

COMMONWEALTH OF KENTUCKY

PUBLIC SERVICE COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

Biofuel Mining Inc)
(Your Full Name))
COMPLAINANT)

VS.

Kentucky Power)
(Name of Utility))
DEFENDANT)

COMPLAINT

The complaint of Biofuel Mining Inc respectfully shows:
(Your Full Name)

(a) Biofuel Mining Inc via counsel
(Your Full Name)

PO Box 4023 Frankfort KY 40601
(Your Address)

(b) Kentucky Power
(Name of Utility)

1645 Winchester Ave Ashland KY 41101
(Address of Utility)

(c) That: See attached
(Describe here, attaching additional sheets if necessary,

the specific act, fully and clearly, or facts that are the reason

and basis for the complaint.)

Continued on Next Page

Formal Complaint


Biofuel Mining Inc vs. Kentucky Porter

Page 2 of 2

Wherefore, complainant asks See attached
(Specifically state the relief desired.)

Dated at Frankfort, Kentucky, this 29th day
(Your City)

of April, 2022
(Month)


(Your Signature*)
Anna Whites, Attorney
4/29/22
Date

Anna Whites
(Name and address of attorney, if any)

*Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

Biofuel Mining, Inc. v. Kentucky Power

STATEMENT OF RELEVANT FACTS

Comes the Complainant, Biofuel Mining, Inc., (“Biofuel”), by counsel, and as an attachment to the PSC Formal Complaint form, states as follows:

Complainant Biofuel is an applicant for utility services as defined under 807 KAR 5:041 Section 1(1).

Biofuel verbally contracted with Kentucky Power to reserve and contract for 30MW of power on an ongoing basis for a site in Letcher County. See: Attachment A. Kentucky Power has yet to provide a statement as to the actual electric rate to be charged or a customer agreement or contract and provided an “estimate” today without contracting for a specific rate with the customer.

Because Kentucky Power did not provide a rate guarantee, a set rate or other information regarding the rate which would be charged the customer for the power usage, or even a contract or customer service agreement for the customer to sign, Biofuel was unwilling to hand over such a significant deposit. Biofuel requested those specific written assurances and a brief extension of time in which to pay the \$2.8 million.

Kentucky Power notified Biofuel today, April 29, 2022, that if it did not receive those funds by close of business, it would deny Biofuel the right to receive that power at its newly purchased site.

Biofuel acknowledges that it was told that the proposed deposit might be as much as \$2.8 million and that it would be notified of a date certain to pay that, at some point in the future. Because there was not yet a rate agreement signed or a customer contract signed, or a start date for service agreed upon, Biofuel did not expect the demand for a deposit to be made months early. That lack of transparency, and demand by Kentucky Power for a large sum of money without even a customer contract signed or a rate for the service agreed upon, is not in accordance with law.

On April 25, 2022, during a phone call with Biofuel’s President, Kentucky Power Representative Shaun Sumner notified Biofuel that the deposit for service would be two million eight hundred thousand dollars (\$2,800,000.00) and is due in seven (7) days. No means of calculating that sum or basis for that sum was given to Biofuel.

Kentucky Power notified Biofuel of that proposed deposit sum amount in February and March, 2022, but did not give a date when that sum would be due. The power usage will not begin until August, under the current Biofuel work plan. Biofuel reasonably expected to be given a fair notice of when such a sum would be due.

Kentucky Power gave Biofuel only seven (7) days notice of a due date for the \$2.8 million dollars. The seven (7) day time period for the Company to provide Kentucky Power with \$2.8

million is insufficient for the sum demanded. Had Kentucky Power given reasonable advance notice of even an approximate date when that sum would be due, Biofuel could have been prepared to pay it. Surprising the customer, months in advance of the service being turned on and provided, with a one week timeframe, including a weekend, and expecting a wire transfer of \$2.8 million to be available on such short notice is unreasonable and improper. Kentucky Power's assertion, as reflected in Exhibit B, communications between the parties, that Biofuel should somehow have known that the deposit would be demanded months before the service was slated to begin, and even before the parties had agreed on a rate, is wholly without merit. It was incumbent on Kentucky Power to give adequate notice of a due date for the deposit. Biofuel is willing to pay such a deposit, in the sum requested, but requires more notice than five (5) working days.

