CASE NUMBER:

99-162

NOTICE TO THE PUBLIC OF A PROPOSED DECREASE IN RATES OF KENERGY CORP PSC CASE 99-162

Kenergy Corp, 6402 Old Corydon Road, P.O. Box 18, Henderson, KY 42419 filed an application for a decrease in rates with the Kentucky Public Service Commission on August 16, 1999. The proposed decrease is designed to flow through to Kenergy's customers the reduction in expense, which will result from the consolidation of Green River Electric Corporation and Henderson Union Electric Cooperative Corp. There is no change proposed in the current base rates of each rate class. A 4% consolidation credit rider for each rate class (except direct-served) is being proposed for a period of five years.

THE AMOUNT AND PERCENT OF DECREASE BY RATE CLASS, BASED ON 1998 USAGE, ARE LISTED BELOW:

KENERGY EAST (former Green River Electric Service Territory)

	PERCENT	MONTHLY DOLLARS
Residential and all other single phase	4%	$ 3.10
Commercial three-phase under 1,000 KW	4%	$ 47.11
Commercial three-phase over 1,000 KW	4%	$1,080.50
Direct-served industrial customers	0%	$ 0

KENERGY WEST (former Henderson Union Service Territory)

	PERCENT	MONTHLY DOLLARS
Residential (single phase)	4%	$ 3.03
Farm, government or commercial (50 KVA or less)	4%	$ 4.15
Grain bins (51 to 500 KVA)	4%	$ 7.66
Farm or commercial (51 to 501 KVA)	4%	$ 57.07
Large power (501 to 2000 KVA) non-dedicated delivery	4%	$884.94
Direct-served industrial customers	0%	$ 0

Any customer, prospective customer or his agent desiring additional information regarding this proposed decrease in rates or regarding Kenergy's tariffs (present or proposed) may secure such information at Kenergy's office at the above stated address, or at one of its offices at P.O. Box 1389, 3111 Fairview Drive, Owensboro, KY 42302; P.O. Box 99, 315 Hawes Blvd., Hawesville, KY 42348; P.O. Box 268, 703 Main Street, Marion, KY 42064; P.O. Box 73, 1441 U.S. 231 North, Hartford, KY 42347, or P.O. Box 327, 2620 Brown Badgett Road, Hanson, KY 42413.

The rates contained in this notice are the rates proposed by Kenergy. However, the Kentucky Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for customers other than the rates in this notice.

Any corporation, association, body politic or person may, by motion, request leave to intervene in the proceeding before the Kentucky Public Service Commission. That motion must be submitted to the Kentucky Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, KY 40602, and shall set forth the grounds for the request, including the status and interest of the party. Intervenors may obtain copies of the application filed by contacting Kenergy at the address stated above. A copy of the application is available for public inspection at any of the Kenergy offices listed above.

Kenergy Corp
By: Dean Stanley, President & CEO

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Kenergy Corp
By: Dean Stanley, President & CEO

tions to children who needed them. More than 50 children were treated by health department staff when they picked up their school supplies at the Out-Reach Center near Crittenden County Elementary.

The Out-Reach Center has provided school supplies to children for the past five years, but last week was only the second time the center arranged to pro-

various agencies located inside the Out-Reach Center conducted head lice screenings at the elementary school. Tammy West, Heart to Heart health care coordinator, said the number of cases of head lice has greatly decreased in the last few years. While a few cases were detected West said the annual checks help to reduce the problem significantly.

NOTICE TO THE PUBLIC OF A PROPOSED DECREASE IN RATES OF KENERGY CORP PSC CASE 99-162

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Kenergy Corp
By: Dean Stanley, President & CEO

DORSEY, KING, GRAY & NORMENT
ATTORNEYS-AT-LAW
318 SECOND STREET
HENDERSON, KENTUCKY 42420

JOHN DORSEY (1920-1986)
FRANK N. KING, JR.
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(270) 826-6672

RECEIVED
SEP 10 1999
PUBLIC SERVICE
COMMISSION

September 9, 1999

FEDERAL EXPRESS

Ms. Helen Helton, Executive Director
Public Service Commission of Kentucky
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Case No. 99-162

Dear Ms. Helton:

We enclose herewith for filing response on behalf of Kenergy Corp. This response is being filed pursuant to Ordering paragraph 7 of the Commission's August 31, 1999, order.

Thank you for your assistance.

Very truly yours,

DORSEY, KING, GRAY & NORMENT

By Frank N. King

Frank N. King, Jr.

FNKJr/cds
Encls.
Copy/w/encls.: Mr. Dean Stanley

RECEIVED
SEP 1 0 1999
PUBLIC SERVICE COMMISSION

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP. FOR APPROVAL OF RATE DECREASE FOR KENERGY CORP., CONSOLIDATION SUCCESSOR) CASE NO. 99-162

RESPONSE OF KENERGY CORP.

(Cost of Service Study Issue)

The Commission's August 31, 1999, order directed Kenergy Corp. ("Kenergy") to file its response to the arguments of Kentucky Industrial Utilities Customers, Inc. ("KIUC") regarding the need for a cost of service study. This response addresses that single issue.

Kenergy cited two reasons in its amended application why a cost of service study should not be required in this case. These reasons were set forth in the prepared testimony of Jack D. Gaines, a rate analyst with Southern Engineering Company. One of the reasons – that requiring a cost of service study could delay implementation of the proposed rate decrease – no longer applies. The Commission's August 31, 1999, order which directed the proposed rate reduction to become effective on an interim basis on and after

September 2, 1999, eliminated this reason. However, the other reason – that a cost of service study is not timely – is certainly valid, particularly in light of the fact that Kenergy has been in operation only since July 1, 1999, and plans to prepare a consolidated cost of service study to support further rate consolidation after it has accumulated at least 12 months of consolidation history. Kenergy anticipates significant savings from the consolidation, but only time will tell regarding the amounts and the areas of savings.

Perhaps a more compelling reason for not requiring a cost of service study is the fact that this study would not shed any light on whether any portion of the present rate reduction should extend to direct serve customers (special contract customers). This is because a methodology has not been developed to allocate costs to the special contract customers. These costs obviously exist but they cannot be quantified. This point was made by Mr. Gaines in his prepared testimony in two (2) earlier rate cases involving Green River Electric Corporation ("Green River"), Case Nos. 10275 and 90-152. (Green River was a consolidation predecessor of Kenergy.)

In both of these earlier cases a cost of service study was performed. Mr. Gaines testified that all customer classes, including special contract customers, are responsible for a portion of Green River's administrative and general expense, its general plant and its general plant related expenses such as depreciation and property tax. However, due to the unique nature of services to a special contract customer it is difficult to develop a methodology to allocate to them a portion of these costs. Mr. Gaines pointed out that "(T)raditional methodologies, such as using demand, energy, and customer allocators would result in a substantial portion of these costs being allocated to the special contract class." Relevant excerpts from the Gaines testimony are attached hereto marked "Exhibit A" and "Exhibit B."

In the two (2) above mentioned cases rate adjustments (increases) were sought only for regular tariff customers. In both of these cases none of the revenue associated with service to special contract customers was included in the allocated cost of service study, and only the purchased power expense and Public Service Commission assessment expense attributable to special contract customers was removed from total expenses (see Gaines' testimony in Case No. 10275, lines 6- 10, page 12, and in Case No. 90-152, lines 22-26, page 12). A cost of service study in the instant case, of course, would follow this same methodology and would not yield meaningful information to the

Commission on whether special contract customers should participate in the instant rate reduction.

A cost of service study was also filed in Case No. 97-220, which was a rate case filed by Kenergy's other consolidation predecessor, Henderson Union Electric Cooperative Corp. In that cost of service study no attempt was made to quantify administrative and general expense and general plant costs, other than the Public Service Commission assessment, dues and related cost and expenses associated with Accuride and Hudson Foods, two special contract customers. Obviously a new cost of service study would not provide any significantly different results.

A cost of service study is not a panacea for determining rate increase or decrease allocations to customer classes. In another earlier case involving Green River, Case No. 8252, the Commission acknowledged that rates do not have to be based on cost of service stating:

> The commission agrees with Green River that rates do not have to be based strictly on cost of service and that (special contract customer's) rate should include some contribution to Green River's overhead.

(Order at page 6, copy attached as "Exhibit C)

It is common knowledge that a cost of service study costs thousands of dollars. In all likelihood the cost to Kenergy of such a study would be in the neighborhood of $20,000 to $25,000. However, the results of the study would fail to provide the Commission with any meaningful information on the ultimate issue of whether special contract customers should participate in the rate reduction. The Commission should grant Kenergy's request for a deviation from 807 KAR 5:001, Section 10, (6)(u), and Kenergy should not be required to file a cost of service study.

DORSEY, KING, GRAY & NORMENT
318 Second Street
Henderson, Kentucky 42420
(270) 826-3965 Telephone
(270) 816-6672 Telefax
Attorneys for Applicants

By Frank N. King
FRANK N. KING, JR.

I hereby certify that the foregoing has been served upon the Attorney General of Kentucky, Office of Rate Intervention, 1024 Capital Center Drive, Frankfort, Kentucky 40601, and upon Michael L. Kurtz, Esq., Boehm, Kurtz & Lowry, 2110 CBLD Center, 36 East Seventh Street, Cincinnati, Ohio 45202, attorney for Kentucky Industrial Utilities Customers, Inc., by mailing true and correct copies of same on this 9th day of September, 1999.

Frank N. King
Frank N. King, Jr.

the rates adjusted for the flow through increase and to revenues based upon the proposed Green River increase.

Q DOES THE ALLOCATED COST OF SERVICE STUDY INCLUDE ANY REVENUE OR EXPENSE ASSOCIATED WITH SERVICE TO GREEN RIVER'S SPECIAL CONTRACT CUSTOMERS?

A None of the revenue associated with service to Green River's special contract customers is included in the allocated cost of service study. However, only purchased power expense and PSC assessment expense has been removed from total expenses. As a result, other expenses associated with providing service to special contract customers has not been removed from, and therefore is included in, the allocated cost of service study for Green River's regular tariff customers.

Q ARE GREEN RIVER'S CUSTOMERS RESPONSIBLE FOR ANY OF ITS COSTS OF PROVIDING SERVICE OTHER THAN PURCHASED POWER COST AND PSC ASSESSMENT EXPENSE?

A Yes, all classes, including special contract, are responsible for a portion of Green River's administrative and general expense, its general plant, and its general plant related expenses such as depreciation and property tax.

Q WHY HAVE YOU NOT MADE AN ALLOCATION TO GREEN RIVER'S SPECIAL CONTRACT CUSTOMERS OF COSTS OTHER THAN PURCHASED POWER AND PSC ASSESSMENT EXPENSES?

A Although the special contract customers are responsible for a portion of administrative and general expense, general plant related expenses, and margins, due to the unique nature of these services it is difficult to develop a methodology to allocate to them a portion of these costs. Traditional methodologies, such as using demand, energy, and customer allocators would result in a substantial portion of these costs being allocated to the special contract class. As an example, if we were to allocate the demand related portion of general plant to special contract customers on the basis of their class demand, that class would be assigned approximately $1,500,000 or 56% of general plant. Nevertheless, all customers should share the cost of supporting common plant and general expenses. Because a methodology for allocating these expenses to Green River's special contract customers has not been proposed does not mean these customers are not responsible for a portion of these costs.

Q HOW DOES THE FACT THAT YOU HAVE NOT ALLOCATED ANY OF THESE COMMON COSTS TO THE SPECIAL CONTRACT CUSTOMERS AFFECT THE ALLOCATED COST OF SERVICE STUDY OR THE REGULAR TARIFF CUSTOMERS?

A By including that portion of Green River's administrative and general expense, and general plant related costs that is a responsibility of the special contract customers in the cost of service study for the regular tariff customers, the "system total" margins, TIER, and rate of return generated by the regular tariff customers is understated. However, the relationship among the various customer classes and their relative rates of return have not been significantly influenced by the inclusion of total administrative and general expense and general plant related costs. Thus, the allocated cost of service study provides a reasonable comparison of the revenue responsibility of each of Green River's regular tariff customer classes.

Q PLEASE DESCRIBE THE RESULTS OF THE ALLOCATED COST OF SERVICE STUDY.

A The results of the allocated cost of service study are summarized on Pages 1 through 5 of Exhibit 10. On Page 1, the allocated costs are compared to class revenues generated under rates which include the proposed flow through adjustments. As shown, the TIER, rate of return and relative rate of return by class are as follows:

	Flow Through Rates		
	TIER	ROR	Relative ROR
Outdoor Lights	10.55	44.28%	8.13
Single Phase	(0.04)	(0.17%)	(0.03)
Three Phase:			
Sec.-under 1000 kW	6.32	27.39%	5.03
Pri.-under 1000 kW	7.41	43.21%	7.94
Over 1000 kW	17.17	67.57%	12.41
Total	1.28	5.44%	1.00

PRESENT RATES, ADJUSTED FOR FLOW THROUGH RATES AND ADJUSTED FOR PROPOSED RATES. UPON WHICH OF THESE SCENARIOS IS THE ALLOCATED COST OF SERVICE STUDY BASED?

A The operating expenses in the cost of service study match those found in column (h), Adjusted for Proposed Rates, of the adjusted income statement, excluding the cost of purchased power for special contract customers in the amount of $110,536,444 and the PSC assessment expense associated with special contract customers in the amount of $81,616. Therefore, the regular tariff wholesale power cost which is reflected in the allocated cost of service study is based upon Big Rivers' proposed wholesale rate. All other expenses are based upon the adjusted levels as developed by Green River. In the allocated cost of service study, these expenses are separately compared to revenues based on the rates adjusted for the flow through increase and to revenues based upon the proposed Green River increase.

Q DOES THE ALLOCATED COST OF SERVICE STUDY INCLUDE ANY REVENUE OR EXPENSE ASSOCIATED WITH SERVICE TO GREEN RIVER'S SPECIAL CONTRACT CUSTOMERS?

A None of the revenue associated with service to Green River's special contract customers is included in the allocated cost of service study. However, only purchased power expense and PSC assessment expense has been removed from total expenses. As a result, other expenses associated with providing service to special contract customers has not been removed from, and therefore is included in, the allocated cost of service study for Green River's regular tariff customers.

Q ARE GREEN RIVER'S SPECIAL CONTRACT CUSTOMERS RESPONSIBLE FOR ANY OF ITS COSTS OF PROVIDING SERVICE OTHER THAN PURCHASED POWER COST AND PSC ASSESSMENT EXPENSE?

A Yes, all classes, including special contract, are responsible for a portion of Green River's administrative and general expense, its general plant, and its general plant related expenses such as depreciation and property tax.

Q WHY HAVE YOU NOT MADE AN ALLOCATION TO GREEN RIVER'S SPECIAL CONTRACT CUSTOMERS OF COSTS OTHER THAN PURCHASED POWER AND PSC ASSESSMENT EXPENSES?

A Although the special contract customers are responsible for a portion of administrative and general expense, general plant related expenses, and margins, due to the unique size of the loads in demand and their service characteristics, it is difficult to develop a methodology to allocate to them a portion of Green River's common costs. Traditional methodologies, such as using demand, energy, and customer allocators would result in a substantial portion of these costs being allocated to the special contract class. Nevertheless, all customers should share the cost of supporting common plant and general expenses. Because a methodology for allocating these expenses to Green River's special contract customers has not been proposed does not mean these customers are not responsible for a portion of these costs.

Q HOW DOES THE FACT THAT YOU HAVE NOT ALLOCATED ANY OF THESE COMMON COSTS TO THE SPECIAL CONTRACT CUSTOMERS AFFECT THE ALLOCATED COST OF SERVICE STUDY OR THE REGULAR TARIFF CUSTOMERS?

A By including that portion of Green River's administrative and general expense, and general plant related costs that is a responsibility of the special contract customers in the cost of service study for the regular tariff customers, the "system total" margins, TIER, and rate of return generated by the regular tariff customers is understated. However, the relationship among the various customer classes and their relative rates of return have not been significantly influenced by the inclusion of total administrative and general expense and general plant related costs. Thus, the allocated cost of service study provides a reasonable comparison of the revenue responsibility of each of Green River's regular tariff customer classes.

Q PLEASE DESCRIBE THE RESULTS OF THE ALLOCATED COST OF SERVICE STUDY.

A The results of the allocated cost of service study are

Policies Act of 1978. Green River has experienced some legal and administrative expenses as a consequence of being covered by these acts.

Green River argued that the only finding of fact with respect to the NSA rate in the Commission's Order of November 30, 1981, was that Green River had not provided any computations showing the level of expenses, other than regulatory assessment and trade association dues, incurred in providing service to NSA. Green River contended that putting an exact dollar amount on the cost of serving NSA was not necessary to support its requested increase, as rates do not have to be based on cost of service. Green River further argued that NSA as a member of Green River should share in paying the costs of operating Green River whether or not those costs would continue if NSA were no longer a member of Green River. The Commission agrees with Green River that rates do not have to be based strictly on cost of service and that NSA's rate should include some contribution to Green River's overhead. Since 1975 the amount of revenue retained by Green River from the NSA rate that is available to contribute to Green River's overhead has decreased by $56,283 while Green River's operating expenses have increased.

NSA contended that Green River had not pointed out any material facts clearly overlooked by the Commission nor presented any arguments that were not previously made in its application or its brief.

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

August 31, 1999

To: All parties of record

RE: Case No. 99-162

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,
Stephanie Bell

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

Honorable Frank N. King
Attorney at Law
Dorsey, King, Gray & Norment
318 Second Street
Henderson, KY 42420

Dean Stanley
General Manager
Green River Electric Corporation
3111 Fairview Drive
P. O. Box 1389
Owensboro, KY 42302 1389

Charlye Jo Griggs
Director of Office Services
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Honorable Michael L. Kurtz
Counsel for KIUC
Boehm, Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF RATE DECREASE FOR KENERGY CORP., CONSOLIDATION SUCCESSOR	)))))	CASE NO. 99-162

ORDER

On May 20, 1999, Green River Electric Corporation ("GREC") and Henderson Union Electric Cooperative Corporation ("HUECC") jointly applied, pursuant to KRS 278.455, for approval of a 4-percent reduction in the rates for their non-direct serve member-customers. The proposed rate adjustment was to become effective upon July 1, 1999 when GREC and HUECC consolidated and formed Kenergy Corporation ("Kenergy"). Finding that the application did not comply with KRS 278.455, the Commission, on July 1, 1999, rejected it and directed the applicants to bring the application into compliance with KRS 278.455 or Administrative Regulation 807 KAR 5:001, Section 10.

On August 16, 1999, Kenergy filed an amended application pursuant to 807 KAR 5:001, Section 10, and requested deviations from certain filing requirements specified in that regulation. Kenergy also requests that the proposed rate reduction for non-direct serve member-customers become effective on September 1, 1999 or, in the alternative, be suspended for one day and then take effect subject to change. Kenergy has also moved that the Commission reduce the required notice period for the proposed rate reduction to 15 days.

In response to Kenergy's motion and application, Kentucky Industrial Utility Customers ("KIUC") has advised the Commission that Kenergy's proposed rate reduction should be permitted to take effect subject to change after hearing. KIUC, however, contends that Kenergy's request for a deviation from the requirement of Administrative Regulation 807 KAR 5:001, Section 10, for a cost-of-service study requirement should be denied. In support of its position KIUC states, among other things, that a cost-of-service study is key evidence in determining which customer classes share in the rate reduction. KIUC further contends that longstanding Commission policy requires that in the absence of a cost-of-service study a rate adjustment should be apportioned to all rate classes on the basis of total revenue. Granting a deviation of the cost-of-service study requirement would therefore require significant changes to Kenergy's proposed rate reduction.

In its reply to KIUC's response, Kenergy reiterates that the rates be permitted to go into effect on September 1 and that the Commission grant it until September 10, 1999 to fully reply to KIUC's arguments regarding the need for a cost-of-service study. Kenergy acknowledges that the Commission has the authority to direct the filing of a cost-of-service study at any point in these proceedings and will not contest any Commission directive to produce such study.

Having considered the motion and responses and being otherwise sufficiently advised, the Commission finds that Kenergy's motion for deviation from the filing requirements of Administrative 807 KAR 5:001, Section 10, and for a shortened notice period should be granted. As Kenergy has acknowledged the Commission's authority to require the filing of a cost-of-service study at a later date and has represented that it will not contest such action, granting the motion will not prejudice the rights of any party. The Commission will not determine whether a cost-of-service study should be required until after Kenergy has fully responded to KIUC's response.

Based on the application, responses, and being otherwise sufficiently advised, the Commission finds that further proceedings are necessary in order to determine the reasonableness of the proposed rates and that such proceedings cannot be completed prior to September 1, 1999. In such circumstances, the Commission typically suspends the proposed rates for the maximum period of time provided for in KRS 278.190(2). However, since the proposed rates represent a reduction in rates, there is no good reason to deny Kenergy's customers the benefits of lower rates on an interim basis while the merits of the application are investigated.

Nevertheless, certain specific aspects of the proposed rate reduction have already been characterized by KIUC as being unreasonable. Thus, to protect the interests of all concerned while still allowing customers the benefits of lower rates, the Commission will suspend the proposed rates for one day and allow them to become effective subject to change for service rendered on and after September 2, 1999. Any change will operate prospectively only, thereby eliminating any potential for retroactive adjustments.

The Commission further finds that since its statutory authority to review rate applications is limited by KRS 278.190(3) to ten months, and as final decision in this matter should be rendered before that time, the proposed rates approved herein should remain in effect only until issuance of a final rate order.

IT IS THEREFORE ORDERED that:

1. Kenergy's requested deviations from Administrative Regulation 807 KAR 5:001, Section 10, are granted.

2. Kenergy's request to reduce the notice period to the Commission to 15 days is granted.

3. The Commission reserves the right to require Kenergy to perform a cost-of-service study during the course of this proceeding should we determine that such study is necessary.

4. Kenergy's amended application is accepted as filed as of August 16, 1999.

5. Kenergy's proposed rates are suspended for one day, to be effective, subject to change, with service rendered on and after September 2, 1999.

6. Within 20 days of the date of this order, Kenergy shall file its revised tariff sheets setting forth the rates made effective herein with a notation at the bottom of each page reflecting the effective date and the statement, "Interim rates subject to change."

7. Kenergy shall no later than September 10, 1999, file with the Commission its response to KIUC's arguments regarding the need for a cost-of-service study.

Done at Frankfort, Kentucky, this 31st day of August, 1999.

By the Commission

ATTEST:

Executive Director

DORSEY, KING, GRAY & NORMENT
ATTORNEYS-AT-LAW
318 SECOND STREET
HENDERSON, KENTUCKY 42420

JOHN DORSEY (1920-1986)
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August 24, 1999

RECEIVED
AUG 25 1999
PUBLIC SERVICE
COMMISSION

FEDERAL EXPRESS

Ms. Helen Helton, Executive Director
Public Service Commission of Kentucky
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Case No. 99-162

Dear Ms. Helton:

We enclose herewith for filing a reply on behalf of Kenergy Corp. We call your attention to the fact that there is pending a motion to implement a rate reduction next week, September 1, 1999. Thank you for your assistance.

Very truly yours,

DORSEY, KING, GRAY & NORMENT

By Frank N. King
Frank N. King, Jr.

FNKJr/cds
Encls.
Copy/w/encls.: Mr. Dean Stanley

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AUG 25 1999
PUBLIC SERVICE COMMISSION

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF KENERGY CORP. FOR APPROVAL OF RATE REDUCTION) CASE NO. 99-162

(FORMERLY:
IN THE MATTER OF THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP. FOR APPROVAL OF RATE DECREASE FOR KENERGY CORP., CONSOLIDATION SUCCESSOR)

REPLY OF KENERGY CORP.

KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. ("KIUC") has filed a response favoring the implementation of a rate reduction on September 1, 1999, and requesting that the amended application of **KENERGY CORP ("Kenergy")** should be accepted as filed. However, KIUC argues that the Commission should require Kenergy to file a cost of service study. Kenergy is concerned that the cost of service study issue may impair the timely implementation of the requested rate reduction and respectfully requests the Commission not to allow this to happen.

Kenergy submits that the reasons cited by rate analyst Jack Gaines for not filing a cost of service study have merit and that the requested deviation should be approved. However, if the Commission is not convinced of this at this time based on the present state of the record, Kenergy alternatively urges the Commission to accept the amended application for filing (approving all other requested deviations) and to reserve ruling at this time on whether a cost of service study should be required. Kenergy should be allowed time after September 1, 1999, in which to fully reply to KIUC's arguments. If the Commission ultimately orders that a cost of service study be filed, Kenergy will unconditionally comply with same. See attached statement of Kenergy's CEO and President Dean Stanley.

The above alternative proposal will allow the requested rate reduction to go into effect on an interim basis on September 1, 1999, and the cost of service study issue will not be an obstacle to that occurring. This will allow the affected Kenergy member-customers to realize this reduction in rates without further delay. Moreover, as pointed out above, KIUC clearly favors allowing the requested rate reduction to go into effect in this manner.

WHEREFORE, Kenergy respectfully requests that if the Commission is not prepared at this time to grant the requested cost of service study deviation, then the Commission make its order as follows:

1. Approving all deviations requested in the amended application except the request for a deviation with respect to the filing of a cost of service study, and accepting the amended application for filing.

2. Reserving ruling at this time on whether a cost of service study should be required and allowing Kenergy until

September 10, 1999, to fully reply to KIUC's arguments on the merits.

3. Authorizing implementation of a 4% rate reduction for non-direct serve member-customers on an interim basis commencing September 1, 1999, subject to possible suspension for one day, and further subject to change after hearing.

4. Granting to Kenergy all proper relief.

DORSEY, KING, GRAY & NORMENT
318 Second Street
Henderson, Kentucky 42420
(270) 826-3965 Telephone
(270) 816-6672 Telefax
Attorneys for Applicant

By Frank N. King
FRANK N. KING, JR.

I hereby certify that the foregoing has been served upon the Attorney General of Kentucky, Office of Rate Intervention, 1024 Capital Center Drive, Frankfort, Kentucky 40601, and upon Michael L. Kurtz, Esq., Boehm, Kurtz & Lowry, 2110 CBLD Center, 36 East Seventh Street, Cincinnati, Ohio 45202, attorney for Kentucky Industrial Utilities Customers, Inc., by mailing true and correct copies of same on this 24th day of August, 1999.

Frank N. King
Frank N. King, Jr.

STATEMENT OF DEAN STANLEY, PRESIDENT AND CEO OF KENERGY CORP.

The undersigned, DEAN STANLEY, President and CEO of Kenergy Corp., states that for the reasons set forth in the filed testimony of rate analyst Jack Gaines, he firmly believes that the Commission should not require Kenergy to file a cost of service study in Case No. 99-162. However, if, after considering Kenergy's full argument on the issue, the Commission orders that such a study be filed, Kenergy will not contest or resist same and will unconditionally file the cost of service study.

This the 20th day of August, 1999.

Dean Stanley

DEAN STANLEY

STATE OF KENTUCKY

COUNTY OF HENDERSON

The foregoing was signed, acknowledged and sworn to before me by DEAN STANLEY, this 20th day of August, 1999.

My commission expires September 29, 2001

Sharla D. Smithhart

Notary Public, State of Kentucky at Large

(seal)

BOEHM, KURTZ & LOWRY
ATTORNEYS AT LAW
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36 EAST SEVENTH STREET
CINCINNATI, OHIO 45202
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Via Overnight Mail

August 18, 1999

Hon. Helen Helton
Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40601

Re: In The Matter Of: Notice of Intent of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation to File Joint application for Rate Reduction, Case No. 99-162.

Dear Ms. Helton:

Please find enclosed the original and ten copies each of the Response Of Kentucky Industrial Utility Customers, Inc. To Motion To Implement Requested Rate Reduction On September 1, 1999 And For Waiver Of Filing Requirements of Kentucky Industrial Utility Customers, Inc. in the above-referenced matter. By copy of this letter, all parties listed on the Certificate of Service have been served.

Please place this document of file.

Very Truly Yours,

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MLK/kew
Attachment
cc: Certificate of Service
Gerald Wuetcher, Esq. (Via Telefax Transmission)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by regular U.S. mail (unless otherwise noted) to all parties on this 18th day of August, 1999.

Honorable Frank N. King
Attorney at Law
Dorsey, King, Gray & Norment
318 Second Street
Henderson, KY. 42420
(Via Telefax Transmission and Overnight Mail)

Dean Stanley
General Manager
Green River Electric Corporation
3111 Fairview Drive
P. O. Box 1389
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Charlye Jo Griggs
Director of Office Services
Henderson Union Electric
Cooperative Corporation
6402 Old Corydon Road
P. O. Box 18
Henderson, KY. 42420 0018

Michael L. Kurtz, Esq.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of: The Application of Green River Electric Corporation and Henderson Union Electric Cooperative Corp. For Approval of Rate Decrease for Kenergy Corp., Consolidation Successor	:	Case No. 99-162

RESPONSE OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.
TO MOTION TO IMPLEMENT REQUESTED RATE REDUCTION
ON SEPTEMBER 1, 1999 AND FOR WAIVER OF FILING REQUIREMENTS

By cover letter dated August 13, 1999, Kenergy Corp. ("Kenergy") filed an Amended Application with the Kentucky Public Service Commission ("Commission") to implement a 4% rate reduction of approximately $2.3 million per year for five years for its residential customers to go into effect on September 1, 1999, or, alternatively, to have the rate reduction go into effect on an interim basis on that date subject to suspension for one day and further subject to change after hearing.

Kentucky Industrial Utility Customers, Inc. ("KIUC") has no objection to the proposal that on September 1, 1999 a residential-only rate reduction will go into effect on an interim basis subject to change after hearing. A rate reduction is a good thing, and KIUC does not intend to stand in the way of such a residential-only rate reduction so long as its rights are not prejudiced. The rights of KIUC and other intervenors will not be prejudiced if the rate reduction goes into effect as filed subject to change after hearing.

The amended application should be accepted as filed. The amended application is in compliance with 807 KAR 5:001, Section 10. However, as discussed below, the Commission should not grant Kenergy's request for a waiver of the cost-of-service filing requirement.

KIUC objects to Kenergy's request for a waiver of the general rate case filing requirement that a cost-of-service study be filed. KAR 5:001, Section 10 provides that all applications requesting a general adjustment to existing rules shall be supported as follows:

> *"(U) If the utility provides gas, electric or water utility service and has annual gross revenues greater than $5,000,000, a cost-of-service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period."*

Kenergy offers no reasons in its Amended Application to support its requested cost-of-service study waiver. Instead, it relies on the pre-filed testimony of Mr. Jack D. Gaines to support its cost-of-service waiver request. Mr. Gaines is a consultant with Southern Engineering Company. At page 4 of his testimony, Mr. Gaines was asked why the Commission should waive the general rate case filing requirement that a cost-of-service study be filed as part of the application. Mr. Gaines responded that the waiver should be granted for two reasons: first, a cost-of-service study is *"not timely"* and second, *"because requiring a cost-of-service study could delay implementation of the proposed decrease."* As stated previously, KIUC has no objection to the interim rate decrease going into effect on September 1, 1999 subject to change after hearing, even though none of the KIUC companies will initially receive any of the rate reduction. If the Commission allows the proposed rate reduction to go into effect on September 1, 1999 subject to change after hearing, then one of the two reasons offered by Mr. Gaines for not filing a cost-of-service study is eliminated. The other reason offered by Mr. Gaines for not filing a cost-of-service study is without merit. Mr. Gaines believes that it is *"not timely"* for Kenergy to prepare a cost-of-study for the following four reasons:

> *"First, Henderson Union filed a cost of service study in Case No. 97-220, which was used to support significant re-allocations of revenues among customer classes and rate design. Second, in anticipation of consolidation, Henderson Union's rate designs were adjusted at that time to more closely resemble those of Green River, a major step toward rate consolidation. Third, Green River's single-phase rate was converted to a 'flat' rate from a block rate in Case No. 97-219. And, fourth, Kenergy is planning to prepare a consolidated cost of service study to support further rate consolidation after it has accumulated at least twelve months of consolidated history."* Gaines Direct Testimony at p. 4.

None of Mr. Gaines' four reasons are valid. First, he says it is *"not timely"* because Henderson Union filed a cost-of-service study in Case No. 97-220. After Case No. 97-220, Henderson Union merged with Green River Electric, which did not file a cost-of-service study in Case No. 97-219. A cost-of-service study for Henderson Union cannot substitute for a cost-of-service study for Kenergy, which is more than twice as large as Henderson Union. Further, a cost-of-service study for Henderson Union cannot be used to judge the fairness of rates paid by KIUC members Southwire Company, Kimberly Clark Corporation, and Commonwealth Aluminum, all of which were served by Green River Electric. Second, Mr. Gaines says that Henderson Union's rate designs were adjusted in Case No. 97-220 to more closely resemble those of Green River Electric in anticipation of consolidation. We fail to see the connection. If anything, this cuts the other direction. Since Henderson Union changed its rate design in Case No. 97-220, it would seem opportune to consider how that new rate design is operating through a cost-of-service study. Third, he states that Green River went from a flat rate to a block rate in Case No. 97-220 for single-phase service. Just as with Henderson Union's new rate design, this would seem to be an opportune time to consider how Green River Electric's new block rate design is functioning. This can best be done through a cost-of-service study. The fact that the rate design of Green River Electric has recently changed is an additional reason to file a cost-of-service study, not a reason to avoid one. Fourth, he states that Kenergy is planing to prepare a consolidated cost-of-service study in the near future once it obtains twelve months of consolidated data. Since Kenergy is planning to prepare a cost-of-study in the near future, it is proper that such a study be filed in conjunction with this general rate case. Kenergy does not need twelve months of consolidated data to do a cost-of-service study. Kenergy did not need twelve months of consolidated data to file a consolidated income statement in this case. See Exhibit 1 to Amended Application. A cost-of-service study analysis can be performed for the new company for the twelve months ending December 31, 1998 based upon the combined operations of Green River and Henderson Union. In the alternative, Green River and Henderson Union can prepare separate cost-of-service studies based upon their individual operations for the year ending December 31, 1998. There is no impediment here, other than Kenergy's apparent unwillingness to disclose its cost of serving the industrial ratepayers and smelters compared to the revenue received from those customers.

As the Commission knows from the earlier phase of this case, the chief concern of KIUC is our belief that the large industrial and smelter customers should pay fair, just and reasonable electric rates and should receive a non-discriminatory allocation of any rate decrease. Assuming that existing rates to all classes of ratepayers were previously established at levels that were fair, just and reasonable, then the allocation of a 4% rate decrease to a single class of ratepayers that provides about 25% of Kenergy's revenues cannot result in rates to all customer classes that continue to meet this regulatory standard, unless it can be shown by substantial evidence that all of the merger-related cost reduction is attributable solely to this class of ratepayers. Kenergy has provided no such evidence. We believe that a zero allocation of the rate decrease to industrial and smelter customers and a 100% allocation to residential customers is per se discriminatory. We intend to prove this at hearing. The Commission can best be aided in its decision making if it is provided with a cost-of-service analysis by the utility.

The general filing requirements set out in 807 KAR 5:001 exist for a reason. Contrary to Kenergy's wishes, the Commission cannot just assume that the revenue allocation proposed by the utility is fair, just and reasonable under KRS 278.030(1) and not discriminatory under KRS 278.170(1). Nor can the Commission approve a revenue allocation to help the utility fulfill certain campaign promises made in an effort to have the merger approved. Instead, the Commission's decision must be based on substantial evidence and that is why the rate case regulation calls for a cost-of-service study. *"In order to sustain or reverse an order of the Commission it is necessary that there be a finding of specific evidentiary facts. Furthermore, it has been repeatedly held that where the validity of an order of an administrative body depends on a determination of fact, the absence of findings of basic evidentiary facts is fatal to such an order."* Energy Regulatory Commission v. Kentucky Power Company, Ky. App., 605 S.W.2d 46, 49 (1980).

It has been the long standing policy of this Commission that where a utility proposes an adjustment to rates (including a surcredit in the context of a merger proceeding) and a cost-of-service analysis is not provided, then the rate increase or rate decrease should be allocated to rate classes on the basis of total revenue. The Application Of Kentucky Utilities Company To Assess A Surcharge Under KRS 278.183 To Recover Cost Of Compliance With Environmental Requirements For Coal Combustion Wastes And By-Products, Case No. 93-465; The Application Of Louisville Gas And Electric Company For Approval Of A Compliance Plan And To Assess A Surcharge Pursuant To KRS 278.183 To Recover Cost Compliance Using Environmental Requirements For Coal Combustion Wastes And By-Products, Case No. 94-332; Application Of Kentucky Power Company d/b/a American Electric Power To Assess A Surcharge Under KRS 278.183 To Recover Costs Of Compliance With The Clean Air Act And Those Environmental Requirements Which Apply To Coal Combustion Waste And By-Products, Case No. 96-489; Joint Application Of Louisville Gas And Electric Company And Kentucky Utilities Company For Approval Of Merger, Case No. 97-300.

In the absence of a valid cost-of-service analyses, a revenue allocation is reasonable because it maintains the relationship among rate classes found in the exiting rates. The existing rates are legally presumed to be fair, just and reasonable and non-discriminatory.

The 100% residential/0% industrial allocation proposed here is in flagrant disregard of the Commission's total revenue allocation policy, violently disrupts the existing balance among rate classes and therefore cannot survive scrutiny absent a compelling cost-of-service justification. The *"radical departure from (past) administrative interpretation consistently followed cannot be made except for the most cogent reasons."* South Central Bell Telephone v. Public Service Commission, Ky. App., 702 S.W.2d 447, 450 (1985) (quoting Utility Regulatory Commission v. Kentucky Water Service Company, Ky. App., 642 S.W.2d 591, 593 (1982)).

A cost-of-service study is required in this case even more so than in a typical rate case. Here, we expect the major issue to be the allocation of the proposed rate decrease. This is not a proceeding where the general filing requirements regarding cost-of-studies should be waived.

Respectfully submitted,

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COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

August 18, 1999

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AUG 16 1999
PUBLIC SERVICE COMMISSION

August 13, 1999

FEDERAL EXPRESS

Ms. Helen Helton, Executive Director
Public Service Commission of Kentucky
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Case No. 99-162

Dear Ms. Helton:

Enclosed herewith for filing please find an amended application and a motion, along with required copies. Please note that applicant Kenergy Corp. seeks to have the requested rate reduction become effective September 1, 1999.

Your assistance is appreciated.

Very truly yours,

DORSEY, KING, GRAY & NORMENT

By Frank N. King, Jr.

Frank N. King, Jr.

FNKJr/cds
Encls.
Copy/w/encls.: Mr. Dean Stanley

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED
AUG 16 1999
PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF KENERGY CORP. FOR APPROVAL OF RATE REDUCTION	)))	CASE NO. 99-162

MOTION TO IMPLEMENT REQUESTED RATE REDUCTION

ON SEPTEMBER 1, 1999

Now comes **KENERGY CORP.** ("Kenergy"), by counsel and moves the Commission as follows:

1. On even date herewith Kenergy is filing an amended application for approval of a rate reduction. The amended application requests approval of a 4% rate reduction for non-direct serve member-customers for five (5) years. The amended application is filed under 807 KAR 5:001, Section 10.

2. The rate reduction being sought is identical to the one sought in the original application. This proposed rate reduction was agreed to by the boards of directors of the two (2) original applicants, Kenergy's predecessors, and is a part of the Consolidation Agreement entered into on January 23, 1999. (Consolidation was approved by the Commission in Case No. 99-136.) The two boards thought that this rate reduction could be achieved through the recently enacted statute KRS 278.455, and member-customers were informed prior to the consolidation vote that the rate reduction would be sought. However, the Commission's July 1, 1999, order herein prevented the requested rate reduction from

becoming effective. Kenergy now seeks to have this rate reduction implemented under the general rate adjustment procedure.

3. The amended application seeks to have the rate reduction, as requested, go into effect on September 1, 1999, or, alternatively, to have the rate reduction go into effect on an interim basis on that date, subject to possible suspension for one day and further subject to change after hearing.

4. It is to be noted that in the motion of Kentucky Industrial Utility Customers, Inc. ("KIUC") which was served in response to the original application there is no opposition to implementing a rate reduction on an interim basis subject to change after a hearing. In fact, this was one of the alternatives suggested by KIUC.

5. The Commission must ordinarily be given 30 days' notice of a rate change, and this can be shortened to 20 days for good cause. However, KRS 278.180 (2) authorizes the Commission, upon application of a utility, to "prescribe a less time within which a reduction of rates may be made." Kenergy requests that the Commission prescribe the time between the date of filing of the amended application and September 1, 1999, as sufficient time for notice to be given of this requested rate reduction.

WHEREFORE, Kenergy respectfully requests:

(1) That the Commission prescribe the time between the date of filing of the amended application and September 1, 1999, as sufficient time for notice to the Commission of this requested rate reduction;

(2) That the Commission implement the rate reduction, as requested, on September 1, 1999, or alternatively, order the rate

reduction to go into effect on an interim basis on that date, subject to possible suspension for one day and further subject to change after hearing; and

(3) That Kenergy be afforded all proper relief.

DORSEY, KING, GRAY & NORMENT
318 Second Street
Henderson, Kentucky 42420
(270) 826-3965 Telephone
(270) 816-6672 Telefax
Attorneys for Applicant

By Frank N. King
FRANK N. KING, JR.

VERIFICATION

The undersigned, DEAN STANLEY, being first duly sworn states that he is the President and Chief Executive Officer of Kenergy Corp.; that he has personal knowledge of the matters set forth in the foregoing motion; and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

Dean Stanley
Dean Stanley

STATE OF KENTUCKY

COUNTY OF HENDERSON

Subscribed, sworn to and acknowledged before me by DEAN STANLEY this 13th day of August, 1999.
My commission expires September 29, 2001

Charla D. Smithhart
Notary Public, State of Kentucky at Large

(seal)

I hereby certify that the foregoing has been served upon the Attorney General of Kentucky, Office of Rate Intervention, 1024 Capital Center Drive, Frankfort, Kentucky 40601, and upon Michael L. Kurtz, Esq., Boehm, Kurtz & Lowry, 2110 CBLD Center, 36 East Seventh Street, Cincinnati, Ohio 45202, attorney for Kentucky Industrial Utilities Customers, Inc., by mailing true and correct copies of same on this 13th day of August, 1999.

Frank N. King, Jr.

Frank N. King, Jr.

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED
AUG 16 1999
PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF KENERGY CORP. FOR APPROVAL OF RATE REDUCTION	)))	CASE NO. 99-162

FILED
AUG 16 1999
PUBLIC SERVICE COMMISSION

(FORMERLY:
IN THE MATTER OF THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP. FOR APPROVAL OF RATE DECREASE FOR KENERGY CORP., CONSOLIDATION SUCCESSOR)

A M E N D E D A P P L I C A T I O N

Introduction

On May 20, 1999, **GREEN RIVER ELECTRIC CORPORATION** ("GREC") and **HENDERSON UNION ELECTRIC COOPERATIVE CORP.** ("HUEC") applied for a 4% rate reduction for five years for their non-direct serve member-customers. The reduction was proposed to be effective on July 1, 1999, which is date GREC and HUEC were to become consolidated as **KENERGY CORP.** ("Kenergy"). The application was filed under KRS 278.455 which allows a proportional rate reduction in the discretion of the utility and recognizes that specified special contract customers may be excluded therefrom.

On July 1, 1999, the consolidation became effective pursuant to the order of the Commission entered in Case No. 99-136 and applicable law. However, on that same day the Commission entered an order herein declining to accept the rate reduction application for filing. The Commission found that the contracts between the applicants and their large industrial customers, except two (2) smelter customers, did not qualify for exclusion under KRS 278.455(3) because they were not special contracts in which rates were subject to change or adjustment only as stipulated therein.

