of Transactions, (III) Approval to Issue Evidences of Indebtedness, and (IV) 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.

<sup>3</sup> See Commission's Order dated April 30, 1998 in the matter of: The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction.

<sup>4</sup> Case No. 2007-00455, Big Rivers' Original Application at Volume 5 of 10, Tab 20.

3) An amended wholesale power supply agreement between Big Rivers and Kenergy ("Power Supply Agreement").<sup>5</sup>

In the instant matter, Kenergy seeks Commission approval of the same Smelter Agreements and Power Supply Agreement that are under consideration in Case No. 2007-00455, as well as amendments to its tariff made necessary by the Unwind Transaction and tariff revisions sought by Big Rivers in Case No. 2007-00455.

The Smelter Agreements and Power Supply Agreement are currently being reviewed by the Commission in Case No. 2007-00455 and the reasonableness of those agreements will be addressed in that case. Consequently, the Commission will only address Kenergy's requested tariff revisions in this Order.

Kenergy's tariff revisions include the establishment of the following six tariff riders:

- 1) Fuel Adjustment Clause ("FAC tariff")
- 2) Environmental Surcharge ("ES tariff")
- 3) Unwind Surcredit Adjustment Clause ("US tariff")
- 4) Rebate Adjustment ("RA tariff")
- 5) Member Rate Stability Mechanism ("MRSM tariff")
- 6) Unwind Rider – Composite Factor ("URCF")

FAC tariff. In Case No. 2007-00455, Big Rivers is requesting approval of an FAC tariff, pursuant to 807 KAR 5:056, wherein fluctuations in fuel costs will be timely reflected in the rates charged each month to its members. Kenergy seeks approval of

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<sup>5</sup> Id. at Volume 7 of 10, Tab 27.

its own FAC tariff pursuant to that same regulation to pass through to its customers the monthly charges in fuel costs as billed by Big Rivers.<sup>6</sup>

ES tariff. In Case No. 2007-00460,<sup>7</sup> Big Rivers was granted approval of an environmental compliance plan and approval to establish its ES tariff pursuant to KRS 278.183. The approval was conditioned upon the Unwind Transaction being approved by the Commission.<sup>8</sup> The purpose of Big Rivers' ES tariff is to provide for timely rate recovery for Federal Clean Air Act compliance costs, as well as compliance costs relating to federal, state, or local environmental requirements that apply to coal combustion wastes and by-products from facilities utilized for the production of energy from coal. Pursuant to the same statutory authority, Kenergy requests approval of its proposed ES tariff to flow through to its customers on a monthly basis the impact of Big Rivers' ES tariff.<sup>9</sup>

US tariff. Pursuant to section 4.11 of the Smelter Agreements, the Smelters will pay a monthly surcharge to Big Rivers through Kenergy. These surcharges are extra amounts the Smelters will pay each month under the Smelter Agreements that will flow through the US tariff as a credit to offset the fuel charges payable by Big Rivers' non-smelter member load. Pursuant to KRS 278.455(1) and 807 KAR 5:007, Big Rivers is requesting Commission approval in Case No. 2007-00455 for a US tariff to flow this

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<sup>6</sup> The FAC tariff is presented in Kenergy's Application at Exhibit 1.

<sup>7</sup> The Application of Big Rivers Electric Corporation for Approval of Environmental Compliance Plan and Environmental Surcharge Tariff (KY PSC June 25, 2008).

<sup>8</sup> See Final Order of the Commission in Case No. 2007-00460 dated June 25, 2008 at 10.

<sup>9</sup> The ES tariff is presented in Kenergy's Application at Exhibit 2.

surcharge revenue back to its members. In the instant case, Kenergy seeks approval of the US tariff to flow the credits received from Big Rivers through to its non-smelter customers.<sup>10</sup>

RA tariff. Kenergy requests approval of the RA tariff<sup>11</sup> to provide a vehicle to pass through to its non-smelter customers any TIER-related rebates received from Big Rivers pursuant to the Smelter Agreements.<sup>12</sup>

MRSM tariff. Pursuant to the Unwind Transaction, Big Rivers will establish an Economic Reserve account in the approximate amount of \$157 million.<sup>13</sup> In Case No. 2007-00455, Big Rivers requested approval of an MRSM tariff to flow the Economic Reserve account through to its members to “offset the monthly impacts of the FAC and Environment Surcharge on each non-smelter bill, net of the credits received under the Unwind Surcredit and Rebate Adjustment.”<sup>14</sup> Kenergy seeks approval of the MRSM tariff to flow through to its non-smelter customers the effects of the Big Rivers’ MRSM tariff.<sup>15</sup>

URCF tariff. Kenergy’s original application proposed a URCF tariff that would be applied to all non-smelter rate schedules of Kenergy for billings to customers served

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<sup>10</sup> The US tariff is presented in Kenergy’s Application at Exhibit 3.