KRS 278.030(1) requires a utility to set appropriate rates and contract with customers. The rates set must be just and reasonable. In the present case, the record is limited to a couple of verbal discussions with Amanda Cox and one message demanding a specific downpayment of millions of dollars, prior to any utility rate being agreed upon or even disclosed to the customer. In essence, Kentucky Power is refusing to provide transparency sufficient that a contract can be agreed upon, but demanding that either the massive sum be paid them today, or they will dismiss the customer's request for service. That behavior is not reasonable or in accordance with law.

807 KAR 5:011 details rate setting and rate transparency under Section 4. 807 KAR 5: 006 Section 8 "Deposits," at subsection (d) provides a specific means of determining what a deposit shall be. In the present case, as there are no similar customers and the rate or monthly bill of the services cannot be or has not yet been determined, the deposit calculated by Kentucky Power has no basis in fact and is improper. Kentucky Power is merely "guesstimating" what a deposit might be. That demand is not based on any agreed upon rate for power usage between the parties. Until a rate is set, the deposit sum should not be found to be reasonable or transparent. Kentucky Power must provide a set rate to the customer and the customer must agree that it wants service at that rate. Only then could the deposit sum be properly calculated.

KRS 278.030(2) requires a utility to provide adequate service. 807 KAR 5: 006 Section 6 prohibits the utility from denying service to a customer who has fulfilled the requirements of a utility application. The same KAR at Section 15 provides guidance for when service may be denied. None of those circumstances exist in the present case. Biofuel has requested service, asked for a customer contract, and requested disclosure of the specific rate to be charged. Once that is provided, the basis for any deposit and the fairness of that deposit sum should be clear. Until that is provided, no such support exists for the deposit sum demanded by Kentucky Power.

RELIEF REQUESTED

Biofuel requests the following relief:

- (1) That Kentucky Power be required to provide a specific rate to the customer prior to determining a deposit sum and to provide sufficient basis for the calculation of the deposit;
- (2) That Kentucky Power be required to enter into a clear and transparent contract or customer service agreement with Biofuel before requiring payment of a deposit;
- (3) That Kentucky Power be required to provide a reasonable period of time, such as thirty (30) days notice before demanding the deposit in full.

In addition, Biofuel requests that the PSC prohibit Kentucky Power from the date of filing of this COMPLAINT from cancelling the Agreement with Biofuel Mining or allowing any other party to pay a deposit and thereby gain a right to the 30MW of power currently reserved for Biofuel.

Respectfully submitted,

Anna Stewart Whites

ANNA STEWART WHITES

Attorney at Law

327 Logan Street

P.O. Box 4023

Frankfort KY 40601

(502) 352-2373/FAX 352-6860

AnnaWhites@aol.com

CERTIFICATE OF SERVICE:

This is to certify that a true and correct copy of the foregoing was mailed, this the 29th day of April, 2022, to the PSC at P.O. Box 615, Frankfort, Kentucky 40601 and to Kentucky Power, Attn: Legal Counsel, 1645 Winchester Ave, Ashland, Kentucky 41101. An electronic copy was also emailed to the PSC at psced@ky.gov

EXHIBIT A

Price Matrix for 30MW

Good Morning!

I've attached our pricing matrix for 30MW. Please let me know if you have any questions.