The Commission has granted leave to amend the application to conform to KRS 278.455 or, in the alternative, to conform to Administrative Regulation 807 KAR 5:001, Section 10. Kenergy, the consolidation successor of GREC and HUEC, still desires to have the 4% rate reduction become effective for its non-direct serve member-customers, and to exclude the large industrial customers, including the two smelters, therefrom. Under the Commission's interpretation of KRS 278.455(3) Kenergy perceives no plausible way to accomplish this by amending to conform to KRS 278.455[1]; therefore, this amended application seeks the same rate reduction that was sought in the original application and is filed as an application for general rate adjustment under 807 KAR 5:001, Section 10.

As will be noted at the conclusion of the amended application, Kenergy requests that the rate reduction be permitted to go into effect on September 1, 1999. Kenergy desires that this be on a permanent basis for the five (5) year period. However, realizing the position of intervenor **KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.** ("KIUC"), Kenergy is requesting that alternatively the rate reduction be allowed to become effective on an interim

---

[1]As set forth in the original application a proportional rate reduction which includes large industrial customers would result in an operating loss from those customers in excess of $4 million annually.

basis, subject to change after hearing. It is to be noted that in KIUC's motion served herein on June 3, 1999, there was no opposition to implementing a rate reduction on an interim basis subject to change after hearing. In fact, this was one of the alternatives suggested by KIUC.

(Kenergy anticipates that if the Commission orders the rate reduction into effect on an interim basis, the Commission may suspend the effective date of the interim rates for one day in order to retain control of the docket as was done in connection with the work out plan of Big Rivers Electric Corporation in Case No. 97-204.)

The Commission stated in its July 1, 1999, order herein that deviations may be requested from those provisions of 807 KAR 5:001, Section 10 deemed to be unduly burdensome or inapplicable under the existing circumstances, and that deviations would be granted where good cause is shown. This amended application seeks a proportional rate decrease for all member-customers except the previously mentioned large industrial customers. There will be no change in rate design. Kenergy submits that under these circumstances a full fledged application for rate adjustment is both impractical and unnecessary and, therefore, good cause should be found for the deviations sought below.

****

The amended application of Kenergy respectfully shows:

(a) Kenergy is a nonprofit electric cooperative organized under KRS Chapter 279 and is engaged in the business of distributing retail electric power to member consumers in the Kentucky counties of Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Webster, Breckinridge, Union, Crittenden, Caldwell, Lyon, and Livingston,

(b) The post office address of Kenergy is Post Office Box 18, Henderson, Kentucky 42419-018.

(c) Kenergy's existing rates should be adjusted so that all non-direct serve member-customers will have a 4% rate reduction for five (5) years. This rate reduction should not be extended to Kenergy's 21 large industrial customers which were to be excluded from this reduction in the original application. The requested reduction will allow expected consolidation savings to be immediately passed to these member-customers and will result in rates that are fair, just and reasonable.

(d) Attached as "Exhibit 1" is Adjusted Income Statement (Combined Green River & Henderson-Union) for the 12 months ending December 31, 1998. This statement provides 12 month historical test period information. The only adjustments for known and measurable changes being made are (i) 4% reduction in operating revenue which reflects projected consolidated savings and (ii) non-recurring write-off of capital credits of wholesale power supplier Big Rivers Electric Corporation.

(e) The annual reports of Kenergy's predecessors, GREC and HUEC, including the annual report for the most recent calendar year, are on file with the Commission in accordance with 807 KAR 5:006, Section 3 (1).

(f) Kenergy is the consolidation successor of GREC and HUEC which filed the original application herein. The articles of consolidation are filed in Case No. 99-136.

(g) A certificate of good standing (Certificate of Existence) is attached as "Exhibit 2."

(h) A certificate of assumed name for Kenergy Corp., adopting the name Kenergy, has been filed in the Office of the Kentucky Secretary of State, the county clerk's offices of all counties in Kenergy's service territory, and the office of Franklin County Clerk. A copy is attached as "Exhibit 3."

(i) The proposed tariff in forms which comply with 807 KAR 5:011 are attached as "Exhibit 4." The effective date is less than 30 days from the date of filing this amended application. Pursuant to KRS 278.180 (2) the Commission may prescribe a less time within which a reduction of rates may be made. Accompanying this amended application is a motion requesting the Commission to prescribe a less time so that the rate reduction can go into effect on the requested effective date.

(j) There are no changes to existing tariffs except for the two (2) new tariff sheets shown in "Exhibit 4."

(k) All affected customers will be notified of the filing of this amended application by publishing a notice as required under 807 KAR 5:001, Section 10 (4)(c) 3. A copy of the notice is attached as "Exhibit 5." Affidavits from the publishers verifying that the notice was published will be filed with the Commission no later than 45 days of the file date hereof.

(l) Notice of intent to file a rate application was filed herein on April 9, 1999. The notice stated that the application would be filed under KRS 278.455, but the proposed rate reduction was identical to that sought herein. To the extent said notice does not fully comply with 807 KAR 5:001, Section 10 (2) a deviation should be allowed.

(m) Proposed adjustments are addressed above in item (d).

(n) The prepared testimonies of Dean Stanley, Kenergy's President and CEO, Steve Thompson, Kenergy's Vice President of Finance and Accounting, and Jack Gaines, consultant with Southern Engineering Company, are attached as "Exhibit 6," "Exhibit 7" and "Exhibit 8," respectively.

(o) The 4% reduction equates to a $2,298,780.00 annual dollar deduction utilizing 1998 revenues of the non-direct serve customers.

(p) The proposed rate change will cause the average bill for each customer classification to be reduced 4% for five (5) years.

(q) A summary of Kenergy's determination of its revenue requirements is set forth in Exhibits 1—9 of the NRECA consolidation study filed in Case No. 99-136. Kenergy requests that those exhibits be incorporated herein by reference.

(r) Kenergy does not have a current chart of accounts more detailed than the Uniform System of Accounts prescribed by the Commission and requests a deviation from 807 KAR 5:001, Section 10 (6) (j).

(s) An independent auditor's annual opinion report is attached as "Exhibit 9." To the extent that this report does not fully satisfy the requirements of 807 KAR 5:001, Section 10 (6) (k) a deviation is requested.

(t) Kenergy is not regulated by the Federal Energy Regulatory Commission or Federal Communication Commission and therefore has no audit reports from these agencies.

(u) Kenergy has not had a depreciation study performed and requests a deviation from the requirements of 807 KAR 5:001, Section 10 (6) (n).

(v) There are no commercially available or in-house developed software, programs or models used in connection with this filing, and Kenergy requests a deviation from 807 KAR 5:001, Section 10 (6) (o).

(w) Annual reports to members of GREC and HUEC, with statistical supplements covering the two most recent years prior to this filing are attached as "Exhibit 10."

(x) Monthly managerial reports (RUS Form 7) providing financial results of operations of GREC and HUEC for the 12 months in the test period are on file with the Commission. To the extent these reports do not fully satisfy the requirements of 807 KAR 5:001, Section 10 (6) (r), Kenergy requests a deviation.

(y) Kenergy has not had any amounts charged or allocated to it by an affiliate or general or home office or paid any monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years.

(z) A cost of service study has not been performed. See attached testimony of rate analyst Jack Gaines ("Exhibit 8," responses to questions 14 and 15) for reasons that a cost of service study should not be required in connection with this filing. Kenergy requests a deviation from the requirements of 807 KAR 5:001, Section 10 (6) (u).

(aa) To the extent the foregoing does not fully comply with rules, regulations and other law, deviations therefrom are requested.

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order as follows:

1. Authorizing implementation of the requested 4% rate reduction for non-direct serve member-customers for five (5) years commencing September 1, 1999, or, alternatively, authorizing implementation of a 4% rate reduction for non-direct serve member-customers on an interim basis commencing September 1, 1999, subject to possible suspension for one day, and further subject to change after hearing.
2. Granting to Kenergy all proper relief.

DORSEY, KING, GRAY & NORMENT
318 Second Street
Henderson, Kentucky 42420
(270) 826-3965 Telephone
(270) 816-6672 Telefax
Attorneys for Applicant

By Frank N. King
FRANK N. KING, JR.

I hereby certify that the foregoing has been served upon the Attorney General of Kentucky, Office of Rate Intervention, 1024 Capital Center Drive, Frankfort, Kentucky 40601, and upon Michael L. Kurtz, Esq., Boehm, Kurtz & Lowry, 2110 CBLD Center, 36 East Seventh Street, Cincinnati, Ohio 45202, attorney for Kentucky Industrial Utilities Customers, Inc., by mailing true and correct copies of same on this 13th day of August, 1999.

Frank N. King, Jr.

Frank N. King, Jr.

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

July 29, 1999

To: All parties of record

RE: Case No. 99-162

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

Stephanie Bell

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

Honorable Frank N. King
Attorney at Law
Dorsey, King, Gray & Norment
318 Second Street
Henderson, KY 42420

Dean Stanley
General Manager
Green River Electric Corporation
3111 Fairview Drive
P. O. Box 1389
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Henderson, KY 42420 0018

Honorable Michael L. Kurtz
Counsel for KIUC
Boehm, Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP. FOR APPROVAL OF RATE DECREASE FOR ENERGY CORP., CONSOLIDATION SUCCESSOR	)	CASE NO. 99-162

ORDER

Kenergy Corp. having moved for a 20-day extension of time in which to submit its amended application in response to the Commission's July 1, 1999 Order and the Commission finding good cause, IT IS HEREBY ORDERED that the motion is granted and Kenergy Corp.'s amended application is due August 20, 1999.

Done at Frankfort, Kentucky, this 29th day of July, 1999.

By the Commission

ATTEST:

Helen C. Helton

Executive Director

DORSEY, KING, GRAY & NORMENT
ATTORNEYS-AT-LAW
318 SECOND STREET
HENDERSON, KENTUCKY 42420

JOHN DORSEY (1920-1986)
FRANK N. KING, JR.
STEPHEN D. GRAY
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J. CHRISTOPHER HOPGOOD

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(270) 826-3965
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July 21, 1999

FEDERAL EXPRESS

JUL 22 1999

Ms. Helen Helton, Executive Director
Public Service Commission of Kentucky
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Case No. 99-162

Dear Ms. Helton:

We enclose herewith for filing motion for extension of time to file amended application. The motion requests that this case be kept open and that an additional 20 days be allowed for the filing of the amended application.

Thank you for your assistance.

Very truly yours,

DORSEY, KING, GRAY & NORMENT

By Frank N. King
Frank N. King, Jr.

FNKJr/cds
Encls.
Copy/w/encls.: Mr. Dean Stanley

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

JUL 22 1999

IN THE MATTER OF THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP. FOR APPROVAL OF RATE DECREASE FOR KENERGY CORP., CONSOLIDATION SUCCESSOR)))))) CASE NO. 99-162

MOTION FOR EXTENSION OF TIME

Kenergy Corp., consolidation successor of Green River Electric Corporation and Henderson Union Electric Cooperative Corp., moves for an extension of time of 20 days in which to file an amended application herein.

Under Ordering paragraph 3 of the July 1, 1999, order entered herein, an amended application was to be filed within 30 days thereof or this docket would be closed. Additional time is needed in order to prepare and file the amended application and exhibits thereto. For convenience and economy, this filing should be made in the captioned case, rather than closing this case and requiring a new case to be opened.

The extension of time being sought will not be prejudicial to the rights or interests of intervenor Kentucky Utility Customers, Inc.

WHEREFORE, Kenergy Corp. moves that it be allowed to and including August 20, 1999, in which to file amended application and that it be allowed all proper relief.

DORSEY, KING, GRAY & NORMENT
318 Second Street
Henderson, Kentucky 42420
(270) 826-3965 Telephone
(270) 816-6672 Telefax
Attorneys for Applicants

By Frank N. King
FRANK N. KING, JR.

I hereby certify that the foregoing has been served upon the Attorney General of Kentucky, Office of Rate Intervention, 1024 Capital Center Drive, Frankfort, Kentucky 40601, and upon Michael L. Kurtz, Esq., Boehm, Kurtz & Lowry, 2110 CBLD Center, 36 East Seventh Street, Cincinnati, Ohio 45202, attorney for Kentucky Industrial Utilities Customers, Inc., by mailing true and correct copies of same on this 21st day of July, 1999.

Frank N. King
Frank N. King, Jr.

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

July 1, 1999

To: All parties of record

RE: Case No. 99-162

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

Stephanie Bell

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

Honorable Frank N. King
Attorney at Law
Dorsey, King, Gray & Norment
318 Second Street
Henderson, KY 42420

Dean Stanley
General Manager
Green River Electric Corporation
3111 Fairview Drive
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Charlye Jo Griggs
Director of Office Services
Henderson Union Electric
Cooperative Corporation
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42420 0018

Honorable Michael L. Kurtz
Counsel for KIUC
Boehm, Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF RATE DECREASE FOR KENERGY CORP., CONSOLIDATION SUCCESSOR	)))))	CASE NO. 99-162

ORDER

Green River Electric Corporation ("GREC") and Henderson Union Electric Cooperative Corporation ("HUECC") (collectively "the Cooperatives") have jointly applied, pursuant to KRS 278.455, for approval of a 4 percent reduction in the rates for their non-direct serve member-customers. The reduction is proposed to become effective upon the Cooperatives' consolidation as Kenergy Corp. Kentucky Industrial Utility Customers ("KIUC") has moved, in the alternative, for suspension of the proposed adjustment; or implementation of the proposed rates on an interim basis subject to refund; or Commission approval of a permanent rate reduction for all rate classes. Finding that KRS 278.455 does not govern the application, the Commission rejects the application and directs that the Cooperatives bring their application into compliance with either KRS 278.455 or Administrative Regulation 807 KAR 5:001, Section 10.

GREC and HUECC are electric Cooperatives that collectively serve 48,477 customers in a 15 county area. They have agreed to consolidate on July 1, 1999 and to provide electric service as Kenergy Corp.[1] Pursuant to their consolidation agreement,

[1] See Case No. 99-136, The Application of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation for Approval of Consolidation (Ky. P.S.C. June 18, 1999).

the Cooperatives have applied for approval of a consolidation credit rider equal to 4 percent of the monthly billing amount that will appear on all non-direct serve customer bills. The Cooperatives propose that the credit rider become effective on July 1, 1999 and remain in effect through June 30, 2004.

The Cooperatives make their application pursuant to KRS 278.455, which significantly reduces the level of Commission review of certain electric cooperative rate adjustments. This statute provides:

> Notwithstanding any other statute to the contrary, a G&T or distribution cooperative may at any time decrease regulated operating revenues by an amount to be determined solely by the cooperative utility. **If the revenue reduction is allocated among and within the consumer classes on a proportional basis that will result in no change in the rate design currently in effect, the revised rates and tariffs shall be authorized and made permanent on the proposed effective date.**

KRS 278.455(1) (emphasis added). It further provides that such rate changes "shall not apply to special contracts under which the rates are **subject to change or adjustment only as stipulated in the contract.**" KRS 278.455(3) (emphasis added).

KIUC argues that the Cooperatives have failed to comply with KRS 278.455 in that they have not allocated the proposed revenue reduction among and within their consumer classes on a proportional basis. KIUC states that the Cooperatives have improperly excluded two entire customer classes, large industrial customers served at dedicated delivery points and its large smelter class customers, from the rate reduction. It argues that these 22 customers are served under four separate standard tariffs and are entitled to share in the proposed rate reduction.

Anticipating the Cooperatives' arguments, KIUC contends that KRS 278.455(3) does not support the exclusion of these 22 customers. It contends that the 20 large industrial customers are not special contract customers. All of the industrial customers that HUECC serves are charged rates that are set forth in a filed rate schedule. Of the six large industrial customers that GREC serves, all are served under the cooperative's "Rate Schedule Large Industrial Customers Served Under Special Contracts."[2] None of these contracts, KIUC further asserts, has rates that are self-contained and not subject to change from outside forces. Therefore, these contracts cannot, KIUC concludes, be considered as containing rates that are subject to change or adjustment only as stipulated in the contract.

GREC and HUEC advance two arguments in opposition to KIUC's motion. First, they contend all excluded industrial customers are served under special contracts. They note that, while these contracts adopt or incorporate by reference a filed rate schedule, they contain provisions that are not included in the rate schedule or general tariff and hence are special contracts. Second, they argue that as long as the contract specifies the manner in which rates can be changed or adjusted, even if it is an occurrence extraneous to the contract itself, it meets the qualifications of KRS 278.455(3). The Cooperatives note that, in the case of virtually every industrial customer, their contract with the customer provides under what circumstances the rates may be changed or adjusted. These changes include modification by Commission Order, modification by operation of law, or modification required by the Rural Utilities Service.

[2] KIUC notes that one of these customers, Commonwealth Aluminum, has terminated its contract with GREC and "has no explicit written electric contract in place with its distribution cooperative (GREC) or with the G&T cooperative (Big Rivers)." KIUC Motion at 6.

KRS Chapter 278 does not define "special contract." Administrative Regulation 807 KAR 5:011, Section 13, however, suggests that a special contract is any contract governing utility service which sets out rates, charges or conditions of service not included in a utility's general tariff. These provisions include specific load requirements, construction obligations, security deposits, and notice requirements. Such provisions fall within the broad statutory definition of "rate"[3] and must be filed with the Commission.[4] Most contracts involving the Cooperatives' large industrial customers have such provisions.

KRS 278.455 fails to support KIUC's argument that the definition of "special contracts" excludes any contract that contains or incorporates charges that are contained in a filed rate schedule. Nothing within KRS 278.455 suggests that a contract

---

3

> "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;

KRS 278.010(12).

4

> Under rules prescribed by the commission, **each utility shall file with the commission**, within such time and in such form as the commission designates, schedules showing **all rates and conditions for service** established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

KRS 278.160(1) (emphasis added).

containing or incorporating a filed rate schedule cannot be a "special contract." The statute does not refer to rates that are not contained in a filed rate schedule. As previously noted, the statutory definition of rate is sufficiently broad to cover other provisions besides charges.

Nevertheless, while the industrial customer contracts may qualify as "special contracts," their rates are not limited to changes "only as stipulated in the contract." KRS 278.455(3). None of the contracts specifically limit how the Cooperatives' rates may be changed. They merely recognize that the rates are subject to Commission regulation. See Board of Education of Jefferson County v. William Dohrman, Ky.App., 620 S.W.2d 328 (1981). None of the industrial customer contracts contain any express limitation upon either party's right to apply to the Commission for changes in the filed rate.

The legislative history fails to support the Cooperatives' claim that a contracts recognition of the Commission's statutory authority to change rates is a limitation or stipulation on rate changes. When first introduced, House Bill 517 provided:

> Any rate increase or decrease as provided for in subsections of [sic] (1) and (2) of this section shall not apply to special contracts under which the rates are subject to change or adjustment only as stipulated in the contract or as ordered by the commission.

HB 517, codified as amended at KRS 278.455.

The bill was subsequently amended to delete the phrase "or as ordered by the commission." This amendment is clear indication the General Assembly did not intend to exempt special contracts subject to change by Commission Order from any rate reduction or increase implemented pursuant to this statute.

Based upon our view of the legislative history, we are of the opinion that the General Assembly enacted KRS 278.455(3) to protect a cooperative's ability to guarantee a contract rate for a specified period and to enable a cooperative to compete with other electric utilities for long-term contracts with industrial customers who wanted guarantees on their power costs. Where the customer and the utility have agreed only that the filed rate will be charged and have recognized that the filed rate is subject to change pursuant to statutory procedures, there is no guarantee of rate stability to be protected. Each party accepts that the filed rate may change.

While the contracts between the Cooperatives and the large industrial customers do not fall within KRS 278.455(3), the Commission finds that the Cooperatives' contracts with the aluminum smelters are within the exemption. Each aluminum smelter contract places specific limitations on the parties' right to obtain rate adjustments and establishes with great specificity when the contract rates may be changed. Accordingly, the Cooperatives' decision to exclude their smelter customers from the proposed rate reduction is not contrary to KRS 278.455 and is not grounds for rejecting their application.

Having considered the motion and response thereto and being otherwise sufficiently advised, the Commission finds that:

1. The Cooperatives have not allocated the proposed revenue reduction among and within their consumer classes on a proportional basis. Their proposed rate reduction does not allocate any of the reduction to their large industrial or smelter class customers.

2. The contracts between the Cooperatives and their large industrial customers are not special contracts whose rates are subject to change or adjustment

only as stipulated in the contracts. KRS 278.455(3) therefore does not exempt the Cooperatives from allocating a proportionate share of the proposed revenue reduction among and within the large industrial customer class.

3. As the Cooperatives' application does not conform to the requirements of KRS 278.455, it is not subject to Commission review under that statute.

4. If the Cooperatives' application is considered as an application for general rate adjustment, it fails to meet the filing requirements set forth in Administrative Regulation 807 KAR 5:001, Section 10.

5. As the Cooperatives' application fails to meet the filing requirements set forth in Administrative Regulation 807 KAR 5:001, Section 10, it cannot be accepted for filing; nor can KIUC's requested relief be granted.

IT IS THEREFORE ORDERED that:

1. KIUC's motion is denied.

2. The Cooperative's application is not accepted for filing.

3. The Cooperatives shall have 30 days from the date of this Order to amend their application to conform to KRS 278.455 or, in the alternative, to conform to Administrative Regulation 807 KAR 5:001, Section 10.

4. Should the Cooperatives choose to submit their application as an application for general rate adjustment pursuant to Administrative Regulation 807 KAR 5:001, Section 10, they may request a deviation from those provisions of Administrative Regulation 807 KAR 5:001, Section 10, that they deem unduly burdensome or inapplicable under the existing circumstances. Deviations will be granted where good cause is shown.

5. If, within 30 days of the date of this Order, the Cooperatives have failed to amend their application to conform to KRS 278.455 or Administrative Regulation 807 KAR 5:001, Section 10, this docket shall be closed without further Order of the Commission.

Done at Frankfort, Kentucky, this 1st day of July, 1999.

By the Commission

ATTEST:

Helen C. Helton

Executive Director

BOEHM, KURTZ & LOWRY
ATTORNEYS AT LAW
2110 CBLD CENTER
36 EAST SEVENTH STREET
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

RECEIVED
JUN 21 1999
PUBLIC SERVICE
COMMISSION

Via Overnight Mail

June 18, 1999

Hon. Helen Helton
Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40601

Re: In The Matter Of: Notice of Intent of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation to File Joint application for Rate Reduction, Case No. 99-162.

Dear Ms. Helton:

Please find enclosed the original and ten copies each of the Reply of Kentucky Industrial Utility Customers, Inc. in the above-referenced matter. By copy of this letter, all parties listed on the Certificate of Service have been served.

Please place this document of file.

Very Truly Yours,

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MLK/kew
Attachment
cc: Certificate of Service
Frank N. King, Esq. (Via Telefax Transmission)
Gerald Wuetcher, Esq. (Via Telefax Transmission)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by regular U.S. mail (unless otherwise noted) to all parties on this 18th day of June, 1999.

Honorable Frank N. King
Attorney at Law
Dorsey, King, Gray & Norment
318 Second Street
Henderson, KY. 42420
(Via Telefax Transmission)

Dean Stanley
General Manager
Green River Electric Corporation
3111 Fairview Drive
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Owensboro, KY. 42302 1389

Charlye Jo Griggs
Director of Office Services
Henderson Union Electric
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6402 Old Corydon Road
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Henderson, KY. 42420 0018

Michael L. Kurtz, Esq.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
JUN 21 1999
PUBLIC SERVICE COMMISSION

In The Matter Of: The Application of Green River Electric Corporation and Henderson Union Electric Cooperative Corp. For Approval of Rate Decrease for Kenergy Corp., Consolidation Successor	:	Case No. 99-162

REPLY OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

The central point of contention between Kentucky Industrial Utility Customers, Inc. ("KIUC") and Henderson Union Electric Cooperative Corporation ("HUEC") and Green River Electric Corporation ("GREC") (collectively referred to as "Cooperatives") involves the interpretation of the following portion of KRS 278.455(3).

> *"Any rate ... decrease as provided for in ... this section shall not apply to special contracts under which the rates are subject to change or adjustment only as stipulated in the contract."*

KIUC avers that the definition of *"special contracts"* as used in Section 3 is contained in the Commission's regulations. 807 KAR 5:011, Section 13. KIUC further avers that Section 3 provides a carve out provision whereby customers served by a particular type of special contract (i.e., contracts under which the rates are subject to change only as stipulated in the contract and are not subject to change under a general tariff) can be excluded from a streamlined rate decrease application.

The Cooperatives advocate a much different definition of what constitutes a special contract. The Cooperatives argue that a contract which incorporates by reference a general tariff is a special contract which meets the requirements of Section 3.

> *"The type of special contracts excluded under subsection (3) are those that stipulate that the rates are subject to change or adjustment only as stipulated in the contract. Thus, if a special contract adopts or incorporates by reference certain rates set forth in a Commission approved tariff, and specifies how those rates may be changed or adjusted, that special contract fits the category of special contracts included under subsection (3)."*
> HUEC/GREC Response at p. 5.

The argument of the Cooperatives is totally at odds with the definition of special contracts contained in the Commission's regulations. 807 KAR 5:011, Section 13 defines *"special contracts"* as contracts governing utility service *"which set out rates, charges or conditions of service not included in its general tariff ..."*. Completely ignoring this regulation, the Cooperatives argue that an agreement which *"incorporates by reference certain rates set forth in a Commission tariff"* is a *"special contract"*. This argument does not even make it to first base. If the rates charged under an agreement for electric service are merely those set out in a general tariff, then such an agreement is not a *"special contract"* under 807 KAR 5:011, Section 13. The Cooperatives self-styled definition of *"special contracts"* would turn virtually every service agreement into a special contract subject to carve out.

Contrary to their assertions, the contractual provisions quoted on pages 8-10 of the Cooperatives' Response do not support their position. The Willamette, ALCOA, Arvin Industries, Hudson Foods, Peabody Coal and Accuride contracts all contain a provision which says, in effect, that the initial rate set forth in the contract is subject to the continuing jurisdiction of the Commission and may be changed by order of the Commission. (Response of Cooperatives at pp. 8-10).[1] The Cooperatives attempt to turn these contractual provisions inside-out. They argue that because the contract rates are subject to the continuing jurisdiction of the Commission, the Cooperatives can use the new statute to circumvent Commission oversight of the rates in the 22 contracts through the carve out provision. Precisely the opposite is true. All ratepayers have a contractual relationship with their utility,[2] and the rates set forth in that contractual relationship are always subject to change by the Commission unless there is a Commission order to the contrary approving a special contract with fixed rates.

When a special contract is filed with the Commission for approval, it is normally treated as a new rate fling and suspended pending investigation. If the Commission becomes satisfied that the customized rates contained in the special contract are fair, just and reasonable and non-discriminatory,

---

1 The Applicants have made no showing that the contractual terms and conditions under which they provide electric service to their industrial customers served directly off the transmission system are materially different from the terms of the contracts under which the Applicants provide electric service to their numerous industrial customers that are served from the distribution system. In fact, KIUC avers that documents obtained from the Applicants through discovery would amply demonstrate that there is no difference.

2 See HUEC By-Laws, Article VIII, Section 2 which explicitly recognizes that all of HUEC's member-customers have a contract with the Cooperative and are bound by such contract.

then the special contract is approved. That process was not undertaken with regard to the 22 agreements at issue here. That is because not all of these 22 agreements are special contracts.

It is troubling to note that Applicants seek to justify their use of discretion (denying rate decreases to 22 direct serve customers) by citing discretion used by the Commission. (Response at p. 17-20). The proper application of KRS 278.455 provides for no such exercise of discretion. The use of discretion in ratemaking is the province of the Commission, not the utilities. If the Applicants seek the Commission's approval of their use of such discretion, it must be through a general rate proceeding rather than through the automatic application of KRS 278.455.

It is clear that the Applicants seek to use KRS 278.455 as a backdoor method to correct what they perceive as a prior error in judgment by this Commission in the last rate case. This is not what the Legislature intended. KRS 278.455 grants limited authority in the setting of rates to a cooperative utility, but only to the extent that such authority is used in a manner that incorporates and maintains the Commission's prior decision regarding the proper rate design. It would be inappropriate for this Commission to allow the Applicants to use a law that is supposed to incorporate the Commission's prior judgments as to fair, just and reasonable rates to implement rate reductions that remedy utility-perceived inequities from prior rate cases.

This Application does not comply with KRS 278.455 and it should be handled in one of the three ways set out in KIUC's Motion.

Respectfully submitted,

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
2110 CBLD Center, 36 East Seventh Street
Cincinnati, Ohio 45202
Ph: (513) 421-2255 Fax: (513) 421-2764
E-Mail: KIUC@aol.com

COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

June 18, 1999

DORSEY, KING, GRAY & NORMENT
ATTORNEYS-AT-LAW
318 SECOND STREET
HENDERSON, KENTUCKY 42420

JOHN DORSEY (1920-1986)
FRANK N. KING, JR.
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RECEIVED
JUN 17 1999
PUBLIC SERVICE COMMISSION

June 16, 1999

FEDERAL EXPRESS

Ms. Helen Helton, Executive Director
Public Service Commission of Kentucky
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Case No. 99-162

Dear Ms. Helton:

We enclose herewith for filing applicants' response to the motion of Kentucky Industrial Utilities Customers, Inc ("KIUC"). Ten (10) copies are also provided. Copies have been served as set forth in the certificate of service and also a copy has been faxed to KIUC's counsel today.

Thank you for your assistance.

Very truly yours,

DORSEY, KING, GRAY & NORMENT

By Frank N. King, Jr.

Frank N. King, Jr.

FNKJr/cds
Encls.
Copy/w/encls.: Mr. Michael L. Kurtz,
Mr. Dean Stanley
Mr. John West

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED
JUN 17 1999
PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP. FOR APPROVAL OF RATE DECREASE FOR KENERGY CORP., CONSOLIDATION SUCCESSOR	)	**CASE NO. 99-162**

RESPONSE TO MOTION OF KENTUCKY INDUSTRIAL

UTILITIES CUSTOMERS, INC.

Applicants **GREEN RIVER ELECTRIC CORPORATION** ("GREC") and **HENDERSON UNION ELECTRIC COOPERATIVE CORP.** ("HUEC") respond to the motion of **KENTUCKY INDUSTRIAL UTILITIES CUSTOMERS, INC.** ("KIUC") served on June 3, 1999, as follows:

I. INTRODUCTION

Applicants GREC and HUEC are seeking approval of consolidation in Case No. 99-136. The consolidated corporation will be Kenergy Corp. and the consolidation will become effective July 1, 1999. Applicants have requested approval of a 4% rate decrease for five (5) years for member-customers of Kenergy Corp. in accordance with KRS 278.455(1).

KIUC has filed a three-pronged motion asking the Commission to suspend the effectiveness of the rate decrease pending a hearing, or to implement a rate decrease on an interim basis subject to a change after the hearing, or to permanently approve a rate decrease for all customer classes. KIUC contends that the application is deficient. GREC and HUEC submit that the application filed in this case is proper in all respects and that the rate decrease sought should be authorized by the Commission and made permanent on the proposed effective date.

II. ARGUMENT

A. Real Parties in Interest

A threshold question is whether KIUC has standing to present argument for and on behalf of the large industrial customers not participating in this case. KIUC argues on behalf of 22 large industrial customers but acknowledges that the only four (4) members participating in the case are Alcan Aluminum Corporation ("Alcan"), Southwire Company ("Southwire"), Commonwealth Aluminum Corporation ("Commonwealth"), and Kimberly Clark corporation ("Kimberly Clark"). Obviously, the other 18 members have rejected KIUC's overture to intervene in this case.

A basic legal doctrine is that a legal action or proceeding must be prosecuted in the name of the real party in interest. The real party in interest is the one holding the substantive right to be enforced. Rule 17.01 of Kentucky Rules of Civil Procedure; see also Comments following rule in Philipps, 6 Kentucky Practice, Fifth Edition. Clearly, KIUC is not the real party in interest as to the 18 members who have not chosen to intervene, and the Commission should disregard arguments made on their behalf.

Applicants GREC and HUEC appreciate the fact that the Commission is charged with assuring that rates are fair, just and reasonable (KRS 278.030) and may not want to recognize the real party in interest distinction. Therefore, applicants will respond generally to the arguments made on behalf of all 22 large industrial customers and will respond specifically to the arguments on behalf of the four (4) participating members. Either way KIUC's arguments fail and the rate decrease sought in the application should be authorized.

B. Large Industrial Customers Defined

KIUC points out that the 22 member customers being excluded from the proposed rate decrease are served under four (4) Commission approved tariffs. For GREC these tariffs are "Large Industrial Customers Served Under Special Contract (Dedicated Delivery Points)" and "Smelter Customers Served Under Special Contract." For HUEC these tariffs are "LP-4 Dedicated Delivery Point or 2001 kW and Above" and "Smelter Customers Served Under Special Contract." For convenience herein, and following KIUC's approach, these 22 member customers will be referred to as "large industrial customers." Alcan and Southwire, when discussed separately, will be referred to as "smelters."

GREC and HUEC have sent explanatory letters to the large industrial customers being excluded from the proposed rate decrease. (These letters are more fully discussed in section E, at page 17.) At the time these letters were sent in late March 1999 there were only 21 large industrial customers being excluded. This number varies from time to time and in this response the number 22 will be used, to be consistent with KIUC's figure. The actual number, of course, has no bearing on the validity of the arguments.

C. Special Contracts Defined; Special Contracts That Fit Under KRS 278.455(3)

KIUC completely misses the point when it argues that the type of special contracts excluded under KRS 278.455(3) are required to be "non-tariff contracts with self contained rate provisions." Argument at page 5. In order to explain why this argument is misplaced, first a special contract must be defined, then the wording of subsection (3) needs to be examined to determine the type of special contract that is excluded from the proportional rate decrease. (Reference herein to subsection (3) is reference to KRS 278.455(3).)

807 KAR 5:011 Section 13 defines special contracts as follows:

> Section 13. Special Contracts. Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this regulation application to tariffs containing rates, rules and regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.

In other words, a special contract may set out rates not included in the general tariff, and/or it may set out charges not included in the general tariff, and/or it may set out conditions of service not included in the general tariff. Of course, if the rates mirror the general tariff and there were no other charges or conditions of service outside of that tariff, there would be no need for a special contract; the customer would receive service under the appropriate tariff.

All of the special contracts of GREC and HUEC (except the smelter contracts which will be discussed separately below in section D(2), pages 10-12) adopt the appropriate established tariff by attaching a copy to the contract or by incorporating it by reference, but these contracts address other matters such as terms (durations), construction obligations, security deposits, etc. which are not included in the general tariffs. Hence, these special contracts do not have so-called "self contained rate provisions" but clearly they fit the regulatory definition.

The type of special contracts excluded under sub-section (3) are those that stipulate that the rates are subject to change or adjustment only as stipulated in the contract. Thus, if a special contract adopts or incorporates by reference certain rates set forth in a Commission approved tariff, and specifies how those rates may be changed or adjusted, that special contract fits the category of special contracts included under subsection (3).

In making the "self contained" argument KIUC insists that in order for there to be a lawful special contract the parties can have no flexibility and must live with the deal "for better or worse." Argument at page 4. We submit that this position is totally absurd and runs contrary to the Commission's philosophy of allowing the contracting parties to have flexibility in their dealings to meet future unknown, unforeseen or unexpected costs, as was clearly announced by the Commission in Case No. 97-204 when the applicants' wholesale power supplier, Big Rivers Electric Corporation ("Big Rivers"), was emerging from bankruptcy. This order is discussed more fully below in section D(2) at page 11.

D. Compliance With KRS 278.455

KRS 278.455 became effective on July 15, 1998, less than a year ago. To the knowledge of the applicants, the instant case is the first filing for a rate decrease under subsection (1). The Commission is still in the process of finalizing the companion regulations.

KIUC has cited KRS 446.080(1) and four (4) Kentucky cases that explain basic tenets of statutory construction (Argument at pages 9 and 10) and we do not quarrel with what is said. Statutes should be liberally constructed with a view to promote their objects and carry out the intent of the legislature. The intent of the legislature, of course, is tantamount. A practical result should be found. Statutes should be constructed so that the entire statute is meaningful. And, we might add, common sense should be used in construing a statute.

KRS 278.455(1) allows a distribution cooperative such as GREC and HUEC to decrease regulated operating revenues by an amount determined solely by the cooperative utility. If this revenue reduction is allocated among and within the customer classes on a proportional basis that will result in no change in the rate design currently in effect, the revised rates and tariffs are required to be authorized and made permanent on the proposed effective date. KRS 278.455(3) specifies that this rate decrease shall not apply to special contracts under which the rates are subject to change or adjustment only as stipulated in the contract.

The only issue being raised by KIUC is that subsection (3) does not authorize exclusion of the 22 large industrial customers from the proposed rate decrease. KIUC's argument on this issue is completely without merit and applicants respond below first to the argument made on behalf of the 22 large industrial customers and then specifically to the claims of the four (4) large industrial customers participating herein.

(1) General Response to the 22 Large Industrial Customers

It should be obvious to the Commission that in order for KIUC to advance its argument, it has been required to invent the concept of a "self-contained" special contract. The explanation is made that this would be a contract where the rates are not subject to change under the general tariff. KIUC contends that this is the only type contract excluded under subsection (3). With this type of contract, upon Commission approval, the parties are "required to live with the deal for better or worse" (Argument at page 4).

We submit that there is absolutely no lawful or legitimate authority for KIUC's position that contracting parties should be handcuffed in this manner. Certainly this position runs contra to the mandate that statutes are to be liberally construed to achieve their meaning and purpose. Subsection (3) excludes special contracts under which rates are subject to change or adjustment only as stipulated therein. Nowhere does this subsection say that the parties must have a rigid, inflexible agreement on rates — a deal they must live with for better or worse — in order for the special contract to fit this category. As long as the parties agree to the manner in which rates can be changed or adjusted, even if it is an occurrence extraneous to the contract itself, the clear wording of the statute is satisfied.

All of GREC and HUEC special contracts with large industrial customers contain provisions addressing how and under what circumstances rates may be changed or adjusted. Typical of the wording in these contracts (except for the Alcan and Southwire contracts) are the following provisions addressing how rates may be changed or adjusted:

- <u>GREC Agreement with Willamette dated September 16, 1991</u>

  12.01 . . . subject, however, to such changes as may be authorized or ordered into effect from time to time by the Public Service Commission of Kentucky.

- <u>GREC Agreement with ALCOA Hawesville Works dated May 11, 1995</u>

4.01(a) . . . subject to such changes as may become effective from time to time by operation of law, by order of the Kentucky Public Service Commission, or by any rate modification lawfully required by Seller's lender, the Rural Utilities Service.

- <u>GREC Agreement with Arvin Industries, Inc. (formerly WorldSource Coil Coating, Inc.) dated December 8, 1989</u>

4.01(a) . . . subject to such changes as may become effective from time to time by operation of law or by order of the Kentucky Public Service Commission, and further subject to such changes as may be required to reflect modification of the rates under which seller purchases electric service at wholesale.

- <u>HUEC Agreement with Hudson Foods, Inc. dated August 14, 1996</u>

4.01(a) . . . subject to such changes as may become effective from time to time by operation of law or by order of the Kentucky Public Service Commission.

- <u>HUEC Agreement with Peabody Coal Company dated July 1, 1992</u>

2.d. The Consumer agrees that if, at any time Schedule LP-4 is modified, the rate for service hereunder shall be correspondingly modified.

- HUEC Agreement with Accuride Corporation (formerly Firestone Steel Products Company) dated October 1, 1983

3.01 . . . subject to such changes as may become effective from time to time by operation of law or by order of the Kentucky Public Service commission, and further subject to such changes as may be required to reflect modification of the rate under which seller purchases electric service at wholesale.

Under the clear wording of these agreements the parties have stipulated to the manner in which rates are subject to change or adjustment. The fact that the parties have agreed that rates may be changed or adjusted dependent on some outside occurrence is irrelevant. Clearly there is nothing in the language of subsection (3) to even suggest that the parties' agreement on rate changes or adjustments must be "self-contained." This reasoning and argument should be rejected out of hand.

(2) The Contracts of Alcan and Southwire

As the Commission is well aware, Alcan and Southwire fought extremely hard to get fixed rates in connection with Big

Rivers' emergence from bankruptcy. However, in the April 30, 1998, order in Case No. 97-204 the Commission rejected proposed provisions in the smelters' tariffs and contracts prohibiting rate adjustments to reflect costs or payments incurred by the distribution cooperatives for expenditures due to legislation, regulatory, or legal action, and the Commission also rejected provisions exempting the smelters from paying any stranded costs or exit fees at the distribution level (Ordering paragraphs 6 and 7, page 45).

In response to these rejections the final smelter contracts allow rates and charges to be modified to provide for recovery of certain costs arising directly from legislative, regulatory or legal action. See Schedule A, General Provisions, section d.(3) of July 15, 1998, Agreement for Electric Service. These contracts also recognize that the smelters may have to pay stranded costs or exit fees at the distribution level upon expiration or early termination of the respective contracts. See section 7.3. Each smelter contact has a provision for a distribution fee of 1/10th of a mill ($0.0001), which is subject to change by order of the Commission after December 31, 2000, only upon application by either or both of the distribution cooperative and the smelter. See Schedule A, General Provision, Section (e).

Unarguably the smelter contracts are subject to change or adjustment only as stipulated therein. To contend otherwise is to ignore the clear wording of the contract. The fact that the change or adjustment may be triggered by an incident or occurrence not "self contained" in the contracts is totally irrelevant. To argue that this restriction should be imposed on the meaning of KRS 278.455(3) is to argue contrary to accepted rules of statutory construction.

The Commission's rulings in Case No. 97-204, discussed above, evidence a strong disdain for inflexibly self contained rates that require the parties to live with them, for better or worse. The Commission recognizes the common sense benefit of allowing the parties to the contract to have flexibility in their relationship.

In arguing that the smelters should be allowed a rate reduction which should be reflected in the distribution fee after December 31, 2000, the smelters completely ignore the clear wording of the agreement which specifies that either or both parties to the contract must make an application to the Commission for a modification of this fee. The filing of an application before the Commission is addressed in 807 KAR 5:001, Section 15. A proper application has not been filed for the backdoor fee reduction sought by the smelters herein. Therefore, even if there is any merit to the smelters' claims, which applicants strongly insist there is not, the Commission should not modify the distribution fee in this proceeding.

(3) The Kimberly-Clark Contract

On March 12, 1993, GREC entered into an agreement for electric service with Scott Paper Company. Scott Paper Company was subsequently acquired by Kimberly-Clark which now purchases retail power under this agreement. Section 4.01 provides that rates are "subject to such changes as may become effective from time to time by operation of law or by order of the Public Service Commission of Kentucky" and requires that the customer be given advance notice of any filing by GREC which attempts to change or affect the "terms, conditions or rates" under the agreement.

As explained above, the Kimberly-Clark agreement clearly falls within the subsection (3) exception.

(4) The Commonwealth Contract

GREC is surprised that Commonwealth is trying to take advantage of the fact that there is no written retail service agreement in effect at the present time. The former agreement may have been terminated by mutual understanding, but the termination was a result of notification from Commonwealth. It is true that Commonwealth became dissatisfied with its contractual arrangement when the Commission rejected proposed rates for industrial customers with one mW or more of peak load, a load factor of 70% or greater, and a five (5) year contract for service. Affidavit of Russell L. Klepper at paragraph 12.