<sup>11</sup> The RA tariff is presented in Kenergy’s Application at Exhibit 4.

<sup>12</sup> Kenergy’s Application, Exhibit 11, Page 6, Lines 9-10.

<sup>13</sup> See Big Rivers’ Motion to Amend the Original Application filed in Case No. 2007-00455 dated October 9, 2008, Book 1 of 8, Page 15, Paragraph 24.

<sup>14</sup> Application of Big Rivers in Case Number 2007-00455, Volume 6 of 10, Exhibit 24, PSC KY. NO. 23, Original Sheet No. 77.

<sup>15</sup> The MRSM tariff is presented in Kenergy’s Application at Exhibit 5.

from non-dedicated delivery points. The URCF tariff is the composite of the FAC tariff, the ES tariff, the US tariff, the RA tariff and the MRSM tariff.<sup>16</sup>

Kenergy requested that it be allowed to present the aforementioned six tariff riders on customers' bills in any one of the following three methods:

- 1) Each of the first five tariff riders separately without the URCF tariff;
- 2) The URCF tariff without the first five tariff riders; or
- 3) Each of the first five tariff riders separately along with the URCF tariff rider,

setting the amount of the first five riders to zero.

#### FINDINGS

At the hearing of this matter, Kenergy made an oral motion to withdraw its request to seek authorization to establish the URCF tariff.<sup>17</sup> Originally, it was Big Rivers' intent to utilize the Economic Reserve to offset any charges reflected through the FAC and the ES for a period of five years after the consummation of the Unwind Transaction. Big Rivers subsequently decided to apply the Economic Reserve to fully offset any increase in rates resulting from the FAC and the ES for only one year after the completion of the Unwind Transaction. The rationale for this change is to allow for a gradual increase in Big Rivers' wholesale rates in order to prevent a sharp increase in rates once the Economic Reserve has expired. Based on this set of circumstances, Kenergy states that it would not be reasonable to apply the URCF tariff for only one year. The Commission finds that good cause has been shown to allow Kenergy to withdraw its proposed URCF tariff.

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<sup>16</sup> The URCF tariff is presented in Kenergy's Application at Exhibit 6.

<sup>17</sup> Kenergy subsequently filed a formal motion to withdraw the proposed URCF on December 8, 2008.

The Commission finds Kenergy's proposed FAC tariff, ES tariff, US tariff, RA tariff and MRSM tariff to be reasonable for flowing through to Kenergy's customers the wholesale tariff changes proposed by Big Rivers in Case No. 2007-00455. If the Commission approves the Unwind Transaction and the revised tariffs proposed by Big Rivers in Case No. 2007-00455, Kenergy's tariffs will be necessary and appropriate to coordinate Kenergy's tariffs with those of Big Rivers. These tariffs will be conditionally approved, subject to the Commission's decision in Case No. 2007-00455. However, if the Commission denies the Unwind Transaction and the revised tariffs proposed by Big Rivers in Case No. 2007-00455 do not become effective, the Commission finds that these five tariffs will be unnecessary.

In addition to the establishment of the tariff riders, Kenergy requested amendments to its existing tariff Schedule Nos. 34, 43, 44 and 45.

Schedule 34. The proposed revisions to Schedule 34<sup>18</sup> are necessary to incorporate the new Smelter Agreements, which are being reviewed in Case No. 2007-00455, into Kenergy's tariff on file with the Commission. The Commission finds that the revisions to Schedule 34 should be conditionally approved, subject to the Smelter Agreements being approved in Case No. 2007-00455.

Schedule 43. The proposed revisions to Schedule 43<sup>19</sup> are necessary to properly add the proposed FAC tariff, ES tariff, US tariff and MRSM tariff. The

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<sup>18</sup> Schedule 34 applies to Smelter Customers Served Under Special Contracts and is presented in Kenergy's Application at Exhibit 10.