Amanda



AMANDA C CLARK | EXTERNAL AFFAIRS
MGR

[REDACTED] | D:606.327.2615
1645 WINCHESTER AVENUE, ASHLAND, KY 41101

	90% Load Factor Avg Rates \$/kWh	
	EDR Contract	Non-EDR
IGS Primary	\$ 0.0570	\$ 0.0667
IGS Sub Transmission	\$ 0.0469	\$ 0.0549
IGS Transmission	\$ 0.0463	\$ 0.0542
Term	6-10 Years	1 Year minimum

Interruptible Discount: Additional \$5.50/kW-Month of Interruptible Capacity

Notes:

- Rate estimates apply to loads of 1,000 kW and above
- EDR contract assumes 10 year contract and full SBDD discount

EXHIBIT B

Subject: Fwd: Response to PSC Inquiry
Date: 4/29/2022 2:19:44 PM Eastern Standard Time
From: [REDACTED]
To: annawhites@aol.com

Sent from my iPhone

Begin forwarded message:

From: Shaun Sumner [REDACTED]
Date: April 25, 2022 at 3:05:05 PM EDT
To: [REDACTED]
Cc: Shane D Allen [REDACTED]
Subject: Response to PSC Inquiry

Wes,

Attached is our official response and what is being provided to the KY PSC in response to your recent inquiry about the security deposit at Jenkins. This is what Shane and I discussed with you over the phone today around 2:15 pm.

SHAUN SUMNER | CUSTOMER ACCOUNT MGR SR
GSSUMNER@AEP.COM | D:606.437.3814 | C:606.213.5782
3249 NORTH MAYO TRAIL, PIKEVILLE, KY 41501



An **AEP** Company

BOUNDLESS ENERGY™

DELIVERED VIA EMAIL TO WESHAMILTON@BIOFUELMINING.COM

April 25, 2022

Wes Hamilton
c/o BioFuel Mining Inc.

RE: KPSC Inquiry No. 2022-01936

Mr. Hamilton:

Kentucky Power values its customers and works to provide reasonable and adequate service. To that end, Company representatives have been working with you and Biofuels Mining, Inc. (“BioFuels”) since January 2022 to ensure you understand (and to assist you and BioFuels in meeting) the requirements of the Company’s Commission-approved tariffs, as well as the Commission’s regulations, for the service to be provided to the BioFuels facility located at 1004 Gateway Industrial Park, Jenkins, Kentucky 41537. The BioFuels facility will require new/upgraded 69 kV service and will have an anticipated load of 30 MW.

Your recent inquiry to the Public Service Commission of Kentucky, which was forwarded to the Company on April 21, 2022, regards one such requirement – the payment of an adequate deposit. It appears from the inquiry narrative forwarded by the Commission staff that you believe the seven calendar days to pay the deposit is unreasonable. Below is a further explanation of the requirement for the deposit, the calculation of the deposit, as well as the Company’s further effort to resolve this matter.

The Company’s terms and conditions of service provide that Kentucky Power may require prior to providing service, in accordance with subsection of its terms and conditions (Tariff Sheet 2-2; Paragraph 4), a deposit equal to two months of the expected bill (Tariff Sheet 2-3; Paragraph 4(C)(1)(b)). These two requirements are consistent with 807 KAR 5:006, Section 1(d)(1)(b) (calculation of the amount of the deposit) and 807 KAR 5:006, Section 8(5) (payment of deposit as a “condition of service”). Attached as Exhibit 1 is the Company’s calculation of the requested deposit amount in accordance with the tariff and regulations.

You first were notified of the deposit amount on February 7, 2022. Subsequently, on March 28, 2022, you again were notified of the deposit amount and the requirement that it be paid within seven calendar days of the formal request for the deposit payment. (Copies of the February 7, 2022 and March 28, 2022 communications are attached as Exhibit 2.) The formal

request for the deposit payment was provided to you on April 20, 2022. (A copy of that communication is attached as Exhibit 3.)

The April 20, 2022 notice indicated the deposit was due April 27, 2022 (seven calendar days from the notice). As a result, you will have had 79 days since first being notified of the deposit amount to make whatever financing arrangements are appropriate to pay the deposit (or provide other security such as an irrevocable letter of credit or a surety bond) prior to the expiration of the seven-calendar day period on April 27, 2022. Nevertheless, the Company is willing to extend the period to April 29, 2022 (seven business from April 20, 2022) to address your concern about the Company's use of calendar days and not business days.