GREC has attempted to accommodate Commonwealth since the contract termination and Commonwealth is currently receiving service under GREC's tariff titled "Large Industrial Customers Served Under Special Contract (Dedicated Delivery Points)." Rates for Commonwealth are specifically spelled out in this special contract tariff, a copy of which is attached for the Commission's reference as "Exhibit 1." As noted by KIUC, GREC and Commonwealth are in privity of contract (Argument at page 6), although an actual written document is not in place at the present time. (When the Commonwealth contract terminated the parties agreed to negotiate a new contract, but that negotiation has not yet taken place.)

If Commonwealth is not de facto a special contract customer, then Commonwealth should not be accorded special contract status. If Commonwealth is not accorded this status, Commonwealth would then belong in the class of GREC customers served under "Three-phase Demand—Large Power 1,000 kW and Above." This will result in a rate increase to Commonwealth of approximately 27%. GREC does not want to impose this and we trust that Commonwealth does not want it either. Commonwealth should be treated as a large industrial customer which is excluded from the rate reduction under subsection (3). Commonwealth's argument is based on de minimis considerations and should not be allowed to prevent the proposed rate decrease for over 48,000 member customers from being made permanent on the proposed effective date.

E. KIUC's Reasoning in Support of Request For Allocation of $256,000.00 is Flawed

The foregoing argument should satisfy the Commission that GREC and HUEC have followed the letter of the law and that their requested rate decrease should be authorized and made permanent on the proposed effective date. In addition, however, GREC and HUEC desire to point out to the Commission the flawed reasoning of KIUC in maintaining that the 22 large industrial customers should be allocated $256,000.00 of the rate decrease.

KIUC argues that the non-smelter large industrial customers purchase retail electric service on "a bundled basis," whereas the smelters purchase electric service "at transmission levels." Argument at page 1. This distinction is invalid. GREC and HUEC are both distribution cooperatives. KRS 278.010(10). They are retail electric suppliers engaged in the furnishing of retail electric service. KRS 278.010(4). Billings include all charges, including generation, transmission and distribution components. GREC and HUEC serve and bill all retail customers, smelters and non-smelters alike, on a bundled basis.

KIUC attempts to divide the smelter contracts into two components, a generating and transmission component and a distribution component (Klepper affidavit at paragraphs 23 and 24) and then argue that the distribution component cannot be part of a special contract. This twisted reasoning is also invalid. Actually, the retail contract of any direct served customer can be said to have both a generation and transmission component and a distribution component. However, as pointed out above, the service and billing are on a bundled basis and a distribution component cannot be singled out for special treatment. Obviously, this approach is not envisioned in KRS 278.455.

Carrying the distribution component theme further, KIUC argues that the proposed rate decrease (4% of total sales) is equivalent to proposing a reduction of approximately 11% to 13% of the distribution component of the applicants' rates. Klepper affidavit at paragraph 27. This is perhaps interesting information but it is useless. The rate decrease permitted under KRS 278.455 is to be allocated proportionately among and within the customer classes. This means as the rates and tariffs are affected, and it has nothing to do with the so-called underlying "distribution component."

KIUC acknowledges that the gross margins (referred to as distribution components) resulting from retail sales to the 22 large industrial customers are much smaller than those resulting from sales to the other members of the system. Klepper Affidavit at paragraph 26. This acknowledgment is correct in the cases of GREC and HUEC and undoubtedly it is also correct in cases of retail electric sales to large industrial customers in general. These customers are high volume consumers of electricity that receive lower rates resulting in smaller gross margins. This is undoubtedly one of the principal reasons that special contract customers may be excluded from a proportionate rate reduction.

As stated above, prior to filing the application herein GREC and HUEC notified their combined 21 direct-served members (14 from HUEC and 7 from GREC) by letters that the rate reduction would not apply to them. Copies of an example of these letters are attached as "Exhibit 2" and "Exhibit 3." As explained in the letters, during 1998 revenues and power costs for the 21 direct served members were $171,823,979.00 and $169,428,327.00 respectively. This left a gross margin before expenses of $2,395,653.00, or just 1.5%. If the 4% rate reduction were afforded to these 21 members, this would result in a loss of approximately $4.5 million from sales to these customers.

KIUC has created its own methodology to support its claim that the 22 large industrial customers should be allocated $256,000.00 of the revenue decrease. Clearly this approach is not authorized under KRS 278.455. Perhaps KIUC thinks that this figure will be palatable to the Commission, but the applicants urge the Commission not to bite. These special contract customers are not required to be included in the proportional rate decrease.

F. The Fairness Aspect

Before concluding the applicants desire to comment on the fairness of the proposed rate decrease under consideration. In the past the large industrial customers (direct served) and the remaining customers (non-direct served) of GREC and HUEC have not been treated equally, usually at the expense of the non-direct served customers. In PSC Case 10275, which was filed on June 30, 1988, GREC proposed and the Commission accepted a 2% overall increase to the non-direct served customers, with no increase proposed for the direct served special contract class. Then, in PSC Case 90-152 GREC proposed and the Commission approved an overall 5% increase to the rural (non-direct) classes of customers, again with no general increase proposed to the direct served special contract customers. These rate increases were carried forward and reflected in Case No. 97-219, when current retail rates for GREC were established.

In the case establishing current rates for HUEC, Case No. 97-220, HUEC proposed and the Commission approved an allocation of approximately $488,201.00 of purchase power savings from rural (non-direct) system customers to direct served customers. The purpose of this allocation was to have each customer class more fairly bare its share of expenses. However, it meant that rather than the rural customers receiving a 10.56% decrease in connection with the reduction in rates of wholesale power supplier Big Rivers, the rural customers received only a 8.36% decrease.

(Attached as "Exhibit 4" is a schedule of HUEC's rate decreases in connection with Case No. 97-220. While rural system members received only an 8.36% rate decrease, direct served members, not including Alcan, received a 14.94% rate decrease.)

It was against this backdrop that the boards of directors of GREC and HUEC decided to allocate some of the projected savings to be realized from consolidation with an offer of reduced rates to rural or non-direct served customers. The express agreement on this point is set forth in paragraph 15 of the January 23, 1999, consolidation agreement and provides for the filing of an application with the Commission seeking a 4% reduction for five (5) years for all non-direct served members, which is precisely what GREC and HUEC have done in the instant application.

The Commission has acknowledged in the past that it is reasonable to distinguish between direct served and non-direct served customers. An example of this is found in Case No. 98-427 providing for restitution refunds, in which the Commission stated on page 5 of the May 24, 1999, order: "The Commission recognizes that the proposed plan treats rural customers differently from directly served industrial and commercial customers. While directly served customer refunds are based upon historical usage, individual rural customer refunds are based upon current usage. A reasonable basis for this difference in treatment, however exists. Use of historic usage for all customers would be administratively burdensome and expensive."

Applicants recognize, as did the Commission in its order, that Case No. 98-427 was unique. Nevertheless, the point is made clear that if there is no undue discrimination customer classes may be treated differently. This fundamental principle of law is embodied in KRS 278.455.

KIUC is totally off the mark in accusing the applicants of improperly engaging in politics and buying residential votes to ensure approval of the consolidation. Argument at page 10. It is true that the applicants promoted consolidation strongly and encouraged their members to vote in favor of it. However, nothing has been done improperly. The enactment of KRS 278.455 permitted the applicants to offer the proposed rate decrease. The proposal not only comports with the law, but it is obviously very fair under the circumstances.

The Commission is charged with assuring that rates are fair, just and reasonable. The proposed rate decrease accomplishes this.

III. CONCLUSION

KRS 278.455 affords a streamlined procedure for implementing a rate decrease resulting from a decrease in regulated operating revenues by an amount determined solely by the cooperative utility. A hearing is not envisioned and the Commission is mandated to authorize the revised rates and tariffs and make them permanent on the proposed effective date.

GREC and HUEC have closely complied with the provisions of this statute in their application. KIUC requests interim rates and a hearing, but these measures are not allowed if there has been statutory compliance.

The proposed rate decrease meets all legal requirements and its implementation will result in fair, just and reasonable rates. KIUC's motion should be denied and an order should be entered authorizing the proposed rate decrease.

DORSEY, KING, GRAY & NORMENT
318 Second Street
Henderson, Kentucky 42420
(270) 826-3965 Telephone
(270) 816-6672 Telefax
Attorneys for Applicants

By Frank N. King
FRANK N. KING, JR.

VERIFICATION

The undersigned, JOHN WEST, being first duly sworn states that he is the President and Chief Executive Officer of Henderson Union Electric Cooperative Corp.; that he has personal knowledge of the matters set forth in the foregoing application; and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

John West

John West

STATE OF KENTUCKY

COUNTY OF HENDERSON

Subscribed, sworn to and acknowledged before me by JOHN WEST this 16th day of June, 1999.

My commission expires 9-8-2002

Kaci B. West

Notary Public, State of Kentucky at Large

(seal)

VERIFICATION

The undersigned, DEAN STANLEY, being first duly sworn states that he is the President and Chief Executive Officer of Green River Electric Corporation; that he has personal knowledge of the matters set forth in the foregoing application; and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

Dean Stanley
Dean Stanley

STATE OF KENTUCKY

COUNTY OF DAVIESS

Subscribed, sworn to and acknowledged before me by DEAN STANLEY this 16th day of June, 1999.

My commission expires 6-16-03

Delma J. Hayden
Notary Public, State of Kentucky at Large

I hereby certify that the foregoing has been served upon the Attorney General of Kentucky, Office of Rate Intervention, 1024 Capital Center Drive, Frankfort, Kentucky 40601, and upon Michael L. Kurtz, Esq., Boehm, Kurtz & Lowry, 2110 CBLD Center, 36 East Seventh Street, Cincinnati, Ohio 45202, attorney for Kentucky Industrial Utilities Customers, Inc., by mailing true and correct copies of same on this 16th day of June, 1999.

Frank N. King

Frank N. King, Jr.

GREEN RIVER ELECTRIC CORPORATION
OWENSBORO, KENTUCKY

FOR ALL TERRITORY SERVED
Community, Town or City
PSC KY. NO. 6

Eleventh Revised SHEET NO. 37

CANCELLING PSC NO. 6

Tenth Revised SHEET NO. 37

CLASSIFICATION OF SERVICE

Large Industrial Customers Served Under Special Contract (Dedicated Delivery Points)	RATE PER UNIT
(T) The Rates to Commonwealth and Willamette Industries shall be as follows:	
The monthly delivery point rate shall be:	
Demand Charge of:	
(R) Per KW of Billing Demand	$10.15
Energy Charge of:	
(R) Per KWH	.014015
(T) The Rates to A-CMI and WorldSource shall be as follows:	
The monthly delivery point rate shall be:	
Demand Charge of:	
(R) Per KW of Billing Demand	$10.40
Energy Charge of:	
(R) PER KWH	.016215
(T) The Rates to Kimberly-Clark shall be as follows:	
The monthly delivery point rate shall be:	
Demand Charge of:	
(R) Per KW of Billing Demand	$10.20
Energy Charge of:	
(R) Per KWH	.014215

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

JUL 18 1998

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)
BY: [signature]
SECRETARY OF THE COMMISSION

DATE OF ISSUE August 24, 1998 DATE EFFECTIVE July 18, 1998

ISSUED BY [signature] TITLE President and CEO
NAME OF OFFICER

ISSUED BY AUTHORITY OF PSC ORDER NO. 97-219

EXHIBIT
1

GREEN RIVER ELECTRIC CORPORATION
OWENSBORO, KENTUCKY

FOR ALL TERRITORY SERVED
Community, Town or City
PSC KY. NO. 6

Original SHEET NO. 37A

CANCELLING PSC NO. 6

SHEET NO. 37A

CLASSIFICATION OF SERVICE		
	Large Industrial Customers Served Under Special Contract (Dedicated Delivery Points)	RATE PER UNIT
(T)	The Rates to Alcoa-Hawesville Works shall be as follows:	
	The monthly delivery point rate shall be:	
	Demand Charge of:	
(R)	Per KW of Billing Demand	$10.40
	Energy Charge of:	
(R)	Per KWH	.030614
(T)	Taxes	
	There shall be added any applicable Utility Gross Receipts Tax for Schools (KRS 160.617) or Kentucky Sales Tax (KRS 139.210).	

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

JUL 18 1998

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)
BY: [signature]
SECRETARY OF THE COMMISSION

DATE OF ISSUE August 24, 1998 DATE EFFECTIVE July 18, 1998

ISSUED BY Dean Stanley TITLE President and CEO
NAME OF OFFICER

ISSUED BY AUTHORITY OF PSC ORDER NO. 97-219

GREEN RIVER ELECTRIC Corporation • P. O. Box 1389 • 3111 Fairview Dr., Owensboro, Ky. 42302-1389

March 26, 1999

Dear

On January 23, 1999, the boards of directors of Green River Electric Corporation and Henderson Union Electric Cooperative entered into a consolidation agreement. The vote of the member-customers will be by mail ballot and conducted simultaneously with votes being tabulated not later than April 15, 1999. The effective date of the consolidation, if approved, will be July 1, 1999.

This letter is being sent to the seven (7) member-customers of Green River Electric which comprise a class designated as "Special Contract" or "Directly Served Members." A similar letter is being sent to the 14 member-customers of Henderson Union Electric in this class. These 21 customers are served directly from transmission lines with a dedicated substation and are large users of electricity.

Section 15 of the Consolidation Agreement provides that after a successful vote, the two cooperatives shall immediately apply to the Kentucky Public Service Commission for a 4% rate reduction for five (5) years for all non-direct served members. This application will be filed under a recently enacted Kentucky law that permits special contract customers to be excluded from a rate reduction if the decrease in revenue is allocated among and within consumer classes on a proportional basis that does not result in a change in the rate design.

During 1998, revenues and power costs from the 21 directly served members were $171,823,979.00 and $169,428,327.00 respectively, leaving a gross margin before expenses of $2,395,653.00. The 4% rate reduction cannot apply to the directly served members because this would result in a loss of approximately $4.5 million from customers of this class.

EXHIBIT
2

In closing, we trust you understand the reasoning behind our making the 4% reduction available only to non-direct customers. We are hopeful of having your support for the consolidation. Please call should you want to discuss these matters further.

Sincerely,

Dean Stanley

Dean Stanley
President and CEO

dh

Henderson Union Electric Cooperative
6402 Old Corydon Road P.O. Box 18 Henderson, KY 42420-0018
(502) 826-3991 Toll Free in KY 1-800-844-4832

HENDERSON UNION EC

March 26, 1999

Dear

On January 23, 1999, the Boards of Directors of Henderson Union Electric Cooperative and Green River Electric Corporation entered into a consolidation agreement. The vote of the member-customers will be by mail ballot and conducted simultaneously with votes being tabulated not later than April 15, 1999. The effective date of consolidation, if approved, will be July 1, 1999.

This letter is being sent to the 14 member-customers of Henderson Union which comprise a class designated as "Special Contract" or "Directly Served Members". A similar letter is being sent to the seven (7) member-customers of Green River Electric in this class. These 21 member-customers are served directly from transmission lines with a dedicated substation and are large users of electricity

Section 15 of the Consolidation Agreement provides that after a successful vote, the two cooperatives shall immediately apply to the Kentucky Public Service Commission for a 4% rate reduction for five (5) years for all non-direct served members. This application will be filed under a recently enacted Kentucky law that permits special contract customers to be excluded from a rate reduction if the decrease in revenue is allocated among and within consumer classes on a proportional basis that does not result in a change in the rate design.

During 1998, revenues and power costs from the 21 directly served members were $171,823,979.00 and $169,428,327.00 respectively, leaving a gross margin before expenses of $2,395,653.00. The 4% rate reduction cannot apply to the directly served members because this would result in a loss of approximately $4.5 million from customers of this class.

In closing, we trust you understand the reasoning behind our making the 4% reduction available only to non-direct customers. We are hopeful of having your support for the consolidation. Please call should you want to discuss these matters further.

Sincerely,

HENDERSON UNION ELECTRIC COOPERATIVE CORP.

By: John West

John West, President and CEO

EXHIBIT
3

HENDERSON UNION RECC
SUMMARY OF RATE DECREASES

Line No.	Rate Class	Rate Change With 100% Flow Through	Proposed Rates
	(a)	(b)	(c)
1.	SCHEDULE A–RESIDENTIAL SERVICE	–10.76%	–6.10%
2.	SCHEDULE B–COMMERCIAL SERVICE (50 KVA or Less)	–9.62%	–9.63%
3.	SCHEDULE B-1–FARM OR COMMERCIAL (51 to 500 KVA)	–9.86%	–16.01%
4.	SCHEDULE B-2–Grain Bin (51 to 500 KVA)	–9.33%	–0.05%
5.	SCHEDULE LP-3–LARGE POWER Non-Dedicated Delivery	–12.15%	–12.85%
6.	SCHEDULE SL–STREET LIGHTING	–7.12%	–12.81%
7.	TOTAL RURAL SYSTEM	–10.56%	–8.36%
8.	DIRECT SERVED	–10.92%	–14.94%
9.	TOTAL SYSTEM (Without ALCAN)	–10.69%	–10.69%

EXHIBIT
4

DORSEY, KING, GRAY & NORMENT
ATTORNEYS-AT-LAW
318 SECOND STREET
HENDERSON, KENTUCKY 42420

JOHN DORSEY (1920-1986)
FRANK N. KING, JR.
STEPHEN D. GRAY
WILLIAM B. NORMENT, JR.
J. CHRISTOPHER HOPGOOD

TELEPHONE
(502) 826-3965
TELEFAX
(502) 826-6672

RECEIVED
JUN 0 9 1999
PUBLIC SERVICE
COMMISSION

June 7, 1999

VIA FAX AND CONVENTIONAL MAIL

Ms. Helen Helton, Executive Director
Public Service Commission of Kentucky
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Case No. 99-162

Dear Ms. Helton:

We have received a copy of the motion of Kentucky Industrial Utility Customers, Inc. seeking a suspension of the effectiveness of the proposed rate decrease, or implementation of a rate decrease on an interim basis, or approval of a permanent rate decrease for all customers. The applicants intend to respond to this motion and this letter is to notify the Commission that the response will be filed on or before June 17, 1999.

Thank you for your assistance.

Very truly yours,

DORSEY, KING, GRAY & NORMENT

By Frank N. King, Jr.

Frank N. King, Jr.

FNKJr/cds
Copy: Mr. Michael L. Kurtz,
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RECEIVED
JUN 04 1999
PUBLIC SERVICE COMMISSION

Via Overnight Mail

June 3, 1999

Hon. Helen Helton
Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40601

Re: In The Matter Of: Notice of Intent of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation to File Joint application for Rate Reduction, Case No. 99-162.

Dear Ms. Helton:

Please find enclosed the original and ten copies each of the Motion of Kentucky Industrial Utility Customers, Inc. in the above-referenced matter. By copy of this letter, all parties listed on the Certificate of Service have been served.

Please place this document of file.

Very Truly Yours,

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MLK/kew
Attachment
cc: Certificate of Service
Frank N. King, Esq. (Via Telefax Transmission)
Gerald Wuetcher, Esq. (Via Telefax Transmission)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by regular U.S. mail (unless otherwise noted) to all parties on this 3rd day of June, 1999.

Honorable Frank N. King
Attorney at Law
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(Via Telefax Transmission)

Dean Stanley
General Manager
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Michael L. Kurtz, Esq.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
JUN 04 1999
PUBLIC SERVICE COMMISSION

In The Matter Of: The Application of Green River Electric Corporation and Henderson Union Electric Cooperative Corp. For Approval of Rate Decrease for Kenergy Corp., Consolidation Successor	:	Case No. 99-162

MOTION OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. TO SUSPEND EFFECTIVENESS OF RATE DECREASE PENDING HEARING; OR IMPLEMENT A RATE DECREASE ON AN INTERIM BASIS SUBJECT TO CHANGE AFTER HEARING; OR TO PERMANENTLY APPROVE RATE DECREASE FOR ALL CUSTOMERS CLASSES

Kentucky Industrial Utility Customers, Inc. ("KIUC") files it Motion To Suspend Effectiveness of Rate Decrease Pending Hearing; Or Implement A Rate Decrease On An Interim Basis July 1, 1999 Subject To Change After Hearing; Or To Permanently Approve Rate Decrease On July 1, 1999 For All Customer Classes. The factual basis for the legal arguments set forth herein are contained in the attached affidavit of Russell L. Klepper.

BACKGROUND

KIUC is a statewide non-profit corporation which represents the interests of industrial ratepayers before this Commission. The members of KIUC participating in this case are: Alcan Aluminum Corporation ("Alcan"), Southwire Company ("Southwire"), Commonwealth Aluminum Corporation ("Commonwealth"), and Kimberly Clark Corporation ("Kimberly Clark"). Commonwealth is a member-customer of the Green River Electric Corporation ("GREC") and purchases electric service from GREC on a bundled basis. Kimberly Clark is a member-customer of GREC and purchases electric service from GREC on a bundled basis. The wholesale supplier of generation and transmission service to GREC on behalf of Commonwealth and Kimberly Clark is Big Rivers Electric Corporation ("Big Rivers"). Alcan is a member-customer of the Henderson Union Electric Cooperative Corporation ("HUEC") and receives electric service at transmission levels but pays a distribution fee to HUEC. The generation and transmission service for Alcan's load is provided to HUEC from LG&E Energy

Management ("LEM"). Southwire is a member-customer of GREC and purchases electric service at transmission levels but pays a distribution fee to GREC. The generation and transmission service for Southwire's load is provided to GREC from LEM. Alcan and Southwire are referred to collectively as "Smelters".

The rates and tariffs currently in effect for HUEC were established by the Commission in Case No. 97-220, Application Of Henderson Union Electric Cooperative Corporation For A Decrease In Existing Rates And For Approval Of Contracts, revised Order issued June 10, 1998. HUEC's currently effective rates and tariffs were the result of the Commission's decision in Case No. 97-204, Application Of Big Rivers Electric Corporation, Louisville Gas & Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., And LG&E Station Two, Inc. For Approval Of Wholesale Rate Adjustment For Big Rivers Electric Corporation And For Approval Of Transaction, Order issued April 30, 1998. The rates and tariffs currently in effect for GREC were established by the Commission in Case No. 97-219, Application Of Green River Electric Corporation For A Decrease In Existing Rates And For Approval Of Contracts, revised Order issued June 10, 1998. The currently effective GREC rates and tariffs were also the result of the related wholesale transaction involving Big Rivers, Case No. 97-204.

HUEC currently has in effect the following tariffs: Schedule A – Residential; Schedule B – Farm, Government Or Commercial; Schedule B-1 – Farm Or Commercial; Schedule B-2 – Grain Drying Service; Schedule LP-3 (501 To 2000) kVa – Non-Dedicated Delivery Points; Schedule LP-3 – Off-Peak Rate Rider Large Power Non-Dedicated Delivery Points; Schedule LP-4 – Dedicated Delivery Point; Smelter; Schedule SL – Street Lights; And Schedule D – Security Lamp.

GREC currently has in effect the following tariffs: Residential Service (Single Phase & Three Phase) And All Other Single Phase Service; Residential Electric Thermal Storage ("ETS"); Commercial, Large Power and Public Building Three-Phase Demand Less Than 1,000 kW; Three-Phase Demand – Large Power 1,000 kW And Above; Street and Individual Consumer Lighting; Decorative Area

Lighting; Large Industrial Customers Served Under Special Contracts; and Smelter Customers Served Under Special Contracts.

On May 20, 1999, GREC and HUEC filed an application requesting Commission approval of a Consolidation Credit Rider which would result in a 4% rate decrease for five years for the majority, but not all, member-customers of GREC and HUEC pursuant to KRS 278.455. The applicants seek to exclude 22 member-customers served under four Commission approved tariffs from the proposed rate decrease, including Commonwealth, Kimberly Clark, Alcan and Southwire. The proposed rate decrease is expected to reduce regulated operating revenues by approximately $2,560,000 annually. The rate decrease application was filed in conjunction with the consolidation of GREC and HUEC into Kenergy Corp., Case No. 99-136. The rate decrease is made possible because of the administrative and operational savings realized by the merger of the two distribution cooperatives. The rate decrease relates only to distribution costs. This is in contrast to the wholesale rate decrease approved in Case No. 97-204 where the savings from Big Rivers' G&T operations were flowed through to the distribution cooperatives and ultimately to the member customers. The proposed rate decrease would apply to Kenergy Corp. when it comes into existence on July 1, 1999. As indicated in the attached affidavit of Mr. Russell L. Klepper, if the $2.56 million annual rate decrease is applied proportionally to all rate classes, then the approximate amount of the decrease which would be allocated to the 22 excluded large industrial and smelter customers would be $256,000. In other words, the large industrial and smelter customers would receive only about 10% of this distribution-related rate decrease.

ARGUMENT

The rate decrease application does not comply with KRS 278.455. KRS 278.455 provides in relevant part as follows:

> *"(1) Notwithstanding any other statute to the contrary, a G&T or distribution cooperative may at any time decrease regulated operating revenues by an amount to be determined solely by the cooperative utility. If the revenue reduction is allocated among and within the consumer classes on a proportional basis that will result in no change in the rate design currently in effect, the revised rates and tariffs shall be authorized and made permanent on the proposed effective date.*

* * *

> *(3) Any rate ... decrease as provided for in ... this section shall not apply to special contracts under which the rates are subject to change or adjustment only as stipulated in the contract."*

Under Section 1, the Commission shall authorize the revised rates and tariffs and shall make them permanent on the proposed effective date, but only if the revenue reduction is allocated among and within the consumer classes on a proportional basis that will result in no change to the current rate design. The applicants make the unsupported assertion that they meet this initial test even though they propose to completely exclude two entire customer classes from the rate reduction: 1) twenty large industrial customers served at dedicated delivery points; and 2) the two Smelters. These two customer classes are comprised of 22 member-customers served under four Commission approved tariffs.

Section 3 provides a carve out provision whereby customers served by a particular type of special contract (i.e., special contracts under which the rates are subject to change only as stipulated in the contract) can be excluded from a streamlined rate decrease application. The obvious statutory intent being that if the cooperative and its member-customer agree on a special contract where the rates are self-contained in the special contract (i.e., not subject to change under the general tariff), and the Commission approves the agreement, then both parties should be required to live with the deal for better or worse. 807 KAR 5:011, Section 13 defines special contracts to be contracts with rates, charges or conditions of service not included in the general tariff.

> *"Section 13. Special Contracts. Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this regulation applicable to tariffs containing rates, rules and regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable."*

The classic example of a special contract is the Gallatin Steel/East Kentucky/LG&E arrangement. Case No. 94-456. As opposed to a special contract, utilities as a matter of course require industrial customers to enter into standard contracts which provide for use of a Commission approved tariffed industrial rate. For example, Kentucky Utilities Company ("KU") has almost no special contracts, but all industrial customers are required to sign standard contracts with KU which set forth items such as contract demand, term, corporate guarantee, etc. (see e.g. attached: KU Rate Schedule LCI-TOD TERM OF CONTRACT section; KU Rate Schedule HLF AVAILABILITY section and TERM OF CONTRACT section). In sum, not all utility contracts with industrial customers are special contracts. Furthermore, every utility customer has a contractual relationship with its electric supplier as set forth in the applicable rate schedule and the utility's rules and regulations.

HUEC's By-Laws explicitly recognize the contractual relationship between the utility and its member-customers.

> *"The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and bylaws shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of the article of the bylaws shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's office.*

HUEC By-Laws, Article VIII, Section 2 (attached) (emphasis added).

The application herein is in violation of the statute. The application does not propose to allocate the reduction *"among and within the customer classes on a proportional basis that will result in no change in the rate design currently in effect ... "*. Without explanation or support, the application seeks to provide no rate decrease to the large industrial class and the Smelter class. These two customer classes are comprised of 22 separate customers of GREC and HUEC served under four separate standard tariffs. The applicants have made no showing that the 22 member-customers who will receive no rate decrease have the type of special contract carved out by Section 3 (i.e., non-tariff contracts with self contained rate provisions). Contrary to Kentucky law and practice, applicants have apparently merely assumed that every large industrial and smelter customer is served under a contract, and that contract is the type of special contract subject to carve out under Section 3.

HUEC provides service to the following fourteen member-customers under Schedule LP-4 – Dedicated Delivery Point and proposes to allocate these fourteen member-customers none of the rate reduction: Hudson Foods; Breckenridge Mine; Lodestar Energy; Accuride; Smith Coal; Patriot Coal; Pittsburgh & Midway Coal; Cardinal River; K.B. Alloy; Valley Grain; Victory Process; CR Mining; Black Diamond Mine; and Dotiki No. 3 Mine. HUEC also proposes to provide no rate decrease to Alcan under the HUEC Smelter tariff. The existing HUEC tariffs provide rates for each of these HUEC customers. Thus, none are served under special contracts whereby the rates are not established by the tariff. Accordingly, none of the customers fall subject to KRS 278.455(3).

GREC proposes to allocate none of the rate decrease to six member-customers served under Rate Schedule Large Industrial Customers Served Under Special Contracts: Willamette, Commonwealth; Kimberly Clark, Arvin Roll Coater, Inc. (formerly Worldsource); ACMI; and Alcoa Hawesville. GREC also proposes to provide no rate decrease to Southwire under its tariff Smelter Customers Served Under Special Contracts.

Commonwealth currently has no explicit written electric contract in place with either its distribution cooperative (GREC) or with the G&T cooperative (Big Rivers). Commonwealth's written contract with GREC terminated on or about July 17, 1998. Of course, Commonwealth, like all member-customers, is in privity of contract with GREC as set forth in the applicable tariff, GREC's rules and regulations, and GREC's By-Laws and Articles of Incorporation. Because no explicit written contract is in place, there cannot be any special contract. Therefore, Section 3 of the statute which carves out certain special contracts from rate decreases does not apply to Commonwealth. The application violates KRS 278.455 and Commonwealth must receive its proportional share of the rate decrease.

Kimberly Clark does not have the type of special contract covered by Section 3 of the statute. Section 3 of the statute carves out special contracts *"under which the rates are subject to change or adjustment only as stipulated in the contract."* However, Kimberly Clark's rates are changed automatically by PSC action. Section 4.01 of the Kimberly Clark contract provides in relevant part: *"Customer shall pay Seller for service hereunder at the rates set forth in Exhibit C ... subject to changes as may become effective from time to time by operation of law or by order of the Public Service Commission of Kentucky ..."* In other words, Kimberly Clark does not have a contract where the rates are self-contained in the contract. Therefore, the carve out provision of Section 3 of the statute does not apply and Kimberly Clark is legally entitled to its proportional share of the rate decrease.

Alcan is served by HUEC under a contract entered into in conjunction with HUEC's Smelter Tariff. Southwire is served by GREC under a contract entered into in conjunction with GREC's Smelter Tariff. Neither Smelter contract deviates from the respective Smelter Tariff. Since a "special contract" under 807 KAR 5:011, Section 13 is one that deviates from the filed tariff, in a technical sense the Smelter contracts may not be considered to be special contracts. However, we recognize that in a practical sense the Smelter contracts may be considered "special" in that the contracts provide for rates, charges, terms and conditions established as part of the Big Rivers bankruptcy process. Assuming that the Smelters have special contracts, they are not the type of special contracts that are carved out by Section 3. The generation and transmission rates which are currently being provided to HUEC and GREC by LEM for the Smelters pursuant to FERC order are the only self-contained rates in the contract. Even though the FERC approved wholesale G&T rates provided by LEM are not subject to change by order of this Commission, the distribution fees paid by Alcan to HUEC and Southwire to GREC are not similarly self-contained. In fact, this Commission specifically refused to approve those provisions in the proposed Smelter contracts which prohibited rate adjustments to reflect costs or payments incurred by HUEC or GREC for expenditures due to legislation, regulatory, or legal action. The Commission also rejected those contract provisions which exempted the Smelters from paying any stranded costs or exit fees related to HUEC or GREC.

> *"For Big Rivers, the Commission finds that the lease transaction, coupled with the unforeseen cost resolution, will minimize any risk that non-Smelter customers would be allocated the Smelters' share of costs resulting from legislative, regulatory, or legal changes. Similarly, this transaction will minimize the risk of stranded costs or exit fees allocable to the Smelters at the wholesale level. Thus, these provisions do not appear to be unreasonable for application to Big Rivers' wholesale costs.*
>
> *However, the Commission finds that the same situation does not exist at the retail level. It is impossible to predict the cost changes that could occur over the next 13 years for Henderson Union and Green River and there is no agreement, analogous to the unforeseen cost resolution, to provide indemnification for changes in retail costs allocable to the Smelters. Neither the prohibition for cost adjustments due to legislative, regulatory, or legal action nor the prohibition of stranded costs or exit fees are reasonable at the distribution level and it is unreasonable to include these provisions in*

the distribution cooperative tariffs and contracts with the Smelters." Case No. 97-204, April 30, 1998 Order at 29-30.

Therefore, with respect to distribution costs, the Smelters do not have special contracts where the rates are subject to change only as set forth in the contract. Because distribution rates are the only rates at issue here, distribution cost savings to Kenergy as a result of the merger should flow through to Alcan and Southwire as well. The only complicating factor in the Smelter situation is that the Commission approved distribution fees paid by the Smelters are not subject to modification until January 1, 2001. After January 1, 2001, the distribution fee is subject to change by application to the Commission by either the cooperatives or the Smelters. Therefore, the Commission should rule that the Smelters will receive their proportional share of the five year merger savings beginning in 2001.

The applicants have failed to meet their burden of proof that they have complied with KRS 278.455. Energy Regulatory Commission v. Kentucky Power Company, Ky. App., 605 S.W.2d 46, 50 (1980) *("Applicants before an administrative agency have the burden of proof.");* Kentucky American Water Co. v. Com. Ex. Rel. Cowan, Ky., 847 S.W.2d 737, 741 (1993) *("Therefore, at all times in this case KAWC [utility applicant] had the burden of proof to show that the rates contained in its application were just and reasonable.").* It is not enough for the applicant to merely assert that because its application is filed under KRS 278.455, new rates will become permanent on the effective date proposed by the utility. If this were true, then the Commission would be powerless to regulate a rate decrease application where the cooperative claims that the decrease will be allocated on a proportional basis to all rate classes, but where, for example, the entire decrease was allocated to one customer. The critical question is not whether the application was filed pursuant to KRS 278.455, but whether the application complies with KRS 278.455. This motion and the attached affidavit provide substantial evidence that the requirements of the statute have not been met. The Commission is not merely a rubber stamp in this matter. At a minimum, the Commission must make a threshold determination of statutory compliance before the application can be allowed to become effective.

One of the most fundamental tenets of statutory construction in Kentucky is that statutes are to be liberally construed to carryout the legislative intent by giving effect to all provisions of the statute. The Commission cannot unduly focus on that provision of Section 1 which provides that the rate reduction will be made permanent on the proposed effective date to the exclusion of the other provisions of the statute which set forth how the rate decrease must be allocated among all customers classes. Instead, the Commission must harmonize the statute and interpret it as a whole. KRS 446.080(1) provides:

> *"(1) All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature, and the rule that statutes in derogation of the common law are to be strictly construed shall not apply to the statutes of this state."* KRS 446.080(1).

In four recent cases, the Kentucky Supreme Court has explained in great detail how this rule of statutory construction should be applied.

> *"A fundamental rule of statutory construction is to determine the intent of the legislature, considering the evil the law was intended to remedy. In determining whether a conflict exists between sections of a statute, a practical result must be found."* Kimberly Beach v. Commonwealth of Kentucky, Ky., 927 S.W. 2d 826, 828 (1996).

> *"The principal rule of statutory construction is that the applicability and scope of a statute may be determined by ascertaining the intent and purpose of the legislature and by considering the evil which the law is intended to remedy as well as other prior and contemporaneous facts and circumstances which shed intelligible light on the intention of the General Assembly. In enacting any law, the legislature is presumed to take cognizance of the existing statutes and condition of the law so that when the statute under consideration is ambiguous, the new enactment is to be construed in connection and in harmony with the existing law as a part of the general and uniform system of jurisprudence."* Donald Mitchell v. Kentucky Farm Bureau Mutual Insurance Co., Ky., 927 S.W.2d 343, 346 (1996).

> *"'General rules of statutory construction govern our attempt to reconcile what appellant perceives to be a conflict between sections (1) and (5) of the fee approval statute. We start with the well-established premise that in construing legislative enactments, courts 'should look to the letter and spirit of the statute, viewing it as a whole....' [citation omitted]. Where there is apparent conflict between sections of a statute, courts must endeavor to harmonize its interpretation so as to give effect to both. [citation omitted]. In so doing, the reviewing court must attempt to construe the statute in such a manner that ' 'no part of it is meaningless or ineffectual.'"* Bobby Lee Combs, et. al. v. Hubb Coal Corporation, et. al., Ky., 934 S.W.2d 250, 252 (1996).

"The fundamental rule in statutory interpretation is to give effect to the legislative intent. [citation omitted]. A statute should not be interpreted so as to bring about an absurd or unreasonable result. The policy and purpose of the statute must be considered in determining the meaning of the words used." Kentucky Industrial Utility Customers, Inc., et. al. v. Kentucky Utilities Company, et. al., Ky., 983 S.W.2d 493, 500 (1998).

The intent of the legislature in enacting KRS 278.455 was to eliminate a disincentive which historically hindered rate decrease applications by cooperative utilities. That disincentive was that once a voluntary rate decrease was proposed, the Commission might determine that a bigger reduction was appropriate. This happened to East Kentucky Power several years ago. To avoid this, KRS 278.455 allows a cooperative utility to unilaterally determine the amount of the rate decrease and its effective date, but only if all rate classes are treated equally. We have demonstrated with substantial evidence that this is not the case here. The intent of the legislature in enacting KRS 278.455 was not to transfer all ratemaking authority from the Commission to the cooperative utility.

Instead of complying with the statute's prerequisite of fundamental fairness through proportional treatment of all rate classes, the applicants have cynically twisted the law to serve their base political goal of buying residential votes to ensure approval of their previously rejected merger. By discriminating against their largest customers, the cooperatives seek to artificially raise the rate decrease per residential customer. Of course, residential customers make up the largest voting block. While GREC and HUEC may value short term political expediency over compliance with the law and principles of non-discrimination, the Commission must not.

To add insult to injury, in all likelihood such overt discrimination against 22 customers was not even necessary to win the vote for merger. The amount of the $2.56 million annual rate decrease allocable to the large industrial and smelter class is relatively small, approximately $256,000 or 10% of the total decrease. As explained in the attached affidavit, the reason that the large industrial and smelter percentage is relatively small is that this is a distribution-only rate decrease unrelated to G&T costs. Therefore, correcting this unlawful discrimination will not significantly impact other ratepayers.

WHEREFORE, for the reasons set forth above, KIUC respectfully requests that this Honorable Commission issue an Order:

1. Suspending the effectiveness of the rate decrease pending hearing for failure to comply with KRS 278.455; or

2. Allow the rate reduction to become effective on July 1, 1999 on an interim basis subject to change as may be determined after hearing; or

3. Allow the rate reduction to become permanent on July 1, 1999, but require that all customer classes served under all tariffs receive a proportional share of the reduction.

Respectfully submitted,

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COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

June 3, 1999

ELECTRIC RATE SCHEDULE LCI - TOD

Large Commercial/Industrial Time-Of-Day Rate

RATING PERIODS

The rating periods applicable to the Maximum Load charges shall be as follows:

On-Peak Period - 8:00 a.m. to 10:00 p.m., Eastern Standard Time (EST), year round, throughout the Company's service area.

Off-Peak Period - All hours Monday through Friday not included above plus all hours of Saturday and Sunday.

MINIMUM ANNUAL BILL

Service under this schedule is subject to an annual minimum of $51.00 per kilowatt for primary and $48.72 per kilowatt for transmission on-peak delivery for each yearly period based on the greater of (a), (b), (c), (d) or (e), as follows:

(a) The highest monthly on-peak maximum load during such yearly period.
(b) The contract capacity, based on the expected on-peak maximum KW demand upon the system.
(c) Sixty percent of the KW capacity of facilities specified by the customer.
(d) Primary delivery, $255,000 per year; transmission delivery $243,600 per year.
(e) Minimum may be adjusted where customer's service requires an abnormal investment in special facilities.

Payments to be made monthly of not less than 1/12 of the Annual Minimum until the aggregate payments during the contract year equal the Annual Minimum. However, payments made in excess of the amount based on above rate schedule will be applied as a credit on billings for energy used during contract year.

DUE DATE OF BILL: Customer's payment will be due within 10 days from date of bill.

FUEL CLAUSE

An additional charge or credit will be made on the kilowatt-hours purchased by the customer in accordance with the fuel clause set forth on Sheet No. 24 of this Tariff.

FRANCHISE CHARGE

The rate herein provided shall include, where applicable, an additional charge for local government franchise payment determined in accordance with the Franchise Billing Plan as set forth in the Rules and Regulations of this Tariff.

TERM OF CONTRACT

Service will be furnished under this schedule only under contract for a fixed term of not less than 5 years, and for yearly periods thereafter until terminated by either party giving written notice to the other party 90 days prior to termination. Company, however, may require a longer fixed term of contract and termination notice because of conditions associated with the customer's requirements for service.

RULES AND REGULATIONS

The customer, in order to earn the Primary or Transmission Service Rate must own and maintain or lease, at the Company's option, all transformers and other facilities necessary to take service at the Primary or Transmission voltage delivered.

Service will be furnished under the Company's general Rules and Regulations or Terms and Conditions.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

JUL 1 1993

PURSUANT TO 807 KAR 5:011.
SECTION 9 (1)
BY: [signature]
PUBLIC SERVICE COMMISSION MANAGER

KENTUCKY UTILITIES COMPANY

Seventh Revision of Original Sheet No. 14 T
PSC No. 11

ELECTRIC RATE SCHEDULE HLF

High Load Factor

APPLICABLE
In all territory served by the Company.

AVAILABILITY
This rate schedule is available for secondary or primary service at the existing nominal voltage on an annual basis for lighting and/or heating and/or power where no class rate is available. Customers shall contract for a definite amount of electrical capacity in kilowatts, which shall be sufficient to meet normal maximum requirements, but in no case shall the capacity contracted for be less than 1,000 KW. The Company may not be required to supply capacity in excess of that contracted for except by mutual agreement. Contracts will be made in multiples of 100 KW.

It is optional with the customer whether service will be billed under this schedule for the entire requirements, or under various other schedules applicable to the various services. The customer having selected this schedule will continue to be billed under it for not less than 12 consecutive months, unless there should be a material and permanent change in the customer's service. This rate not applicable for mine power or related loads.

Service under this schedule will be limited to maximum loads not exceeding 5,000 KW. Existing customers who demonstrate an average demand of 5,000 KW or greater over a 12-month period, or new customers upon demonstrating an average demand of 5,000 KW or greater, will be served under Rate Schedule LCI-TOD.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

JUL 1 1993

PURSUANT TO 807 KAR 5:011
SECTION 9 (1)
BY: [signature]

CHARACTER OF SERVICE
See Character of Electric Service (Sheet No. 2).

RATE

Maximum Load Charge:	Secondary	Primary
All KW of Monthly Billing Demand	\$5.27 per KW	\$4.91 per KW

Energy Charge: 2.119 cents per KWH R

DETERMINATION OF MAXIMUM LOAD
The load will be measured and will be the average KW demand delivered to the customer during the 15-minute period of maximum use during the month.

The Company reserves the right to place a KVA meter and base the billing demand on the measured KVA. The charge will be computed based on the measured KVA times 90 percent at the applicable KW charge.

