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**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**NOTICE OF AMENDMENT TO EXISTING )  
TARIFFS OF BIG RIVERS ELECTRIC )  
CORPORATION AND KENERGY CORP. ) CASE NO. 2007-00164  
TO IMPLEMENT A VOLUNTARY REAL-TIME )  
PRICING PILOT PROGRAM FOR LARGE )  
COMMERCIAL AND INDUSTRIAL CUSTOMERS )**

**ATTORNEY GENERAL'S COMMENTS**

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and tenders the following comments in the above-styled matter.

**I. Summary of Plan**

Big Rivers Electrical Corporation and Kenergy Corporation (hereinafter referred to as "Petitioners" or "Company") seek Commission approval of certain amendments to existing tariffs to implement a pilot real-time pricing program for large commercial and industrial customers. This program is proposed in response to the Commission's Order in Administrative Case No. 2006-00045.

In designing the proposed pilot program, the company reviewed similar RTP programs offered by various utilities. The programs reviewed by the company included those offered by Commonwealth Edison, Gulf Power, Duke Energy, Niagra Mohawk Power Corp., and Georgia Power. The program proposed by the company utilizes their existing rate Schedule 10 tariff, which, after the first 5 MW, already provides a mechanism utilizing market pricing for electrical power. The proposed pilot program is restricted to customers having new loads over 5 MW and

for expanded loads over 5 MW under special contract rather than by way of a new tariff. It is the Petitioners' position that such arrangement is beneficial to the customer as the first 5 MW of demand is almost always lower than market prices. Under the proposed program, depending on whether the participant is served by Big Rivers or Kenergy, the respective service provider will provide the required metering equipment to the participant.

As the existing Rate Schedule 10 is currently applicable only to new or expanding loads, no reductions in overall demand are expected and the primary purpose of the program will be to discern whether users under Rate Schedule 10 will respond to the day or week ahead pricing of electrical energy to shift their variable demand to low peak hours.

The proposed tariff is not based upon the two-part bill, which utilizes a Customer Baseline Load where a historical usage is charged under standard tariff pricing, and an additional charge or credit for the deviations from such baseline historical usage. Rather, all service under the Rate Schedule 10 is to be charged at market prices. The company proposes to recover its embedded costs associated with administration of the tariff through each special contract.

The program tariff is based on the market cost of electrical power at various times of the day and year and the company expects to notify customers, either by telephone or by email, with the day ahead or week ahead pricing as published by ACES Power Marketing. However, the exact terms and methods for providing such pricing notification is subject to the parties contract terms. Day ahead prices are expected to be disseminated by the company at any time prior to 5 p.m. Central Time with the pricing to be in effect starting at midnight that same evening and extending for the 24 hour period. Week ahead prices would be disseminated in the same manner for the 168 hour period.

The company states that it intends to educate participants concerning the pilot program initially via discussions between prospective participants and company representatives. The company also prepares and distributes a quarterly newsletter for commercial and industrial users offering suggested techniques for reducing electrical usage. Additionally, the company will offer follow-up services consisting of energy use assessments, operational assessments and end-use technology identification to assist participants and introduce successful energy saving techniques and ideas to participants.

Pending approval of the amendments by the Commission, Petitioners stated in their application they wished to begin the program June 1, 2007. Therefore, it is expected that they would implement the program fairly rapidly after its initial approval. The term of the program is not specified in the application and no mention is made of the company preparing any reports for the Commission.

## **II. Attorney General's Comments**

From a general perspective, the Attorney General applauds Petitioners' initiative, subject to the following provisos.

First, the Attorney General's comments should not be construed in any manner as acquiescing to the inclusion of any administrative costs in a future rate case.

Second, the Attorney General notes that continued support and interaction between the company and participants is necessary to ensure successful results under the program and therefore, the Attorney General urges that the Commission require Petitioners to forthrightly and plainly advise participants regarding the tariff and on the options which a participant can take to reduce and/or shift their demand. In addition, the Attorney General urges that successful

techniques to reduce demand and/or shift load be disseminated to both participants and non-participants as widely as possible to maximize benefits under to the company, participants and non-participants.