As the Staff narrative also evidences, you are aware that there is limited capacity to provide additional service to Gateway Industrial Park. There are multiple requests for service at Gateway Industrial Park. The limitations on the capacity that can be served at that location means the Company can provide service to only one customer at the requested load. The Company received a second request for service at the park from another customer on March 23, 2022. That customer has been "on hold" since that date while the Company worked to assist you in meeting the requirements for establishing service.

Kentucky Power must treat all of its customers reasonably and in a non-discriminatory manner. Given the period the second customer has been in the queue, and the period you have been aware of the deposit requirement and amount, Kentucky Power believes it has no choice under its tariffs but to require that BioFuels by April 29, 2022 pay the full deposit amount about which you inquired before offering similar terms to the second customer.

EXHIBIT 1

IGS Bill Calculator

Biofuel at Jenkins

Days in Billing Period	30 Days
Contract Capacity	30,000 kW
EDR Capacity	0 kW
KI = KWH Usage	19,440,000 kwh
N = KW Demand On Peak	30,000.00 kW
F = KW Demand Off Peak	30,000.00 kW
V = Reactive Demand	
Excess KVAR Demand	0.0 KVAR

IGS 359,371 Subtransmission ← Choose

Include DSM?

April	
Fuel Adj. Clause (/kWh)	\$ 0.010240
System Sales Clause (/kWh)	\$ 0.000100
Kentucky Economic Develop. Surcharge	\$ 1.000000
Capacity Charge	\$ 0.000770
KY KWH Base Fuel Rate Charge Rider	\$ 0.026120
Energy Charge	\$ 0.002300
Federal Tax Cut Tariff	\$ (0.006720)
Purchased Power Adjustment /kW	\$ 1.660000
Purchased Power Adjustment /kWh	\$ 0.000120
Big Sandy Decommissioning	\$ 0.083578
Environmental	\$ 0.065273
Demand Side Management	\$ 0.300000
School Tax Amount	\$ 0.030000
Franchise Tax Amount	
State Tax Amount	\$ 0.060000

Power Factor	100.00%
Load Factor	90.00%

Rate Billing	\$1,055,738.00
Fuel Adjustment	\$201,009.60
Basis for Big Sandy Decommissioning Rider & Environmental	\$486,375.00

Check for DR Discount

Service Charge	1 X	\$794.00	=	\$794.00
Demand: Min Demand Line Item	18,000 kW X	\$19.17	=	\$0.00
DR Discount	0 kW X	-\$5.50	=	\$0.00
ON	30,000 kW X	\$16.33	=	\$489,900.00
OFF	30,000 kW X	\$1.76	=	\$52,800.00
KY KWH Base Fuel Rate Charge Rider	19,440,000 kwh X	\$0.0261200	=	\$507,772.80
Energy Charge	19,440,000 kwh X	\$0.0002300	=	\$4,471.20
Reactive Demand Charge	0.0 KVAR X	\$0.69	=	\$0.00
Fuel Adjustment Clause	19,440,000 kwh X	\$0.01024	=	\$199,085.60
System Sales	19,440,000 kwh X	\$0.0001000	=	\$1,944.00
KY Economic Development Surcharge	1 X	\$1.00	=	\$1.00
Capacity Charge (Settle Factor)	19,440,000 kwh X	\$0.0007700	=	\$14,968.80
Demand Side Management	0 kwh X	\$0.300000	=	\$0.00
Federal Tax Cut	19,440,000 kwh X	-\$0.006720	=	-\$130,636.80
Purchased Power Adjustment / kW	30,000.0 kW X	\$1.660	=	\$49,800.00
Purchased Power Adjustment / kWh	19,440,000 kwh X	\$0.000120	=	\$2,332.80
		SUB		\$1,193,213.40
Big Sandy Decommissioning Rider	\$0.083578 X	\$486,375.00	=	\$40,650.25
		SUB		\$1,233,863.65
Environmental Adjustment	\$0.065273 X	\$486,375.00	=	\$31,747.16
		SUB		\$1,265,610.81
School Tax	\$0.03 X	\$1,265,610.81	=	\$37,968.33
		SUB		\$1,303,579.14
Franchise Tax	\$ - X	\$1,303,579.14	=	\$0.00
		SUB		\$1,303,579.14
State Sales Tax	\$0.06 X	\$1,303,579.14	=	\$78,214.75
		1 Month Total		\$1,381,793.88