In lieu of placing a KVA meter, the Company may adjust the measured maximum load for billing purposes when power factor is less than 90 percent in accordance with the following formula: **(BASED ON POWER FACTOR MEASURED AT TIME OF MAXIMUM LOAD)**

$$\text{Adjusted Maximum KW Load for Billing Purposes} = \frac{\text{Maximum KW Load Measured} \times 90\%}{\text{Power Factor (in percent)}}$$

MINIMUM CHARGE
Service under this schedule is subject to a Monthly Minimum Charge equal to the greater of (a), (b) or (c):

(a) The kilowatt billing demand charge (not less than 1000 KW) plus 400 hours' use of the kilowatt demand used for billing purposes;

(b) The kilowatt billing demand charge of not less than 60 percent of the KW capacity specified by the customer or 1000 KW (whichever is greater) plus the energy charge of 400 hours' use of such KW demand;

(c) The contract capacity (not less than 1000 KW) plus the energy charge of 400 hours use of such capacity.

Date of Issue: July 1, 1993
Cancelling Sixth Revision of
Original Sheet No. 14
Issued July 1, 1989

Issued By
R. M. Hewett
R. M. Hewett, Vice President
Lexington, Kentucky
Issued Pursuant To K.P.S.C. Order No. 92-493

Date Effective: July 1, 1993

KENTUCKY UTILITIES COMPANY

First Revision of Original Sheet No. 14.1 T
PSC No. 11

ELECTRIC RATE SCHEDULE	**HLF**

High Load Factor

DUE DATE OF BILL

Customer's payment will be due within 10 days from date of bill.

FUEL CLAUSE

An additional charge or credit will be made on the kilowatt-hours purchased by the customer in accordance with the fuel clause set forth on Sheet No. 24 of this Tariff.

FRANCHISE CHARGE

The rate herein provided shall include, where applicable, an additional charge for local government franchise payment determined in accordance with the Franchise Billing Plan as set forth in the Rules and Regulations of this Tariff.

TERM OF CONTRACT

The initial term to be determined upon the Company's investment in facilities required to provide service, but not less than one year and for yearly periods thereafter until terminated by either party giving 90 days' written notice to the other, prior to the end of any yearly period, of the desire to terminate.

RULES AND REGULATIONS

The customer, in order to earn the Primary service rate must own and maintain or lease all transformers and other facilities necessary to take service at the Primary voltage delivered. Service will be furnished under the Company's general Rules and Regulations or Terms and Conditions, except as otherwise provided herein.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

JUL 1 1993

PURSUANT TO 807 KAR 5:011.
SECTION 9 (1)
BY: [signature]
PUBLIC SERVICE COMMISSION MANAGER

Date of Issue: July 1, 1993
Cancelling Original Sheet No. 14.1
Issued March 12, 1984

Issued By
R. M. Hewett
R. M. Hewett, Vice President
Lexington, Kentucky

Date Effective: July 1, 1983 T

BYLAWS OF HENDERSON UNION ELECTRIC COOPERATIVE CORP.

6402 Old Corydon Road • Post Office Box 18 • Henderson, Kentucky 42420-0018

The aim of Henderson Union Electric Cooperative Corp. (hereinafter called the "Cooperative") is to make electric energy available to its members at the lowest cost consistent with sound economy and good management.

ARTICLE I
Members

Section 1. Qualification and Obligations. Any person, firm, corporation, or body politic may become a member in the Cooperative by:

(a) making a written application for membership

(b) paying the membership fee hereinafter specified

(c) agreeing to purchase from the Cooperative electric energy as hereinafter specified, and

(d) agreeing to comply with and be bound by the Articles of Incorporation and any amendments thereto, bylaws, and such rules and regulations as may from time to time be adopted by the board of directors,

provided, however, that no person, firm, corporation, or body politic shall become a member unless and until the applicant has been accepted for membership by the board of directors or the members. At each meeting of the members, all applications received more that ninety (90) days prior to such meeting and which have not been accepted by the board of directors shall be submitted by the board of directors to such meeting of the members, and subject to compliance by the applicant with the conditions set forth in subdivisions (a), (b), (c), and (d) of this section, such application for membership may be accepted by a vote of the members at such meeting. The Secretary shall give any such applicant at least ten (10) days prior notice of the date of the members' meeting to which the application will be submitted and such applicant may be present and heard at the meeting. No person, firm, corporation or body politic may own more than one (1) membership in the Cooperative.

A husband and wife may jointly become a member and their application for a joint membership may be accepted in accordance with the foregoing provisions of this section provided the husband and wife comply jointly with the provisions of the above subdivisions (a), (b), (c), and (d).

Section 2. Membership Fee. The membership fee shall be in an amount as determined by the board of directors, the payment of which shall make the member eligible for one (1) service connection.

Section 3. Purchase of Electric Energy. Each member shall, as soon as electric energy shall be available, purchase from the Cooperative all electric energy used on the premises specified in the application for membership, and shall pay therefor monthly at rates which shall from time to time be fixed by the board of directors; provided, however, that the board of directors may limit the amount of electric energy which the Cooperative shall be required to furnish to any one member. It is expressly understood that amounts paid for electric energy in excess of the cost of service are furnished by the members as capital and each member shall be credited with the capital so furnished as provided in these bylaws. Each member shall pay to the Cooperative such minimum amount per month regardless of the amount of electric energy consumed as shall be fixed by the board of directors from time to time. Each member shall also pay all amounts owed by the member to the Cooperative as and when the same shall become due and payable.

Section 4. Non-liability for Debts of the Cooperative. The private property of the members of the Cooperative shall be exempt from execution for the debts of the Cooperative and no member shall be individually liable or responsible for any debts or liabilities of the Cooperative.

Section 5. Expulsion of Members. The board of directors of the Cooperative may, by the affirmative vote of not less than two-thirds (2/3) of the members thereof, expel any member who shall have violated or refused to comply with any of the provisions of the Articles of Incorporation of the Cooperative or these bylaws or any rules or regulations adopted from time to time by the board of directors. Any member so expelled may be reinstated as a member by the vote of the board of directors or by a vote of the members at any annual or special meeting of the members. The action of the members with respect to any such reinstatement shall be final.

Section 6. Withdrawal of Membership. Any member may withdraw from membership upon payment in full of all debts and liabilities of such member to the Cooperative and upon compliance with such terms and conditions as the board of directors may prescribe.

Section 7. Transfer and Termination of Membership.

Membership in the Cooperative and a certificate representing the same shall not be transferable, expert as hereinafter otherwise provided, and upon the death, cessation of existence, expulsion, or withdrawal of a member the membership of such member shall thereupon terminate, and the certificate of membership of such member shall be surrendered forthwith to the Cooperative. Termination of membership in any manner shall not release the member from the debts or liabilities of such member to the Cooperative.

A membership may be transferred by a member to himself or herself and his or her spouse, as the case may be, jointly upon the written request of such member and compliance by such husband and wife jointly with the provisions of subdivisions (c) and (d) of Section I of this article. Such transfer shall be made and recorded on the books of the Cooperative and such joint membership noted on the original certificate representing the membership so transferred.

When a membership is held jointly by a husband and wife, upon the death of either such membership shall be deemed to be held solely by the survivor with the same effect as though such memb[illegible] ship had been originally issued solely to him or her, as the case may be, and the joint members[illegible] certificate may be surrendered by the survivor and upon the recording of such death on the books the Cooperative the certificate may be reissued to and in the name of such survivor; provided, ho[illegible] ever, that the estate of the deceased shall not be released from any membership debts or liabilit[illegible] to the Cooperative.

Section 8. Removal of a Director by Members. Any member may bring charges for cau[illegible] against a director by filing them in writing with the Secretary, together with a petition signed by [illegible] least ten percent (10%) of the members, requesting the removal of such director by reason there[illegible] The charge shall be considered by the members at the next annual meeting or at a specially call[illegible] meeting. The director against whom such charges have been brought shall be informed in writing [illegible] the charges previous to the meeting and shall have an opportunity at the meeting to be heard [illegible] person or by counsel and to present evidence; and the person or persons bringing the charges sh[illegible] have the same opportunity.

By a majority vote of the members present at the meeting when the charges are considered, t[illegible] question of such removal shall be submitted to the members within ninety (90) days following sa[illegible] meeting by mailing a ballot to each member setting forth the question of such removal so that it may [illegible] answered "Yes" or "No," and the ballots shall be required to be returned within fifteen (15) days aft[illegible] they are mailed. The ballots shall be counted by three (3) impartial members appointed by the board [illegible] this purpose.

If the question of removal is voted in the affirmative, the vacancy shall be filled in accordance wi[illegible] Article III, Section 6 of these bylaws.

ARTICLE II
Meeting of Members

Section 1. Annual Meeting. The annual meeting of the members shall be held on such date in ea[illegible] year as may conform to the program of the Kentucky Association of Electric Cooperatives, or its succe[illegible] sor, and annually fixed by the board of directors of this Cooperative. Said annual meeting shall be he[illegible] for the purpose of passing upon reports covering the previous fiscal year and transacting such oth[illegible] business as may come before the meeting. The annual meeting shall be held at such place in a cour[illegible] served by the Cooperative as the board may designate. Failure to hold the annual meeting at th[illegible] designated time shall not work a forfeiture or dissolution of the Cooperative, but the directors in offic[illegible] shall continue until their successors are elected and qualified.

Section 2. Special Meeting. Special meetings of the members may be called by at least three [illegible] directors or upon a written request signed by at least ten percent (10%) of all the members and it sh[illegible] thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinaft[illegible] provided. Special meetings of the members may be held at any place within the counties served by th[illegible] Cooperative as specified by the board of directors in the notice of the special meeting.

Section 3. Notice of Members' Meetings. Written or printed notice stating the place, day, and ho[illegible] of the meeting and, in case of special meeting, a district meeting, or an annual meeting at which bus[illegible] ness other than that listed in Section 7 of this article is to be transacted, the purpose or purposes f[illegible] which the meeting is called, shall be delivered not less than seven (7) days nor more than twenty (2[illegible] days before the date of the meeting, either personally or by mail, by or at the direction of the Secretar[illegible] or by the persons calling the meeting, to each member. If mailed, such notice shall be deemed to [illegible] delivered when deposited in the United States mail, addressed to the member at his or her address [illegible] it appears on the records of the Cooperative, with postage thereon prepaid. In case of a joint memb[illegible] ship, notice given to either husband or wife shall be deemed notice to both joint members. The failure [illegible] any member to receive notice of an annual or special meeting of the members shall not invalidate a[illegible] action which may be taken by the members at any such meeting.

Section 4. Quorum. At least one hundred fifty (150) of the members present in person shall cons[illegible] tute a quorum for the transaction of business at all meetings of members. In case of a joint membersh[illegible] the presence at a meeting of either husband, or wife, or both shall be regarded as the presence of o[illegible] member. If less than a quorum is present at any meeting, a majority of those present may adjourn th[illegible] meeting from time to time without further notice.

Section 5. Voting. Each member shall be entitled to one (1) vote and no more on each matt[illegible] submitted to a vote of the members. The election of directors shall be by mail ballot as provided in Artic[illegible] III, Section 4 of these bylaws. All other matters shall be voted on at a meeting of the members or by m[illegible] ballot, as determined by the board of directors, unless these bylaws specify the manner of voting. If [illegible] matter is voted on at a meeting, the question shall be decided by a majority of the members preser[illegible] Proxy voting shall not be permitted.

Section 6. Agenda. Any legitimate proposal may be placed on the agenda of the annual meeting [illegible] any member filing the proposal with the Secretary at least sixty (60) days prior to the meeting. If th[illegible] proposal requires a vote of the members, the board of directors shall decide whether it shall be voted [illegible] by the members at the annual meeting or shall be voted on by mail ballot.

Section 7. Order of Business. The order of business at the annual meeting of the members, ar[illegible] so far as possible at all other meetings of the members, shall be essentially as follows:

1. Call of the roll

net margin for any fiscal year of the Coop[illegible] from its entire operation, including both operating and non-operating margin, until such net l[illegible] negative margin is entirely dissipated. The capital allocated to the patrons as provided in the first paragraph of this section of the bylaws for any fiscal year shall be the amount remaining after there has been deducted any loss for previous fiscal year or years as herein provided.

In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the board of directors shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to patrons' accounts may be retired in full or in part. The board of directors may retire capital credits attributable to any prior fiscal year without giving priority to capital first received and credited.

Capital credited to the account of each patron shall be assignable only on the books of the Cooperative pursuant to written instructions from the assignor and only to successors in interest or successors in occupancy in all or a part of such patron's premises served by the Cooperative unless the board of directors, acting under policies of general application, shall determine otherwise. In the event that a non-member patron shall elect to become a member of the Cooperative, the capital credited to the account of such non-member patron may be applied by the Cooperative toward the payment of a membership fee on behalf of such non-member person.

Provided, however, that the board of directors shall have the power to adopt rules providing for the separate retirement of that portion ("power supply portion") of capital credited to the accounts of patrons which corresponds to capital credited to the account of the Cooperative by an organization furnishing electric service to the Cooperative. Such rules shall:

(a) establish a method for determining the power supply portion of capital credited to each patron for each applicable fiscal year
(b) provide for separate identification on the Cooperative's books of a power supply portion of capital credited to the Cooperative's patrons
(c) provide for appropriate notifications to patrons with respect to their accounts, and
(d) preclude a general retirement of the power supply portion of capital credited to patrons for a fiscal year until the payment therefor is actually received from the power supplier

Notwithstanding any other provisions of these bylaws, the board of directors, at its discretion, shall have the power at any time upon the death of any patron who is a natural person who received service of 50 KVA installed capacity or under, if the legal representatives of such decedent's estate shall request in writing that the capital credited to any such patron from such service to be retired prior to the time such capital would otherwise be retired under the provisions of these bylaws, to retire capital credited to any such patron immediately upon such terms and conditions as the board of directors acting under policies of general application, and the legal representative of such patron's estate shall agree upon; provided, however, that the financial condition of the Cooperative will not be impaired thereby.

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and bylaws shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of the article of the bylaws shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's office.

Section 3. Patronage Refunds in Connection with Furnishing Other Service. In the event that the Cooperative should engage in the business of furnishing goods or services other than electric energy, all amounts properly chargeable against the furnishing of such goods or services shall, insofar as permitted by law, be pro-rated annually on a patronage basis and returned to those patrons, members, and non-members alike, from whom such amounts were obtained.

ARTICLE IX
Waiver of Notice

Any member or director may waive, in writing, any notice of meetings required to be given by these bylaws. In [illegible] joint membership, a waiver of notice signed by either husband or wife shall be deemed a wai[illegible] notice of such meeting by both joint members.

ARTICLE X
Disposition of Property

The Cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber any of its property other than:

(a) property which in the judgment of the board of directors neither is nor will be necessary or useful in operating and maintaining the Cooperative's system and facilities; provided, however, that all sales of such property shall not in any one (1) year exceed in value ten percent (10%) of the value of all property of the Cooperative
(b) service of all kinds, including electric energy, and
(c) personal property acquired for resale, unless such sale, mortgage, lease, or other disposition of encumbrances is authorized by a majority vote of the members of the Cooperative entitled to vote, present and voting at the meeting at which the proposed sale, mortgage, lease, or other disposition or encumbrance is voted upon

ARTICLE XI
Fiscal Year

The fiscal year of the Cooperative shall begin on the first day of January of each year and end on the thirty-first day of December of the same year.

ARTICLE XII
Membership in Other Organizations

The Cooperative shall not become a member of or purchase stock in any other organization without an affirmative vote of the members at a duly held meeting, the notice of which shall specify that action is to be taken upon such proposed membership or stock purchase; provided, however that the Cooperative may upon the authorization of the board acquire stock in any corporation solely in consideration of assignment or transfer of membership certificate in another corporation, and may purchase stock in or become a member of any corporation or organization organized on a nonprofit basis for the purpose of engaging in or furthering the cause of rural electrification, or with the approval of the Administrator of Rural Utilities Service may purchase stock of any other corporation for the purpose of acquiring electric facilities.

ARTICLE XIII
Seal

The corporation seal of the Cooperative shall be in the form of a circle and shall have subscribed thereon the name of the Cooperative and words "Corporate Seal, Kentucky."

ARTICLE XIV
Amendments

These bylaws may be altered, amended, or repealed by the affirmative vote of not less than two-thirds (2/3) of all the directors at any regular or special meeting, provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment, or repeal.

ARTICLE XV
Rules of Order

Parliamentary procedure at all meetings of the members, of the board of directors, of any committee provided for in these bylaws, and of any other committee of the members or board of directors which may from time to time be duly established shall be governed by the most recent edition of Robert's Rules of Order, except to the extent such procedure is otherwise determined by law or by the Cooperative's Articles of Incorporation or bylaws.

As adopted January 30, 1995

STATEMENT OF NONDISCRIMINATION

Henderson Union Electric Cooperative Corporation is the recipient of Federal financial assistance from the Rural Utilities Service (RUS), an agency of the U.S. Department of Agriculture, and is subject to the provisions of Title VI of the Civil Rights Act of 1964, as amended;. Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and the rules of the U.S. Department of Agriculture, which provide that no person in the United States on the basis of race, color, national origin, age, or handicap shall be excluded participation in, admission or access to, denied the benefits of, or otherwise be subjected to discrimination under any of this organization's programs or activities.

The person responsible for coordinating this organization's nondiscrimination compliance efforts is John West, President and CEO. Any individual, or specific class of individuals, who feels that this organization has subjected them to discrimination may file a written complaint with this organization; or the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250; or the Administrator, Rural Utilities Service, Washington, D.C. 20250. Complaints must be filed within 180 days after the alleged discriminatory action, or by such later date to which the Secretary of Agriculture or the Administrator of RUS extends the time for filing. Identity of complainants will be kept confidential except to the extent necessary to carry out the purposes of the rules and regulations of the U.S. Department of Agriculture.

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP. FOR APPROVAL OF RATE DECREASE FOR KENERGY CORP., CONSOLIDATION SUCCESSOR	))))))	CASE NO. 99-162

AFFIDAVIT OF RUSSELL L. KLEPPER

Comes the Affiant, Russell L. Klepper, and having first been sworn states as follows:

1. The undersigned, Russell L. Klepper, is a Principal of Energy Services Group, LLC, a utility and energy consulting services firm established in 1998 as a successor to Rawson, Klepper & Company, which I founded in 1984. I have over twenty two years of applicable utility experience and specialize in the areas of energy economics, utility finance, ratemaking, and analysis and decision making in a regulated or transitory environment.

2. I hold a BSBA in Economics, an MBA in Finance, and a Masters of Professional Accountancy. I have developed and presented numerous utility related seminars to both public and private audiences. My professional clientele includes the Edison Electric Institute, the World Bank, the United States Agency for International Development, several public policy foundations, municipal, cooperative, and investor owned utilities, and numerous large industrial corporations or legal counsel for such corporations.

3. In mid-1992, I became professionally engaged by Southwire Company ("Southwire") with respect to certain utility related issues, including the relationship between Southwire's subsidiary, NSA, Inc., and Big Rivers Electric Corporation ("Big Rivers"). Since January 1993, I have been continuously engaged on behalf of Kentucky Industrial Utility Customers, Inc. ("KIUC") by Boehm, Kurtz, & Lowry , and/or by legal counsel for Southwire, Alcan Aluminum Corporation ("Alcan"), and Commonwealth Industries, Inc. ("Commonwealth"), with respect to regulatory and civil litigation and other matters involving Big Rivers, Green River Electric Corporation ("GREC"), and/or Henderson Union Electric Cooperative Corp. ("HUEC"). Since October 1997, I have been engaged by Kimberly-Clark Corporation ("Kimberly-Clark") with respect to certain contractual negotiations with GREC and Big Rivers.

4. Since 1993, I have extensively examined the pleadings in every proceeding before this Commission involving Big Rivers, GREC, or HUEC, including all Fuel

Adjustment Charge matters, Environmental Surcharge matters, Integrated Resource Plans, and all matters addressed within the context of Case Nos. 97-204, 97-219, 97-220, and 98-267. I personally appeared before this Commission in numerous of the above referenced cases involving Big Rivers.

5. As a result of the combination of my professional credentials and professional employment described above, I have comprehensive knowledge concerning the rates and rate structures and financial operations of each of GREC and HUEC, the contractual relationships between GREC and each of Southwire, Commonwealth, and Kimberly-Clark, and the contractual relationship between Alcan and HUEC.

6. On behalf of KIUC, I have reviewed the application and other pleadings filed by GREC and HUEC (together, the "Applicants") in Case No. 99-136 seeking approval of consolidation into Kenergy Corp. ("Kenergy"), the application and accompanying rate schedules filed by the Applicants in this Case No. 99-162 seeking a decrease in rates for certain customers of the Applicants, as well as the applicable Kentucky statute, KRS 278.455, the corresponding administrative regulation, 807 KAR 5:007, and a pertinent administrative regulation, 807 KAR 5:011.

7. The rate decrease application filed by the Applicants in Case No. 99-162 is corollary to the consolidation application filed by the Applicants in Case No. 99-136. The revenue reduction sought by the Applicants to reduce rates arises almost entirely from cost savings occurring at the distribution level. The rates for all classes of the Applicants' customers, except for the two customer classes discussed in Paragraph 9 below, are bundled to include generating, transmission, and distribution expenses. The rates to the two customer classes discussed in Paragraph 9 are unbundled into a component for generating and transmission services and a separate fee component payable to the distribution cooperative even though the subject electric service is provided at transmission levels.

8. The rate decrease filed in Case No. 99-162 is premised on KRS 278.455(1), which provides that revised rates and tariffs shall be authorized if a revenue reduction is "allocated among and within the consumer classes on a proportional basis (emphasis added)".

9. In my professional opinion, the filing by the Applicants in Case No. 99-162 fails to comply with KRS 278.455 because the rate decrease, as proposed, improperly excludes two classes of customers: the twenty (20) industrial customers, including Commonwealth and Kimberly Clark, served by the Applicants at dedicated service points directly from the transmission system of Big Rivers; and the two Smelters customers, Alcan and Southwire, who take electric service from the high voltage transmission system. By wrongfully excluding two customer classes, the Applicants have failed to comply with the statute requiring allocation of revenue reductions "among" classes.

10. The apparent basis for the Applicants' exclusion of two customer classes is KRS 278.455(3), which provides that a rate decrease under KRS 278.455(1) "shall not apply to special contracts under which the rates are subject to change or adjustment only as stipulated in the contract" (emphasis added). As discussed in detail below, the exclusion set forth in 278.455(3) does not apply since none of the twenty two industrial customers that the Applicants seek to exclude from the proposed rate decrease have special contracts that fall subject to the qualification that rates are subject to change or adjustment only as stipulated in the contract.

11. Section 13 of 807 KAR 5:011 describes special contracts as those "which set out rates, charges or conditions of service not included in its general tariff" (emphasis added.) All twenty two of the subject industrial customers are served under rates, charges and conditions of service which in fact are included in the general tariffs of the Applicants, as specifically set forth in the Revised Orders of the Commission dated June 10, 1998, in Case Nos. 97-219 and 97-220.

12. As part of its rate application in Case No. 97-204, Big Rivers proposed wholesale rates that would be available only for electric service to the Applicants' industrial customers, including Commonwealth and Kimberly-Clark, with 1 MW or more of peak load, a load factor of 70% or greater, and that agree to enter a five year contract for electric service. In its Order of April 30, 1998, at page 41, the Commission rejected this proposed industrial rate structure, and instead developed rates for the non-Smelter industrial class "which provide a reasonable rate reduction...without requiring the commitment to a five year contract."

13. The contract between GREC and Commonwealth was scheduled to expire on or about May 15, 1998. By mutual agreement, this contract remained in effect pending the entering of a new contract between the parties upon Commission approval of the proposed rate structure discussed in the prior paragraph. As a result of the Commission's denial of Big Rivers' proposed industrial rate structure and the Commission's subsequent denial by Order dated July 14, 1998, in Case No. 98-267 of special contract terms sought by Big Rivers and GREC for the benefit of Commonwealth, GREC and Commonwealth mutually agreed to a termination of their contract, effective on or about July 17, 1998.

14. GREC and Commonwealth have no existing contract. GREC provides electric service to Commonwealth pursuant to its franchise responsibility and the GREC tariff approved by this Commission by its Revised Order dated June 10, 1998. Since there is no contract between GREC and Commonwealth, there is clearly no special contract, and Commonwealth cannot legally be excluded under KRS 278.455(3) from proportional participation in the Applicants' proposed rate decrease under KRS 278.455(1).

15. As successor by merger with Scott Paper Company, Kimberly-Clark has an existing contract with GREC. Section 4.01 of that contract provides in relevant

part that: "Customer shall pay Seller for service hereunder at the rates set forth in Exhibit C...subject to such changes as may become effective from time to time by operation of law or by order of the Public Service Commission of Kentucky...". The rates charged by GREC to Kimberly-Clark were revised on September 2, 1997, by Order of this Commission and were again subject to the Commission's Revised Order of June 10, 1998, in Case No. 97-219. The language quoted from the contract herein amply demonstrates that while Kimberly-Clark is a contract customer, it is not a "special contract" customer under the qualification set forth in KRS 278.455(3) because the electric service rates charged to Kimberly-Clark have been and continue to be subject to change by adjustment of the existing tariff, rather than only as stipulated in the contract.

16. In their filings in Case No. 99-162, the Applicants have sought to treat every industrial customer served from Big Rivers' transmission system at a dedicated delivery point as a special contract customer, but the Applicants have made no showing that each of these twenty two industrial customers is served under a special contract.

17. The Applicants serve numerous large industrial customers from non-dedicated service points on their distribution systems. GREC serves such customers under its Commission approved rate for Three Phase Demand - Large Power 1,000 kW and Above. Similarly, HUEC serves such customers under Schedule LP-3 (501 to 2000) kVa. The Applicants intend to accord the proposed rate decrease to the industrial customers served at distribution voltages, even though the only distinction between these industrial customers and the others to which the Applicants would deny the rate decrease is the voltage at which the different customers are served and the corresponding difference in rates based on service at different voltage levels.

18. To the extent that the Applicants' industrial customers served at distribution (instead of transmission) levels are served under existing contracts, the Applicants have made no showing that the contract terms for service to these industrial customers are materially different than the contract terms under which electric service is provided to industrial customers served at transmission voltages.

19. As demonstrated by the situation of Kimberly-Clark, the existence of a contract for electric service does not necessarily mean that any industrial customer is a "special contract" customer that can be excluded from a rate decrease under KRS 278.455(3).

20. Moreover, given the above cited April 30, 1998 Order of the Commission in Case No. 97-204 and the precedent created by the mutually agreed termination of GREC's contract with Commonwealth, it is likely that many, if not most, of the Applicants' existing contracts with industrial customers will expire or be terminated before the end of the five year effective period of the Applicants'

proposed rate decrease. Upon expiration or termination of existing contracts, the Applicants must continue to provide electric service to such customers under existing tariffs pursuant to their franchise responsibilities, regardless of whether such industrial customers agree to enter new contracts. This circumstance begs the question of whether a customer whose contract has terminated or expired, but that was formerly deemed to be a special contract customer, will become automatically eligible for the proposed rate decrease.

21. Similarly, the Commission mandated right of industrial customers to obtain electric service without the necessity of contracts also raises the question of whether the Applicants will seek to deny this proposed rate decrease to any new industrial customer that would be served at transmission voltages from a dedicated service point and that, like Commonwealth, is served without contract pursuant to the Commission's Order of April 30, 1998.

22. The contract situation of the Smelters is more complex than that of the non-Smelter industrial customers. The electric rates paid by the Smelters are set forth in Smelter Tariffs filed by each of the Applicants and approved by this Commission, and incorporate by reference the entire text of Schedule A to the Agreements for Electric Service between Alcan and HUEC and between Southwire and GREC. As set forth in each Smelter Tariff, the Smelter rates consist of two components, one for generating and transmission services, and the other a distribution fee payable to the distribution cooperative even though electric service is provided at transmission levels.

23. With respect to the generating and transmission component of the Smelter rates, the Smelter contracts may be viewed as "special contracts" within the meaning of KRS 278.455(3). The same is not true with respect to the distribution component.

24. Section e. of the General Provisions of Schedule A to each Smelter's Agreement for Electric Service, the entirety of which is incorporated by reference into each of the Smelter Tariffs, expressly provides that "after December 31, 2000, the fee [charged by the Applicant] shall be subject to change by order of the Kentucky Public Service Commission upon application of either or both of [Applicant] and [Smelter]." This same provision is also set forth in Section 12.6 of each Smelter contract. Thus, with respect to the distribution fee component of the Smelter rates, the Smelter contracts are not "special contracts" within the meaning of KRS 278.455(3) because the distribution fee component is subject to change by action of this Commission pursuant to the terms of the Commission-approved Smelter Tariffs.

25. For clarity, suppose that the Applicants had filed the subject rate decrease after December 31, 2000, rather than before that date. Under the clear language of the Smelter contracts and the Smelter Tariffs, after that date, the Smelters would be entitled to rate decreases filed by the Applicants modifying the distribution based

revenues to be collected by the Applicants. In the instant case, pursuant to the express language of the Smelter contracts and the Smelter Tariffs, the Smelters are entitled to the same distribution based rate decrease as accorded to all other customers of the Applicants, but the effective date of that decrease in distribution fees should be deferred until January 1, 2001.

26. Based on 1998 year end data obtained from documents publicly filed by Big Rivers, the twenty two industrial customers that the Applicants seek to exclude from the proposed rate decrease consume approximately 86% of all energy sold by the Applicants. However, because each of the twenty two industrial customers is served directly from Big Rivers' transmission system, the distribution components of these industrial customers' rates (that part of the rates that recovers electric service costs in excess of the related wholesale cost of power to the Applicants) are much smaller than the corresponding rate components paid by customers who are served from the distribution systems and thus cause a greater proportional expense to be incurred by the Applicants.

27. The structure of the rate decrease proposed by the Applicants is a reduction of 4% of the total amounts paid under the Applicants' rates, including the amount that recovers the wholesale cost of power. However, as set forth in Paragraph 7 above, substantially all of the decrease in expense that allows the proposed rate reduction will be related to distribution cost reductions. In essence, the proposed rate reduction (4% of total rates) is equivalent to proposing a reduction of approximately 11% to 13% of the distribution component of the Applicants' rates.

28. Based on available data, and subject to revision upon access through discovery to more exact information, the aggregate distribution component revenues of the twenty two industrial customers is approximately $2.3 million, or approximately ten (10) percent of the aggregate revenues of the Applicants in excess of wholesale power costs. Thus, subject to adjustment upon receipt and analysis of more comprehensive data, the allocation of the proposed rate decrease on a proportionate basis in compliance with KRS 278.455 would cause approximately $256,000 per year, or ten percent of the revenue decrease, to be allocated to the twenty two industrial customers.

29. The allocation of the proposed rate decrease on a proportionate basis to all customer classes, including the industrial customers served at transmission levels from dedicated delivery points and the Smelters, would cause the proposed rate decrease to the other customer classes to be reduced from 4.0% to about 3.6% of total rates. Accordingly, the allocation by the Applicants of the proposed revenue reduction to all customer classes in compliance with KRS 278.455 will not cause a material change in the rate benefit to be enjoyed by the other customer classes.

Further, the Affiant saith not.
This the 2nd day of June, 1999.

Russell I Klepper

Russell L. Klepper

STATE OF GEORGIA
COUNTY OF FULTON

The foregoing Affidavit was subscribed and sworn to before me by Russell L. Klepper on this 2nd day of June, 1999.

Notary Public
My commission expires:

JAMES H. MORGENSTERN
MY COMMISSION EXPIRES
OCT
29
2000
FULTON COUNTY, GEORGIA
NOTARY PUBLIC

BOEHM, KURTZ & LOWRY
ATTORNEYS AT LAW
2110 CBLD CENTER
36 EAST SEVENTH STREET
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

RECEIVED
JUN 03 1999
PUBLIC SERVICE
COMMISSION

June 1, 1999

Hon. Helen Helton
Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40601

Re: In The Matter Of: Notice of Intent of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation to File Joint application for Rate Reduction, Case No. 99-162.

Dear Ms. Helton:

Please find enclosed the original and ten copies each of the Supplement to the Petition to Intervene of Kentucky Industrial Utility Customers, Inc. in the above-referenced matter. By copy of this letter, all parties listed on the Certificate of Service have been served.

Please place this document of file.

Very Truly Yours,

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MLK/kew
Attachment
cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by regular U.S. mail (unless otherwise noted) to all parties on this 1st day of June, 1999.

Honorable Frank N. King
Attorney at Law
Dorsey, King, Gray & Norment
318 Second Street
Henderson, KY. 42420

Dean Stanley
General Manager
Green River Electric Corporation
3111 Fairview Drive
P. O. Box 1389
Owensboro, KY. 42302 1389

Charlye Jo Griggs
Director of Office Services
Henderson Union Electric
Cooperative Corporation
6402 Old Corydon Road
P. O. Box 18
Henderson, KY. 42420 0018

Michael L. Kurtz
Michael L. Kurtz, Esq.

RECEIVED

JUN 0 3 1999

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of: Notice of Intent of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation to File Joint Application for Rate Reduction	:	Case No. 99-162

SUPPLEMENT TO PETITION TO INTERVENE OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

By cover letter dated May 17, 1999 the Kentucky Industrial Utility Customers, Inc. ("KIUC") filed a Petition to Intervene in the above-captioned proceeding. KIUC's intervention was granted by Order dated May 28, 1999. In its intervention, KIUC stated that it would supplement its Petition with the names of additional participating members as this information became known. The following additional industrial ratepayer who is a member of KIUC should now be listed as participating in this case: Southwire Company.

Respectfully submitted,

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
2110 CBLD Center, 36 East Seventh Street
Cincinnati, Ohio 45202
Ph: (513) 421-2255 Fax: (513) 421-2764
E-Mail: KIUC@aol.com

COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

June 1, 1999

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

May 28, 1999

To: All parties of record

RE: Case No. 99-162

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

Stephanie Bell

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

Honorable Frank N. King
Attorney at Law
Dorsey, King, Gray & Norment
318 Second Street
Henderson, KY 42420

Dean Stanley
General Manager
Green River Electric Corporation
3111 Fairview Drive
P. O. Box 1389
Owensboro, KY 42302 1389

Charlye Jo Griggs
Director of Office Services
Henderson Union Electric
Cooperative Corporation
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42420 0018

Honorable Michael L. Kurtz
Counsel for KIUC
Boehm, Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP. FOR APPROVAL OF RATE DECREASE FOR ENERGY CORP., CONSOLIDATION SUCCESSOR	)	CASE NO. 99-162

O R D E R

This matter arising upon the motion of the Kentucky Industrial Utility Customers ("KIUC"), filed May 18, 1999, for full intervention, and it appearing to the Commission that the KIUC has a special interest which is not otherwise adequately represented, and that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, and this Commission being otherwise sufficiently advised,

IT IS HEREBY ORDERED that:

1. The motion of the KIUC to intervene is granted.

2. The KIUC shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

3. Should the KIUC file documents of any kind with the Commission in the course of these proceedings, it shall also serve a copy of said documents on all other parties of record.

Done at Frankfort, Kentucky, this 28th day of May, 1999.

By the Commission

ATTEST:

Helen C. Helton

Executive Director

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

May 24, 1999

Honorable Frank N. King
Attorney at Law
Dorsey, King, Gray & Norment
318 Second Street
Henderson, KY. 42420

Dean Stanley
General Manager
Green River Electric Corporation
3111 Fairview Drive
P. O. Box 1389
Owensboro, KY. 42302 1389

Charlye Jo Griggs
Director of Office Services
Henderson Union Electric
Cooperative Corporation
6402 Old Corydon Road
P. O. Box 18
Henderson, KY. 42420 0018

RE: Case No. 99-162
GREEN RIVER ELECTRIC CORPORATION
(Rates - General) & HENDERSON UNION ELECTRIC FOR RATE REDUCTION

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received April 2, 1999 and has been assigned Case No. 99-162. In all future correspondence or filings in connection with this case, please reference the above case number.

If you need further assistance, please contact my staff at 502/564-3940.

Sincerely,

Stephanie J. Bell

Stephanie Bell
Secretary of the Commission

SB/jc

DORSEY, KING, GRAY & NORMENT
ATTORNEYS-AT-LAW
318 SECOND STREET
HENDERSON, KENTUCKY 42420

JOHN DORSEY (1920-1986)
FRANK N. KING, JR.
STEPHEN D. GRAY
WILLIAM B. NORMENT, JR.
J. CHRISTOPHER HOPGOOD

TELEPHONE
(502) 826-3965
TELEFAX
(502) 826-6672

May 20, 1999

RECEIVED
MAY 20 1999
PUBLIC SERVICE
COMMISSION

HAND DELIVERED

Ms. Helen C. Helton
Kentucky Public Service Commission
730 Schenkel Lane - Post Office Box 718
Frankfort, Kentucky 40601

Re: Case No. 99-162

Dear Ms. Helton:

We enclose for filing the original and five (5) copies of the application in this case. Please note that application is being made for a rate decrease as allowed under KRS 278.455(1). Thank you for your assistance.

Very truly yours,

DORSEY, KING, GRAY & NORMENT

By Frank N. King, Jr.
Frank N. King, Jr.

FNKJr/cds
Encls.
Copy/w/encls.: Mr. Dean Stanley
Mr. John West

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED
MAY 2 0 1999
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP. FOR APPROVAL OF RATE DECREASE FOR KENERGY CORP., CONSOLIDATION SUCCESSOR	)	CASE NO. 99-162

APPLICATION

The petition of **GREEN RIVER ELECTRIC CORPORATION** and **HENDERSON UNION ELECTRIC COOPERATIVE CORP.** respectfully shows:

(a) Applicant Green River Electric Corporation ("GREC") is a nonprofit electric cooperative organized under KRS Chapter 279 and is engaged in the business of distributing retail electric power to member consumers in the Kentucky counties of Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Webster and Breckinridge.

Applicant Henderson Union Electric Cooperative Corp. ("HUEC") is a nonprofit electric cooperative organized under KRS Chapter 279 and is engaged in the business of distributing retail electric power to member consumers in the Kentucky counties of Henderson, Union, Webster, Hopkins, Crittenden, Caldwell, Lyon and Livingston.

(b) The post office address of GREC is Post Office Box 1389, Owensboro, Kentucky 42302-1389.

The post office address of applicant HUEC is Post Office Box 18, Henderson, Kentucky 42419-018.

(c) GREC's articles of incorporation, along with any amendments thereto, have been previously filed with the Public Service Commission of Kentucky (hereinafter "Commission") in Case No. 9439 and therefore are not annexed hereto.

HUEC's articles of incorporation, along with any amendments thereto, have been previously filed with the Commission in Case No. 91-334 and therefore are not annexed hereto.

(d) The applicants' members have duly approved consolidation and presently the applicants are seeking the Commission's approval of consolidation in Case No. 99-136. The consolidated corporation will be Kenergy Corp. and the consolidation will become effective July 1, 1999. The rate decrease sought herein will apply to Kenergy Corp. when it comes into existence.

(e) Applicants request approval of a 4% rate decrease for five (5) years for member-customers of Kenergy Corp. as allowed under KRS 278.455(1). This rate decrease will be in effect from July 1, 1999, through June 30, 2004. Proposed tariffs for the requested rate decrease are attached hereto as "Exhibit 1" and "Exhibit 2."

(f) This rate decrease will reduce regulated operating revenues of Kenergy Corp. for the five (5) year period approximately $12.8 million, or $2,560,000.00 annually. The revenue reduction will be allocated among and within the consumer classes on a proportional basis that will result in no change in the rate designs currently in effect for each applicant. GREC's current rate design was established by the Commission in Case No.

97-219. HUEC's current rate design was established by the Commission in Case No. 97-220.

(g) Notice of this proposed rate decrease has been published, not more than 30 days prior to the filing hereof, in newspapers of general circulation in the affected service area. Copies of the published notices along with proofs of publication will be forwarded to the Commission when available. Attached as "Exhibit 3" is a copy of the notice being published.

(h) As certified below a copy of this application has been sent to the Attorney General of Kentucky, Office of Rate Intervention.

(i) To the extent this application may not fully satisfy all regulatory and statutory filing requirements, permission to deviate therefrom is hereby requested.

WHEREFORE, applicants respectfully request that the Commission make its order approving the above mentioned 4% rate decrease and the applicants further request all proper relief.

DORSEY, KING, GRAY & NORMENT
318 Second Street
Henderson, Kentucky 42420
(270) 826-3965 Telephone
(270) 816-6672 Telefax
Attorneys for Applicants

By Frank N. King
FRANK N. KING, JR.

I hereby certify that the foregoing has been served upon the Attorney General of Kentucky, Office of Rate Intervention, 1024 Capital Center Drive, Frankfort, Kentucky 40601, by mailing a true an correct copy of same on this 20th day of May, 1999.

Frank N. King
Frank N. King, Jr.

VERIFICATION

The undersigned, DEAN STANLEY, being first duly sworn states that he is the President and Chief Executive Officer of Green River Electric Corporation; that he has personal knowledge of the matters set forth in the foregoing application; and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

Dean Stanley
Dean Stanley

STATE OF KENTUCKY

COUNTY OF DAVIESS

Subscribed, sworn to and acknowledged before me by DEAN STANLEY this 19th day of May, 1999.

My commission expires September 29, 2001

Charles D. Smithhart
Notary Public, State of Kentucky at Large

(seal)

VERIFICATION

The undersigned, JOHN WEST, being first duly sworn states that he is the President and Chief Executive Officer of Henderson Union Electric Cooperative Corp.; that he has personal knowledge of the matters set forth in the foregoing application;

and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

John West

John West

STATE OF KENTUCKY

COUNTY OF HENDERSON

Subscribed, sworn to and acknowledged before me by JOHN WEST this 20th day of May, 1999.

My commission expires September 29, 2001

Sharla D. Smithhart

Notary Public, State of Kentucky at Large

(seal)

KENERGY CORP.

(FORMERLY GREEN RIVER ELECTRIC CORPORATION'S TARIFF)

FOR ALL TERRITORY SERVED
Community, Town or City
PSC KY. NO. 6

Fourth Revised SHEET NO. 31

CANCELLING PSC NO. 6

Third Revised SHEET NO. 31

CLASSIFICATION OF SERVICE	
CONSOLIDATION CREDIT RIDER	RATE PER UNIT

Availability

In all territory served.

Applicable

To all electric rate schedules except direct-served smelter and large industrial customers served under special contracts.

Consolidation Credit

The monthly billing amount computed under each of the rate schedules which this credit is applicable shall be reduced by 4% before application of the school tax, sales tax, landfill fee or other similar items.

Term

The base rates of the applicable rate schedules along with the consolidation credit rider will be in effect from July 1, 1999 through June 30, 2004, absent the incurrence of extraordinary circumstances or flow-through of changes in rates from wholesale supplier; provided, however, there will not be any adjustment in said rates or credit rider without prior approval of the Commission.

DATE OF ISSUE May 19, 1999 DATE EFFECTIVE July 1, 1999

ISSUED BY Dean Stanley TITLE President and CEO
NAME OF OFFICER

ISSUED BY AUTHORITY OF PSC ORDER NO. 99-162.

Exhibit 1

KENERGY CORP.

(FORMERLY HENDERSON UNION ELECTRIC COOPERATIVE CORP.'S TARIFF)

FOR ALL TERRITORY SERVED
Community, Town or City
PSC KY. NO. 7

Original SHEET NO. 1A

CANCELLING PSC NO. 6

SHEET NO.

CLASSIFICATION OF SERVICE	
CONSOLIDATION CREDIT RIDER	RATE PER UNIT

Availability

In all territory served.