<sup>19</sup> Schedule 43 applies to Small Power Production or Cogeneration (Under 100 kW) (Customer Sells Power to Kenergy) and is presented in Kenergy's Application at Exhibit 7.

Commission will conditionally approve the revisions to Schedule 43, subject to the approval of these tariff riders for Big Rivers in Case No. 2007-00455.

Schedule 44 and Schedule 45. Kenergy proposed revisions to Schedule 44<sup>20</sup> that are necessary to coordinate with Big Rivers' proposed tariff in Case No. 2007-00455 related to Big Rivers purchase of electricity from generating facilities operated by Kenergy customers. Kenergy also proposed revisions to Schedule 45<sup>21</sup> to allow Kenergy to pass the wholesale tariff proposed by Big Rivers in Case No. 2007-00455 through to all Kenergy customers to which the wholesale tariff applies. In addition, Schedule 45 includes a provision allowing Kenergy to determine the retail adder on a case-by-case basis. The revisions to Schedule 44 and Schedule 45 incorporate all the necessary changes to coordinate with Big Rivers' proposed Small Power and Cogeneration tariffs in Case No. 2007-00455.<sup>22</sup> The Commission finds that the revisions to Schedule 44 and Schedule 45 as proposed by Kenergy are appropriate and necessary if the related tariff revisions requested by Big Rivers in Case No. 2007-00455 are approved by the Commission. The Commission will conditionally approve these tariff changes, subject to the approval of Big Rivers' related tariff changes in Case No. 2007-00455.

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<sup>20</sup> Schedule 44 applies to Small Power and Cogeneration (Over 100 kW) (Customer Sells Power to Big Rivers) and is presented in Kenergy's Application at Exhibit 8.

<sup>21</sup> Schedule 45 applies to Small Power and Cogeneration (Over 100 kW) (Customer Buys Power from Kenergy) and is presented in Kenergy's Application at Exhibit 9.

<sup>22</sup> Kenergy Application, Exhibit 11, Page 11, Lines 16 and 17.



### Motion to Amend

On November 12, 2008, Kenergy filed a motion requesting permission to amend its application. In its motion, Kenergy states that the original application needs to be amended to address matters that have occurred since the filing of the original application and to confirm that the five proposed tariff riders are still applicable and do not need modification. More specifically, the amendment reflects a minor revision to one of Kenergy's proposed tariffs, includes updated versions of the retail and wholesale agreements with the Smelters, and supplements the testimony of one of its witnesses. The Commission finds that good cause has been shown to permit Kenergy to amend its application.

IT IS THEREFORE ORDERED that:

1. Kenergy's proposed FAC tariff, ES tariff, US tariff, RA tariff and MRSM tariff are conditionally approved subject to the Commission's approval of the Unwind Transaction in Case No. 2007-00455.
2. Kenergy's proposed revisions to Schedule Nos. 34, 43, 44, and 45, are conditionally approved subject to the Commission's approval of the Unwind Transaction in Case No. 2007-00455.
3. In the event that the Commission approves the Unwind Transaction in Case No. 2007-00455, all of Kenergy's conditionally approved tariffs shall become effective on the same date that the tariffs proposed by Big Rivers in Case No. 2007-00455 become effective.
4. In the event that Kenergy's conditionally approved tariffs become effective, Kenergy shall file the monthly reports for the FAC tariff, ES tariff, US tariff, RA tariff and

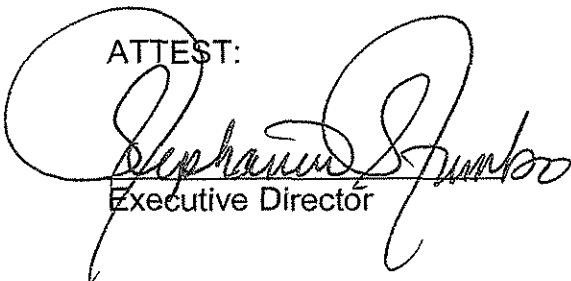
MRSM tariff in the same formats as provided at Exhibits JDG-2 through JDG-6 of Kenergy's Application at Exhibit 11.

5. Kenergy's Motion to Withdraw Its Proposed URCF tariff is granted.
6. Kenergy's Motion to File an Amended Application is granted.
7. Kenergy shall file all revised tariffs with the Commission within 30 days after their effective dates.

Done at Frankfort, Kentucky, this 12th day of December, 2008.

By the Commission

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