\$2,763,587.77 Expected Deposit Amount

Estimated Annual Electric Cost	1 Mo Total X 12 =	\$16,581,526.60
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IGS Bill Calculator

Biofuel at Jenkins

Days in Billing Period	30 Days
Contract Capacity	30,000 KW
EDR Capacity	0 KW
KI = KWH Usage	21,600,000 kwh
N = KW Demand On Peak	30,000.00 KW
F = KW Demand Off Peak	30,000.00 KW
V = Reactive Demand	
Excess KVAR Demand	0.0 KVAR

KSS 350.371 - Subtransmission ← Choose

Include DSM?

April	
Fuel Adj. Clause (/kWh)	\$ 0.010240
System Sales Clause (/kWh)	\$ 0.000100
Kentucky Economic Develop. Surcharge	\$ 1.000000
Capacity Charge	\$ 0.000770
KY KWH Base Fuel Rate Charge Rider	\$ 0.026120
Energy Charge	\$ 0.000230
Federal Tax Cut Tariff	\$ (0.006720)
Purchased Power Adjustment /kW	\$ 1.660000
Purchased Power Adjustment /kWh	\$ 0.000120
Big Sandy Decommissioning	\$ 0.083578
Environmental	\$ 0.065273
Demand Side Management	\$ 0.300000
School Tax Amount	\$ 0.030000
Franchise Tax Amount	
State Tax Amount	\$ 0.060000

Power Factor	100.00%
Load Factor	100.00%

Rate Billing	\$1,112,654.00
Fuel Adjustment	\$273,344.00
Basis for Big Sandy Decommissioning Rider & Environmental	\$474,495.00

Check for DR Discount

Service Charge	1 X	\$794.00	=	\$794.00
Demand: Min Demand Line Item	18,000 kW X	\$19.17	=	\$0.00
DR Discount	0 kW X	-\$5.50	=	\$0.00
ON	30,000 kW X	\$16.33	=	\$489,900.00
OFF	30,000 kW X	\$1.76	=	\$52,800.00
KY KWH Base Fuel Rate Charge Rider	21,600,000 kwh X	\$0.0261200	=	\$564,192.00
Energy Charge	21,600,000 kwh X	\$0.0002300	=	\$4,968.00
Reactive Demand Charge	0.0 KVAR X	\$0.69	=	\$0.00
Fuel Adjustment Clause	21,600,000 kwh X	\$0.01024	=	\$221,184.00
System Sales	21,600,000 kwh X	\$0.0001000	=	\$2,160.00
KY Economic Development Surcharge	1 X	\$1.00	=	\$1.00
Capacity Charge (Settle Factor)	21,600,000 kwh X	\$0.0007700	=	\$16,632.00
Demand Side Management	0 kwh X	\$0.300000	=	\$0.00
Federal Tax Cut	21,600,000 kwh X	-\$0.006720	=	-\$145,152.00
Purchased Power Adjustment / kW	30,000.0 kW X	\$1.660	=	\$49,800.00
Purchased Power Adjustment / kWh	21,600,000 kwh X	\$0.000120	=	\$2,592.00
		SUB		\$1,259,871.00
Big Sandy Decommissioning Rider	\$0.083578 X	\$474,495.00	=	\$39,657.34
		SUB		\$1,299,528.34
Environmental Adjustment	\$0.065273 X	\$474,495.00	=	\$30,971.71
		SUB		\$1,330,500.06
School Tax	\$0.03 X	\$1,330,500.06	=	\$39,915.01
		SUB		\$1,370,415.07
Franchise Tax \$	- X	\$1,370,415.07	=	\$0.00
		SUB		\$1,370,415.07
State Sales Tax	\$0.06 X	\$1,370,415.07	=	\$82,224.90
		1 Month Total		\$1,452,639.97

\$2,805,278.94 Expected Deposit Amount

Estimated Annual Electric Cost	1 Mo Total X 12 =	\$17,431,679.63
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EXHIBIT 2

From: Shane D Allen
Sent: Monday, February 7, 2022 1:26 PM
To: [REDACTED]
Subject: Biofuel Mining New Account

The account number is [REDACTED] with the corresponding order number 036763858.