Applicable

To all electric rate schedules except "LP-4" dedicated delivery point or 2,001 KW and above and smelter customer served under special contract.

Consolidation Credit

The monthly billing amount computed under each of the rate schedules which this credit is applicable shall be reduced by 4% before application of the school tax, sales tax, landfill fee or other similar items.

Term

The base rates of the applicable rate schedules along with the consolidation credit rider will be in effect from July 1, 1999 through June 30, 2004, absent the incurrence of extraordinary circumstances or flow-through of changes in rates from wholesale supplier; provided, however, there will not be any adjustment in said rates or credit rider without prior approval of the Commission.

DATE OF ISSUE May 19, 1999 DATE EFFECTIVE July 1, 1999

ISSUED BY John West TITLE President and CEO
NAME OF OFFICER

ISSUED BY AUTHORITY OF PSC ORDER NO. 99-162.

Exhibit 2

PUBLIC NOTICE

IN THE MATTER OF THE APPLICATION OF GREEN RIVER ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP. FOR APPROVAL OF RATE DECREASE FOR KENERGY CORP., CONSOLIDATION SUCCESSOR	**KENTUCKY PUBLIC SERVICE COMMISSION CASE NO. 99-162**

Public notice is hereby given as follows:

1. Green River Electric Corporation ("GREC") and Henderson Union Electric Cooperative Corp. ("HUEC") have applied to the Kentucky Public Service Commission ("Commission") for approval of a 4% rate decrease for five (5) years for customer classes of their consolidation successor, Kenergy Corp., as allowed under KRS 278.455(1). This rate decrease will be in effect from July 1, 1999, through June 30, 2004.

2. Existing rates for each customer class affected by the rate decrease will be reduced by 4% for the five year period.

3. The effect of the 4% rate decrease upon the average bill for each customer class is:

GREC'S CUSTOMER CLASSES

Based On 1998 Usage

	PERCENT	MONTHLY DOLLARS
Residential and all other single phase	4%	$ 3.10
Commercial three-phase under 1,000 KW	4%	$47.11
Commercial three-phase over 1,000 KW	4%	$1,080.50
Direct served industrial customers	N/A	N/A

EXHIBIT 3

HUEC'S CUSTOMER CLASSES

Based On 1998 Usage

	PERCENT	MONTHLY DOLLARS
Residential (single phase)	4%	$ 3.03
Farm, government or commercial (50 KVA or less)	4%	$ 4.15
Grain bins (51 to 500 KVA)	4%	$ 7.66
Farm or commercial (51 to 501KVA)	4%	$57.07
Large power (501 to 2000 KVA) non-dedicated delivery	4%	$884.94
Direct served industrial customers	N/A	N/A

4. The rate reduction is being made at the sole discretion of GREC and HUEC pursuant to KRS 278.455(1).

5. Any person may examine the application and any other filings made by the applicants at the applicants' main offices or at the Commission's office.

6. The addresses and telephone numbers of both the applicants and the Commission are as follows:

Green River Electric Cooperative Corporation
ATTENTION: Dean Stanley, President and CEO
3111 Fairview Drive
Post Office Box 1389
Owensboro, Kentucky 42302
270-926-4141

Henderson Union Electric Cooperative Corp.
ATTENTION: John West, President and CEO
6402 Old Corydon Road
Post Office Box 18
Henderson, Kentucky 42420
270-826-3991

Kentucky Public Service Commission
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602
502-564-3940

GREEN RIVER ELECTRIC COOPERATIVE CORPORATION

By s/Dean Stanley
Dean Stanley, President and CEO

HENDERSON UNION ELECTRIC COOPERATIVE CORP.

By: s/ John West

John West, President and CEO

BOEHM, KURTZ & LOWRY
ATTORNEYS AT LAW
2110 CBLD CENTER
36 EAST SEVENTH STREET
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255

TELECOPIER (513) 421-2764

RECEIVED
MAY 18 1999
PUBLIC SERVICE COMMISSION

Via Overnight Mail

May 17, 1999

Hon. Helen Helton
Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40601

Re: In The Matter Of: Notice of Intent of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation to File Joint application for Rate Reduction, Case No. 99-162.

Dear Ms. Helton:

Please find enclosed the original and ten copies each of the Petition to Intervene of Kentucky Industrial Utility Customers, Inc. in the above-referenced matter. By copy of this letter, all parties listed on the Certificate of Service have been served.

Please place this document of file.

Very Truly Yours,

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MLK/kew
Attachment
cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by regular U.S. mail (unless otherwise noted) to all parties on this 17th day of May, 1999.

Honorable Frank N. King
Attorney at Law
Dorsey, King, Gray & Norment
318 Second Street
Henderson, KY. 42420

Dean Stanley
General Manager
Green River Electric Corporation
3111 Fairview Drive
P. O. Box 1389
Owensboro, KY. 42302 1389

Charlye Jo Griggs
Director of Office Services
Henderson Union Electric
Cooperative Corporation
6402 Old Corydon Road
P. O. Box 18
Henderson, KY. 42420 0018

Michael L. Kurtz, Esq.

RECEIVED
MAY 18 1999
PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of: Notice of Intent of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation to File Joint Application for Rate Reduction	:	Case No. 99-162

PETITION TO INTERVENE OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

Pursuant to K.R.S. §278.310 and 807 KAR 5:001 Section 3(8), Kentucky Industrial Utility Customers, Inc. ("KIUC") requests that it be granted full intervenor status in the above-captioned proceeding and states in support thereof as follows:

1. KIUC is an association of the largest electric and gas public utility customers in Kentucky. The purpose of KIUC is to represent the industrial viewpoint on energy and utility issues before this Commission and before all other appropriate governmental bodies. The members of KIUC who purchase electricity from Green River Electric Corporation ("GREC") or Henderson Union Electric Cooperative Corporation ("HUEC") who will participate herein are: Alcan Aluminum Corporation, Commonwealth Aluminum Corporation and Kimberly Clark Corporation. KIUC will supplement its Petition with the names of additional participating members as this information becomes known.

2. The matters being decided by the Commission in this case may have a significant impact on the rates paid by KIUC member companies for electricity. Electricity represents a significant cost of doing business for KIUC members. The attorneys for KIUC authorized to represent them in this proceeding and to take service of all documents are:

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
2110 CBLD Center, 36 East Seventh Street
Cincinnati, Ohio 45202
(513) 421-2255

3. The position of KIUC cannot be adequately represented by any existing party. KIUC intends to play a constructive role in the Commission's decision making process herein and KIUC's participation will not unduly prejudice any party.

WHEREFORE, KIUC requests that it be granted full intervenor status in the above captioned proceeding.

Respectfully submitted,

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
2110 CBLD Center, 36 East Seventh Street
Cincinnati, Ohio 45202
Ph: (513) 421-2255 Fax: (513) 421-2764
E-Mail: KIUC@aol.com

COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

May 17, 1999

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602
www.psc.state.ky.us
(502) 564-3940
Fax (502) 564-3460

Paul E. Patton
Governor

Ronald B. McCloud, Secretary
Public Protection and Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

April 21, 1999

Frank N. King, Esq.
Dorsey, King, Gray & Norment
318 Second Street
Henderson, Kentucky 42420

Re: Case No. 99-136
Case No. 99-162
Green River Electric Corporation
Henderson Union Electric Cooperative Corporation

Dear Mr. King:

This letter confirms your telephone conversation of today with Susan Hutcherson regarding the above referenced cases. The Commission has established separate proceedings to address the proposed rate adjustment application and the proposed consolidation of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation. The utilities' joint application for Commission approval of their proposed consolidation has been docketed as Case No. 99-136. The proposed application for rate adjustment has been docketed as Case No. 99-162.

Any questions concerning this matter should be directed to Susan Hutcherson at 502-564-3940, Extension 215 or Gerald Wuetcher, Commission counsel at 502-564-3940, Extension 259.

Sincerely,

Stephanie Bell
Secretary of the Commission

sh
cc: Dean Stanley
Charlye Jo Griggs

EDUCATION PAYS

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

April 9, 1999

Honorable Frank N. King
Attorney at Law
Dorsey, King, Gray & Norment
318 Second Street
Henderson, KY. 42420

RE: Case No. 99-~~136~~ 162
GREEN RIVER ELECTRIC CORPORATION
(Rates - General)

This letter is to acknowledge receipt of notice of intent to file a rate application in the above case. The notice was date-stamped received on April 2, 1999 and has been assigned Case No. 99-136. In all future correspondence or filings made in connection with this case, please reference the above case number.

If I can be of any help on procedural matters, please feel free to contact me at 502/564-3940.

Sincerely,

Stephanie Bell
Secretary of the Commission

SB/jc

DORSEY, KING, GRAY & NORMENT

ATTORNEYS-AT-LAW

318 SECOND STREET

HENDERSON, KENTUCKY 42420

JOHN DORSEY (1920-1986)
FRANK N. KING, JR.
STEPHEN D. GRAY
WILLIAM B. NORMENT, JR.
J. CHRISTOPHER HOPGOOD

TELEPHONE
(502) 826-3965
TELEFAX
(502) 826-6672

RECEIVED
APR 02 1999
PUBLIC SERVICE
COMMISSION

April 1, 1999

FEDERAL EXPRESS

Ms. Helen C. Helton
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40601

Case 99-162

Re: Green River Electric Corporation and Henderson Union Electric Cooperative Corp.

Joint Notice of Intent to File Application for Rate Reduction

Dear Ms. Helton:

As the Commission has been notified, Green River Electric and Henderson Union are proposing a consolidation. The members of these two cooperative utilities are voting by mail ballot on the issue at the present time and the votes will be tabulated on April 15. If consolidation is approved by the members, a 4% rate reduction for five years will be sought for all non-direct serve customers, effective July 1, 1999.

Enclosed for filing please find joint notice of intent to file this application. As stated therein, the filing will be made under the newly enacted KRS 278.455. If the members do not approve consolidation, request will be made to the Commission for leave to withdraw the notice of intent.

Your attention is also called to the fact that the notice requests permission to be allowed to use an abbreviated form of newspaper notice and to publish the notice to customers only once.

Your assistance in this matter is appreciated.

Very truly yours,

DORSEY, KING, GRAY & NORMENT

By Frank N. King

Frank N. King, Jr.

FNKJr/cds
Encl. -
Copy: Mr. John West
Mr. Dean Stanley

RECEIVED

APR 02 1999

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT NOTICE OF INTENT TO FILE)
APPLICATION FOR RATE REDUCTION)
OF GREEN RIVER ELECTRIC CORPORATION) NO. 99-162
and HENDERSON UNION ELECTRIC)
COOPERATIVE CORP.)

Green River Electric Corporation ("GREC") and Henderson Union Electric Cooperative Corp. ("HUEC") hereby give written notice of intent to file an application for the hereinafter specified rate reduction, to become effective provided the proposed consolidation of GREC and HUEC receives all necessary approvals.

GREC and HUEC, by counsel, state that their respective members are now voting by mail ballot on whether consolidation should be approved. The ballots will be counted on April 15, 1999, and if the members duly approve the consolidation, application will be made to the Commission for its approval of same. The name of the consolidated entity will be Kenergy Corp. and the effective date of consolidation is July 1, 1999.

GREC and HUEC have entered into a Consolidation Agreement which provides that a 4% rate reduction for five (5) years for all non-direct serve members will be sought for the consolidated entity, to be effective upon the effective date of consolidation or as soon thereafter as may be ordered by the

Commission. The application will be filed under KRS 278.455 because the revenue reduction resulting from the proposed rate reduction will be allocated among and within the consumer classes on a proportional basis that will result in no change in the rate designs currently in effect. The rate reduction will not apply to the direct serve customers, which are parties to special contracts.

An abbreviated application will be filed wherein deviations will be requested from certain regulatory and statutory filing requirements. Permission is hereby requested to be allowed to use an abbreviated form of newspaper notice and to publish the notice to customers only once.

If consolidation is not duly approved by the members, request will be made to the Commission for leave to withdraw this notice of intent.

It is hereby certified that a copy of this notice has been served upon the Attorney General of Kentucky, Office of Rate Intervention, 1024 Capital Center Drive, Frankfort, Kentucky 40601, by mailing a true and correct copy of same on this the 1st day of April, 1999.

DORSEY, KING, GRAY & NORMENT
318 Second Street
Henderson, Kentucky 42420
Telephone - 502-826-3965
Telefax - 502-826-6672
Attorneys for Green River Electric Corporation and Henderson Union Electric Cooperative Corp.

By Frank N. King
Frank N. King, Jr.

BOEHM, KURTZ & LOWRY
ATTORNEYS AT LAW
2110 CBLD CENTER
36 EAST SEVENTH STREET
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255

TELECOPIER (513) 421-2764

RECEIVED
MAR 1 0 2000
PUBLIC SERVICE
COMMISSION

Via Overnight Mail

March 9, 2000

Mr. Martin J. Huelsmann, Jr.
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

Re: In The Matter Of: Notice of Intent of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation to File Joint application for Rate Reduction, Case No. 99-162.

Dear Mr. Huelsmann:

Please find enclosed the original and eight (8) copies each of the Direct Testimony and Exhibits of Russell L. Klepper on behalf of Kentucky Industrial Utility Customers, Inc. in the above-referenced matter. By copy of this letter, all parties listed on the Certificate of Service have been served.

Please place this document of file.

Very Truly Yours,

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MLK/kew
Attachment
cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by regular U.S. mail (unless otherwise noted) to all parties on this 9th day of March, 2000.

Honorable Frank N. King
Dorsey, King, Gray & Norment
318 Second Street
Henderson, KY. 42420
(VIA OVERNIGHT MAIL)

Dean Stanley, General Manager
Green River Electric Corporation
3111 Fairview Drive
P. O. Box 1389
Owensboro, KY. 42302 1389

Michael L. Kurtz, Esq.

BEFORE THE

COMMONWEALTH OF KENTUCKY

PUBLIC SERVICE COMMISSION

RECEIVED
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PUBLIC SERVICE COMMISSION

In The Matter Of: The Application of Green River Electric Corporation and Henderson Union Electric Cooperative For Approval of Rate Decrease for Kenergy Corp., Consolidation Successor	:	Case No. 99-162

DIRECT TESTIMONY AND EXHIBITS

OF

RUSSELL L. KLEPPER

ON BEHALF OF THE

KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

ENERGY SERVICES GROUP, LLC
ROSWELL, GEORGIA
MARCH 2000

DIRECT TESTIMONY OF
RUSSELL L. KLEPPER
ON BEHALF OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

Q. Please state your name, address, and occupation.

A. Russell L. Klepper. I live and work in Roswell, Georgia, which is a suburb of Atlanta. I am the Co-Founder and Principal of Energy Services Group, LLC, a utility and energy consulting services firm that is the successor to Rawson, Klepper & Company.

Q. Please describe your educational background.

A. I hold a Bachelor of Science in Business Administration with a major in Economics and a Master of Business Administration with a major in Finance, both from the University of Florida, and a Master of Professional Accountancy from Georgia State University.

Q. Please describe your applicable utility experience.

A. I have twenty three years of applicable utility experience, the first seven as an employee in the financial areas of a major utility. For the past sixteen years, the preponderance of my time has been spent as an independent consultant on utility finance, rates and regulation, and regulatory transition issues, as well as certain facets of the economics of both regulated and unregulated firms that produce, sell, and distribute energy for consumption by ultimate consumers. I have provided professional services to both investor owned and governmental utilities, to private companies that have significant interests in the energy industry, and to entities such as the World Bank, the United States Energy Association, and the Edison Electric Institute. As a consultant, I have developed and presented two national seminars and numerous in-house seminars that focus on different aspects of utility planning and decision making. A more detailed Summary of Professional Credentials is attached to this direct testimony as Exhibit No._(RLK-1).

Q. Have you previously appeared before the Kentucky Public Service Commission?

A. Yes, I have previously submitted testimony and personally appeared before the Kentucky Public Service Commission (hereinafter the "Commission" or the "KPSC") in numerous proceedings pertaining to Big Rivers Electric Corporation ("Big Rivers"). These include each of the three two-year Fuel Adjustment Clause ("FAC") proceedings covering the period from November 1, 1990 through October 31, 1996, many of the six month FAC review cases subsumed within the above referenced two year FAC cases, and every environmental surcharge proceeding or informal conference involving Big Rivers.

Further, I submitted testimony and personally appeared in Case No. 97-204, the keystone proceeding for Commission approval of (a) the transactions between Big Rivers and the LG&E Entities, and (b) new wholesale rates for Big Rivers. These approvals were precedent conditions to the resolution of Big Rivers' bankruptcy proceeding. I also participated in the informal conference that was conducted by the KPSC Staff in Case No. 99-450, the proceeding in which Big Rivers sought and received approval for its proposed Deferred Sale/Leaseback Transaction.

In addition, I submitted testimony and personally appeared before the Commission in Case No. 92-493-C, an FAC proceeding involving Kentucky Utilities Company.

Q. On whose behalf are you appearing in this proceeding?

A. In this proceeding, I am appearing on behalf of the Kentucky Industrial Utility Customers, Inc. ("KIUC"). KIUC is participating in this proceeding on behalf of Alcan Aluminum Corporation ("Alcan"), Southwire Company ("Southwire", and together with Alcan, the "Smelters"), Commonwealth Industries, Inc. ("Commonwealth"), and Kimberly Clark Corporation, the successor by merger with Scott Paper Company

("Kimberly Clark"). Alcan, Southwire, Commonwealth, and Kimberly Clark are hereinafter referred to as the "KIUC Members".

Together, the KIUC Members purchase approximately 76% of the energy and account for about 63% of the total revenues of Kenergy Corp. ("Kenergy"), the successor by merger of Green River Electric Corporation ("GREC") and Henderson Union Electric Cooperative Corp. ("HUEC").

Q. What is the purpose of your testimony in this proceeding?

A. I have been asked by KIUC to comment upon Kenergy's proposal in this general rate proceeding filed pursuant to KRS 278.190 to use the anticipated savings from the GREC/HUEC merger to reduce by 4% the electric rates of all Kenergy customers, except for the 21 direct serve industrial customers (including the KIUC Members). This testimony will address those issues that should be considered by the Commission in its determination of whether the resulting rates would be *"fair, just, and reasonable"*, as required by KRS 278.030, and whether the resulting rates would *"subject any person to any unreasonable prejudice or disadvantage"*, as prohibited by KRS 278.170.

As discussed below, Kenergy's rate reduction proposal is inherently unreasonable and discriminatory and unsupported by the evidence in this proceeding. Accordingly, my testimony provides analytical support for an alternative rate reduction to all Kenergy customers (including the direct serve industrial customers) in the amount of 9.52% of the distribution component included in the rates of each customer class.

Noting that Kenergy has opened a general rate proceeding, this testimony will also ask that, as an alternative to merely allocating the expected merger savings, the Commission re-examine and reduce the distribution fees now charged to the KIUC Members. As set forth in detail below, this request in based on demonstrable inequities in the relationship between the amount of the distribution fees charged by Kenergy to the KIUC Members and the amount of direct and indirect costs that Kenergy incurs in providing electric service to the KIUC Members.

Q. What activities have you undertaken in preparing for your testimony in this proceeding?

A. Since the latter half of 1992, I have been continuously involved on behalf of KIUC and/or the KIUC Members, either individually or collectively, in matters pertaining to Big Rivers and the predecessors to Kenergy. In addition to the KPSC proceedings in which I participated, my recent involvement has included advising the Smelters with respect to monitoring and participating in Case Nos. 97-204, 98-267, 97-219, and 97-220, and with respect to all other rate and economic aspects of the comprehensive contractual arrangements involved in the global settlement with Big Rivers. My participation included a prominent role in the negotiation and drafting of all electric service arrangements for the Smelters, including but not limited to the Agreements for Electric Service dated July 15, 1998, as amended, between GREC and Southwire and between HUEC and Alcan.

I have also separately advised each of Commonwealth and Kimberly Clark with respect to their contractual relationships with GREC, one of the predecessors to Kenergy.

Finally, I have reviewed in detail the filings made by Kenergy in this proceeding, including the initial application and Kenergy's responses to the initial and supplemental data requests of both the Commission and KIUC. I have also reviewed the applications and other filings of the parties in the two prior KPSC proceedings seeking regulatory approval for the merger of GREC and HUEC.

Q. **If granted, would the rate reduction proposal of Kenergy in this proceeding produce retail electric rates that are fair, just and reasonable, and non-discriminatory?**

A. No. The Kenergy proposal would use the anticipated merger savings to provide a 4% rate decrease to all Kenergy's customers except the direct serve industrial customers. In accepting Kenergy's Application in this proceeding, the Commission agreed to excuse Kenergy's obligation to provide a cost of service study supporting its rate proposal. However, the Commission has emphasized that Kenergy bears the burden of proving that the resulting rates would be fair, just and reasonable, and non-discriminatory, all as required by applicable law. Notwithstanding its burden of proof, Kenergy has produced no evidence whatsoever in this proceeding that the anticipated merger savings will affect only those costs that are borne by the non-direct serve customers. Thus, there has been no analytical justification offered by Kenergy in support of its proposal.

Q. **Absent analytical justification, what is the basis of Kenergy's proposal?**

A. As can be clearly seen from Kenergy's Application in this proceeding and from Item 1 of Kenergy's Response to the Commission's Supplemental Request for Information, the management of Kenergy *"reasoned that the fair approach was to offer the 4% rate reduction to the customers who had carried the financial brunt of rate increases in the past."*

A second reason for Kenergy's proposal has not been articulated, but it is in plain view. The first merger initiative, which proposed to equalize rates between GREC and HUEC, was defeated by a vote of HUEC's members, whose rates would have increased notwithstanding the economic benefits of the merger. In order to curry the favor of the memberships of both GREC and HUEC, a widely promoted key element of the second merger proposal was a 4% rate decrease.

The 21 direct serve industrial customers, who purchase 88% of the energy sold by Kenergy, were disenfranchised by their exclusion from any rate reduction. Under the organizational structures of GREC and HUEC, voting rights were exercised equally by all members rather than on the basis of economic participation (the voting structure existing in almost all other business entities). Under this circumstance, the voting power of the direct serve industrial customers was so nominal that the economic impact on those large customers could be ignored by the management of each the merging parties.

Q. Is the rationale offered by Kenergy for the proposed allocation of the merger savings appropriate from a regulatory standpoint?

A. No, it is not appropriate. Further, it is not an appropriate use of the Commission's discretion to use its ratemaking authority to correct or amend any real or perceived deficiency in a prior ratemaking decision of the Commission.

The management of Kenergy clearly believes that the Commission erred in one or more prior rate decisions that resulted in non-direct serve customers bearing a greater percentage rate increase than that borne by direct serve customers. If the predecessors to Kenergy believed that ratemaking errors were manifest in prior Commission decisions, the appropriate remedy would have been to seek judicial review of those decisions. However, to my knowledge, the predecessors to Kenergy did not seek any judicial review or other legal remedy to reverse or modify those decisions. (If remedies were sought, they were obviously unsuccessful). It is clearly inappropriate for Kenergy's management now to attempt to implement unilaterally a retroactive remedy that undermines prior ratemaking decisions of this Commission.

Q. Would it be appropriate for the Commission to allow the entire merger savings to be allocated to non-direct serve customers on the assertion that direct serve customers

enjoyed an inappropriately greater reduction in total cost than non-direct serve customers pursuant to Case Nos. 97-204 and 98-267?

A. No. It is apples versus oranges. Case Nos. 97-204 and 98-267 involved generation and transmission costs. This case involves distribution costs. Attachments 1c and 2 of Kenergy's responses to the Commission's Initial Request for Information show that in Case Nos. 97-204 and 98-267 the direct serve customers received larger percentage rate decreases than the non-direct serve industrial customers on a total rate basis (i.e., generation, transmission and distribution). However, as demonstrated by Attachments 2 and 3 of Kenergy's Responses to KIUC's Supplemental Requests for Information, the percentage rate decreases considering only generating and transmission services were approximately equal over all classes of customers, except for the Smelters. The reason that the decreases were smaller on an overall basis for non-direct serve customers is that these customers incur substantial distribution costs as a component of their total costs. The distribution rate component did not decrease to the same extent, if at all, as the generating and transmission rate component. The allocation of cost decreases in a prior Commission proceeding establishing new wholesale rates for generating and transmission costs provides no justification in the instant proceeding for a preferential allocation of distribution cost decreases. The allocation among customer classes of distribution cost decreases should be independent of wholesale generating and transmission costs. Moreover, the allocation of distribution cost decreases should be supported by appropriate evidence, which simply has not been submitted by Kenergy in this case.

Q. Was any part of the 1998 rate decreases accorded to the KIUC Members attributable to reductions in the distribution component of rates charged by the predecessors to Kenergy?

A. No. Attachment 2 to Kenergy's Responses to KIUC's Supplemental Requests for Information clearly shows that Alcan, Commonwealth and Kimberly Clark received no decrease in rates attributable to distribution fees. This same Attachment 2 purports to show that Southwire received a very nominal rate decrease attributable to distribution fees, but this is incorrect.

On September 2, 1997, Interim Rates were implemented by this Commission that effected on a temporary basis the proposed wholesale and retail rates that later were made permanent, with modifications, by order of this Commission. Prior to implementation of the Interim Rates, Southwire was charged separately for electric services to its Smelter and to its Rod and Cable Mill. Prior to the Interim Rates, Southwire paid a distribution fee of 0.08 mills per kWh for energy consumed by the Smelter and 0.3 mills per kWh for energy consumed by the Rod Mill. Based on representative annual consumption of 3,100,000,000 kWh and 36,000,000 kWh for the Smelter and the Rod Mill, respectively, Southwire's annual distribution fees prior to implementation of the Interim Rates were approximately $258,800.

After implementation of the Interim Rates, the Smelter and the Rod Mill were combined into a single service point, and the distribution fee for all consumption was changed to 0.1 mills per kWh. Based on annual combined consumption of 3,136,000,000 kWh (as shown above), Southwire's annual distribution fees increased by 21.2% to $313,600. Therefore, Southwire was the one and only customer of GREC that experienced an increase in its distribution fee.

Q. Please place into context the proposed rate reduction to the non-direct serve customers of Kenergy.

A. The non-direct serve customers of Kenergy use only 12% of the energy sold by Kenergy and pay about 24% of Kenergy's total revenues. The disparity between the percentage of energy consumed and the percent of revenues paid is attributable to the facts that (a) Kenergy's residential and small commercial customers incur more wholesale power costs per kWh of consumption than large industrial customers because of relatively lower load factors; (b) customers served from distribution systems cause substantially higher system energy losses than customers served at transmission levels; and (c) customers served from Kenergy's distribution system cause Kenergy to incur substantial expenses for distribution and customer accounting operations, and for administrative and general expenses that support the distribution and customer accounting operations. By contrast, the expenses incurred by Kenergy to serve customers who are connected directly to Big Rivers' transmission system are extremely nominal, because Kenergy incurs virtually no costs for distribution or customer accounting operations with respect to direct serve customers.

For calendar 1998, Kenergy's total revenues from non-direct serve customers was $57,469,511, comprised of $35,727,968 in directly related purchase power expense and $21,741,543 in distribution revenue. Based on a 4% rate reduction, the total annual revenue reduction would be $2,298,780.

However, a more meaningful representation of Kenergy's proposed rate reduction would be to say that the non-direct serve customers would receive a rate benefit that is 10.57% of the distribution component of their rates ($2,298,780 in revenue reduction divided by $21,741,543 in distribution revenue).

Q. In the absence of any analytical support or an appropriate qualitative justification for Kenergy's proposed allocation of the merger savings, can you set forth an alternative allocation of the merger savings that would result in rates that are fair, just and reasonable, and non-discriminatory?

A. Yes. In the absence of any evidence that shows that the merger savings will affect only those costs incurred for the benefit of the non-direct serve customers of Kenergy, it must be assumed that the merger savings will arise from cost reductions that are realized across all components of Kenergy's distribution costs. Therefore, the appropriate allocation of merger savings among customers would be an equal percentage decrease in the distribution component of the rates of every customer class.

Based on calendar 1998, Kenergy's distribution revenues from non-direct serve customers and direct serve customers were $21,741,543 and $2,395,652, respectively, for total distribution revenues of $24,137,195. If the Commission wishes to maintain exactly the proposed annual revenue reduction of $2,298,780, then the distribution component of the rates of all customer classes should be reduced by 9.52% (based on an annual revenue reduction of $2,298,780 divided by total distribution revenues of $24,137,195). This would produce an annual revenue decrease to the non-direct serve customers of $2,069,795, or 3.60% of total rates (instead of 4%).

Q. Item 1 of the Commission's Supplemental Request for Information asks Kenergy about the implications of providing a 4% reduction in Kenergy's adder to direct serve industrial customers. Would this be a fair rate reduction to the direct serve customers?

A. No, it would not. There would be no consistency or fairness in providing to non-direct serve customers a 4% decrease in the total rate, which includes a significant component for generating and transmission costs, while providing to direct serve customers a 4% decrease in only the distribution component of the rate, which does not include generating and transmission costs.

Q. Would a rate modification that reduces the distribution component of the rates of all customer classes be an action that is consistent with Commission precedent?

A. Yes. In the absence of cost of service evidence supporting a different allocation, the Commission has historically allocated rate increases or decreases on the basis of total revenue. While many cases could be cited to reflect the Commission precedent, the most appropriate would seem to be The Joint Application Of Louisville Gas And Electric Company And Kentucky Utilities Company For Approval Of Merger, Case No. 97-300. In the LG&E/KU case, both of the merging utilities were vertically integrated, providing generating, transmission and distribution services, so the mandated rate decrease was allocated on the basis of total revenues for generating, transmission and distribution services. In the instant case, the merging utilities are both providers of only distribution services, and there is no anticipated material reduction in costs for generating and transmission services. Accordingly, it would be consistent with Commission precedent to allocate the merger savings in this case based on total distribution revenues.

Q. If the Commission decides that the direct serve industrial customers are entitled to a decrease in rates in order to allocate to those customers a portion of the merger savings, would it be appropriate for the Smelters to share in that rate reduction?

A. Yes, provided that the reduction in the distribution fees paid by the Smelters would not become effective until January 1, 2001, as specifically provided by the Agreements for Electric Service and the associated Smelter Tariffs. Kenergy's Response to Item 1c of the Commission's Supplemental Request for Information states that the Smelter Adder is fixed by contract, but as seen below, this is only partially correct.

Section e of the General Provisions of each Smelter Tariff provides in relevant part that:

> *"...each kilowatt hour purchased by [Smelter] under this Schedule A shall be subject to a fee charged by [Kenergy] of one-tenth of a mill ($0.0001), payable monthly, provided that after December 31, 2000, the fee shall be subject to change by order of the Kentucky Public Service Commission upon application by either or both of [Kenergy] and [Smelter]."*

By KIUC's participation in this proceeding on behalf of the Smelters, the Commission should deem that the Smelters have made application for a reduction in the distribution fee. The clear language of the Tariff (that also appears in Section 12.6 of each of the Agreements for Electric Service) reflects the agreement between Kenergy and each of the Smelters that the distribution fee would be fixed until December 31, 2000, but would thereafter be subject to modification by order of the Commission upon the exercise of its ratemaking authority. Accordingly, if the Commission should find in this proceeding that a modification in the Smelters' distribution fee is appropriate, whether by reason of an allocation of the merger savings or otherwise, then the Commission's order should establish that change in rates, to become effective for the Smelters on January 1, 2001, as specifically provided by the governing documents previously approved by this Commission.

Q. What is the appropriate scope of issues for the Commission to consider within this general rate proceeding?

A. It is obvious that Kenergy filed this general rate proceeding with the intention that the scope of this proceeding would be limited to the Commission's consideration of effecting rate decreases based on an allocation of the anticipated merger savings. However, within the context of a general rate proceeding filed pursuant to KRS 278.190, it is incumbent upon the Commission to consider not only the issues raised by the Applicant, but also any other rate issues that may be raised by the intervenors or the Commission itself.

Q. What issue does KIUC wish to have the Commission consider?

A. The KIUC Members assert that the amount of the distribution fees that they pay to Kenergy is no longer fair or reasonable in light of the existing relationship between the amount of the distribution fees and the distribution related costs that Kenergy incurs in providing electric service to the KIUC Members. Evidence has been submitted in this proceeding by Kenergy in response to KIUC's data requests that fully supports KIUC's assertion in this matter.

Q. Please describe the evidence that demonstrates the relationship between the distribution fees and distribution related costs of service for the KIUC Members.

A. Attachment 9 of Kenergy's Response to KIUC's Initial Request for Information contains detailed analyses used by GREC in the allocation of capital credits for the years 1997 and 1998. It was the practice of GREC to perform a detailed analysis of distribution related costs applicable to each direct serve customer in order to allocate an appropriate amount of patronage capital for the benefit of each of these customers. These detailed analyses can be relied upon by the Commission as valid evidence of the distribution related costs that GREC incurred, and that Kenergy similarly continues to incur, in providing electric service to Southwire, Commonwealth, and Kimberly Clark.

Q. Why is it appropriate for the Commission to rely on studies that were performed for the purpose of allocating patronage capital rather than for ratemaking purposes?

A. Regardless of the use of a detailed study of costs, the conclusions of the study should remain unchanged. The By-Laws of Kenergy state in Article I, Section 3, as follows:

"It is expressly understood that <u>amounts paid for electric energy in excess of the cost of service</u> are furnished by members as capital and each member shall be credited with the capital so furnished as provided in these bylaws." (emphasis added).

The By-Laws of Kenergy further state in Article VIII, Section 2, as follows:

"In order to induce patronage and to assure that the Corporation will operate on a non-profit basis, the Corporation is obligated to account on a patronage basis to all its patrons, members and nonmembers alike, <u>for all amounts received and receivable from the furnishing of electric energy in excess of operating costs and expenses properly chargeable against the furnishing of electric</u>

energy....The Corporation shall credit to a capital account for each patron all such amounts in excess of operating costs and expenses." (Emphasis added)

The By-Laws of GREC contained substantially similar provisions, and the detailed studies cited above were performed by the authorized personnel of GREC to satisfy GREC's obligations under its By-Laws. Thus, these detailed cost of service studies that were performed by GREC for purposes of allocating patronage capital are equally adequate, reliable and authoritative for ratemaking purposes.

Q. What conclusions can be drawn from the detailed analyses of distribution related costs of service performed by GREC?

A. Attachment 9, page 2 of 11 of Kenergy's Response to KIUC's Initial Request for Information shows that in 1998, GREC received distribution revenues from its direct serve customers of $877,562, but had related distribution expenses of only $233,225. The components of this total distribution expense are $99,811 for KPSC Assessments and $133,414 for Administrative & General Expenses, and are further documented in Attachment 9 on page 3 of 11 and page 4 of 11, respectively. This analysis shows that less than 27 cents of each dollar of distribution revenue that GREC received from its direct serve customers was necessary to cover distribution related expenses, and more than 73 cents of each dollar was excess revenue booked to patronage capital. The revenue and related expense of each KIUC Member served by GREC is as follows:

Name	Revenue	Expense	Expense %
Southwire	$313,032	$120,128	38.4%
Commonwealth	$ 73,507	$ 19,254	26.2%
Kimberly Clark	$135,981	$ 26,432	19.4%

By contrast, Attachment 9, page 5 of 11, shows that GREC had distribution revenues of $13,719,727 from the non-direct serve customers, but patronage capital of only $2,863,245 allocated to this group. This implies distribution related costs of $10,856,482 to serve the non-direct serve customers, meaning that more than 79 cents of each dollar of distribution revenue from the non-direct serve customers is necessary to recover related distribution expense.

This rate inequity, whereby the direct serve industrial customers pay distribution fees that are disproportionate to their distribution related costs, has produced accumulated allocations of patronage capital that are clearly unreasonable and unduly discriminatory. Southwire's annual distribution fees comprise about 1.3% of Kenergy's annual distribution related revenues, yet Southwire's accumulated patronage capital is 7.2% of Kenergy's total patronage capital. Similarly, Commonwealth's annual distribution fees comprise about 0.3% of Kenergy's annual distribution related revenues, but Commonwealth's accumulated patronage capital is more than 2% of Kenergy's total patronage capital.

The disproportionate accumulation of patronage capital by the KIUC Members may eventually be rectified through the distribution of patronage capital, but only if the distribution components of rates are adjusted so that all customer classes pay the same approximate percentage of excess revenues. Absent a substantial reduction in the distribution fees paid by the KIUC Members, the forced payment of excess revenues and the accompanying forced accumulation of unreasonable and discriminatory levels of patronage capital will continue to subject the KIUC Members to unreasonable prejudice and disadvantage, in violation of KRS 278.170.

Q. Do any inequities exist within the industrial class of which the Commission should be aware?

A. Yes. By any standard of comparison, with respect to the level of distribution fees, Kimberly Clark is treated in a particularly discriminatory fashion. Other than the Smelters, GREC (and now Kenergy) serve three very large industrial customers. The distribution fee paid by Willamette and Commonwealth is $0.0003 per kWh, but the distribution fee paid by Kimberly Clark (which has energy consumption almost equal to Commonwealth and a higher load factor than Commonwealth) is $0.0005 per kWh, plus $0.05 per kW of demand per month. Fundamental fairness dictates that absent a cost of service reason for any differential, the distribution fees paid by each of these three customers should be at the same level.

As seen from the chart above, the distribution fee paid by Commonwealth is almost four times the amount of its related distribution expense, so there is no justification for increasing Commonwealth's distribution fee. While the Commission should take the actions necessary to reduce the distribution fees to levels that are properly reflective of the associated distribution related costs, it is particularly important that the Commission take notice and correct the substantial economic discrimination now suffered by Kimberly Clark.

Q. Would an examination of the patronage capital allocations of HUEC reflect similar inequities in the percentage of patronage capital attributable to the different customer classes?

A. Unfortunately, we do not know. The management of HUEC did not perform the detailed cost of service analyses that were performed by their counterparts at GREC. Instead, HUEC historically allocated patronage capital based on the simplistic assumption that each customer's payment of excess revenues was exactly equal to that customer's payment of distribution revenues as a percentage of HUEC's total distribution revenues.

This simplistic approach has been particularly adverse to Alcan. As can be seen from Kenergy's Response to Item 9 of KIUC's Supplemental Request for Information, Alcan has accumulated only $696,572 in distribution related patronage capital, less than 19% of the amount accumulated for the benefit of Southwire. This disparity has occurred despite the fact that Alcan and Southwire are of similar size and have historically had similar energy consumption, and that until 1997, the distribution fee paid by Alcan was 25% greater than the similar fee paid by Southwire. Another meaningful indication of the ongoing discrimination against Alcan is that Commonwealth, an electric customer about 12% of the size of Alcan, has accumulated about 50% more patronage capital than accumulated by Alcan.

Q. Is the structure by which direct serve customers pay distribution fees an appropriate rate structure to recover the distribution related costs that Kenergy incurs in providing electric service to these customers?

A. In my view, it is not. From a review of the detailed cost of service analyses performed by GREC for purposes of allocating patronage capital, it is seen that of the distribution related cost incurred by Kenergy in providing electric service to direct serve industrial customers, only the KPSC assessment varies as a function of electric consumption. None of the distribution related costs attributable to direct serve customers varies with the level of electric demand of those customers. Instead, the preponderance of the distribution related cost arises from an allocation of Kenergy's overhead expense, which remains substantially unaffected by changes in the level of energy consumption or demand levels of Kenergy's direct serve customers.

As an example, the recent expansion of Southwire's Smelter has not caused Kenergy to incur any additional distribution related expenses, except for an increase in its regulatory assessment. However, the structure of the distribution fee, which causes the amount of the fee payment to vary as a direct function of energy consumption, has caused Southwire to pay an additional $85,000 per year in distribution fees. Similarly, if Alcan were to re-start its third potline that is now idle, its distribution fees would increase by almost

$100,000 per year, while Kenergy would experience less than $20,000 in incremental distribution related costs.

A more appropriate rate structure for the collection by Kenergy of distribution related costs incurred on behalf of direct serve industrial customers would be a significant monthly customer fee in a fixed amount, with a correspondingly smaller fee per kWh of energy consumption to cover the KPSC assessment. Using this rate structure, the burden of distribution revenues to be paid to Kenergy by the direct serve customers would be allocated more effectively to reflect and recover the distribution related costs, and the changes in distribution related costs, that are incurred by Kenergy for the benefit of the direct serve customers.

Q. What is the appropriate remedy to the inequity in the distribution component of rates as described above?

A. In order to establish rates that are fair, just and reasonable, and non-discriminatory, the distribution component of rates for all customer classes should be re-established by this Commission to produce distribution related revenues to Kenergy in an amount that (a) directly recovers Kenergy's distribution related costs attributable to each class of customers, and (b) causes each customer class to provide excess distribution revenues that reflect an equal percentage of distribution related expenses.

The cost of service information discussed above, which was prepared and provided by Kenergy, amply demonstrates that the KIUC Members are unreasonably prejudiced by being forced to provide excess distribution revenues that are far greater on a percentage basis than the excess distribution revenues provided by non-direct serve customers. Therefore, as an alternative to using the anticipated merger savings to reduce rates to all classes of customers, the distribution related merger savings should first be used to correct the existing rate inequities manifested by the excess revenue burden currently borne by the KIUC Members.

Q. How should the Commission proceed in taking the actions that are necessary and appropriate to correct the existing inequities, as discussed above, in the distribution components of Kenergy's retail rates?

A. Upon the conclusion of hearings in this proceeding, but before the Commission has issued its rate order, the Commission should direct Kenergy to make a compliance filing. The filing should contain an analysis that sets forth, for each customer class served by Kenergy, the amount of distribution revenue received by Kenergy and the associated amount of distribution related expense incurred by Kenergy. This cost of service analysis should be performed in a manner that is consistent with those analyses performed for calendar 1997 and 1998 by GREC and that satisfies Kenergy's requirements under its By-Laws to perform a cost of service analysis for the purpose of allocating excess revenues as patronage capital.

Using the information provided by Kenergy in its compliance filing, the Commission should make appropriate adjustments to the distribution components of Kenergy's retail rates in order to equalize the percentage of the excess revenue burden borne by each customer class.

After making the adjustments that correct the existing inequities in Kenergy's rates, the remaining amount of the proposed revenue reduction arising from anticipated merger savings should be allocated proportionately across all components of Kenergy's pro forma distribution revenues (including the rate adjustments to correct inequities).

Q. Does this conclude your testimony?

A. Yes, it does.

Russell L. Klepper

Russell L. Klepper

State of Georgia
County of Fulton

Subscribed and sworn to before me, a notary public in and for the State and County aforesaid.

My commission expires:

LORI R. SECHRIST
MY COMMISSION EXPIRES
DEC 03 2002
COBB COUNTY, GEORGIA
NOTARY PUBLIC

Date: 3/7/00

Notary Public

Mr. Klepper is a founder and principal of Energy Services Group, LLC, a utility and energy consulting services firm established in 1998. In 1984, Mr. Klepper established Rawson, Klepper & Company, the predecessor to ESG. With a strong academic background and more than twenty-two years of experience as a utility practitioner and consultant, Mr. Klepper specializes in the areas of energy economics, utility expenditure planning and cost control, ratemaking, negotiation of contracts for energy and energy transportation, strategic analysis, planning and decision making in a regulated or transitory energy environment.

PROFESSIONAL INTERESTS

Mr. Klepper prepares and presents public and in-house seminars, serves as an expert witness on energy related economic and regulatory issues, and advises large energy consumers, regulatory intervention groups, trade associations, public policy foundations and other energy industry participants on matters related to analysis of capital expenditure alternatives, acquisition and allocation of capital, strategic, financial, and integrated resource planning, and determination of revenue requirements and rate structuring in an increasingly competitive energy industry. He is a noted writer and speaker in the areas of privatization of utility operations and the impacts arising from federal participation in the electric industry.

