

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF KENERGY CORP)	
AND BIG RIVERS ELECTRIC CORPORATION)	CASE NO.
FOR APPROVAL OF CONTRACTS AND FOR A)	2013-00413
DECLARATORY ORDER)	

ORDER

On February 24, 2014, Kentucky Industrial Utility Customers, Inc. ("KIUC") filed a petition pursuant to KRS 278.400 seeking a rehearing of the Commission's January 30, 2014 Order approving eight new contracts entered into by and among Big Rivers Electric Corporation ("Big Rivers"), Kenergy Corp. ("Kenergy"), and Century Aluminum Sebree LLC ("Century Sebree") for electric service to Century Sebree commencing on or after January 31, 2014. KIUC raises four arguments in support of its request for rehearing. First, KIUC contends that the Commission's findings that the eight new electric service contracts that make up the Century Sebree Transaction were a product of extensive and good-faith negotiations and that the delicate balance of interests achieved by those contracts would be jeopardized if KIUC's recommendation of a market-access charge were to be imposed were not supported by the evidence. KIUC asserts that there is insufficient evidence to support the conclusion that imposing additional fees on Century Sebree would cause Century Sebree to back out of the transaction. KIUC argues that Big Rivers did not perform any financial analysis to assess Century Sebree's financial condition to determine whether a market-based power supply was necessary to keep Century Sebree viable. Based on the information

obtained through discovery, KIUC contends that Century Sebree is profitable and that a rehearing is necessary to determine whether requiring Century Sebree to contribute to the costs of Big Rivers' excess capacity would, in fact, place the Century Sebree Transaction agreements in jeopardy.

KIUC next argues that the Commission failed to address whether the profitability of Century Sebree is a relevant issue when determining fair, just, and reasonable rates for not only Century Sebree but also for Big Rivers' and Kenergy's remaining customers. KIUC contends that the Century Sebree Transaction agreements, as approved, do not result in fair, just, and reasonable rates because the remaining customers of Big Rivers and Kenergy will bear the burden of paying the stranded costs associated with Big Rivers' excess capacity due to the loss of the Century Sebree load without the Commission's having first determining whether Century Sebree is capable of making a contribution towards such costs.

Third, KIUC asserts that the approval of the Century Sebree Transaction without allocating the stranded costs to the cost-causer, Century Sebree, would potentially violate KRS 278.170(1) and KRS 278.030(1), depending upon the outcome of Big Rivers' pending rate case, Case No. 2013-00199.¹ KIUC contends that the ratemaking scheme associated with the Century Sebree Transaction would result in unreasonable discrimination against Big Rivers' and Kenergy's remaining ratepayers if the decision in Case No. 2013-00199 is that those ratepayers should pay the entirety of the capacity costs stranded by the departure of Century Sebree.

¹ Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by a Fully Forecasted Test Period* (Ky. PSC filed Jun. 28, 2013).

Lastly, KIUC argues that the Commission failed to properly balance the interests of Big Rivers and Kenergy, their creditors, and their ratepayers. KIUC maintains, again, that the Commission did not, but should have, considered whether Century Sebree could contribute to the stranded costs resulting from Century Sebree's exiting the Big Rivers' system. KIUC points out that this issue may be rendered moot should the Commission in its final ruling in Case No. 2013-00199 require creditor contributions to pay for Big Rivers' excess capacity.

Big Rivers filed a response arguing that KIUC's petition for rehearing should be denied. Big Rivers asserts that the four issues raised by KIUC in its petition revolve around a claim that the Commission erred when it refused to impose a market-access charge in approving the Century Sebree Transaction agreements. Big Rivers contends that the arguments raised by KIUC's petition are the same arguments that have already been unsuccessfully raised by KIUC during the pendency of this proceeding and that such arguments cannot now be raised yet again as grounds for rehearing. Big Rivers further contends that KIUC is barred under the principles of *res judicata* from raising the market-access charge issue in this proceeding. Big Rivers points out that this issue was raised by KIUC in Case No. 2013-00221,² which case involved similar parties and a substantively similar set of agreements, as compared to the ones in this proceeding, and that the Commission declined to adopt KIUC's recommendation of a market-access charge. Big Rivers asserts that the Commission's ruling in Case No. 2013-00221 is now settled law because KIUC appealed that ruling to the Franklin Circuit Court and

² Case No. 2013-00221, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order* (Ky. PSC Aug. 14, 2013).

KIUC then voluntarily dismissed its appeal with prejudice. Lastly, Big Rivers argues that the Commission's findings are supported by substantial evidence.

Century Sebree also filed a response objecting to KIUC's petition for rehearing. Century Sebree contends that the Commission's January 30, 2014 Order is neither unlawful nor unreasonable and, therefore, KIUC's request for a rehearing should be denied. Century Sebree asserts that the Commission previously determined that the market-access charge is unreasonable in Case No. 2013-00221 and that the Commission's rulings in the instant matter is consistent with that prior determination. Century Sebree also contends that the evidentiary record, including Century Sebree's hearing testimony and post-hearing data response regarding profitability, firmly supports the Commission's findings as contained in the January 30, 2014 Order.

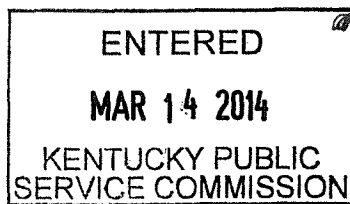
Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that KRS 278.400 expressly limits the new evidence that the Commission can consider on rehearing by providing that "[u]pon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing." As the Commission has previously held, KRS 278.400 "is intended to provide finality to Commission proceedings by limiting rehearing to new evidence not readily discoverable at the time of the original hearing."³ Based on this standard, the Commission finds that KIUC has not alleged the existence of any newly discovered evidence to justify granting rehearing. KIUC raises arguments in its rehearing request that were already fully discussed and addressed in the Commission's

³ Case No. 2008-00250, *Proposed Adjustment of the Wholesale Water Service Rates of Frankfort Electric and Water Plant Board* (Ky. PSC Apr. 27, 2009), at 3.

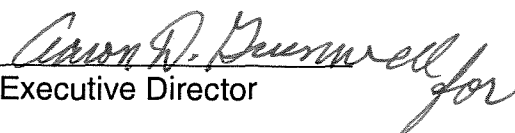
January 30, 2014 Order, and our findings therein were fully supported by the evidentiary record.

IT IS THEREFORE ORDERED that KIUC's petition for rehearing is denied.

By the Commission



ATTEST:


Executive Director

Case No. 2013-00413

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