

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

JOINT APPLICATION OF NOTICE OF INTENT)
OF KENERGY CORP. TO FILE FLOW-THROUGH)
RATE APPLICATION)

Case No. 2013-00385

ATTORNEY GENERAL'S MOTION TO INTERVENE,
MOTION FOR DEVIATION AND LEAVE TO FILE RESPONSE TO KIUC

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and pursuant to KRS 367.150(8), which grants him the right and obligation to appear before regulatory bodies of the Commonwealth of Kentucky to represent consumers' interests, hereby moves the Public Service Commission to grant him full intervenor status in this action pursuant to 807 KAR 5:001(8).

Further, pursuant to 807 KAR 5:001 Section 22, the Attorney General moves for a deviation and leave to file out-of-time the following response to the Kentucky Industrial Utility Customers' ("KIUC") "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." Good cause exists to allow a deviation from the Commission's regulation concerning motion practice 807 KAR 5:001 Section 5 and to permit the filing of this response based on the following:

- (a) KIUC filed its motion on November 7, 2013, in advance of the filing of Kenergy's application, in advance of the Commission's scheduling order in

this matter and in advance of the deadline for all interested parties to seek intervention;

- (b) KIUC did not serve the Attorney General with a copy of its Motion;
- (c) While KIUC styles its pleading as a *motion*, KIUC clearly is seeking to file pre-evidentiary comments by way of this flow-through case and in advance of the hearing-in-chief; specifically, KIUC concedes in its reply filed on November 21, 2013, that Kenergy's flow-through rates are "entirely dependent upon the outcome of Case No. 2013-00199;" and
- (d) The Attorney General is the only party with statutory responsibility to represent the interests of Kentucky ratepayers; and
- (e) Time exists both within the schedule ordered by the Commission on December 6, 2013, and prior to the hearing scheduled in Case No. 2013-00199 to afford KIUC time to file a reply to the Attorney General's response, if permitted by the Commission.

Therefore, the Attorney General requests that the Commission accept the following Response out of time for good cause.

RESPONSE TO KIUC'S MOTION

First and foremost, the Attorney General believes KIUC's motion is better described by what it really is: an attempt to redistribute funds which the Commission set aside to avert the risks inherent in the Unwind Transaction and to protect and benefit members of Big Rivers' Rural Class, thereby hedging against such risk and promoting gradualism. KIUC proposes to have the Commission essentially revoke its own findings, precede and prior opinion, in an effort to now benefit the members of Big Rivers' Industrial Class.

From the date that the Commission first established both the Economic Reserve ["ER"] and the Rural Economic Reserve ["RER"] mechanisms in its Final Order of the "Unwind Case,"¹ the Commission has been crystal clear in its intent that the RER be used solely for the benefit of Big Rivers' Rural class of customers. The justification for the very creation of the RER was at the Commission's direction with the intent of mitigating disproportionate rate impacts on the Rural class:

"The Commission is acutely aware of the current economic and financial crisis now facing our great nation and the people of this Commonwealth. Utility service is a necessity of life, not a luxury, and it needs to be available at the lowest reasonable rates for the Rural Customers of Big Rivers.

Unfortunately, under the Unwind Transaction, a combination of higher fuel costs and exhaustion of the Economic Reserve account in 2013 will result in rate increases for Rural Customers that are simply too high. Thus, Big Rivers' reacquisition of control of its generating units will be consistent with the public interest only if some mitigation is provided to offset the projection of higher rates for the Rural Customers."²

¹ Case No: 2007-00455, Final Order dated March 9, 2009.

² *Id.* at 25-26.

This offset was the creation of the RER with an additional \$60.9 million to be held by Big Rivers exclusively for this purpose. Further, there was absolutely no ambiguity in the Commission's decision in this regard as opined in its Final Order in the Unwind Case and as detailed in the conditions imposed on Big Rivers and the other signatories to the Unwind Agreement:

"24. Big Rivers commits that a Rural Economic Reserve account will be established and funded at closing of the Unwind Transaction in an amount no less than \$60.9 million to be used exclusively to credit the bills rendered to the Rural Customers over a period of 24 months commencing upon depletion of all funds in the Economic Reserve. All funds in the Rural Economic Reserve shall be invested in interest-bearing United States Treasury notes, with all interest earned credited to the Rural Economic Reserve. Big Rivers commits that *no funds* in the Rural Economic Reserve escrow account will be spent, pledged, or otherwise used for *any purpose other than as credits on the future bills of Rural Customers* in accord with the terms of this commitment."³

Since the date of its decision in the Unwind Transaction, the Commission has maintained its position and been steadfast in its resolve in this matter, as expressed most notably in its Final Order in Case No. 2012-00535, in which the Commission noted:

"At no time during the 14 plus months that Case No. 2007-00455 was before the Commission did KIUC claim that the Unwind Transaction would result in rate increases that would be too high for Aleris, Domtar, and Kimberly Clark. To the contrary, Alcan and Century filed testimony supporting the Unwind Transaction as beneficial for both Industrial customers and Rural customers . . . " ⁴

In fact, KIUC attempted to pursue this matter in Case No. 2012-00535, alleging it was "discriminatory" for the Commission to essentially create two separate funds and

³ Id., Appendix A at 5 (emphasis added).

⁴ Case No. 2012-00535, Final Order dated Oct. 29, 2013, pp. 49-50.

require that the RER be used solely for the Rural class.⁵ The Commission rejected KIUC's contention, finding that "there has been no showing of sufficiently changed circumstances to justify amending the established purpose of the RER fund,"⁶ that KIUC was attempting to "relitigate" the Commission's findings in the Unwind case,⁷ and finally that, "[t]he time for KIUC to raise its challenge to the RER expired over four years ago."⁸

The Attorney General believes that given the unprecedented amount of Big Rivers' rate increase granted in Case No. 2012-00535, and given that the company's Rural class customers face an almost equally large increase in Big Rivers' currently-pending base rate Case No. 2013-00199, the Commission should hold fast to its commitment to isolate the benefits of the RER to only its originally-intended beneficiaries -- the Rural class.

Finally, the Attorney General agrees with Kenergy in its assertion that this particular issue should be decided solely within the confines of Case No. 2013-00199 and should be deemed not relevant in the context of this flow-through proceeding. However, as a party seeking intervention to this proceeding, the Attorney General accepts and shall abide by the existing procedural schedule which the Commission established in its Order dated December 6, 2013.

⁵ *Id.* at 50.

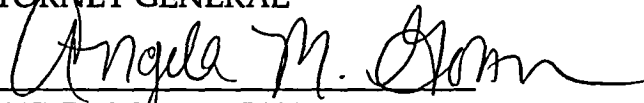
⁶ *Id.*

⁷ *Id.* at 51.

⁸ *Id.*

WHEREFORE, the Attorney General respectfully requests that the Commission deny KIUC's motion and rule that the issues and arguments contained there are deemed not relevant to this flow-through proceeding.

Respectfully submitted,
JACK CONWAY
ATTORNEY GENERAL



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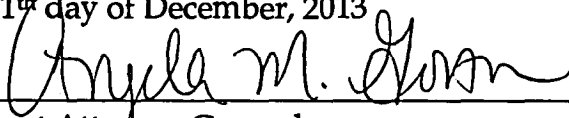
Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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This 11th day of December, 2013



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