Deposit \$2,850,000

Thanks,



SHANE D ALLEN | CUSTOMER ACCOUNT MGR ASSC
[REDACTED] | D 606.436.1205 | C:606.671.0898
1400 E. MAIN STREET, HAZARD, KY 41701

AEP CONFIDENTIAL

From: Shane D Allen
Sent: Monday, March 28, 2022 10:27 AM
To: [REDACTED]
Subject: Biofuel Mining INC, at Coalfields Industrial Park, Jenkins, KY

Wes,

Kentucky Power does not as of yet have confirmation of the availability of 30 MW at the Gateway Industrial Park, nor do we have an estimate of the costs that of upgrades that will incur. When we have confirmed that 30 MW is available and we have the estimated costs from transmission to serve Biofuel Mining INC, Biofuel Mining INC will then be asked to sign a Letter of Agreement (LOA) to cover the cost to serve Biofuel Mining INC. In addition, Biofuel Mining INC will be required to securitize the amount requested in the LOA should Biofuel Mining INC for any reason not be able to fulfill the obligations of the LOA. Additionally, when Kentucky Power does officially request a deposit for the capacity requested and to provide service, Biofuel Mining INC will have 7 calendar days to pay the deposit, \$2.85M, in full, by wire transfer (no checks). The Deposit may also be supplied in the form of a surety bond from an approved supplier, or an irrevocable letter of credit from an approved bank. Presently, Biofuel Mining INC Currently owes Kentucky Power \$6,716.52 on Account # [REDACTED] and \$2,537.19 on Account # [REDACTED], for a total of \$9,253.71. In order to obtain service from any new electric account, Biofuels will need to provide payment of that balance as well. There currently are limited MW available on the circuit in the industrial park, and there are other potential customers interested in the same limited MW. If you cannot agree to these terms, then Kentucky Power must consider other potential customers for the service.

Please let me know if you have any questions.

Thanks,



SHANE D ALLEN | CUSTOMER ACCOUNT MGR ASSC
[REDACTED] | A: 8.610.1205 | C: 606.671.0898
1400 E. MAIN STREET, HAZARD, KY 41701

EXHIBIT 3

From: Shane D Allen
Sent: Wednesday, April 20, 2022 11:15 AM
To: Wes Hamilton
Subject: Biofuel Mining INC
Attachments: Biofuel Mining INC LETTER OF AGREEMENT.docx; Biofuel Mining INC LOC Security Schedule 1.doc; Biofuel Mining INC LOAD RAMP SCHEDULE for LOA yyyymmdd.docx; Biofuel Mining Inc. Example ILOC.doc; Biofuel Mining Inc. Example SURETY BOND FOR ELECTRIC SERVICES (003).docx

Wes,

These Documents are in regard to the Kentucky Power Account # [REDACTED] Biofuel Mining INC located at 1004 Gateway Industrial Park.

I have attached the Letter of Agreement and the Security Schedule Information that goes with it. In the Security Schedule it provides Wire Bank information if you should choose to use that method and also the Letter of Credit should you decide to go with that method. The LOA includes a security of \$293,000.

I have also included a Load Ramp up Schedule for you and your team to fill out. This will help with making sure your contract for power will be accurate.

Biofuel Mining INC will have 7 calendar days from today, 4/20/2022 to pay the deposit, \$2,850,000, in full, by wire transfer (no checks). The Deposit may also be supplied in the form of a surety bond from an approved supplier, or an irrevocable letter of credit from an approved bank. I have also attached instructions for the Deposit methods as well.

Thanks,



SHANE D ALLEN | CUSTOMER ACCOUNT MGR
[REDACTED] | D:606.436.1205 | C:606.671.0898
1400 E. MAIN STREET, HAZARD, KY 41701