In addition, Mr. Klepper has prepared and presented reports on topics such as Strategic Issues in Utility Planning, Utility Service Obligations in a Changing Environment, Competition within the Utility Industry, Co-Ownership of Utility Assets, Resource Recovery and Waste Utilization, Cogeneration and Independent Power Production, Transmission Access and Pricing, Determination of Costs in Railroad Ratemaking, and Fuel Acquisition and Transportation.

PROFESSIONAL ACTIVITIES

Instructor of Economics and Money and Banking, American Institute of Banking, 1974-75.

Expert Witness on Financial and Regulatory Matters.
- ♦ Interstate Commerce Commission, 1979-81.
- ♦ Utah Public Service Commission, 1985-86.
- ♦ Kentucky Public Service Commission, 1993-98.
- ♦ Florida Public Service Commission, 1994, 1996-1997.

Southeastern Electric Exchange. Member, Finance Committee, 1982-83.

Financial Management Association. Industry Reviewer of utility related presentations. 1983 Southeastern Conference.

Edison Electric Institute. Member, Committee on Electric Power Ownership Alternatives, 1983-84. Presenter of "A Strategic View of the 1990s" to EEI Strategic Planning Committee, 1989.

Southeastern Regional Public Utilities Conference. Presenter of "A Viewpoint on Utility Privatization". 1990.

The Management Exchange, Inc., faculty member, 1982-92.

- Co-Developer and Co-Presenter of national seminar "Capital Expenditure Analysis for Utilities."
- Developer and Presenter of national seminar "Financial Planning for Utilities."

Energy Bureau. Presenter of "Evaluating Financing Techniques." Conference on "Utility Financing for a Beleagured Industry." 1984.

Public Utility Reports. Conference Moderator and Discussion Group Leader. "Managing Utilities in a Changing Environment." 1984.

The World Bank

- Consulting Member of the Power Section Mission to PLN, the National Electric Utility of the Republic of Indonesia, specializing in utility financial and strategic planning. 1987.

- Developer and Presenter of internal seminar "Financial Planning and Analysis for Underdeveloped Countries." 1989.

- Developer and Presenter of materials for "Seminar on Energy Policy and the Environment", presented in Ethiopia in collaboration with the United Nations Economic Commission for Africa and in Egypt in collaboration with the Organization of Energy Planning. 1992.

United States Energy Association. Developer and Presenter of Materials at "Seminar on Natural Monopolies: Regulation, Structure and Pricing Decisions", a conference conducted in Vienna, Austria, for electric utility executives from Hungary, Poland, and the Czech and Slovak Republics. Jointly sponsored by the World Bank and the U.S. Agency for International Development. 1992.

The Cato Institute and the Institute for Energy Research. Presenter of "Federal Participation in the Electric Industry; A Review and Assessment of the Implications Upon Industry Restructuring". Conference on "New Horizons in Electric Power Deregulation". 1995.

National Rural Utilities Cooperative Finance Corporation. Presenter of "Federal Participation in the Electric Industry; A Focus on the Rural Utilities Service". Cooperative Financing Forum. 1995.

The World Research Group. Presenter of "The Impact of Federal Participation in the Power Industry". Conference on "Public Power in a Restructured Electric Industry". 1995.

Kentucky Industrial Utility Customers, Inc. Presenter of "Economic Underpinnings to the Changing Regulatory Environment". Annual Conference. 1996.

MONOGRAPHS

The Utah Transmission Proceeding: Public vs. Private Ownership - A Case Study. Prepared under contract with the Economics Division of the Edison Electric Institute. 1987.

Privatization: An Overview of Worldwide Experience with Implications for the Electric Utility Industry in the United States. Prepared under contract with the Public Policy Analysis Division of the Edison Electric Institute. 1988-89.

Discussion of Considerations and Recommendations for Appropriate Methodologies for Determining the Cost of Equity Capital for Independent Telephone Systems. Co-authored with Roger A. Morin. Prepared under contract with the Ontario Telephone Service Commission. 1989.

Review and Assessment of Recent Executive Branch Initiatives with Ownership Implications for the Electric Utility Industry in the United States. Prepared under contract with the Bulk Power Policy Group of the Edison Electric Institute. 1993.

An Overview of the Bonneville Power Administration: Its Purpose, Performance, and Prospects. Prepared under contract with the Bulk Power Policy Group of the Edison Electric Institute. 1994.

Federal Participation in the Electric Industry; A Review and Assessment of the Implications Upon Industry Restructuring. Prepared for publication of proceedings on "New Horizons in Electric Power Deregulation", a conference cosponsored by the Cato Institute and the Institute for Energy Research. 1995.

EDUCATIONAL HISTORY

Bachelor of Science in Business Administration,
Major in Economics, University of Florida, 1971.

Master of Business Administration, Major in Finance,
University of Florida, 1972.

Master of Professional Accountancy,
Georgia State University, 1980.

Member, MBA Advisory Board, Warrington College of Business Administration, University of Florida, 1995 to Present.

EMPLOYMENT HISTORY

First National Bank of Florida in Tampa, Investment Division.
Employed 1972. Assistant Cashier 1973-74. Assistant Vice President 1974-76.
Exercised responsibilities for liabilities, portfolio management, analysis of bank operations, and pricing of deposit related bank services.

Georgia Power Company, Corporate Finance Department.
Financial Analyst 1977-81. Financial Services Manager 1981-84.
Participated in the financial planning process, special financial projects, and the development and preparation of rate filings. Later directed the evaluation of capital expenditure alternatives, managed the administration of the portfolio of outstanding capital instruments, and coordinated the financial, regulatory, legal and marketing aspects of raising over $1.2 billion in capital through the issuance of preferred stock, first mortgage and pollution control bonds, and other debt instruments.

RELATED BUSINESS ACTIVITIES

In November of 1987, Mr. Klepper participated in the founding and initially served as Director, Vice President and Chief Financial Officer of Bio-Gas Development, Inc. (BGD), a venture enterprise focusing on the development of economically viable waste energy recovery projects using proprietary environmental remediation technologies. In December of 1992, substantially all of BGD's assets were sold to Methane Treatment Technologies, Inc. (MTec), which continues the effort to achieve the business objectives of BGD. For a period of one year, Mr. Klepper continued to serve MTec in the same professional capacities of Director, Vice President and Chief Financial Officer.

INDEX

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KENERGY CORP.

CASE NO. 99-162

RATE REDUCTION

<u>**Index of Exhibits to Amended Application**</u>

EXHIBIT 1	-	Adjusted Income Statement
EXHIBIT 2	-	Certificate of Good Standing
EXHIBIT 3	-	Certificate of Assumed Name
EXHIBIT 4	-	Proposed Tariff for 4% Consolidation Credit Rider
EXHIBIT 5	-	Customer Notice
EXHIBIT 6	-	Testimony of Dean Stanley
EXHIBIT 7	-	Testimony of Steve Thompson
EXHIBIT 8	-	Testimony of Jack Gaines
EXHIBIT 9	-	Independent Auditor's Report A. Green River Electric Corporation B. Henderson Union Electric Cooperative
EXHIBIT 10	-	Annual Report to Members for Two Most Recent Years A. Green River Electric Corporation B. Henderson Union Electric Cooperative
EXHIBIT 11	-	Financial Exhibit • Mortgage Information • Note & Interest Information • Detailed Income Statement & Balance Sheet June 30, 1999 • Description of Property (Exhibit 11 is not referenced in Amended Application)

Kenergy Corp.
Adjusted Income Statement(Combined Green River & Henderson-Union)
For the twelve months ending December 31, 1998

Line No.	Item	Per Form 7	Pro-Forma Adjustments		Adjusted
	(a)	(b)	(c)		(d)
	OPERATING REVENUE				
1	Non dedicated delivery points	$57,469,511	($2,298,780)	[1]	$55,170,731
2	Dedicated delivery points	$171,823,979			171,823,979
3	Other Revenue	$712,936			712,936
4	Total Revenue	$230,006,426	($2,298,780)		$227,707,646
	OPERATING EXPENSES				
	Purchased Power:				
5	Non dedicated delivery points	$35,727,968			$35,727,968
6	Dedicated delivery points	$169,428,327			169,428,327
7	Total Purchased Power	205,156,295			205,156,295
	Other Expenses:				
8	Distribution - Operation	$3,568,961			$3,568,961
9	Distribution - Maintenance	$4,147,984			4,147,984
10	Consumer Accounts	$1,919,095			1,919,095
11	Customer Service	$319,823			319,823
12	Sales	$134,725			134,725
13	Administrative & General	$3,447,890			3,447,890
14	Depreciation	$3,997,236			3,997,236
15	Other Tax	$204,688			204,688
16	Interest	$3,366,894			3,366,894
17	Other Interest	$93,535			93,535
18	Other Deductions	$64,357			64,357
19	Total Other Expenses	$21,265,188	$0		$21,265,188
20	TOTAL OPERATING EXPENSES	$226,421,483	$0		$226,421,483
21	OPERATING MARGINS	3,584,943	(2,298,780)		1,286,163
22	Non operating margins-Interest	$905,316			905,316
23	Income(loss) from Equity Investments	($38,079)			(38,079)
24	Non operating margins-Other	$27,218			27,218
25	Other Capital Credits	$135,477			135,477
26	Extraordinary Items	($39,689,199)	$39,689,199	[2]	0
27	TOTAL MARGINS	($35,074,324)	$37,390,419		$2,316,095

[1] 4% reduction to reflect savings from efficiencies
to be realized pursuant to the July 1 , 1999 *consolidation approved in case* 99-136.
[2] Non recurring write off of Big Rivers capital credits.

COMMONWEALTH OF KENTUCKY

John Y. Brown III
Secretary of State

Certificate of Existence

I, JOHN Y. BROWN III, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

KENERGY CORP.

is a nonprofit corporation duly organized and existing under KRS Chapter 273, whose date of incorporation is June 22, 1999 and whose period of duration is perpetual.

I further certify that all fees and penalties owed to the Secretary of State have been paid; that articles of dissolution have not been filed; and that the most recent annual report required by KRS 273.3671 has been delivered to the Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 27th day of July, 1999.

John Y. Brown, III

JOHN Y. BROWN III
Secretary of State
Commonwealth of Kentucky
llawrence/0471117

COMMONWEALTH OF KENTUCKY

JOHN Y. BROWN III
SECRETARY OF STATE

RECEIVED & FILED
JUL 7 10 48 AM '99
JOHN Y. BROWN III
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY

$20.00

CERTIFICATE OF ASSUMED NAME

This certifies that the assumed name of KENERGY
(Name under which the business will be conducted)

has been adopted by KENERGY CORP.
(Real name - KRS 365.015(1))

which is the "real name" of (YOU MUST CHECK ONE)

____	a Domestic General Partnership	____	a Foreign General Partnership
____	a Domestic Limited Partnership	____	a Foreign Limited Partnership
____	a Domestic Business Trust	____	a Foreign Business Trust
X	a Domestic Corporation	____	a Foreign Corporation
____	a Joint Venture		

organized and existing in the state of KENTUCKY, and whose address is

6402 Old Corydon Road, (Street address, if any) Henderson, (City) Kentucky (State) 42420 (Zip Code).

This Certificate of Assumed Name is executed by:

Signature	Print or type name and title
Dean Stanley	DEAN STANLEY, PRESIDENT and CEO

ACKNOWLEDGMENT

State of KENTUCKY

County of HENDERSON

The foregoing instrument was acknowledged before me this 1st day of July, 19 99

by DEAN STANLEY

on behalf of KENERGY CORP.,

a ~~General Partnership/Limited Partnership/Business Trust/~~ Corporation/ ~~Joint Venture~~

Karla L. Smithhart
(Notary Public Signature)
State of Kentucky at Large
My Commission expires:
September 29 ~~19~~2001.

Exhibit 3
Page 1 of 1

KENERGY CORP.

(FORMERLY GREEN RIVER ELECTRIC CORPORATION'S TARIFF)

FOR ALL TERRITORY SERVED
Community, Town or City
PSC KY. NO. 6

Fourth Revised SHEET NO. 31

CANCELLING PSC NO. 6

Third Revised SHEET NO. 31

CLASSIFICATION OF SERVICE

CONSOLIDATION CREDIT RIDER	RATE PER UNIT

<u>Availability</u>

In all territory served.

<u>Applicable</u>

To all electric rate schedules except direct served smelter and large industrial customers served under special contracts.

<u>Consolidation Credit</u>

The monthly billing amount computed under each of the rate schedules which this credit is applicable shall be reduced by 4% before application of the school tax, sales tax, landfill fee or other similar items.

<u>Term</u>

The base rates of the applicable rate schedules along with the consolidation credit rider will be in effect from September 1, 1999 through August 31, 2004, absent the incurrence of extraordinary circumstances or flow-through of changes in rates from wholesale supplier; provided, however, there will not be any adjustment in said rates or credit rider without prior approval of the Commission.

DATE OF ISSUE August 13, 1999 DATE EFFECTIVE September 1, 1999

ISSUED BY Dean Stanley TITLE President and CEO
NAME OF OFFICER

ISSUED BY AUTHORITY OF PSC ORDER NO. 99-162.

KENERGY CORP.

(FORMERLY HENDERSON UNION ELECTRIC COOPERATIVE CORP.'S TARIFF)

FOR ALL TERRITORY SERVED
Community, Town or City
PSC KY. NO. 7

Original SHEET NO. 1A

CANCELLING PSC NO. 6

SHEET NO.

CLASSIFICATION OF SERVICE	
CONSOLIDATION CREDIT RIDER	RATE PER UNIT

Availability

In all territory served.

Applicable

To all electric rate schedules except "LP-4" dedicated delivery point or 2,001 KW and above and smelter customer served under special contract.

Consolidation Credit

The monthly billing amount computed under each of the rate schedules which this credit is applicable shall be reduced by 4% before application of the school tax, sales tax, landfill fee or other similar items.

Term

The base rates of the applicable rate schedules along with the consolidation credit rider will be in effect from September 1, 1999 through August 31, 2004, absent the incurrence of extraordinary circumstances or flow-through of changes in rates from wholesale supplier; provided, however, there will not be any adjustment in said rates or credit rider without prior approval of the Commission.

DATE OF ISSUE August 13, 1999 DATE EFFECTIVE September 1, 1999

ISSUED BY Dean Stanley TITLE President and CEO
NAME OF OFFICER

ISSUED BY AUTHORITY OF PSC ORDER NO. 99-162.

NOTICE TO THE PUBLIC OF A PROPOSED
DECREASE IN RATES OF
KENERGY CORP
PSC CASE 99-162

Kenergy Corp, 6402 Old Corydon Road, P. O. Box 18, Henderson, KY 42419 filed an application for a decrease in rates with the Kentucky Public Service Commission on August 16, 1999. The proposed decrease is designed to flow through to Kenergy's customers the reduction in expense, which will result from the consolidation of Green River Electric Corporation and Henderson Union Electric Cooperative Corp. There is no change proposed in the current base rates of each rate class. A 4% consolidation credit rider for each rate class (except direct-served) is being proposed for a period of five years.

THE AMOUNT AND PERCENT OF DECREASE BY RATE CLASS, BASED ON 1998 USAGE, ARE LISTED BELOW:

KENERGY EAST (former Green River Electric Service Territory)

	PERCENT	MONTHLY DOLLARS
Residential and all other single phase	4%	$ 3.10
Commercial three-phase under 1,000 KW	4%	$ 47.11
Commercial three-phase over 1,000 KW	4%	$1,080.50
Direct served industrial customers	0%	$ 0

KENERGY WEST (former Henderson Union Service Territory)

	PERCENT	MONTHLY DOLLARS
Residential (single phase)	4%	$ 3.03
Farm, government or commercial (50 KVA or less)	4%	$ 4.15
Grain bins (51 to 500 KVA)	4%	$ 7.66
Farm or commercial (51 to 501 KVA)	4%	$ 57.07
Large power (501 to 2000 KVA) non-dedicated delivery	4%	$ 884.94
Direct served industrial customers	0%	$ 0

Any customer, prospective customer or his agent desiring additional information regarding this proposed decrease in rates or regarding Kenergy's tariffs (present or proposed) may secure such information at Kenergy's office at the above stated address, or at one of its offices at P. O. Box 1389, 3111 Fairview Drive, Owensboro, KY 42303; P. O. Box 99, U.S. Highway 60, Hawesville, KY 42348; P. O. Box 268, 703 Main Street, Marion, KY 42064; P. O. Box 73, Highway 231, Hartford, KY 42347; or P. O. Box 327, Old Hanson Rd., Hanson, KY 42413.

The rates contained in this notice are the rates proposed by Kenergy. However, the Kentucky Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for customers other than the rates in this notice.

Any corporation, association, body politic or person may, by motion, request leave to intervene in the proceeding before the Kentucky Public Service Commission. That motion must be submitted to the Kentucky Public Service Commission, 730 Schenkel Lane, P. O. Box 615, Frankfort, KY 40602, and shall set forth the ground for the request, including the status and interest of the party. Intervenors may obtain copies of the application filed by contacting Kenergy at the address stated above. A copy of the application is available for public inspection at any of the Kenergy offices listed above.

Kenergy Corp
By: Dean Stanley, President & CEO

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF)
KENERGY CORP. FOR APPROVAL OF RATE) CASE NO. 99-162
REDUCTION)

TESTIMONY OF DEAN STANLEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF KENERGY CORP.

Q1. Please state your name and business address.

A. Dean Stanley, P. O. Box 18, Henderson, Kentucky 42419-0018.

Q2. By whom are you employed and what is your position?

A. Kenergy Corp. ("Kenergy") which is the consolidation successor of Green River Electric Corporation ("GREC") and Henderson Union Electric Cooperative Corp. ("HUEC"). I serve as the company's president and chief executive officer.

Q3. Please describe your educational background and work experience.

A. My educational background is in accounting and finance. I hold a BS degree in Accounting from Western Kentucky University. I was employed by GREC for 30 years and I served as president and CEO of GREC from 1981 until its consolidation into Kenergy on July 1, 1999.

Q4. Please explain the rate reduction that is being sought.

A. Kenergy is seeking a 4% rate reduction for five (5) years for non-direct served member-customers. The proposal is to exclude the large industrial customers, including the two (2) smelters, Alcan and Southwire, from this rate reduction. This proposed rate reduction was agreed to by the boards of directors of GREC and HUEC and is contained in Section 15 of the Consolidation Agreement entered into on January 23, 1999.

The boards of GREC and HUEC thought that this rate reduction could be accomplished through the recently enacted statute KRS 278.455. However, the Commission's July 1, 1999, order impaired this effort. Kenergy is now attempting to have this rate reduction implemented under the general rate adjustment procedure.

Q5. Please explain the rationale for making the 4% reduction part of the Consolidation Agreement?

A. There were several reasons for including this provision in the Consolidation Agreement. First and foremost, management felt this provision was necessary to send a strong signal to the members that voting for consolidation does indeed mean lower rates than otherwise achievable. Secondly, the current financial positions of both Green River and Henderson Union was very strong, enabling the 4% reduction from a financial viability perspective while the efficiencies from consolidation are being realized. Thirdly, while not intended to be a vehicle to reduce rates, the RUS consolidation incentive of lowering the minimum times interest earned ratio from 1.50 to 1.00 during the initial five-year period does provide a safety net to allow for one-time charges such as early out programs, equipment upgrades, consulting fees, etc.

Q6. Why was the 4% consolidation credit rider chosen instead of a reduction in base rates?

A. The main reason is to enable the rate reduction to be shown as a separate item on the bill, so the member/customer will easily see the impact. Also, the rate reduction is requested for a five-year period (absent extreme circumstance), at which time a new rate filing is anticipated, hopefully to establish base rates reflecting most of the efficiencies gained from consolidation.

Q7. If the Commission will not grant the proposed rate reduction for five (5) years without a hearing, what is Kenergy's position regarding an interim rate reduction initially?

A. We are requesting in the alternative that the proposed rate reduction be permitted to go into effect on an interim basis, subject to change after hearing. We anticipate that if the Commission may suspend the new rates for one day as was done in connection with the work out of Big Rivers Electric Corporation.

Q8. Does this conclude your testimony?

A. Yes.

Exhibit 7

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF)
KENERGY CORP. FOR APPROVAL OF RATE) CASE NO. 99-162
REDUCTION)

TESTIMONY OF STEVE THOMPSON, VICE PRESIDENT OF FINANCE & ACCOUNTING OF KENERGY CORP.

Q1. Please state your name and business address.

A. Steve Thompson, P. O. Box 18, Henderson, Kentucky 42419-0018.

Q2. By whom are you employed and what is your position?

A. Kenergy Corp. ("Kenergy") which is the consolidation successor of Green River Electric Corporation ("GREC") and Henderson Union Electric Cooperative Corp. ("HUEC"). I am the company's vice president of Finance and Accounting.

Q3. Please describe your educational background and work experience.

A. I hold a BS degree in accounting from Brescia University and hold a certified public accountant's license in Kentucky. I was employed by GREC, and now Kenergy, for over 21 years in the position of supervisor of General Accounting.

Q4. Have you previously testified before this Commission?

A. Yes, I have on several occasions.

Q5. What is the purpose of your testimony?

A. The main purpose of my testimony is to provide support for the adjusted income statement contained in Exhibit 1 of the application.

Q6. Please explain why you have chosen the twelve months ending December 31, 1998 as the test year.

A. First and foremost, I felt this period was representative of normal operations, in terms of weather and other factors such as maintenance expense.

Secondly, I prefer to use a calendar year because many reports and analysis are prepared on this basis which is very useful in responding to data requests.

Q7. Please explain how you arrived at the amounts appearing in column (b) "per Form 7".

A. These amounts represent the sum of the GREC and HUEC Form 7 amounts during 1998.

Q8. Could you describe your approach in the selection of items to make pro-forma adjustments?

A. Recognizing that the purpose of the application was to obtain approval for the 4% consolidation credit rider reduction pursuant to the consolidation agreement, I did not see the need to quantify all the typical adjustments such as labor and overhead costs, etc. I have made two adjustments, one for the 4% reduction and one to remove the extraordinary loss related to the writedown of the investment in Big Rivers pursuant to the Chapter 11 bankruptcy settlement.

Q9. Please explain the difference between the $2,298,780 adjustment #1 shown on the adjustment income statement and the $2,560,000 amount utilized in the original application.

A. The $2,298,780 is simply the test year revenues for the non-dedicated delivery point customers times 4%. The $2,560,000 amount represents the average of the projected 4% revenue reduction for the five-year period 2000 – 2004.

Q10. Which amount is Kenergy proposing the Commission utilize in this proceeding?

A. To be consistent with the methodology of using a historical test period, adjusted for known and measurable changes, the $2,298,780 amount should be utilized.

Q11. Why have you not proposed an adjustment to reflect the savings from consolidation?

A. Although the annual savings from consolidation are estimated by management at $1,750,000 - $2,500,000, the timeframe for realizing these savings is not known and measurable. The time period for achieving these efficiencies is mainly dependent upon employee reductions from the early retirement plan and normal attrition, which simply cannot be measured at this time.

Q12. What financial analysis did the Board of Directors and management rely on as part of the decision-making process to seek approval of the 4% reduction from the Public Service Commission immediately after the consolidation was approved by the members?

A. The financial forecast scenarios contained in Exhibits 1 – 9 of the NRECA consolidation study filed in Case No. 99-136 were utilized by the Board and management to assess the financial viability of the 4% reduction. I would like to incorporate by reference into this proceeding these Exhibits. These financial forecast scenarios represent the best available indication of the revenue requirements of Kenergy Corp. pursuant to consolidation. I urge the Commission to measure and assess the financial viability of the requested 4% reduction by considering all scenarios in conjunction with each other, as opposed to concentrating on one particular ratio, such as times interest earned.

Q13. Is it your opinion that the main assumptions utilized in these forecast scenarios, prepared in January 1999, are still representative today?

A. I am not aware of any major economic or cost changes that would cause the overall results to be materially different.

Q14. Does this conclude your written testimony?

A. Yes.

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF)
KENERGY CORP. FOR APPROVAL OF RATE) CASE NO. 99-162
REDUCTION)

TESTIMONY OF JACK D. GAINES, VICE PRESIDENT & MANAGER OF THE UTILITY RATE & FINANCIAL SERVICES DEPT. OF SOUTHERN ENGINEERING COMPANY

Q1. Please state your name and business address.

A. Jack D. Gaines, 1800 Peachtree Street, N.W., Atlanta, GA 30367-8301.

Q2. By whom are you employed?

A. I am employed by Southern Engineering Company.

Q3. What is your position with Southern Engineering Company?

A. I hold the position of Vice President and Manager of the Utility Rate and Financial Services Department.

Q4. Please state your educational background.

A. I graduated from Georgia Institute of Technology receiving a Bachelor of Science in Industrial Management.

Q5. Please state your experience as it relates to the utility industry.

A. I have been employed by Southern Engineering Company for approximately 23 years as a rate analyst. During that time, I have prepared or assisted in the preparation of retail rate and cost of service studies for either rural cooperatives or municipal utility systems in thirteen different states. I have also submitted testimony and exhibits before the Indiana Utility Regulatory Commission, Kentucky Public Service Commission, the Vermont Public Service Board, the Virginia State Corporation Commission, the Georgia Public Service Commission, the Illinois Commerce Commission, the New York Public Service Commission, and the Federal Energy Regulatory Commission.

Q6. What is the purpose of your testimony?

A. The purpose of my testimony is to provide support for Kenergy's request not to apply any of a proposed four percent (4%) rate decrease to the Smelters or the "Direct Served" class. The "Direct Served" class includes those customers served under the Green River Rate Schedule for Large Industrial Customers Served Under Special Contract (GREC Special Contract Rate) and Henderson Union's Schedule LP-4-Dedicated Delivery Point or 2,001 kW and Above (HUEC Schedule LP-4). Together, the GREC Special Contract Rate and the HUEC Schedule LP-4 will be called the "Direct Served" rates.

Q7. Please describe your experience as it relates to Kenergy's rates for electric service.

A. I have served as Green River's rate consultant since the early 1980's. I prepared the cost of service studies and supported the rate design and revenue allocations in Case No. 8252, Case No. 10275, Case No. 90-152, and Case No. 97-219. I prepared the cost of service study and sponsored the revenue allocations and rate designs for Henderson Union Electric Cooperative in Case No. 97-220. Therefore, I am very familiar with the existing Kenergy rate structures and the issues surrounding this current application.

Q8. Is it your opinion that Kenergy's proposed four percent (4%) decrease should not be applied to the Smelter Rates or the Direct Served Rates?

A. Yes, it is my opinion that the proposed four percent (4%) decrease should only be applied to the regular tariff rate schedules, which would exclude the Smelter Rates, and the Direct Served Rates.

Q9. Why should none of the four percent (4%) decrease be applied to the Smelter Rates?

A. There should be no decrease applied to the Smelter Rate because:

1) The current $.0001 per kWH adder is contractually set through December 31, 2000.

2) Kenergy's annual gross margins from the Smelter Rates are only four-tenths of a percent (.4%) of revenue. In 1998, the Smelter gross margins were approximately $514,000 out of $128 million in revenue. By comparison, a four percent (4%) revenue decrease applied to the Smelters would reduce revenues by $5.1 million annually.

Q10. Why do you believe the four percent (4%) decrease should not be applied to the GREC Special Contract Rates?

A. The gross margin generated under the GREC Special Contract Rate is only 1.7 percent (1.7%) of revenue, or approximately $565,000 out of $32.9 million in revenue. A four percent (4%) decrease applied to the GREC Special Contract Rate would reduce revenues by $1.316 million, which exceeds the annual gross margin of $751,000.

Q11. Should there be any decrease applied to the GREC Special Contract Rates in this case?

A. No, there should be no decrease to the GREC Special Contract Rates because: (1) Green River increased rates, beyond that necessary to flow through power cost, to its regular tariff classes, and primarily its single-phase class, as part of the three rate cases prior to Case No. 97-219. Meanwhile, the Direct Served Rates were increased only by the amounts necessary to flow through power cost and the Green River adders were not increased. To reverse that trend now and decrease the GREC Special Contract Rates at this point would be inconsistent treatment of this class; and (2) According to Green River's management the adders, which are listed for each customer served under the GREC Special Contract Rate, were individually subjects of the contract negotiations with each customer.

Therefore, because the adders are small in comparison to overall revenue, have not been increased while other Green River Rates have been increased, and were each considered and established during negotiations with each customer, there should be no decrease applied to the GREC Special Contract Rate class in this case.

Q12. Should any decrease be applied to the HUEC Schedule LP-4 rate?

A. No, there should be no decrease applied to Schedule LP-4, because in Case No. 97-220, those customers served on Schedule LP-4 received a substantial rate reduction, over and above the reduction to flow through the Big Rivers decrease, while the other HUEC customers received a corresponding increase. In Case No. 97-220, Henderson Union proposed, and the Commission approved, a substantial reduction in the level of mark-up reflected in Schedule LP-4. Specifically, the gross margins generated by the 13 customers now served under Schedule LP-4 were reduced by approximately $488,000 per year, which equated to a four percent (4%) revenue decrease. Correspondingly, the rates to the regular tariff customers of Henderson Union were increased by approximately by $488,000.

Q13. Is there any other reason why you believe that the proposed four percent (4%) decrease should not be applied to the smaller or Direct Served Rates?

A. The extensive record of the consolidation of Green River and Henderson Union to form Kenergy Corp. consistently and repeatedly references the plan to decrease rates by four percent (4%) across the board and that the proposed decrease would not be applied to the Smelters or other Direct Served customers.

Q14. Kenergy has requested that the Commission waive the requirement that a cost of service study be filed as part of its application. Why should the Commission grant such a waiver?

A. The requested waiver should be granted because it is not timely for Kenergy to prepare a cost of service study and because requiring a cost of service study could delay implementation of the proposed decrease.

Q15. Why is it not timely for Kenergy to prepare a cost of service study?

A. First, Henderson Union filed a cost of service study in Case No. 97-220, which was used to support significant re-allocations of revenues among customer classes and rate design. Second, in anticipation of consolidation, Henderson Union's rate designs were adjusted at that time to more closely resemble those of Green River, a major step toward rate consolidation. Third, Green River's single-phase rate was converted to a "flat" rate from a block rate in Case No. 97-219. And, fourth, Kenergy is planning to prepare a consolidated cost of service study to support further rate consolidation after it has accumulated at least twelve months of consolidated history.

Q16. Does this conclude your written testimony?

A. Yes.

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GREEN RIVER ELECTRIC CORPORATION
OWENSBORO, KENTUCKY

FINANCIAL STATEMENTS

Years Ended December 31, 1998 and 1997

(With Independent Auditors' Report Thereon)

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors
Green River Electric Corporation

We have audited the accompanying balance sheets of Green River Electric Corporation (Green River) as of December 31, 1998 and 1997, and the related statements of revenue and expenses, changes in members' equities and cash flows for the years then ended. These financial statements are the responsibility of Green River's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards and the standards applicable to financial audits contained in *Government Auditing Standards,* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed more fully in Note 3, Green River's investment in Big Rivers is recorded in conformity with the accounting practices prescribed or authorized by the United States Department of Agriculture Rural Utilities Service (RUS). Accordingly, Green River has not recorded its proportionate share of certain losses incurred by Big Rivers. In our opinion, generally accepted accounting principles require Green River's investment in Big Rivers to be adjusted to reflect such amounts. The effect of not adjusting Green River's investment in Big Rivers results in an overstatement of $23,346,133 in the carrying value of Green River's investment in Big Rivers at December 31, 1997. In 1998, as granted by the RUS, Green River determined that the capital credits assigned by Big Rivers should be written off and treated as an extraordinary current period expense. In our opinion, since Green River's method of accounting for its Big Rivers investment has not changed, generally accepted accounting principles require this write off be treated as an adjustment to prior periods and not as a current period expense. The effect of this is an overstatement of expense and net loss for the year ended December 31, 1998 of $23,346,133.

In our opinion, except for the effects of the 1997 overstatement of the investment in Big Rivers and the 1998 treatment of Big Rivers capital credit write offs as referred to in the preceding paragraph, the financial statements referred to above present fairly, in all material respects, the financial position of Green River Electric Corporation as of December 31, 1998 and 1997, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

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In accordance with *Government Auditing Standards,* we have also issued our report dated February 26, 1999 on our consideration of Green River's internal control over financial reporting and our tests of its compliance with laws, regulations, contracts, and grants.

As discussed in Note 3 to the financial statements, Big Rivers' plan for reorganization, as amended, under Chapter 11 of the U.S. Bankruptcy Code was approved in 1998. Continuation of Big Rivers' business hereafter under the plan is dependent on their ability to achieve successful future operations for which the ultimate outcome is uncertain at this time.

Owensboro, Kentucky
February 26, 1999

GREEN RIVER ELECTRIC CORPORATION

BALANCE SHEETS

December 31, 1998 and 1997

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	1998	1997
ASSETS		
Utility plant, net	$60,730,927	$ 55,814,599
Investments	4,336,619	27,576,049
Current assets:		
Cash and cash equivalents	4,519,912	5,418,871
Accounts receivable, less allowance for doubtful accounts: 1998, $235,876; 1997, $229,455:		
Billed	11,107,177	10,784,640
Unbilled	3,213,813	3,404,434
Materials and supplies	1,059,990	597,026
Other current assets	200,439	200,739
Total current assets	20,101,331	20,405,710
Other assets	1,508,361	1,319,966
Total assets	$86,677,238	$105,116,324
MEMBERS' EQUITIES AND LIABILITIES		
Members' equities:		
Memberships	$ 125,080	$ 131,095
Patronage capital	27,801,832	50,256,675
Other	1,492,026	1,103,338
	29,418,938	51,491,108
Long-term debt	39,571,545	37,296,099
Current liabilities:		
Accounts payable	12,470,648	11,814,914
Current maturities of long-term debt	1,187,270	1,226,123
Other current and accrued liabilities	1,623,261	1,328,590
Total current liabilities	15,281,179	14,369,627
Other noncurrent liabilities	2,059,867	1,639,331
Deferred credits	345,709	320,159
Commitments and contingencies (Notes 3, 11, 14 and 15)		
Total members' equities and liabilites	$86,677,238	$105,116,324

Exhibit 9a

See Notes to Financial Statements

GREEN RIVER ELECTRIC CORPORATION

STATEMENTS OF REVENUE AND EXPENSES

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Years Ended December 31, 1998 and 1997

	1998	1997
Operating revenue	$146,666,916	$143,851,556
Operating expenses:		
Cost of power	131,732,330	130,017,420
Distribution operation	1,955,965	1,714,701
Distribution maintenance	2,172,545	1,944,194
Customer accounts	1,053,551	1,081,625
Consumer service and information	260,015	256,345
Administrative and general	2,219,195	2,229,339
Depreciation	2,249,477	2,145,262
Taxes	124,524	116,930
Other deductions	33,117	39,371
	141,800,719	139,545,187
Operating margins before interest expense	4,866,197	4,306,369
Interest on long-term debt	2,166,713	1,960,800
Other interest expense	41,164	37,875
Operating margins	2,658,320	2,307,694
Nonoperating margins:		
Investment income	805,403	545,452
Other income	14,087	16,979
Net margins before operating margins assigned	3,477,810	2,870,125
Operating margins assigned by associated organizations	29,774	24,494
Net margins before extraordinary deductions	3,507,584	2,894,619
Extraordinary deductions	(23,346,133)	-
Net margins (loss)	$(19,838,549)	$ 2,894,619

See Notes to Financial Statements

GREEN RIVER ELECTRIC CORPORATION

STATEMENTS OF CHANGES IN MEMBERS' EQUITIES

Years Ended December 31, 1998 and 1997

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	Memberships	Patronage Capital	Other	Total
Balance, January 1, 1997	$127,810	$49,852,591	$ 647,635	$50,628,036
Membership fees, net of refunds	3,285	-	-	3,285
Net margins	-	2,894,619	-	2,894,619
Patronage capital retired	-	(2,490,535)	-	(2,490,535)
Retired capital credits - gain	-	-	456,689	456,689
Other changes	-	-	(986)	(986)
Balance, December 31, 1997	131,095	50,256,675	1,103,338	51,491,108
Membership fees, net of refunds	(6,015)	-	-	(6,015)
Net margins (loss)	-	(19,838,549)	-	(19,838,549)
Patronage capital retired	-	(2,616,294)	-	(2,616,294)
Retired capital credits - gain	-	-	385,434	385,434
Other changes	-	-	3,254	3,254
Balance, December 31, 1998	$125,080	$27,801,832	$ 1,492,026	$29,418,938

See Notes to Financial Statements

GREEN RIVER ELECTRIC CORPORATION

STATEMENTS OF CASH FLOWS

Years Ended December 31, 1998 and 1997

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	1998	1997
Cash flows from operating activities:		
Net margins (loss)	$(19,838,549)	$2,894,619
Adjustments to reconcile net margins (loss) to net cash provided by operating activities:		
Extraordinary deductions	23,346,133	-
Depreciation charged to operations	2,249,477	2,145,262
Depreciation charged to clearing accounts	112,131	171,861
Noncash assigned capital credits	(67,852)	(16,761)
Interest expense paid from prior note prepayments	-	172,903
Decrease (increase) in accounts receivable	(322,537)	(2,871,314)
Decrease (increase) in materials and supplies	(462,964)	(54,708)
Decrease (increase) in other current assets	(4,654)	(12,477)
Decrease in accounts payable	276,914	3,231,222
Increase (decrease) in other current and accrued liabilities	248,374	(24,367)
Other, net	57,890	62,139
Net cash provided by operating activities	5,594,363	5,698,379
Cash flows from investing activities:		
Capital expenditures, net	(6,824,145)	(4,284,672)
Decrease in other investments, excluding assigned capital credits	255,099	35,075
Net cash used in investing activities	(6,569,046)	(4,249,597)
Cash flows from financing activities:		
Additional memberships, net of refunds	(6,015)	3,285
Additional long-term debt	3,679,000	1,981,000
Reduction of long-term debt	(1,415,952)	(1,786,524)
Patronage capital retired	(2,241,908)	(1,973,503)
Other, net	60,599	61,508
Net cash provided by (used in) financing activities	75,724	(1,714,234)
Net decrease in cash and cash equivalents	(898,959)	(265,452)
Cash and cash equivalents, beginning of year	5,418,871	5,684,323
Cash and cash equivalents, end of year	$ 4,519,912	$5,418,871

See Notes to Financial Statements

GREEN RIVER ELECTRIC CORPORATION

NOTES TO FINANCIAL STATEMENTS

Years Ended December 31, 1998 and 1997

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1. Organization and Summary of Significant Accounting Policies

(A) Nature of Business

Green River Electric Corporation (Green River) is a nonprofit electric distribution cooperative association which provides electric power to approximately 29,000 residential, commercial and industrial customers located in nine western Kentucky counties.

(B) Basis of Accounting

The accounting policies of Green River reflect those prescribed by the United States Department of Agriculture Rural Utilities Service (RUS), formerly the Rural Electrification Administration and the Kentucky Public Service Commission (KPSC) which conform with generally accepted accounting principles in all material respects, except for the method of recording the investment in the generation and transmission corporation discussed in Notes 1 (F) and 3.

(C) Revenues

Revenues are accrued when services are rendered based on rates authorized by the KPSC.

(D) Utility Plant

Utility plant is stated at original cost, net of contributions, which is the cost when first dedicated to public service. Green River capitalizes supervisory and overhead costs applicable to construction projects.

Maintenance and repairs of property units and renewals of minor items of property are charged to maintenance expense accounts. The costs of replacing complete property units are charged to utility plant accounts and the original cost of distribution plant property units retired and cost of removal, net of salvage value, are charged to accumulated depreciation.

(E) Depreciation

Depreciation is provided on the basis of the estimated useful lives of assets at straight-line rates, which for 1998 and 1997, were as follows:

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1. Organization and Summary of Significant Accounting Policies, Continued

(E) Depreciation, Continued

Distribution plant	3.12% and 6.75%
General plant	2.50% to 18.00%

Green River uses the composite method of depreciation for distribution plant and the unit method of depreciation for general plant.

(F) Investments

As more fully described in Note 3, Green River's investment in a generation and transmission corporation is stated in the accounts at an amount equal to the cost of the original membership certificate, plus the unimpaired capital credits assigned (noncash transaction) to Green River by the generation and transmission corporation since inception, less Green River's proportionate share of capital credits assigned by the generation and transmission corporation in excess of its net margins. As required by RUS, Green River does not recognize its proportionate share of losses incurred by the generation and transmission corporation. All other investments of Green River are stated at cost which approximates their fair values on the balance sheet.

(G) Cash and Cash Equivalents

Cash and cash equivalents consist of cash on hand, money market funds, and investments with an original maturity of three months or less. Cash equivalents at December 31, 1998 and 1997 consisted of repurchase agreements.

(H) Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

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1. Organization and Summary of Significant Accounting Policies, Continued

(I) Advertising

Green River follows the policy of charging the costs of advertising to expense as incurred. Advertising expense was $27,473 and $22,997 for the years ended December 31, 1998 and 1997, respectively.

(J) Materials and Supplies Inventory

Materials and supplies inventory are stated at the lower of cost or market using the average cost method.

(K) Reclassifications

Certain reclassifications have been made to the 1997 financial statements to conform to 1998 financial statement presentation. These reclassifications had no effect on net margins.

2. Utility Plant

Utility plant at December 31, 1998 and 1997, consists of the following:

	1998	1997
Distribution plant	$65,615,333	$61,200,593
General plant	9,546,421	8,830,052
	75,161,754	70,030,645
Less accumulated depreciation	15,902,008	14,972,602
	59,259,746	55,058,043
Construction in progress	1,471,181	756,556
	$60,730,927	$55,814,599

3. Investments

Generation and Transmission Corporation

Electric power sold by Green River is purchased from Big Rivers Electric Corporation (Big Rivers), a generation and transmission cooperative association and LG&E Energy Marketing, Inc.

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3. Investments, Continued

(LEM), an indirect wholly-owned subsidiary of LG&E Energy Corp. The membership of Big Rivers is comprised of Green River and three other distribution cooperatives. Green River presently purchases all of its power and energy requirements from Big Rivers under a wholesale power contract which expires in 2023 with the exception of the power and energy requirements of its major customer, which is supplied by LEM under a power purchase agreement entered into in 1998 expiring December 31, 2010. Accounts payable due Big Rivers and LEM under such contracts were $4.9 million and $6.6 million, respectively, at December 31, 1998 and $11.3 million and $0, respectively, at December 31, 1997.

Green River's investment in Big Rivers consists of:

	1998	1997
Capital credits assigned	$86,181,305	$86,181,305
Adjustment for capital credits assigned by Big Rivers in excess of its net margins and prior unassigned losses	(62,835,172)	(62,835,172)
Write off of assigned capital credits	(23,346,133)	-
	$ -	$23,346,133

Green River's 1997 investment in Big Rivers does not include Green River's allocation of certain losses incurred by Big Rivers. Green River had not recorded an adjustment of $23.3 million required by generally accepted accounting principles to write down its investment to zero as a result of Big Rivers reporting an excess of liabilities over assets (deficit) since 1987. RUS requires such losses to be used to offset future margins assigned by Big Rivers to its members, which is not in conformity with generally accepted accounting principles. The effect of not adjusting Green River's 1997 investment in Big Rivers results in an overstatement in the carrying value of Green River's investment in Big Rivers in the amount of approximately $23.3 million at December 31, 1997.