Third, the goals of the these programs are to discern whether participants will undertake conservation and/or efficiency efforts to reduce and/or shift their demand in response to the RTP pricing structure and there are many ways in which those goals may be reached. However, the Attorney General notes that the application offered by the Petitioner departs from the design of programs submitted by other utilities and currently under review by the Commission which utilize a Customer Baseline Load "CBL" approach and utilize a "base" billing under standard tariffs based on historical data with a additional charge or credit for usage which deviates from this historical baseline. While this departure should not render the submitted program "un-approvable" by the Commission, there are some points of concern that should be addressed so that evaluation of the results obtained under this program is possible and so that such results will provide meaningful comparisons when weighed against the results from other programs. With that in mind, the Attorney General notes that from the application there is no specific time frame for this pilot program to be in effect. While other submissions have sought approval for a three year pilot program, this application involves a tariff that is already in existence and, therefore, the "pilot" program will continue until such time as the company applies for, and the Commission approves, additional modifications to the tariff "ending" the pilot. The Attorney General believes that the proposed program should have a defined "end-date" such that the applicant does not have to return to seek Commission approval to end the pilot. Additionally, applicability of the tariff is to be negotiated by special contract, which may have terms which could dictate a contract term

longer than the three years proposed by most other programs. The Attorney General believes that should the Commission choose to allow the use of special contracts by the Company to implement the pilot program, that such contracts be allowed to extend no longer than three years after the Commissions' initial approval. The Attorney General believes that a standard time frame for the expiration of each pilot program is necessary to properly evaluate the results of all of the programs approved by the Commission related to its Order in 2006-00045.

Fourth, the Attorney General notes that the proposed program is not designed to be cost neutral to the participants. It should be stated that as the proposed tariff already exists, it is not expected that a participant in the program should see significant cost increases since the tariff currently utilizes market pricing and has been in effect since 2000. Therefore, any participants would already have some experience operating under the tariff.

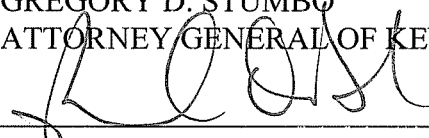
Lastly, the objectives of these types of programs are to encourage participants to reduce their demand during critical peak hours and/or to shift their variable demand to low peak hours. To evaluate whether these objectives are achieved, the Petitioner should be required by the Commission to collect data from participants in the program each year and issue annual reports detailing the results obtained under the program to the Commission. The Attorney General believes that in order for the Commission to adequately monitor the program, such interim reporting should contain, at a minimum, 1) the current number of program participants, 2) the type of industry or primary business activity for each participant, 3) the number of participants who have withdrawn from the program along with any reasons for such withdrawal, 4) the average, minimum and maximum monthly electrical usage and cost for program participants during each 12 month reporting period, 5) the average, minimum and maximum monthly

electrical usage and costs for program participants for the 12 month period immediately proceeding enrollment into the program, 6) the requirement that the Petitioner solicit and report any comments or suggestions of program participants, 7) an evaluation by the utility of the impact of the program on its' peak and/or base demand as compared to its' historical data for the 12 month period immediately proceeding implementation of the program, 8) the requirement that the Petitioner submit whether, in its opinion, the program is achieving its stated objectives and Petitioner's evaluation of the comments and suggestions of the program participants, 9) in addition to the individual, yearly results, a cumulative comparison of the information furnished in item 4, 5, and 7, to allow year over year comparison of program results, and 10) the program costs to the date of the report along with the details of any deviations from the program budget submitted along with the application. The Attorney General suggests that such reports be made a part of the record and distributed to all parties in the matter.

Subject to the above comments, the Attorney General would recommend the Commission approve the Application of Petitioner.

Respectfully submitted,

GREGORY D. STUMBO  
ATTORNEY GENERAL OF KENTUCKY



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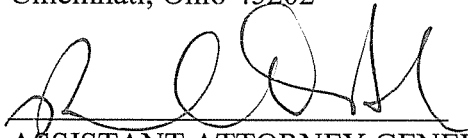
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**CERTIFICATE OF SERVICE AND NOTICE OF FILING**

I hereby give notice that this the 12<sup>th</sup> day of July, 2007, I have filed the original and ten copies of the foregoing Attorney General's Comments with the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 and certify that this same day I have served the parties by mailing a true copy of same, postage prepaid, to those listed below.

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