

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
NOV 07 2013
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF: :
NOTICE OF INTENT OF KENERGY CORPORATION TO :
FILE FLOW-THROUGH RATE APPLICATION :

Case No. 2013-00199

**MOTION TO TREAT ALL CONSUMERS EQUALLY WITH RESPECT
TO THE COMMISSION-CREATED RESERVE FUNDS OR IN THE
ALTERNATIVE TO REQUIRE A FULL-BLOWN DISTRIBUTION RATE CASE**

On October 31, 2013, Kenergy Corp. (“Kenergy”) submitted a Notice of Intent to File Flow-Through Rate Application pursuant to KRS 278.455. The rates that Kenergy will seek to flow-through to its customers are those proposed by Big Rivers Electric Corporation (“Big Rivers”) in Case No. 2013-00199.

In its Notice, Kenergy claims that “[t]he increase in existing rates will be proportional among classes that will result in no change in the rate design.” If this statement were true, then the streamlined rate case process provided for under KRS 278.455 would be applicable to Kenergy’s request. KRS 278.455 provides that if “any revenue increase authorized by the Public Service Commission or any revenue decrease authorized” is allocated “on a proportional basis that will result in no change in the rate design currently in effect” the revised rates and tariffs will be authorized and made permanent on the proposed effective date. Thus, if the rate increase or decrease Kenergy sought to flow-through to customers was done on a proportional basis that led to no changes in the current rate design, then there would be no need for a full-blown distribution rate case to reflect the increases and decreases proposed by Big Rivers at the wholesale level.

However, the rates that Kenergy will seek to flow-through in this case will not meet the standard set forth in KRS 278.455 since they could disproportionately change the rate design currently in effect. Specifically, those rates could result in the over 10,000 Kenergy business customers in one rate class (the Rural class) receiving an average rate credit (decrease) of approximately \$34/MWh beginning August 2014 while the 19 business customers in a different rate class (the Large Industrial class) would not receive that rate credit (decrease).

Accordingly, unless this unequal change in rate design is remedied by the Commission in Case No. 2013-00199, Kenergy should be instructed to file a full-blown distribution rate case before the rates proposed by Big Rivers in that case can be passed on to customers.

The issue here arises because in Case No. 2013-00199 Big Rivers is proposing to use the Rural Economic Reserve funds created by the Commission to provide an average rate credit of approximately \$34/MWh *only* to customers in the Rural rate class beginning in August 2014 (when the Economic Reserve funds expire).¹ This would unreasonably discriminate against Large Industrial customers since there is no valid justification for treating one rate class differently than the other.² No cost-of-service basis exists for doing so. Nor is there support for such differing treatment based upon energy usage or demand. Indeed, 15 of the commercial and industrial customers classified as “Rural” on Kenergy’s system have billing demands higher than 4 of the customers classified as “Large Industrial” on that system.³ “Large Industrial” is a misnomer as many of those customers have a smaller energy usage than many business customers equally mischaracterized as “Rural.” And the one significant distinction between the Rural and Large Industrial rate classes - that they take service at different voltages - is insufficient to justify limiting the Commission-created Rural Economic Reserve rate credit only to the Rural rate class.

Because Kenergy is seeking to flow-through rates that may reflect a rate credit only for the Rural rate class beginning August 2014, those increases could disproportionately change the rate design currently in effect as of that date, contrary to KRS 278.455.⁴ If Big Rivers’ proposal in Case No. 2013-00199 is approved as filed, only Kenergy’s Rural customers would receive the approximately \$34/MWh rate credit provided by the Rural Economic Reserve funds as of August 2014. Consequently, Kenergy’s current rate design would be disproportionately changed at that time since the 10,000 Kenergy business customers classified as “Rural” would begin receiving a greater rate reduction than the 19 business customers classified as “Large Industrial.” Such disproportionate treatment between rate classes is not justified and would run counter to the requirements of KRS

¹ Case No. 2013-00199, Direct Testimony of Billie J. Richert at 13:24-14:1; Case No. 2013-00199, Direct Testimony of Mark Bailey at 7:13-14.

² See Case No. 2013-00199, Direct Testimony of Stephen J. Baron.

³ Id. at 12:4-13:10.

⁴ KRS 278.010(12) “Rate” means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof.”

278.455, which reflect that in the absence of a full-blown distribution rate case, all customers should receive proportional treatment with respect to wholesale rate increases or decreases.

If the Commission does not remedy this undue discrimination by requiring Big Rivers to provide a Rural Economic Reserve rate credit to all consumers, then Kenergy's requested rate increase will be inconsistent with the provisions of KRS 278.455 because it will disproportionately change the rate design currently in effect. It is our hope that the Commission will treat all consumers equally with respect to the \$60.9 million of additional funds that E.ON was required to pay to close the Unwind Transaction in 2009. If that occurs, then a streamlined flow-through distribution rate case would be appropriate. However, if unequal treatment is maintained, then the Commission should instruct Kenergy to file a full-blown distribution rate case.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

jkylercohn@BKLawfirm.com

**COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY
CUSTOMERS, INC.**

November 6, 2013