

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF KENERGY CORP.	)	
FOR ACCEPTANCE AND EXPEDITED	)	
IMPLEMENTATION OF EXTENSION	)	CASE NO. 2008-00514
AGREEMENTS TO SPECIAL RETAIL	)	
CONTRACTS FOR THE SALE OF	)	
TIER 3 ENERGY	)	

ORDER

Kenergy Corp. ("Kenergy") is an electric distribution cooperative organized under KRS Chapter 279. Kenergy purchases power at wholesale from Big Rivers Corporation ("Big Rivers") under the terms of a long-term contract, except for certain quantities of power purchased at market rates for resale to Kenergy's two largest customers, Alcan Primary Products Corporation ("Alcan") and Century Aluminum of Kentucky General Partnership ("Century"). Kenergy's sale of power purchased at market rates to Alcan and Century is known as TIER 3 Energy.

On November 29, 2007, Kenergy and Big Rivers entered into two special wholesale contracts in which Big Rivers agreed to sell and Kenergy agreed to purchase in 2008 certain volumes of TIER 3 Energy. One of the wholesale contracts is for TIER 3 Energy to be resold to Alcan, and the other contract is for TIER 3 Energy to be resold to Century. The contracts, among other things, provide that Big Rivers would sell to Kenergy:

1. 50 MW firm on-peak, 50 MW firm off-peak, and 15 MW fully interruptible resale to Alcan, commencing January 1, 2008 and continuing through December 31, 2008.

2. 63 MW firm on-peak, 63 MW firm off-peak, and 15 MW fully interruptible resale to Century, commencing January 1, 2008 and continuing through December 31, 2008.

The wholesale contracts refer to the on-peak, off-peak, and fully interruptible provisions as Block A Energy, Block B Energy, and Block C Energy, respectively. The rates, terms, and conditions contained in the contracts were approved by the Commission in Case No. 2007-00544.<sup>1</sup>

On June 6, 2008, Kenergy executed amendments to the two special wholesale contracts with Big Rivers and the two retail contracts, one with Alcan and the other with Century, which track Kenergy's wholesale purchases of TIER 3 Energy. The two wholesale contract amendments are designated as First Amendment to Agreement for TIER 3 Energy dated November 29, 2007, and the power to be purchased is designated as Block A-1 Energy. The details of these amendments are as follows:

1. 50 MW block firm sale by Big Rivers to Kenergy, for resale to Alcan, for delivery during on-peak hours on Saturdays, Sundays, and North American Electric Reliability Corporation ("NERC") holidays during the 10-week period from July 1, 2008 through September 9, 2008.

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<sup>1</sup> Case No. 2007-00544, Tariff Filing of Kenergy Corp. for Acceptance and Expedited Implementation of Four Special Retail Contracts for the Sale of TIER 3 Energy (Ky. PSC Dec. 20, 2007).

2. 63 MW block firm sale by Big Rivers to Kenergy, for resale to Century, for delivery during on-peak hours on Saturdays, Sundays and NERC holidays during the 10-week period from July 1, 2008 through September 9, 2008.

The amendments were approved by the Commission in Case No. 2008-00218.<sup>2</sup>

On December 2, 2008, Kenergy filed executed agreements to extend the terms of the special retail contracts and the amendments to those contracts beyond December 31, 2008. The two special retail contract extensions, one for Alcan and one for Century, each consists of three documents: (1) a request for power signed by Alcan or Century, respectively; (2) the respective extension agreement; and (3) a consent signed by Alcan or Century, respectively. Kenergy requests approval of the extension agreements. Kenergy further requests that the Commission accept the extension agreement between Big Rivers and Kenergy as the wholesale agreement for this transaction.

The details of these extension agreements are as follows:

1. Big Rivers and Kenergy agreed to extend the contracts relating to the purchase and sale of Block A Energy, Block B Energy, and Block C Energy from December 31, 2008 through the date that is: (a) coincident with the closing of the

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<sup>2</sup> Case No. 2008-00218, Tariff Filing of Kenergy Corp. for Acceptance and Expedited Implementation of Amendments to Special Retail Contracts for the Sale of Tier 3 Energy (Ky. PSC June 27, 2008).

Unwind Transaction<sup>3</sup>; or (b) if the Unwind Transaction does not close, the date 60 days subsequent to termination of the Big Rivers–E.ON Termination Agreement.

2. Big Rivers and Kenergy agreed to modify the amendments to provide for an expiration date of these amendments that is: (a) coincident with the closing of the Unwind Transaction; or (b) if the Unwind Transaction does not close, the date 60 days subsequent to the termination of the Big Rivers–E.ON Termination Agreement.

3. Big Rivers and Kenergy agreed to amend Section 3.47 of the special wholesale contract relating to resale to Alcan and Section 3.48 of the special wholesale contract relating to resale to Century, both concerning Priority System Sales, to “recognize that beginning October 6, 2008, Big Rivers has not and agrees that it shall not thereafter make sales to third parties of such volume that would entitle [Big Rivers] to implement a Permitted Curtailment of Block A Energy, Block A-1 Energy and Block B Energy pursuant to Sections 5.03 and 6.03 of the [special wholesale contract].”

4. Big Rivers and Kenergy agreed to amend Section 7.03 of the special wholesale contracts (Block C Energy Interruption) to “recognize that beginning October 6, 2008, [Big Rivers] will have the right to interrupt delivery of Block C Energy only for the limited and sole purpose of making Priority System Sales, as defined in Section 3.47, as amended.”

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<sup>3</sup> The Unwind Transaction refers to Case No. 2007-00455, 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. The Unwind Transaction is currently pending before the Commission and involves a request by Big Rivers, E.ON U.S., LLC (“E.ON”), and certain E.ON subsidiaries for approval of the early termination of a 25-year lease of Big Rivers’ generating units to an E.ON subsidiary.

Pursuant to KRS 278.180(1), Kenergy must give the Commission 30 days' notice prior to implementing these extension agreements to the special wholesale and retail contracts for the sale of TIER 3 Energy. Kenergy has requested that the notice period be reduced, as permitted by the statute. Since the two retail customers affected by these extension agreements have consented in writing to all of the contract terms, the Commission finds good cause to reduce the notice period to 20 days. Consequently, the extension agreements will be accepted to become effective on December 23, 2008.

IT IS THEREFORE ORDERED that the extension agreements to Kenergy's special wholesale contracts with Big Rivers for the purchase of TIER 3 and the corresponding extension agreements to Kenergy's retail contracts with Alcan and Century are accepted for service effective December 23, 2008.

Done at Frankfort, Kentucky, this 22nd day of December, 2008.

By the Commission

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ATTEST:

  
Executive Director

Honorable Frank N King, Jr.  
Attorney at Law  
Dorsey, King, Gray, Norment & Hopgood  
318 Second Street  
Henderson, KY 42420