In 1998, Green River determined that the capital credits assigned by Big Rivers were impaired and should be written off. RUS required that this write off of the Big Rivers investment be treated as an extraordinary deduction in the current period to be carried forward and offset with future years nonoperating margins which is not in conformity with generally accepted accounting principles. The effect of treating the write off as a current period expense instead of an adjustment to prior periods is to overstate expense and net loss by approximately $23.3 million for the year ended December 31, 1998.

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3. **Investments, Continued**

Generation and Transmission Corporation, Continued

The following is an unaudited summary at December 31, 1998 and 1997, of financial information pertaining to Big Rivers:

	1998	1997
	(In thousands)	
Balance Sheet Data:		
Current assets	$ 56,350	$ 75,791
Noncurrent assets	903,284	920,634
Total assets	959,634	996,425
Current liabilities	21,057	28,033
Noncurrent liabilities	1,301,332	1,260,945
Total liabilities	1,322,389	1,288,978
Equity (deficit)	$ (362,755)	$ (292,553)
Income Statement Data:		
Revenues	$ 237,875	$ 304,540
Operating margins (loss) before non-operating margins and extraordinary gain	$ (22,072)	$ (9,177)
Net margins (loss)	$ (70,202)	$ (8,055)

The above summary was obtained from the operating report, Form 12a-i; for the month ended December 31, 1998, as prepared by Big Rivers Electric Corporation and submitted to RUS. Big Rivers has experienced significant operating losses in past years and has a net capital deficiency of approximately $363 million at December 31, 1998. It has also been in default under terms of various loan agreements and obligations. These matters, among others, raise substantial doubt about Big Rivers' ability to continue as a going concern. In July 1998, Big Rivers emerged from Bankruptcy Court with an approved Plan of Reorganization (the Plan). The Plan was approved by the KPSC, the creditors of Big Rivers and the Bankruptcy Court. There can be no assurance that Big Rivers will continue to operate, in some form, under the terms of such approved Plan. Continuation of the business thereafter is dependent on Big Rivers' ability to achieve successful future operations. The above financial summary does not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that may result from the outcome of these uncertainties.

Under the approved Plan, Big Rivers entered into a long-term lease of its generation assets to Western Kentucky Energy Corporation (WKEC), a wholly owned subsidiary of LG&E Energy Corporation. Under this arrangement, Big Rivers will retain ownership of its generation facilities and will continue to provide transmission services to its four distribution cooperatives.

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3. Investments, Continued

Generation and Transmission Corporation, Continued

WKEC will lease and operate the generation facilities of Big Rivers for 25 years in exchange for minimum annual lease payments of approximately $30 million and minimum annual payments for transmission services of approximately $5 million. Big Rivers will continue to serve its members in buying wholesale power from LEM, based on a pre-determined maximum capacity, for the term of the lease which would result in reduced rates and provide long-term stability to Big Rivers' four distribution cooperatives and their industrial customers, excluding two large Aluminum Smelters which will be served directly by LEM. Over the life of the lease, WKEC will reimburse Big Rivers for the "expected margins" of the Aluminum Smelters. Additionally, LEM will be allowed to market and sell Big Rivers' excess capacity and energy to non-members for the term of the lease. To the extent its members' load increases in the future beyond the pre-determined maximum capacity, Big Rivers may purchase power on the open market to serve the required load. WKEC will be responsible for the operating costs of the generation facilities; however, Big Rivers will be responsible for ordinary capital expenditures of the generation facilities over the term of the agreement, up to a 49% maximum.

Based upon the aforementioned, assigned capital credits of Big Rivers was deemed impaired and the carrying value of Green River's investment in Big Rivers was allowed to be written down to zero as recommended by the Bankruptcy Court and as approved by RUS for the year ended December 31, 1998. It is the opinion of Green River's management that the write down of the carrying amount of such investment in Big Rivers will not affect Green River's ability to continue operations.

Other Investments

Other material Green River investments include:

Capital Term Certificates (CTC's) of the National Rural Utilities Cooperative Finance Corporation are carried at cost which approximates market. The investment at December 31, 1998 and 1997 totaled $1,333,063. The CTC's mature in varying amounts from 2020 through 2030 and bear interest at 3% per annum.

Investment in the CoBank National Bank for Cooperatives (CoBank) is a restricted investment which is carried at cost and totaled $1,025,248 and $969,024 at December 31, 1998 and 1997, respectively. Under terms of this Loan Base Capital Plan, Green River's investment in CoBank (stock and notified allocated surplus from CoBank) is required to be 11.5% of Green River's average loan balance due to CoBank for the past five years.

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3. Investments, Continued

Green River Electric Corp. Retirement Trust totaling $1,726,567 and $1,370,634 at December 31, 1998 and 1997, respectively, represents amounts set aside to fund Green River's deferred compensation agreements (see note 8) and are stated at cost which approximates fair value.

4. Long-Term Debt

Long-term debt at December 31, 1998 and 1997, consists of:

	1998	1997
First mortgage notes payable to:		
United States of America in quarterly and monthly installments of varying amounts through 2028:		
2% notes	$ 941,358	$ 1,101,860
5% notes	24,410,750	25,089,781
4.25% notes	1,650,202	1,675,685
4.625% note	1,981,000	1,981,000
4.5% note	1,981,000	-
Unapplied note prepayments	(547,380)	(520,924)
	30,416,930	29,327,402
CoBank National Bank for Cooperatives in quarterly and monthly installments of varying amounts through 2028 at interest rates varying with the Bank's current rate of interest (currently 6.5% to 7.25%)	10,341,885	8,924,450
Rural Economic Development Zero-Interest Loan payable to United States of America in monthly installments of $3,704 until February 2004	-	270,370

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4. Long-Term Debt, Continued

	1998	1997
Total long-term debt	40,758,815	38,522,222
Less current maturities	1,187,270	1,226,123
	$ 39,571,545	$37,296,099

Aggregate annual maturities of long-term debt at December 31, 1998 are:

1999	$ 1,187,270
2000	1,207,393
2001	1,234,739
2002	1,207,735
2003	1,208,404
Thereafter	34,713,274
	$40,758,815

All assets of Green River are pledged as collateral on the long-term debt described above.

Green River has unsecured line of credit agreements with financial institutions permitting short-term borrowings for general corporate purposes totaling $12,000,000. Rates for such borrowings are variable. There were no outstanding borrowings under these agreements at December 31, 1998 or 1997.

5. Major Customers

Operating revenues for 1998 and 1997 include approximately $77.4 and $77.9 million, respectively, attributable to sales of power to one aluminum manufacturing member. Accounts receivable from this member amounted to $6.7 million and $6.5 million at December 31, 1998 and 1997, respectively.

Operating revenues also include sales of power to seven other large industrial customers totaling approximately 22% of the Company's operating revenue for 1998 and 1997.

GREEN RIVER ELECTRIC CORPORATION

NOTES TO FINANCIAL STATEMENTS

Years Ended December 31, 1998 and 1997

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6. Pension Plans

Green River has a noncontributory defined benefit pension plan covering employees who were members of the plan on January 1, 1987. Employees with an original date of hire on or after January 1, 1987, are not eligible to join the defined benefit plan. The benefits are based on years of service and the employee's highest average monthly compensation for three consecutive years of service.

Green River amended the defined benefit plan effective January 1, 1987 to offset benefits accruing after January 1, 1987, by the benefits provided by the defined contribution plan discussed below. Green River has adopted the provisions of *Statement of Financial Accounting Standards No. 87*, "Employer's Accounting for Pensions" as amended by *Statement of Financial Accounting Standards* No. 132 "Employers' Disclosures about Pensions and Other Postretirement Benefits."

Net periodic pension cost (income) for 1998 and 1997 included the following components:

	1998	1997
Service cost	$ 114,261	$ 118,950
Interest cost on projected benefit obligation	198,375	211,844
Expected return on plan assets	(429,286)	(382,905)
Net amortization and deferral	(78,924)	(78,924)
	$ (195,574)	$ (131,035)

The following table sets forth the plan's funded status and the amount recognized in Green River's balance sheet at December 31, 1998 and 1997:

	1998	1997
Accumulated benefit obligation:		
Vested	$2,589,453	$2,533,777
Projected benefit obligation	$3,379,394	$3,600,297
Plan assets at fair value	5,680,058	5,392,427
Excess of plan assets over projected benefit obligation	2,300,664	1,792,130
Unrecognized net gain	(399,412)	(7,528)
Unrecognized prior service cost	150,331	169,490
Unrecognized net transition asset	(608,108)	(706,191)
Prepaid pension cost included in other assets	$1,443,475	$1,247,901

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6. Pension Plans, Continued

In determining the actuarial present value of the projected benefit obligation, the weighted average discount rate used was 6.00% and 6.50% for the periods ended December 31, 1998 and 1997, respectively, and the rate of increase in future compensation levels was 5% for both years. The expected long-term rate of return on assets was 8%. Plan assets consist of investments in a guaranteed investment contract and pooled separate accounts. There were no employer or employee contributions for the years ended December 31, 1998 or 1997 and benefits paid totaled $218,617 and $10,485 for the years ended December 31, 1998 and 1997, respectively.

Effective January 1, 1987, Green River adopted a defined contribution retirement and savings plan. This plan is available to all employees, excluding temporary employees, with six months of service, provided they are expected to work at least 1,000 hours during each twelve month period following their date of employment. Under this plan, Green River contributes 6% of each employee's annual compensation. In addition, Green River will provide matching contributions equal to 50% of each employee's contribution, however, Green River's matching contribution will not exceed 5% of each employee's compensation. Pension costs under this plan amounted to $445,155 and $429,600 for the years ended December 31, 1998 and 1997, respectively.

7. Postretirement Benefits

In addition to providing pension benefits, effective October 5, 1993 Green River provides postretirement health care benefits. All full-time employees and directors, including spouses, are eligible for medical benefits under a defined benefit plan if they retire after age 55 or become disabled with at least 10 years of service. Participating retirees pay 100% of health care premiums. The funding policy for retiree health benefits is to pay the related premiums as they become due.

The funded status of the plan and amounts recognized in Green River's financial statements as of December 31, 1998 and 1997 were as follows:

	1998	1997
Accumulated postretirement benefit obligation	$573,300	$534,800
Unrecognized prior service costs	(240,000)	(264,800)
Accrued postretirement benefit liability	$333,300	$270,000

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7. Postretirement Benefits, Continued

Net periodic postretirement benefit cost for 1998 and 1997 included the following components:

	1998	1997
Service cost	$ 17,200	$ 17,200
Interest cost	27,200	27,200
Amortization of prior service costs	24,800	24,800
	$ 69,200	$ 69,200

8. Deferred Compensation

Green River has deferred compensation agreements with key executives providing for periodic payments to them upon retirement or to their beneficiaries in the event of death. Deferred compensation costs were approximately $31,000 and $30,000 for 1998 and 1997, respectively. It is the policy of Green River to fund accrued benefits and for such funds, including earnings thereon net of losses, to remain assets of Green River. Included in other investments (see note 3) and other noncurrent liabilities is $1,726,567 at December 31, 1998 and $1,370,634 at December 31, 1997, relating to these agreements.

9. Income Tax Status

Green River is exempt from federal and state income taxes under section 501(c)(12) of the Internal Revenue Code and, accordingly, the accompanying financial statements include no provision for such taxes.

10. Return of Capital

Green River is exempt from certain operational controls of the RUS because its net worth to RUS debt ratio exceeds 110%. Absent this exemption, the provisions of long-term debt agreements otherwise would limit the return of capital contributed by patrons to amounts which would not allow the total equities and margins to be less than 30% of total assets. Green River's Board of Directors approved retirements of patronage capital totaling approximately $2.6 million and $2.5 million during 1998 and 1997, respectively.

11. Commitments and Contingencies

Green River has been identified as a potentially responsible party by the United States Environmental Protection Agency as one of numerous parties that may be liable for damages under

11. Commitments and Contingencies, Continued

federal law with respect to two superfund hazardous waste sites. Management is of the opinion that the ultimate outcome of these matters will not have a material impact on the financial position commitment or guaranty for LEC of Green River.

At December 31, 1998, Green River had committed to purchase equipment and supplies approximating $718,000 in connection with construction and other projects.

12. Supplemental Cash Flow Information

Cash paid for interest expense during the years ended December 31, 1998 and 1997, amounted to $2,202,590 and $1,834,990, respectively.

13. Consolidation Issues

On January 23, 1999, the Boards of Directors of Green River and Henderson Union Rural Electric Cooperative Corporation (Henderson Union) approved and executed an agreement which provided for consolidation of the two organizations. Henderson Union, an electric distribution cooperative based in Henderson, Kentucky, is also a member of Big Rivers. The plan will be submitted to the members for approval with results being announced April 15, 1999.

14. Risk Management

Green River is exposed to various risks of loss related to torts; theft of, damage to and destruction of assets; errors and omissions; injuries to employees; and natural disasters.

Green River carries commercial insurance for all risks of loss, including workers' compensation, general liability and property loss insurance. Settled claims resulting from these risks have not exceeded commercial insurance coverage in 1998 or 1997.

15. Year 2000 Readiness

The Year 2000 issue is the result of computer programs being written using two digits rather than four to define a specific year. Absent corrective actions, a computer program that has date-sensitive software may recognize a date using "00" as the year 1900 rather than the year 2000. This could result in system failures or miscalculations causing disruptions to various activities and operations.

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15. Year 2000 Readiness, Continued

Green River has developed a Year 2000 Readiness Plan (the Plan). The Plan seeks to identify and eliminate any Year 2000 compatibility issue, which may effect, disrupt or impair the operations of its electric distribution and services, or impose financial legal liabilities on Green River. All aspects of Green River's operations, internally and externally, will be evaluated to determine the potential for failure or impact.

The Plan consists of five phases:

AWARENESS (Target Completion Date - ongoing)

Awareness is crucial to the success of the project. Defining the problem, affected areas, and corporate remedies will help keep employees, customers and the Board of Directors up-to-date on the Year 2000 issue as it affects Green River Electric. Employee's will have the knowledge to answer customer inquiries in an informed manner, and aid in identifying systems which are time/date sensitive. Customers concerns will be addressed with timely information from the corporation concerning its Year 2000 status and efforts. Use of employee newsletters, Kentucky Living inserts, Web page articles, and other means of information exchange will promote awareness among employees and customers. Status reports to the Board of Directors will be forwarded on a quarterly basis.

INVENTORY & ASSESSMENT PHASE (Target Completion Date - December 31, 1998)

Inventory and assessment of corporate systems, external interfaces, and reliances are required to determine Year 2000 impacts on these systems. Inventory will include all computer hardware, commercial software, contractor maintained software, corporate developed software, embedded systems, process controls and external dependencies that could be time/date sensitive. Assessment involves Year 2000 compliance testing of these systems as well as prioritization, resolution requirements and identifying associated costs.

RENOVATION/REPLACEMENT PHASE (Target Completion Date - March 31, 1999)

The renovation/replacement phase is the phase during which changes to systems are actually made. During the renovation phase, decisions made in prior phases on how systems/processes will be made compliant are actually implemented. Three elements must be identified to properly develop the schedule. They are time, labor, and funding. The renovation/replacement schedule will include a priority list and timetable to support the process.

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15. Year 2000 Readiness, Continued

TESTING AND VALIDATION PHASE (Target Completion Date - June 30, 1999)

Testing and validation must be completed for each system to ensure that changes made to systems accomplish Year 2000 compliance as expected. This will not only require testing single applications, but interaction among companion applications. As systems are usually part of a complex environment of interfacing applications, all relevant interfaces must be identified and tested to determine that the proper parameters and data are correctly passed among the applications. If interfacing systems are also being changed for Year 2000 compliance, testing must be synchronized among interrelated systems.

CONTINGENCY PLANNING PHASE (Target Completion Date - November 30, 1999)

Contingency planning must be accomplished to address unforeseen and anticipated problems. This planning will include establishment of test teams to verify proper operation of corporate systems on and after January 1, 2000, and internal and external contact points to respond to problems encountered. Backup planning will also be developed for mission critical systems and external interfaces and dependencies.

Green River Electric Corporation believes that it has a viable Year 2000 review process in place and is diligently working to position itself for a smooth transition into the year 2000 and beyond.

However, because of the unprecedented nature of the Year 2000 issue, its effects and the success of Green River's related Plan efforts will not be fully determinable until the year 2000 and thereafter. Management cannot assure that Green River is or will be Year 2000 ready or that their efforts will be successful in whole or in part, or that external parties with whom Green River conducts business will be year 2000 ready.

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SUBJECT TO REVISION

REPORT ON COMPLIANCE AND ON INTERNAL CONTROL OVER FINANCIAL REPORTING BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

To the Board of Directors
Green River Electric Corporation

We have audited the financial statements of Green River Electric Corporation (Green River) as of and for the year ended December 31, 1998, and have issued our report thereon dated February 26, 1999. In our report, our opinion on the financial statements was qualified because, as discussed in Note 3 to the financial statements, Green River's 1997 investment in Big Rivers Electric Corporation (Big Rivers) has not been adjusted for Green River's proportionate share of certain losses incurred by Big Rivers, as required by generally accepted accounting principles. Further, in 1998, Green River determined that the capital credits assigned by Big Rivers were impaired, thereby, requiring a write off of the investment as an extraordinary current period expense as granted by the Rural Utilities Service. In our opinion, since Green River's method of accounting for its Big Rivers investment has not changed, generally accepted accounting principles require this write off be treated as an adjustment to prior periods and not as a current period expense. In addition, our report included an emphasis paragraph which discusses an uncertainty about the ultimate outcome related to the approved Plan of Reorganization of Big Rivers. We conducted our audit in accordance with generally accepted auditing standards and the standards applicable to financial audits contained in *Government Auditing Standards,* issued by the Comptroller General of the United States.

Compliance

As part of obtaining reasonable assurance about whether Green River Electric Corporation's financial statements are free of material misstatement. We performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered Green River Electric Corporation's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control over financial

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FO.. DISCUSSION PURPOSES ONLY
SUBJECT TO REVISION

Internal Control Over Financial Reporting, Continued

reporting. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over financial reporting and its operation that we consider to be material weaknesses.

This report is intended for the information of the audit committee, management and the Rural Utilities Service and supplemental lenders and is not intended to be and should not be used by anyone other than those specified parties.

Owensboro, Kentucky
February 26, 1999

Kentucky 55 Henderson

HENDERSON UNION ELECTRIC COOPERATIVE

Henderson, Kentucky

REPORT ON AUDITS OF FINANCIAL STATEMENTS

for the years ended September 30, 1998 and 1997

Alan M. Zumstein
Certified Public Accountant
204 Book Road
Floyds Knobs, Indiana 47119

CONTENTS

ALAN M. ZUMSTEIN
CERTIFIED PUBLIC ACCOUNTANT

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KENTUCKY SOCIETY OF CPA'S
AICPA DIVISION FOR FIRMS

Board of Directors
Henderson Union Electric
Cooperative Corporation
Henderson, Kentucky 42420

Independent Auditor's Report

I have audited the consolidated balance sheets of Henderson Union Electric Cooperative Corporation as of September 30, 1998 and 1997, and the related statements revenue and patronage capital and cash flows for the years then ended. These financial statements are the responsibility of Henderson Union Cooperative Corporation's management. My responsibility is to express an opinion on these financial statements based on my audits.

I conducted my audits in accordance with generally accepted auditing standards, the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States and 7 CFR Part 1773, Policy on Audits of Utilities Service (RUS) Borrowers. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit includes examining on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. I believe that my audits provide a reasonable basis for my opinion.

In my opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Henderson Union Electric Cooperative Corporation as of September 30, 1998 and 1997, and the results of operations and cash flows for the years then ended, in conformity with generally accepted accounting principles.

In accordance with Government Auditing Standards, I have also issued a report dated November 5, 1998, on my consideration of Henderson Union Electric Cooperative Corporation's internal control over financial reporting and on its compliance with laws and regulations.

Alan Zumstein

Alan M. Zumstein

November 5, 1998

ALAN M. ZUMSTEIN
CERTIFIED PUBLIC ACCOUNTANT

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MEMBER:
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Board of Directors
Henderson Union Electric
Cooperative Corporation
Henderson, Kentucky 42420

I have audited the financial statements of Henderson Union Electric Cooperative Corporation as of and for the years ended September 30, 1998 and 1997, and have issued my report thereon dated November 5, 1998. I conducted my audit in accordance with generally accepted auditing standards and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.

Compliance

As part of obtaining reasonable assurance about whether Henderson Union Electric Cooperative Corporation's financial statements are free of material misstatement, I performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of my audit and, accordingly, I do not express such an opinion. The results of my tests disclosed no instances of noncompliance that are required to be reported under Government Auditing Standards.

Internal Control Over Financial Reporting

In planning and performing my audit, I considered Henderson Union Electric Cooperative Corporation's internal control over financial reporting in order to determine my auditing procedures for the purpose of expressing my opinion on the financial statements and not to provide assurance on the internal control over financial reporting. My consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatement in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. I noted no matters involving the internal control over financial reporting and its operation that I consider to be material weaknesses.

Board of Directors
Henderson Union Electric
Cooperative Corporation
page two

This report is intended for the information of the audit committee, management, the Utilities Service and supplemental lenders. However, this report is a matter of public record and its distribution is not limited.

Alan M. Zumstein

November 5, 1998

Henderson Union Electric Cooperative

Balance Sheets, September 30, 1998 and 1997

Assets	1998	1997
Electric Plant, at original cost (Note 1):		
In service	$57,270,024	$54,052,293
Under construction	947,932	227,871
	58,217,956	54,280,164
Less accumulated depreciation	12,508,668	12,146,241
	45,709,288	42,133,923
Investments, at cost (Note 2)	2,120,301	18,116,811
Current Assets:		
Cash and temporary investments	1,497,914	917,640
Accounts receivable, less allowance for 1998 of $97,445 and 1997 of $125,449	7,183,186	6,495,526
Material and supplies, at average cost	1,080,530	973,685
Other current assets	292,945	317,237
	10,054,575	8,704,088
Deferred pension costs	567,003	631,181
Total (Note 5)	$58,451,167	$69,586,003

Members' Equities and Liabilities	1998	1997
Members' Equities:		
Memberships	$296,365	$291,240
Patronage capital (Note 4)	22,434,460	38,722,575
Other equities	27,865	27,985
	22,758,690	39,041,800
Long Term Debt (Note 5)	24,265,957	20,547,172
Accumulated Postretirement Benefits (Note 8)	480,760	394,191
Current Liabilities:		
Current maturities of long term debt	822,000	780,000
Accounts payable, purchased power	6,186,652	5,702,840
Accounts payable, other	392,060	466,359
Consumer deposits	880,477	918,699
Accrued expenses	2,371,463	1,508,993
	10,652,652	9,376,891
Consumer Advances for Construction	293,108	225,949
Total	$58,451,167	$69,586,003

The accompanying notes are an integral part of the financial statements.

Statements of Revenue and Patronage Capital

for the years ended September 30, 1998 and 1997

	1998	1997
Operating Revenues	$82,629,470	$85,494,442
Operating Expenses:		
Cost of power	73,017,501	76,442,521
Distribution - operations	1,612,894	1,598,115
Distribution - maintenance	1,934,750	1,657,189
Consumer accounts	841,387	814,704
Customer service	120,719	118,454
Sales	74,392	71,682
Administrative and general	1,203,207	1,361,678
Depreciation, excluding $157,888 in 1998 and $138,815 in 1997 charged to clearing accounts	1,717,958	1,605,915
Taxes	82,864	73,968
Other deductions	31,694	27,444
	80,637,366	83,771,670
Operating margins before interest charges	1,992,104	1,722,772
Interest Charges:		
Long-term debt	1,137,606	1,147,755
Other interest	54,261	11,507
	1,191,867	1,159,262
Operating margins after interest charges	800,237	563,510
Patronage Capital from Associated Organizations	67,624	36,040
Nonoperating Margins:		
Other income, principally interest	99,469	187,681
Nonregulated operations and others	(93,275)	(8,816)
Gain on sale of general plant	66,783	5,267
	72,977	184,132
Write off G & T capital credits	(16,343,066)	-
Net Margins	(15,402,228)	783,682
Patronage Capital - beginning of year	38,722,575	38,082,070
Retirement of patronage capital	(885,887)	(143,177)
Patronage Capital - end of year	$22,434,460	$38,722,575

The accompanying notes are an integral part of the financial statements.

Statements of Cash Flows

for the years ended September 30, 1998 and 1997

	1998	1997
Cash Flows from Operating Activities:		
Net margins	($15,402,228)	$783,682
Adjustments to reconcile to net cash provided by operating activities:		
Depreciation		
Charged to expense accounts	1,717,958	1,605,915
Charged to clearing accounts	157,888	138,815
Patronage capital credits	(67,624)	(36,040)
Write off G & T capital credits	16,343,066	-
Accumulated postretirement benefits	86,569	8,882
Net change in current assets and liabilities:		
Receivables	(687,660)	(1,433,081)
Material and supplies	(106,845)	(139,592)
Other current assets	24,292	(41,500)
Other assets	64,178	61,411
Accounts payable	409,514	1,475,301
Consumer deposits and advances	28,937	222,645
Accrued expenses	137,585	(128,650)
	2,705,630	2,508,906
Cash Flows from Investing Activities:		
Plant additions	(5,764,035)	(4,226,571)
Salvage recovered from plant	312,824	103,649
Receipts from investments, net	(278,932)	58,426
	(5,730,143)	(4,064,496)
Cash Flows from Financing Activities:		
Net increase in memberships	5,125	4,080
Other equities	(120)	1,351
Additional long-term borrowings	4,613,000	1,272,000
Payments on long-term debt	(796,824)	(757,322)
Payments for past service benefits	(55,392)	(55,392)
Payments to estates of deceased members	(161,002)	(143,177)
	3,604,787	330,422
Net increase in cash balances	580,274	(1,225,168)
Cash balances - beginning	917,640	2,142,808
Cash balances - ending	$1,497,914	$917,640
Supplemental cash flows information:		
Interest paid on long-term debt	$1,147,460	$1,147,181

The accompanying notes are an integral part of the financial statements.

1. Summary of Significant Accounting Policies

Henderson Union maintains its records in accordance with policies prescribed or permitted by the Kentucky Public Service Commission (PSC) and the United States Department of Agriculture, Rural Utilities Service (RUS), which conform in all material respects with generally accepted accounting principles. The more significant of these policies are as follows:

Electric Plant

Electric plant is stated at original cost, less contributions, which is the cost when first dedicated to public service. Such cost includes applicable supervisory and overhead costs. There was no construction during the year on which interest was required to be capitalized.

The cost of maintenance and repairs, including renewals of minor items of property, is charged to operating expense. The cost of replacement of depreciable property units, as distinguished from minor items, is charged to electric plant. The cost of units of property replaced or retired, including cost of removal net of any salvage value, is charged to accumulated depreciation.

The major classifications of electric plant in service consisted of:

	1998	1997
Distribution plant	$50,365,876	$47,167,350
General plant	6,904,148	6,884,943
Total Plant	$57,270,024	$54,052,293

Depreciation

Provision has been made for depreciation on the basis of the estimated lives of assets, using the straight-line method on a composite basis. Depreciation rates are as follows:

Distribution plant	3.1%
Microwave equipment	5-10%
Structures and improvements	2.0%
Transportation equipment	15.6%
Other general plant	6.0% - 13.5%

Statement of Cash Flows

For purposes of the statement of cash flows, Henderson Union considers temporary investments having a maturity of three months or less to be cash equivalents.

Continued

1. **Summary of Significant Accounting Policies, continued**

Revenue

Revenue is recorded in the period in which billings are rendered to consumers, based on monthly meter-reading cycles. Henderson Union's sales are concentrated in a seven county area of western Kentucky. There is only one consumer whose individual account balance exceeded 10% of outstanding accounts receivable at September 30, 1998 or 1997. See Note 7 for additional information.

Cost of Power

Henderson Union is one of four members of Big Rivers Electric Corporation (Big Rivers). Under a wholesale power agreement dated July 15, 1998, Henderson Union is committed to purchase its electric power requirements from Big Rivers until 2011, except for its Significant Patron. The rates charged by Big Rivers are subject to approval by the PSC. The cost of power is recorded monthly during the period in which the energy is consumed, based upon billings from Big Rivers. The power purchased for Henderson Union's Significant Patron is purchased from LG&E Energy Marketing, Inc. (LEM). The agreed upon rates from LEM will expire December 31, 2011.

Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Fair Value of Financial Instruments

Financial instruments include cash, temporary investments and long-term debt. Investments in associated organizations are not considered a financial instrument because they represent non-transferable interests in associated organizations.

The carrying value of cash and temporary investments approximates fair value because of the short maturity of those instruments. The fair value of long-term debt approximates the fair value because of the borrowing policies of Henderson Union.

Off Balance Sheet Risk

Henderson Union has off-balance-sheet risk in that they maintain cash deposits in financial institutions in excess of the amounts insured by the Federal Deposit Insurance Corporation (FDIC).

Continued

1. **Summary of Significant Accounting Policies, continued**

Report Reclassifications

Effective January 1, 1998, Henderson Union adopted functional accounting whereby benefits, general insurance, property taxes and other expenses are recorded in the accounts that generate the expense. The 1997 financial statements have been restated to reflect functional accounting. This reclassification did not have any effect on net margins for 1997.

2. **Investments**

Investments in associated organizations and other consisted of:

	1998	1997
Associated organizations:		
Big Rivers Electric Corporation:		
Patronage capital assigned	-	$16,343,066
National Rural Utilities Cooperative Finance Corporation:		
Capital Term Certificates	1,253,807	1,254,926
Patronage capital assigned	215,407	229,865
Membership fee	1,000	1,000
Other associated organizations	188,195	211,785
Other investments:		
Economic Development loan	400,000	-
ERC loans, 5% various	54,846	73,385
Others	7,047	2,784
Total	$2,120,302	$18,116,811

Henderson Union records patronage capital assigned by associated organizations in the year in which such assignments are received.

The Capital Term Certificates (CTCs) of National Rural Utilities Cooperative Finance Corporation (NRUCFC) are recorded at cost. The CTCs were purchased from NRUCFC as a condition of obtaining long-term financing. The CTCs bear interest at 0%, 3% and 5% and are scheduled to mature at varying times from 2020 to 2080.

Big River's filed, and was granted, a First Amended Plan of Reorganization, As Modified And Restated June 9, 1997 (the Plan). The Plan provides that as of the effective date, July 17, 1998, patronage capital claims shall be extinguished, released and discharged. Accordingly, all patronage capital on Big Rivers' books shall be reduced to zero on the effective date. As such, Henderson Union wrote off the book investment in Big Rivers in the amount of $16,343,066.

Continued

3. Patronage Capital:

Patronage capital consisted of:

	1998	1997
Assignable	$980,646	$980,646
Assigned to date	23,375,346	39,718,412
Less retirements to date	(1,976,483)	(1,976,483)
Total	$22,379,509	$38,722,575

Under provisions of the long-term debt agreement, return to members of capital contributed by them is limited to amounts which would not allow the total equities to be less than 40% of total assets, except that distributions may be made to estates of deceased members. The debt agreement provides, however, that should such distributions to estates not exceed 25% of net margins for the next preceding year, Henderson Union may distribute the difference between 25% and the payments made to such estates.

4. Long Term Debt

Substantially all assets are pledged as collateral on the long term debt to RUS and NRUCFC under a joint mortgage agreement. The Economic Development loan is secured by a portion of the assets pledged by one of Henderson Union's consumers. The amount due National Rural Electric Cooperative Association (NRECA) is for additional past service benefits purchased upon conversion of the pension plan. Long term debt consisted of:

	1998	1997
First mortgage notes due RUS:		
2%	$931,434	$931,434
5%	14,134,146	14,134,146
	15,065,580	15,065,580
First mortgage notes due NRUCFC:		
7%	314,672	335,465
6.75% - 7.0% (6.75%- 7.0% in 1997)	4,111,640	4,195,613
6.55% variable rate (6.55% in 1997)	3,156,945	1,675,122
	7,583,257	6,206,200
Economic Development loan, no interest, due in monthly installments through 2008	400,000	-

Continued

4. **Long Term Debt**

	1998	1997
Amount due NRECA, non interest bearing	-	55,392
	23,048,837	21,327,172
Less current maturities	(780,000)	(780,000)
	$22,268,837	$20,547,172

The interest rates on notes payable to NRUCFC at 6.75% - 7.0% are subject to change every seven years. The 6.55% interest rate notes to NRUCFC adjusts monthly and may be converted to fixed rate at any time upon Board approval by Henderson Union.

The long-term debt payable to RUS and NRUCFC is due in quarterly and monthly installments of varying amounts through 2029. Henderson Union had unadvanced loan funds available from RUS in the amount of $2,613,000 and from NRUCFC in the amount of $640,000.

As of September 30, 1998, annual maturities of long-term debt outstanding for the next five years are as follows: 1999 - $780,000; 2000 - $815,000; 2001 - $835,000; 2002 - $840,000; 2003 - $875,000.

5. **Short Term Borrowings**

At September 30, 1998, Henderson Union had a short-term line of credit of $10,000,000 available from NRUCFC and $2,000,000 from National Bank for Cooperatives. Henderson Union has repaid all borrowings against the line of credit during the audit period.

6. **Significant Patron Information**

Operating revenue and cost of power for 1998 and 1997, and accounts receivable as of September 30, 1998 and 1997, resulting from the sale of electric energy to a single industrial consumer, are as follows:

	1998	1997
Operating revenue	$50,470,063	$52,600,397
Cost of power	50,269,586	52,404,815
Accounts receivable	4,251,455	3,923,925

Continued

7. Employee Benefits

Pension Plan

All eligible employees of Henderson Union participate in the NRECA Retirement and Security Program, a defined benefit pension plan qualified under section 401 and tax-exempt under section 501(a) of the Internal Revenue Code. Henderson Union makes annual contributions to the Program equal to the amounts accrued for pension expense. Contributions were $244,488 for 1998 and $251,736 for 1997. In this multiemployer plan, which is available to all member cooperatives of NRECA, the accumulated benefits and plan assets are not determined or allocated separately by individual employer.

Retirement Savings Plan

Henderson Union has a Retirement Savings Plan for all employees who are eligible to participate in Henderson Union's benefit programs. The plan allows participants to make contributions by salary reduction, pursuant to Section 401 (k) of the Internal Revenue Code. Henderson Union will match the contributions of each participant, up to 3% of the participant's base compensation. Henderson Union contributed $92,052 for 1998 and $89,572 for 1997. Participants vest immediately in their contributions and the contributions of Henderson Union.

Accumulated Postretirement Benefits

Henderson Union sponsors a defined benefit plan that provides medical insurance coverage to retirees for five (5) years after they retire, or until age 65, whichever is first. Henderson Union provides all the contributions for the cost of coverage. For purposes of the liability estimates, the substantive plan is assumed to be the same as the extant written plan. Postretirement benefits are not funded.

The following table sets forth the plan's status reconciled with the amount shown in Henderson Union's balance sheet at September 30, 1998 and 1997.

	1998	1997
Accumulated postretirement benefit obligation:		
Active plan participants	$378,760	$300,191
Retirees	102,000	94,000
Accrued postretirement benefit cost	$480,760	$394,191

Continued

7. **Employee Benefits, continued**

Accumulated Postretirement Benefits, continued

Net periodic postretirement benefit cost included the following components:

	1998	1997
Service cost - benefits attributed to service during the period	$85,449	$11,705
Interest cost on accumulated postretirement benefit obligation	31,535	26,970
Net periodic benefit cost	$116,984	$38,675

For measurement purposes, a 7% annual rate of increase in the per capita cost of covered health care benefits was assumed. The discount rate used in determining the accumulated postretirement benefit obligation was 8%.

8. **Income Tax Status**

Henderson Union is exempt from federal and state income taxes under provisions of Section 501(c)(12). Accordingly, the financial statements include no provision for income taxes.

9. **Related Party Transactions**

Two (2) members of Henderson Union's Board of Directors are members of the Board of Directors of Big Rivers. One of Henderson Union's Directors is also on the Board of Directors of Kentucky Telecommunications, Inc.

One of the Directors and the President & CEO of the Cooperative are also members of the Board of Directors of Kentucky Association of Electric Cooperatives. The Office Manager and Staff Assistant is on the Board of Directors of the Rural Cooperatives Credit Union.

10. **Rate Matters**

Effective May, 1998, Henderson Union was granted a rate reduction to flow through a decrease in the wholesale power purchased from Big Rivers. The amount of the decrease was approximately $17,600,000, of which approximately $14,000,000 of that decrease was to the significant patron as described in Note 6. This decrease had no effect on net margins.

"We are all committed to making strong cooperatives even better through consolidation."

Richard Wilson
Chairman
Hancock County

Jim Mounts
Vice Chairman
Hopkins-Webster

William Reid
Secretary-Treasurer
Eastern Daviess County

Royce Dawson, M.D.
Southern Daviess County

Larry Elder
Western Daviess County

M. Pat Gibson
Ohio County

William Scott
Industrial Director

Sandra Wood
McLean County

On July 1, your cooperative will become Kenergy Corp. through the consolidation of Green River Electric Corporation and Henderson Union Electric Cooperative Corp.

You, as member-owners of Green River Electric, overwhelmingly supported the consolidation of the two neighboring cooperatives.

The underlying rationale of the consolidation was to integrate the complementary strengths of both cooperatives to create a stronger, more competitive organization to be better prepared for the future in a restructured electric utility industry. Both Green River Electric and Henderson Union Electric are strong financially and share many similarities, including enviable customer growth, solid equity positions, and well-maintained and up-to-date physical plants.

As promised, the cooperatives have jointly filed an application with the Kentucky Public Service Commission for permission to reduce electric rates by 4 percent, effective with the consolidation next month.

Through the combining of staffs, Kenergy will have the personnel to improve service and offer more and varied value-added programs to all customers. We'll be announcing these in the months to come.

The Consolidation Agreement calls for a three-year transition period. During this time, the current members of both cooperatives' boards will serve on the Kenergy Board. Thereafter, redistricting will occur and result in an 11-member board, including a director representing large industries.

Dean Stanley
President & CEO

I have been president and CEO of your cooperative for 19 years and will continue in that capacity in the new organization.

Kenergy will be headquartered in the more centrally located office facilities of what is now Henderson Union Electric on Old Corydon Road in Henderson County. However, to ensure responsive service throughout the larger service area, the current GREC headquarters in Owensboro will remain open and staffed, as will service centers in Hanson, Hartford, Hawesville, Marion, and Sturgis.

Kenergy will provide power to customers in all or portions of 14 western Kentucky counties—Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean, Muhlenberg, Ohio, Union, and Webster.

The June 8 Annual Membership Meeting at the Owensboro Sportscenter will be the 62nd and final such meeting of Green River Electric as a corporation.

With the support of member-owners, the cooperative has grown and prospered since its incorporation on June 11, 1937. GREC was established with a $100,000 loan from the former Rural Electrification Administration (REA) to construct 100 miles of line to serve 300 customers in Daviess County. Today, the cooperative distributes electricity to 30,000-plus accounts along 3,400 miles of line in nine counties and has facilities worth in excess of $76.6 million. For a number of years, GREC has been No. 1 in the nation among electric distribution cooperatives in the sale of electricity.

Kenergy, which will be the third largest cooperative in the state in terms of customers, will serve more than 48,000 customer accounts and have revenues in excess of $230 million.

We're proud of the cooperative's successes and excited about what the future holds for Kenergy. We thank you for your past support of the cooperative and ask for your continued support.

"And, there is even more to come."

The power of human connections

Exhibit 10a
Page 1 of 4

Treasurer's Report

Green River Electric

STATEMENT OF OPERATIONS

FOR THE YEARS ENDED DECEMBER 31, 1998 AND 1997

	1998	1997 (1)
Electric Revenue	$146,329,618	$143,530,217
Miscellaneous	337,298	321,339
TOTAL OPERATING REVENUE	$146,666,916	$143,851,556
Cost of Purchased Power	$131,732,330	$130,017,420
Distribution Plant Expense	4,128,510	3,658,895
Consumer Accounting & Collecting Expense	1,053,551	1,081,625
Consumer Service & Information Expense	260,015	256,345
General Office, Administrative & General Expense	2,219,195	2,229,339
TOTAL OPERATING EXPENSE	$139,393,601	$137,243,624
Depreciation Expense	$2,249,477	$2,145,262
Interest on Long-Term Debt	2,166,713	1,960,800
Other Deductions	198,805	194,176
TOTAL COST OF ELECTRIC SERVICE	$144,008,596	$141,543,862
Operating Margins	$2,658,320	$2,307,694
Non-Operating Margins	849,264	586,925
Extraordinary Deductions	<23,346,133> (2)	-0-
TOTAL MARGINS	<$19,838,549>	$2,894,619

BALANCE SHEETS

DECEMBER 31, 1998 AND 1997

	1998	1997
ASSETS		
Total Utility Plant	$76,630,360	$70,787,201
Less Accumulated Provision for Depreciation	<15,899,433>	<14,972,602>
NET UTILITY PLANT	$60,730,927	$55,814,599
Investments	$4,336,619 (2)	$27,576,049
Cash & Cash Equivalents	4,519,912	5,418,871
Accounts Receivable	14,320,990	14,189,074
Other Assets	2,768,790	2,117,731
TOTAL ASSETS	$86,677,238	$105,116,324
MEMBERS' EQUITIES		
Memberships	$125,080	$131,095
Patronage Capital	27,801,832 (2)	50,256,675
Other	1,492,026	1,103,338
TOTAL MEMBERS' EQUITY	$29,418,938	$51,491,108
LIABILITIES		
Long-Term Debt	$39,571,545	$37,296,099
Accounts Payable & Current Maturities of Long-Term Debt	13,657,918	13,041,037
Other	4,028,837	3,288,080
TOTAL LIABILITIES	$57,258,300	$53,625,216
TOTAL MEMBERS' EQUITIES & LIABILITIES	$86,677,238	$105,116,324

(1) Certain reclassifications have been made to the 1997 financial statements to conform to 1998 presentation. These reclassifications have no effect on total margins and total assets or members' equities and liabilities.
(2) Reduction to write off the Big Rivers Electric patronage capital discharged in the Chapter 11 Bankruptcy Case No. 96-41168.

Exhibit 10a, Page 2 of 4

Green River Electric Corporation

Down The Line

News and Information for Member-Owners June 1999

Thank You

Approval of the consolidation of Green River Electric Corporation and Henderson Union Electric Cooperative Corp. will ensure that the new member-owned and controlled cooperative—Kenergy—has a sound future in a rapidly changing electric utility industry environment. With approval from the Kentucky Public Service Commission, the consolidation will become effective July 1, 1999.

(See details inside.)

$1,000 Winner

Pat Zoglman of Daviess County won the $1,000 drawing for returning his ballot in the vote on consolidation. Members of the customer-comprised Credentials and Election Committee conducted the drawing.

GREC Annual Meeting June 8 at Sportscenter

Registration • 5 p.m.

*Light Meal • 5 p.m. to 6:45 p.m.**

Entertainment

The Gospel Envoys • Canoe Creek Band • Caricaturist Don Noble

Business Session • 7 p.m.

Door Prizes

* tickets for GREC member-owners and their immediate families will be available at the registration tables. The Sportscenter is located at 1215 Hickman Avenue, off West Parrish Avenue in Owensboro.

The Gospel Envoys of Owensboro will be one of two musical groups performing at the Annual Meeting June 8.

Another Great Year

1997 was the year of a rate reduction for all member-owners.

For a typical customer — one using 1,000 kilowatt-hours of electricity per month — the rate reduction amounted to an 8.2 percent decrease. Your cooperative took pride in this, as well as in its growth and ability again to return more than $2 million in capital credits to customers. A total of 1,064 new services were connected for a net increase of 773 members. Today, Green River Electric serves 30,000 customers along more than 3,400 miles of line within its nine-county area. Green River Electric continues to sell significantly more energy than any other distribution cooperative in the nation. Last year, kilowatt-hour sales totaled 4.57 billion, of which 4.04 billion were purchased by large industrial customers. Revenue generated from the sale of electricity amounted to $143 million, of which 90.4 percent was used for the purchase of power for distribution to you and your neighbors. Despite the rate reduction and financial success, the year was not without disappointment. While members of Green River Electric apparently saw the merits in consolidating with Henderson Union Electric Cooperative (HUEC) and voted in the affirmative by a 3 to 1 margin — 468 to 170 — customers of HUEC defeated the proposal by 13 votes —230 to 217. Studies showed that consolidation would have led to lower operating costs and made the new organization more competitive. Annual savings, according to the study, would have been from $2.3 million to $2.8 million. Your cooperative is open to revisiting the consolidation issue with HUEC. Consolidating the two organizations makes good business sense and would provide significant long-term benefits to customers, while giving the combined cooperatives the ability to provide electric service at a total cost that is lower than otherwise achievable without consolidation. If the opportunity to consolidate should in the near future again present itself, we would be hopeful that it would have your support. Recently adopted state legislation gives members the right to vote on consolidation issues at special meetings and also extends the option for voting by mail ballot. No longer would such a vote be limited to annual meetings.

Richard [illegible]
Chairman
Hancock County

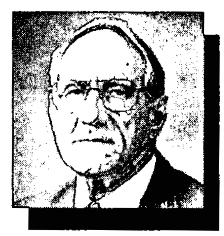
Dean Stanley
President & CEO

Jimmy Mounts
Vice Chairman
Webster/Hopkins counties

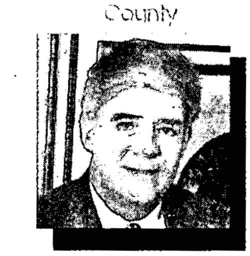
William [illegible]
Secretary/Treasurer
[illegible]

Royce Dawson
Southern Daviess County

Larry Elder
Western Daviess County



R. D. Johnson
[illegible]



William Scott
Industrial Director

[illegible]
McLean County

[illegible]

Exhibit 10a
Page 3 of 4

Treasurer's Report

Statement Of Operations

FOR THE YEARS ENDING DECEMBER 31, 1997, AND 1996

	1997	1996
Electric Revenue	$143,530,217	$145,007,199
Miscellaneous	321,339	259,753
TOTAL OPERATING REVENUE	$143,851,556	$145,266,952
Cost of Purchased Power	$130,017,419	$131,674,969
Distribution Plant Expense	2,648,680	3,500,432
Consumer Accounting & Collecting	879,319	815,860
Customer Service & Information Expense	214,006	234,106
General Office, Admin. & General Expense	2,768,336	2,548,321
TOTAL OPERATING EXPENSE	$136,527,760	$138,773,688
Depreciation Expense	$2,145,262	$2,021,258
Property & Other Tax Expenses	832,793	819,914
Interest on Long-Term Debt	1,960,800	1,997,940
Other Deductions	77,248	67,177
TOTAL COST OF ELECTRIC SERVICE	$141,543,863	$143,679,977
Operating Margins	$2,307,693	$1,586,972
Non-Operating Margins	586,926	658,252
TOTAL & MARGINS	$2,894,619	$2,245,227

Balance Sheet

FOR THE YEARS ENDING DECEMBER 31, 1997, AND 1996

	1997	1996
ASSETS		
Total Utility Plant	$70,787,201	$67,286,284
Less Accumulated Provision for Depreciation	<14,971,629>	<13,452,965>
NET UTILITY PLANT	$$55,815,572	$53,833,319
Investments	$27,575,076	$27,422,597
Cash and Cash Equivalents	5,418,871	5,684,323
Notes & Accounts Receivable	10,784,640	7,913,325
Materials & Supplies	597,026	542,318
Other Assets & Deferred Debits	4,925,139	25,006,207
TOTAL ASSETS AND OTHER DEBITS	$105,116,324	$120,402,089 *(1)*
LIABILITIES		
Long-Term Debt	$37,296,099	$36,910,038
Accounts & Notes Payable	13,041,037	9,840,693
Consumer Deposits	668,630	581,306
Other Liabilities & Deferred Credits	2,619,450	22,442,015
TOTAL LIABILITIES AND OTHER CREDITS	$53,625,216	$69,774,052 *(1)*
MARGINS AND OTHER EQUITIES		
Memberships	$131,095	$127,810
Patronage Capital	50,256,675	49,852,592
Other Margins & Equities	1,103,338	647,635
TOTAL MARGINS & EQUITIES	$51,491,108	$50,628,037
TOTAL LIABILITIES, MARGINS AND OTHER EQUITIES	$105,116,324	$120,402,089

(1) These lines include an energy prepayment from a large industrial customer and a corresponding prepayment to our wholesale power supplier of $20,094,946.

Henderson Union EC

Dr. H.M. Smith
Chairman

Ben H. Shoup
Vice Chairman

William Denton
Secretary

Vickie A. Davis

Glenn E. Cox

Randolph Powell

Christopher Mitchell

James E. Long

Orlin Long

Frank "Nib" King
Attorney

John West
President & CEO

your home, or your business.

Low Electric Rates

National figures continue to show that Kentucky is solidly among the three states with the lowest electric rates in the country. We're proud of this because it didn't happen by accident. We have low rates because of our intelligent use of local, low-cost coal to generate electricity, and intelligent regulatory and business decisions by utilities and government agencies in the state.

We're also pleased about some of the practical effects of those low rates: They are a big help in attracting industry and other economic development activities; they mean we can carefully study issues like utility deregulation rather than rush into a possibly bad decision in a questionable attempt to lower rates; and they help us all to maintain and improve the quality of our lives here in Kentucky.

We pledge to keep working hard to bring you the lowest rates and highest levels of service possible.

Electric Utility Restructuring

Henderson Union has been involved in influencing the national discussion on whether to restructure the electric utility industry. Joining with other cooperatives through state and national associations, we have made sure that your concerns as a member are heard.

At issue is whether to deregulate electric utilities in a way similar to how telephone and airline service was deregulated. Some states have jumped in with both feet. New Hampshire, California, and several other states where rates are especially high have gone ahead and deregulated their electricity industries. Policy makers are keeping close tabs to see what we can learn from those experiments.

During the 1998 session of the Kentucky Legislature, electric cooperatives led the way in calling for a more common-sense approach to the future—an approach that the legislature approved and with which the governor agreed. That approach calls for a careful study of the electric utility industry, which is now under way. It is set to be completed later in 1999, so it can be used to make recommendations to the legislative session in 2000.

We have a lot of questions about making drastic changes to how we get our electric service: Would rural residential consumers pay more for electricity in a deregulated industry? Would there be an adequate and reliable supply of electricity to rural areas? What effects could a deregulated race to cut costs have on jobs, the environment, community involvement, and economic development activities?

We're confident that through careful study, this committee can make recommendations that benefit everyone.

Statement Of Operations

As of December 31, 1998

Operating Revenue and Patronage Capital		$83,339,510
Operating Expense		
Cost of Purchase Power	$73,423,965	
Operating the Electric System	5,877,207	
Depreciation	1,747,759	
Taxes	80,641	
Interest on Loans	1,252,551	
Other Deductions	31,240	
Total Cost of Electric Service		$ 82,412,886
Patronage Capital and Operating Margins		926,624
Non-Operating Margins		113,044
Capital Credits		67,624
Extra Ordinary Items		($16,343,066)
Patronage Capital or Margins		($15,235,774)

Balance Sheet

As of December 31, 1998

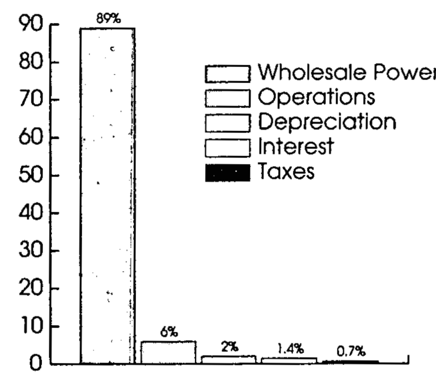
Assets		
Total Utility Plant	$59,077,558	
Less Depreciation	12,505,311	
Net Utility Plant Book Value		$46,572,247
Certificates in Rural Electric Bank & Investments in Associated Organizations		2,525,615
Cash and Reserves		1,845,871
Owed to Co-op on Accounts & Notes		6,773,866
Material in Inventory		1,119,748
Expenses Paid In Advance		195,049
Deferred Debits and Other Assets		578,058
Total Assets		59,610,454
Liabilities		
Consumer Deposits	$875,657	
Membership & Other Equities	22,846,936	
Long-Term Debt	25,914,467	
Notes & Accounts Payable	7,413,097	
Other Current & Accrued Liabilities	2,560,297	
Total Liabilities	$59,610,454	

Henderson Union EC

As of December 31,1997

Operating Revenue and Patronage Capital	$84,379,240
Operating Expense	
Cost of Purchased Power	$75,143,096
Operating the Electric System	5,005,374
Depreciation	1,644,568
Taxes	623,946
Interest on Loans	1,159,022
Other Deductions	20,920
Total Cost of Electric Service	$83,596,926
Patronage Capital and Operating Margins	782,314
Non-Operating Margins	98,129
Capital Credits	54,540
Patronage Capital or Margins	$934,983

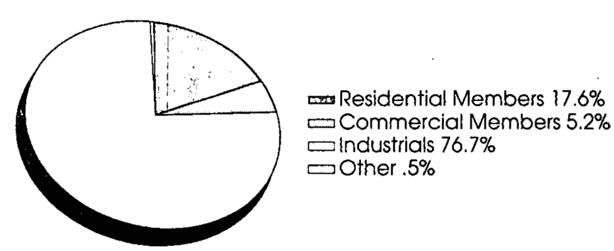
Major Costs



As of December 31,1997

Assets	
Total Utility Plant	$55,146,487
Less Depreciation	12,330,151
Net Utility Plant Book Value	$42,816,336
Certificates in Rural Electric Bank and Investments in Associated Organizations	$18,479,899
Cash and Reserves	962,713
Owed to Co-op on Accounts and Notes	6,632,270
Material in Inventory	975,168
Expenses Paid in Advance	218,496
Deferred Debits and Other Assets	667,970
Total Assets	70,752,852
Liabilities	
Consumer Deposits	$947,139
Membership and Other Equities	38,959,840
Long-Term Debt	21,537,441
Notes and Accounts Payable	7,569,521
Other Current and Accrued Liabilities	1,738,911
Total Liabilities	$70,752,852

Revenue Sources



1997 Statistics

Members Served	17,992
Miles of Line	3,015
Consumers Per Mile	6
Average KWH Usage	1,136

Exhibit 10b
Page 3 of 3

KENERGY CORP

CASE NO. 99-162

Mortgage Information

All the obligations to RUS, CFC, and CoBank are secured by first mortgages and financing statements on all Kenergy's real and personal property.

FINANCIAL EXHIBITS FOR KENERGY CORP.
NOTES EXECUTED
AS OF JUNE 30, 1999

FORMERLY GREEN RIVER ELECTRIC CORPORATION

LINE NO.	NOTE NUMBER	DATE OF ISSUE	PRINCIPAL BALANCE	DATE OF MATURITY	RATE OF INTEREST	PAYABLE IN FAVOR OF
1	4240	01/07/66	28,151.88	2000	2%	U.S. Government
2	4250	01/02/68	257,706.32	2002	2%	U.S. Government
3	4260	07/21/70	155,622.57	2005	2%	U.S. Government
4	B270	07/30/71	79,838.98	2006	2%	U.S. Government
5	B272	07/30/71	78,881.69	2006	2%	U.S. Government
6	B280	06/16/72	126,274.22	2007	2%	U.S. Government
7	B282	06/16/72	122,595.65	2007	2%	U.S. Government
8	1B290	04/15/74	86,276.90	2009	5%	U.S. Government
9	1B292	04/15/74	86,276.90	2009	5%	U.S. Government
10	1B300	11/01/74	89,004.89	2009	5%	U.S. Government
11	1B302	11/01/74	89,004.89	2009	5%	U.S. Government
12	1B310	07/19/75	230,922.71	2010	5%	U.S. Government
13	1B312	07/19/75	229,139.14	2010	5%	U.S. Government
14	1B320	07/17/76	244,558.55	2011	5%	U.S. Government
15	1B322	07/17/76	244,400.64	2011	5%	U.S. Government
16	1B330	08/05/77	439,346.34	2012	5%	U.S. Government
17	1B332	08/05/77	439,346.34	2012	5%	U.S. Government
18	1B340	02/21/78	457,377.30	2013	5%	U.S. Government
19	1B342	02/21/78	457,377.30	2013	5%	U.S. Government
20	1B350	01/15/79	1,115,008.19	2014	5%	U.S. Government
21	1B352	01/15/79	1,115,008.19	2014	5%	U.S. Government
22	1B360	05/06/81	1,080,719.62	2016	5%	U.S. Government
23	1B362	05/06/81	1,080,719.62	2016	5%	U.S. Government
24	1B370	02/03/84	1,172,048.36	2019	5%	U.S. Government
25	1B372	02/03/84	1,172,048.36	2019	5%	U.S. Government
26	1B380	12/05/86	1,415,796.27	2021	5%	U.S. Government
27	1B382	12/05/86	1,415,796.27	2021	5%	U.S. Government
28	1B390	06/23/88	1,462,288.86	2023	5%	U.S. Government
29	1B392	06/23/88	1,462,288.86	2023	5%	U.S. Government
30	1B400	10/29/90	1,655,929.27	2025	5%	U.S. Government
31	1B402	06/29/92	1,655,929.27	2027	5%	U.S. Government
32	1B410	01/28/93	1,756,217.38	2028	5%	U.S. Government
33	1B411	01/28/93	469.28	2028	5%	U.S. Government
34	1B415	01/28/93	1,756,686.66	2029	5%	U.S. Government
35	1B420***	12/14/94	1,644,406.47	2029	4.25%	U.S. Government
36	1B421***	12/14/94	480.68	2029	4.25%	U.S. Government
37	1A425***	12/14/94	1,636,280.44	2029	4.25%	U.S. Government
38	1A430***	07/01/97	1,981,000.00	2032	4.63%	U.S. Government
39	1A435***	07/01/97	1,981,000.00	2032	4.50%	U.S. Government
40	T-22350	01/15/79	54,900.00	2000	**	LBC*
41	T-24942	05/06/81	165,298.08	2001	**	LBC*
42	T-27749	02/03/84	1,156,435.00	2019	**	LBC*
43	T-30566	12/05/86	1,338,927.00	2021	**	LBC*
44	T-32845	10/05/88	1,336,436.00	2023	**	LBC*
45	T-34818	06/15/92	1,512,427.00	2026	**	LBC*
46	T-36243	10/05/93	1,536,354.55	2028	**	LBC*
47	T-36445	01/05/94	1,425,489.69	2029	**	LBC*
48	ML0501T1	07/01/97	1,698,000.00	2032	**	LBC*
49	TOTAL		$40,726,492.58			

* Louisville Bank for Cooperatives. The name of Louisville Bank for Cooperatives has been changed to National Bank for Cooperatives, sometimes known as CoBank.

** Supplemental lenders' interest charge is a variable rate with rate determined at the beginning of each month, except where rate is fixed under long-term interest rate plan.

*** RUS interest charge on this note is indexed to municipal bond market rates that change quarterly, with actual rate determined by tenure of note selected at time of issue.

Interest paid on the above notes was $2,161,997 for the twelve months ending 12/31/98.

KENERGY CORP

Formerly: HENDERSON UNION ELECTRIC COOPERATIVE CORP

Notes Outstanding as of June 30, 1999

DATE OF ISSUE	RATE OF INTEREST	PRINCIPAL BALANCE	MATURITY DATE	LENDER
1-37-67	2%	$122,369.06	01-31-02	RUS
3-11-70	2%	325,691.31	03-11-05	RUS
6-10-72	2%	87,974.07	06-10-07	RUS
6-10-72	2%	86,837.98	06-10-07	RUS
09-12-73	5%	112,184.30	09-12-08	RUS
09-12-73	5%	111,349.85	09-12-08	RUS
15-31-74	5%	150,003.85	05-31-09	RUS
15-31-74	5%	147,315.26	05-31-09	RUS
06-02-75	5%	154,049.33	06-02-10	RUS
06-02-75	5%	153,470.85	06-02-10	RUS
03-05-76	5%	154,659.89	05-22-11	RUS
03-05-76	5%	154,641.22	05-22-11	RUS
01-21-77	5%	166,084.60	04-26-12	RUS
01-21-77	5%	166,084.60	04-26-12	RUS
06-30-78	5%	961,342.09	06-08-13	RUS
06-30-78	5%	958,963.82	06-08-13	RUS
07-14-80	5%	954,748.14	05-31-15	RUS
07-14-80	5%	954,748.14	05-31-15	RUS
06-01-82	5%	674,624.48	04-24-17	RUS
06-01-82	5%	703,816.19	04-24-17	RUS
11-26-86	5%	879,100.52	11-26-21	RUS
11-26-86	5%	879,100.52	11-26-21	RUS
05-24-89	5%	1,231,450.92	09-22-24	RUS
05-24-89	5%	1,263,842.53	09-22-24	RUS
04-21-93	5%	1,219,491.25	05-27-29	RUS
04-21-93	5%	1,251,298.70	05-27-29	RUS
08-12-98	5.125%	2,613,000.00	04-01-33	RUS
01-19-99	5.000%	425,000.00	02-28-34	RUS
02-10-99	5.000%	400,000.00	02-28-34	RUS
05-12-99	5.000%	900,000.00	05-31-34	RUS
05-26-99	5.000%	570,000.00	05-31-34	RUS
06-19-99	5.000%	318,000.00	08-31-34	RUS
06-10-72	7.000%	59,863.59	08-31-07	CFC
04-10-73	7.000%	101,127.71	08-31-08	CFC
02-16-74	7.000%	137,111.01	05-31-09	CFC
02-14-75	*	156,561.83	05-31-10	CFC
06-07-76	6.750%	158,641.99	02-28-11	CFC
01-29-77	*	161,789.63	02-29-12	CFC
06-30-78	6.750%	933,890.20	05-31-13	CFC
10-02-80	*	935,686.63	05-15-15	CFC
05-24-82	*	209,937.72	02-28-02	CFC
09-10-87	6.875%	783,730.18	08-31-21	CFC
12-18-92	6.750%	1,104,449.64	08-31-24	CFC
09-16-96	6.875%	1,064,110.42	02-28-29	CFC
09-29-98	5.950%	1,592,689.95	02-28-33	CFC
12-29-98	*	638,458.01	02-28-33	CFC
TOTAL		$27,289,291.98		

VARIABLE RATE AS OF JUNE 1999, 5.95%

INTEREST PAID ON ABOVE NOTES FISCAL YEAR ENDED DEC 31, 1998 $1,188,524.48

KENERGY CORP.
COMBINED STATEMENT OF OPERATIONS
FOR THE TWELVE MONTHS ENDED JUNE 30, 1999

1. Operating Revenue and Patronage Capital	$235,936,430
2. Power Production Expense	
3. Cost of Purchased Power	210,674,327
4. Transmission Expense	
5. Distribution Expense – Operation	3,769,708
6. Distribution Expense – Maintenance	4,353,774
7. Consumer Accounts Expense	2,038,111
8. Customer Service and Informational Expense	268,218
9. Sales Expense	183,239
10. Administrative and General Expense	3,821,947
11. Total Operation & Maintenance Expense (2 thru 10)	225,109,324
12. Depreciation and Amortization Expense	4,142,504
13. Tax Expense – Property & Gross Receipts	
14. Tax Expense – Other	225,991
15. Interest on Long-Term Debt	3,457,008
16. Interest Charged to Construction – Credit	
17. Interest Expense – Other	70,037
18. Other Deductions	77,490
19. Total Cost of Electric Service (11 thru 18)	233,082,354
20. Patronage Capital & Operating Margins (1 minus 19)	2,854,076
21. Non-Operating Margins – Interest	909,726
22. Allowance for Funds Used During Construction	
23. Income (Loss) from Equity Investments	(14,656)
24. Non-Operating Margins – Other	(77,106)
25. Generation and Transmission Capital Credits	
26. Other Capital Credits & Patronage Dividends	164,639
27. Extraordinary Items....(See Page 2, Part D)	(39,689,199)
28. Patronage Capital or Margins (20 thru 27)	(35,852,520)
29. Eliminate Extraordinary Items	39,689,199
30. Adjusted Patronage Capital or Margins	3,836,679

USDA-RUS	BORROWER DESIGNATION	
FINANCIAL AND STATISTICAL REPORT	KENERGY	
	PERIOD ENDED	RUS USE ONLY
INSTRUCTIONS – See RUS Bulletin 1717B-2	June 30, 1999	

PART C. BALANCE SHEET

ASSETS AND OTHER DEBITS		LIABILITIES AND OTHER CREDITS	
1. Total Utility Plant in Service	138,747,497	30. Memberships	424,565
2. Construction Work in Progress	2,154,969	31. Patronage Capital	50,210,337
3. Total Utility Plant (1+2)	140,902,466	32. Operating Margins – Prior Years	78,651
4. Accum. Provision for Depreciation and Amort.	28,978,082	33. Operating Margins – Current Years	1,029,719
5. Net Utility Plant (3-4)	111,924,384	34. Non-Operating Margins	306,691
6. Non-Utility Property (Net)	16,627	35. Other Margins and Equities	1,448,709
7. Investments in Subsidiary Companies		36. Total Margins & Equities (30 thru 35)	53,498,672
8. Invest. In Assoc.Org.-Patronage Capital	554,614	37. Long-Term Debt – RUS (Net)	48,247,694
9. Invest. In Assoc.Org-Other-General Funds	5,000	(Payments-Unapplied $558,280)	
10. Invest. In Assoc.Org.-Other-Nongeneral Funds	3,646,046	38. Long-Term Debt – RUS – Econ. Devel. (Net)	800,000
11. Investments in Economic Development Projects	800,000	39. Long-Term Debt Other – REA Guaranteed	
12. Other Investments	110,428	40. Long-Term Debt – Other (Net)	18,019,828
13. Special Funds	2,118,225	41. Total Long-Term Debt (37 thru 40)	67,067,522
14. Total Other Property and Investments (6 thru 13)	7,250,940	42. Obligations Under Capital Leases	
15. Cash – General Funds	510,292	43. Accumulated Operating Provisions	3,035,648
16. Cash – Construction Funds – Trustee		44. Total Other Noncurrent Liabilites (42 + 43)	3,035,648
17. Special Deposits	801,000	45. Notes Payable	1,187,270
18. Temporary Investments	3,824,000	46. Accounts Payable	20,148,496
19. Notes Receivable (Net)		47. Consumer Deposits	1,640,381
20. Accounts Receivable – Sales of Energy (Net)	17,390,370	48. Other Current and Accrued Liabilities	2,838,185
21. Accounts Receivable – Other (Net)	159,370	49. Total Current & Accrued Liabilities (45 thru 48)	25,814,332
22. Materials and Supplies – Electric and Other	2,643,776	50. Deferred Credits	883,244
23. Prepayments	1,876,432	51. Accumulated Deferred Income Taxes	
24. Other Current and Accrued Assets	3,339,601	52. Total Liabilities and Other Credits (36 + 41 + 44 + 49 thru 51)	150,299,418
25. Total Current and Accrued Assets (15 thru 24)	30,544,841	ESTIMATED CONTRIBUTIONS IN AID OF CONSTRUCTION	
26. Regulatory Assets		53. Balance Beginning of Year	
27. Other Deferred Debits	579,253	54. Amount Received This Year(Net)	
28. Accumulated Deferred Income Taxes		55. Total Contributions in Aid of Construction	
29. Total Assets and Other Debits (5+14+25 thru 28)	150,299,418		

PART D. NOTES TO FINANCIAL STATEMENTS

THIS SPACE BELOW IS PROVIDED FOR IMPORTANT NOTES REGARDING THE FINANCIAL STATEMENT CONTAINED IN THIS REPORT.

(IF ADDITIONAL SPACE IS NEEDED, USE SEPARATE SHEET.)

Exhibit 11

DESCRIPTION OF KENERGY CORP'S PROPERTY

LINE NO.

Kenergy Corp's property consists generally of the following:

1. Approximately 6,513 miles of distribution lines located in Daviess, Henderson, Hancock, Hopkins, Ohio, McLean, Webster, Crittenden, Union, Lyon, Caldwell, Livingston, Muhlenberg, and Breckinridge Counties in Kentucky.

2. Franchises for electrical service, easements and rights-of-way, permits, substation sites and other rights incident to the operation of an electric distribution system, in the said fourteen Kentucky counties.

3. Office buildings and warehouses located in Daviess, Henderson, Hancock, Hopkins, Crittenden, Ohio, and Union Counties of Kentucky.

4. Electrical equipment, tools and supplies for the repair and maintenance of Kenergy's system, principally located in warehouses in Daviess and Henderson Counties.

5. Trucks and other motor vehicles.

6. Intangibles, such as accounts receivable, investments and various contract rights.

The original cost of Kenergy's property is \$179,277,500 and the depreciated cost of such is \$150,299,418 as of the 30th day of June, 1999.

Original

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

FILED

MAY 02 2000

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

IN THE MATTER OF THE APPLICATION OF KENERGY CORP. FOR APPROVAL OF RATE REDUCTION

CASE NO. 99-162

TRANSCRIPT OF EVIDENCE

DATE OF HEARING: April 18, 2000

CONNIE SEWELL
COURT REPORTER
1705 SOUTH BENSON ROAD
FRANKFORT, KENTUCKY 40601
(502) 875-4272

APPEARANCES

HON. B. J. HELTON, CHAIRWOMAN
HON. EDWARD J. HOLMES, VICE CHAIRMAN
HON. GARY GILLIS, COMMISSIONER

HON. GERALD WUETCHER, COUNSEL FOR COMMISSION STAFF

FOR KENERGY CORP:
HON. FRANK N. KING, JR.
318 SECOND STREET
HENDERSON, KENTUCKY 42420

FOR KENTUCKY INDUSTRIAL UTILITY CUSTOMERS:
HON. MICHAEL L. KURTZ
2110 CBLD CENTER
36 EAST SEVENTH STREET
CINCINNATI, OHIO 45202

INDEX

CONNIE SEWELL
COURT REPORTER
1705 SOUTH BENSON ROAD
FRANKFORT, KENTUCKY 40601
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CHAIRWOMAN HELTON:

We're here in the matter of the application of Kenergy Corporation for approval of a rate reduction, Case No. 99-162. Could I have the appearances of the parties, please?

MR. KING:

For the applicant, Kenergy Corp., Frank N. King, Jr., 318 Second Street, Henderson, Kentucky 42420.

MR. KURTZ:

For Kentucky Industrial Utility Customers, Michael Kurtz, 2110 CBLD Center, Cincinnati, Ohio 45202.

MR. WUETCHER:

On behalf of the Commission staff, Gerald Wuetcher.

CHAIRWOMAN HELTON:

Is there any member of the public who wishes to make a statement? We're ready to begin. Call your witness, Mr. King.

MR. KING:

All right. Let's see here. Madam Chairman, we were wondering if it would be appropriate to have - we have three witnesses and if we could just present them as a panel, would that be . . .

CHAIRWOMAN HELTON:

Ms. Sewell, do you have any problem with that?

CONNIE SEWELL
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1705 SOUTH BENSON ROAD
FRANKFORT, KENTUCKY 40601
(502) 875-4272

MR. KING:

How would that be, Mike? Is that . . .

MR. KURTZ:

Well, we have questions for them individually.

MR. KING:

I was thinking about for cross examination.

MR. KURTZ:

I understand. We have questions for them individually.

MR. KING:

Okay. That's fine.

MR. KURTZ:

They can sit up there. We can just direct them to the individual person, though.

MR. KING:

We'll do it individually. That will be fine. The first witness would be Mr. Dean Stanley.

WITNESS SWORN

The witness, DEAN STANLEY, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KING:

Q. State your name for the record, please.

A. My name is Dean Stanley.

Q. What is your occupation, and what is your business address?

CONNIE SEWELL
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(502) 875-4272

A. I am President and CEO of Kenergy Corp. Our business address is 6402 Old Corydon Road, Henderson, Kentucky.

Q. Have you filed prepared testimony in this case?

A. I have.

Q. Are there any changes that you desire to make to that testimony this morning?

A. There's a . . .

Q. I'm talking about now the direct testimony.

A. I have no changes in the direct testimony that I wish to offer.

Q. So, if these questions were asked of you today, the answers would be the same; is that right?

A. Yes, sir.

MR. KING:

Madam Chairman, we move the introduction of Mr. Stanley's prepared testimony in the record and pass the witness.

CHAIRWOMAN HELTON:

So ordered. Mr. Kurtz?

MR. KURTZ:

Thank you.

CROSS EXAMINATION

BY MR. KURTZ:

Q. Good morning, Mr. Stanley.

A. Good morning.

Q. Kenergy has how many customers?

A. Kenergy has approximately 50,000 customers.

Q. Is Kenergy one of the largest electric distribution cooperatives in the country?

A. It is one of the larger ones.

Q. How many employees does Kenergy have?

A. Currently, we have approximately 175.

Q. Okay. I would like to ask you some questions about the functions that Kenergy serves its customers and, if you know, about how many employees do this particular function, and, if you don't know, you can give us an estimate. If you don't have an estimate, that's fine, too. The maintenance of the distribution lines and facilities, linemen, etc., about how many of those employees do you have?

A. In our operations and maintenance area - we refer to it as our Operations Department - we have just over 100 employees.

Q. What about meter readers?

A. We have approximately six in our meter reading area.

Q. What about the billing or accounting function?

CONNIE SEWELL
COURT REPORTER
1705 SOUTH BENSON ROAD
FRANKFORT, KENTUCKY 40601
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A. Billing and accounting, approximately 35.
Q. Customer accounting, is that included in . . .
A. That's included in that group.
Q. Okay. Bill collection, is that included in the number you gave me also?
A. In the numbers that I have given you with the meter readers and the billing folks.
Q. Okay. What about payroll function?
A. We essentially have one person in the payroll function.
Q. Okay. Any other functions that Kenergy serves that I've missed?
A. We have an Engineering Department.
Q. All right. What does the Engineering Department do and about how many people?
A. They're responsible for the planning and design of the distribution system as well as our technology systems.
Q. About how many people?
A. I'm having a little tougher time with that, Mike; 20.
Q. Okay. Now, let me just focus now for the direct served industrials. These are customers that are served off the Big Rivers transmission system. Am I correct that Big Rivers reads the meter for those customers?
A. That's correct.
Q. Okay. Am I correct that Big Rivers prepares the bill that's resulting from that meter read?

A. That is done through our billing functions. You know, we have some functions performed at Big Rivers for the billing function, the printing of the bills, and so forth. For our large industries, the 21 or so that you're speaking of, your comment, I think, is on target and accurate. Again, we do that under agreement with Big Rivers. We have the responsibility for it. Through agreements, we have that function performed by Big Rivers, . . .

Q. Okay.

A. . . . but it is our responsibility.

Q. Right, and Big Rivers does print the bills for you?

A. Yes.

Q. Do they send them out also?

A. Yes.

Q. But then the payment comes to Kenergy?

A. Correct.

Q. Okay. With respect to your 21 direct served industrial customers, how much distribution charge or what's referred to as the adder do you collect annually from those customers?

A. I think in our testimony we have approximately $2.3 million in total.

Q. And Big Rivers is responsible for maintaining the transmission lines that go to those transmission

voltage customers; isn't that right?
A. Big Rivers owns and maintains the transmission system.
Q. Okay. Now, let me go back a little bit, Mr. Stanley, just to set some background because we've talked about the prior wholesale rate case throughout this testimony. In the Green River flow through rate case, 97-219 - do you remember that case?
A. Go ahead.
Q. I'm sorry?
A. Go ahead.
Q. Okay. That was a case where Green River Electric Cooperative - other than a relatively small net reduction to the Southwire rod and cable mill adder, that was purely a flow through of the wholesale rate reduction from Big Rivers; isn't that right?
A. I think that's fair.
Q. Okay. So there was no attempt to adjust anybody's distribution rates other than that one small exception in that flow through rate case?
A. From the Green River perspective, that is correct.
Q. Okay. And there was a stipulation as a part of that wholesale case that the smelters and Green River and Henderson-Union and Meade County but not Jackson Purchase were signatories to that was part and parcel of that matter?

A. Yes. We were participants in that case.

Q. Okay. And, as the result of that case, the Commission set rates for Green River Electric in 97-219 which were the lawful, fair, just, and reasonable rates at that time; isn't that right?

A. That's correct.

Q. You don't have any reason to question that the rates the Commission set in that Order, I guess, July of '98, now, were not reasonable; do you?

A. Well, that's the Commission's role and that's the Order that it produced, that the rates were fair, just, and reasonable, and, as you know, in those proceedings, there were negotiated rates and then there were rates established at the Commission level.

Q. And you don't have any reason to question the fairness of those rates that the Commission ultimately ordered; do you?

A. No.

Q. Okay. And, at that time, you were General Manager of Green River Electric; isn't that right?

A. Yes.

Q. Okay. Now, moving to the merger scenario, on about April 19 of '99, Green River and Henderson-Union applied for a merger approval which the Commission granted about two months thereafter; is that your recollection?

A. Yes.

Q. Okay. Then, in about May of '99, Kenergy filed to reduce the rates for all customers except the direct served industrials under the streamlined rate mechanism, KRS 278.455; do you recall that?

A. That's correct.

Q. Okay. You recall that the Commission denied that application; isn't that right?

A. They did.

Q. Okay. And you would agree that one of the findings in that Order was that Kenergy has not allocated the proposed revenue reduction among and within customer classes on a proportional basis? Do you recall that from the Order?

A. I . . .

MR. KING:

Well, we object to that. I don't recall that specific language in the Order. I think the Order speaks for itself. It's our recollection that we interpreted the law to say that special contract customers did not have to be included in the proportionate rate reduction and that's what the Order held. So we object to the question to the extent it goes beyond the wording of the Order.

MR. KURTZ:

That's a fair objection. I can read the Order. What I basically did was read ordering paragraph No. 1 from that Order. We can get the actual Order.

Q. This would be Case 99-162, dated July 1, 1999. Let me just read you Finding No. 1 from Page 6 and just see if this comports with your general recollection. "The cooperatives have not allocated the proposed revenue reduction among and within their customer classes on a proportional basis. Their proposed rate reduction does not allocate any of the reduction to their large industrial or smelter class of customers," end of No. 1. You can see the Order. Is that generally your recollection?

A. Generally, yes.

Q. Okay. In Response to the Commission's Order holding that the streamlined statute was not complied with Kenergy, you had an option; didn't you, Mr. Stanley? You could have refiled under the streamlined case rules? You could have refiled under the streamlined rate reduction statute or you could have filed a general rate reduction, and you chose the latter, so we're in a general rate reduction?

A. I would agree.

Q. Okay. Do you recall that the Commission allowed the rate reduction for the residential customers to go into effect on one day suspension?
A. Correct.
Q. And that KIUC did not object to that?
A. That's correct.
Q. Okay. You also understand that the Commission's rate case regulations require a cost of service study but that you applied for and were granted a cost of service study waiver; is that right?
A. That's correct.
Q. In this general rate case, you have proposed the same allocation of the reduction as you had proposed in the streamlined case; isn't that right?
A. Yes.
Q. So it would be fair to say, wouldn't it, that your proposed allocation here, since it's the same as your streamlined allocation, does not allocate the proposed revenue reduction among and within customer classes on a proportional basis? Wouldn't that finding still be accurate?
A. I'm not sure I would agree with sort of the lead in that you've brought to, to this point in time. When we first filed under the KRS 278.455, it was our understanding that large industries could be excluded

under that scenario if they were special contracts, and I believe the Commission's Order did recognize that we did have special contracts for each of those customers. Two smelters certainly were included in that category, and then the other customers were likewise included in that category that could be excluded except for the fact the Commission's determination was that the rates under those agreements could be changed by order of the Commission. So, from that standpoint, then, when we refiled, we simply elected to keep the process moving that we had committed to our customers, and we filed under the general statutes, and we filed in much the same fashion as we did under the 278.455.

Q. Well, really, it was exactly the same proposed allocation; wasn't it?

A. Sure.

Q. And, if your original proposed allocation excluded the industrials and that was found to not allocate the proposed reduction on a proportional basis, wouldn't that same . . .

A. I don't believe these general guidelines, though, keep us from requesting that same kind of treatment of this customer group. I'm not sure I agree it's a class, but I would refer to it as a customer group.

Q. Right, and, in fact, in a general rate case, you can make any allocation or the Commission can order any allocation as long as it's reasonable? Isn't that your understanding of general ratemaking?

A. The Commission has that authority, in my view.

Q. Now, when the Commission authorized a waiver of its rate case regulation that requires a cost of service study, do you recall that the Commission reminded Kenergy that it still carries the burden of proof to justify its allocation?

A. I do.

Q. What's your proof to justify excluding the industrial class?

A. Well, I think our proof is essentially what it was in the original case and that is a 4 percent rate reduction across the board is simply one that Kenergy cannot afford as it applies to these large industrial customers. We simply don't earn that kind of markup from those customers. Our distribution adder would not cover a 4 percent reduction in the revenue.

Q. Now, do you understand that one of the proposals here is to take the same approximately $2.3 million reduction that you've agreed to and give the industrials a portion of that $2.3 million so that Kenergy's total rate reduction amount would be unchanged?

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A.   I do understand that that's a proposal proffered by KIUC in this proceeding.
MR. KURTZ:
Okay. Thank you, Mr. Stanley. Those are all of my questions.
CHAIRWOMAN HELTON:
Mr. Wuetcher?
MR. WUETCHER:
Thank you, Your Honor.

CROSS EXAMINATION

BY MR. WUETCHER:
Q.   Good morning, Mr. Stanley.
A.   Good morning.
Q.   I've just got a couple - a few questions for you.
A.   I'm sorry. Too anxious to get away.
Q.   Prior to their consolidation, did Green River Electric Corporation and Henderson-Union perform or commission any studies to determine the financial effects of their consolidation?
A.   No, we did not. That was an internal function.
Q.   I'm sorry. The utilities did perform some type of study; did they not?
A.   We did some financial forecasts . . .
Q.   Okay. Is it true . . .
A.   . . . and that was part of our consolidation study.

Q. Okay. Is it correct that that study showed that there was a potential for savings from the consolidation?
A. Yes.
Q. And is it correct that these savings would result from the efficiencies gained from the consolidation of Green River's and Henderson-Union's operations?
A. Yes.
Q. Okay. Is it correct that the proposed 4 percent rate reduction to all non-direct serve customers represents Kenergy's effort to forward some of these potential savings to its customers now rather than waiting for a consolidated general rate case proceeding where the issues of rate parity would be addressed?
A. That's correct.
MR. WUETCHER:
Thank you.
CHAIRWOMAN HELTON:
Mr. King?

REDIRECT EXAMINATION

BY MR. KING:
Q. Mr. Stanley, is Kenergy - or let me ask it this way. For the large industrial customers, what utility is responsible for assuring that they have generation, transmission, and distribution?
A. That's Kenergy's responsibility.

CONNIE SEWELL
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Q. Okay.
A. We are the retail provider.
Q. Okay. Kenergy does not actually generate; is that correct?
A. We do not.
Q. Kenergy does not actually transmit; is that correct?
A. We transmit across a distribution system. We do not own the bulk transmission and the subtransmission system.
Q. But Kenergy has that responsibility . . .
A. We have that responsibility.
Q. . . . as far as the large industrial customers are concerned?
A. We have the responsibility for the delivery.
Q. Concerning the reading of meters, preparation of bills that you were questioned about, whose responsibility is that?
A. Kenergy's.
Q. And how does Kenergy handle that?
A. We do it under agreement with Big Rivers.
Q. Is there a cost associated with that?
A. A cost to Kenergy?
Q. To Kenergy.
A. Only through the purchased power costs.
Q. Reflected in the wholesale power rates?

A. Yes.
Q. You were asked about the amount of the adder that the large industrial customers pay, and I believe your testimony was approximately $2.3 million annually; is that correct?
A. That's my recollection.
Q. Approximately what percent of the total distribution part does that represent?
A. Roughly 1 percent.
Q. One percent?
A. And I do that from the . . .
Q. Okay.
A. . . . net of roughly $24 million versus $2.3 million.
Q. All right. Now, that would be 10 percent, though; wouldn't it?
A. Ten percent.
Q. Ten percent, right?
A. I'm sorry.
Q. Ten percent, correct?
A. Let me get my decimal points in the right place.
Q. Okay.
A. I'm sorry.
Q. So your testimony on that would be 10 percent; correct?
A. Yes.
Q. How much of the energy distributed by Kenergy do the

large industrial customers consume percentage-wise approximately?

A. Ninety percent.

Q. So the consumption is 90 percent, but it's just 10 percent of the distribution part of the expenses; is that correct?

A. Roughly.

Q. You mentioned that the large industrial customer rates, in many instances, are negotiated rates. How does that come about?

A. Well, again, there's probably several different scenarios that I can give you as examples. During the bankruptcy proceedings and the rate proceedings before this Commission, the rates for the smelters and for Commonwealth and even others were, in essence, negotiated rates. There was a transaction here for the two smelters that negotiated. They have a fixed rate, and the distribution component was also recognized in that agreement. Kimberly Clark and others, by and large, those are negotiated rates. The distribution adder is negotiated in that setting as well.

Q. Looking at the smelter rates that evolved from the Big Rivers workout, was there any cost of service study applied to those rates?

A. I'm not aware of a cost of service study. There were some cost of service analyses, but I'm not sure that that was utilized in the ratemaking setting within those proceedings.

Q. Under the streamlined statute, 278.455, after the Commission's initial Order, could Kenergy have proceeded under that statute and requested the rate reduction that it is requesting?

A. Could we have?

Q. Could you have? Could Kenergy have?

A. Not in the fashion that we had in that case. As I said earlier, we could not afford a 4 percent rate reduction in total revenue. We simply don't earn that kind of money.

Q. There is, in the testimony, wording to the effect that the Board of Directors and Kenergy management reasoned that, in this case, the fair way to proceed was to ask for the rate reduction to the non-direct serve customers who had carried the brunt of increases in the past. Are you familiar with that testimony?

A. Yes.

Q. Would you expound on that, please?

A. Well, in fact, for most of the markup that Green River had, and I can speak more directly to that than I can the history at Henderson but I suspect it's pretty similar, throughout the years that we have served those large industries, on very few occasions have we adjusted the adder at all. However, on the other side of the equation, as it relates to residential and commercial customers, there have been rate proceedings where we've asked for rate increases to support Kenergy's operations, but we didn't ask the large industries to participate in that, and so our reasoning was that, in view of some of those kinds of circumstances, that it was fair, in this instance here, to pass the 4 percent rate reduction to those customer classes.

Q. Approximately how many flow through rate cases was Green River Electric involved in the latter part of the 1980s and the early part of the 1990s?

A. Oh, gosh, Mr. King, I don't know. That's . . .

Q. Three or four, something like that?

A. Probably.

Q. And, in any one of those cases, was there any increase in the adder of the large industrial customer?

A. I don't recall any. The one adjustment that was made was in the bankruptcy proceeding and that related to the National-Southwire adjustment and the Southwire rod and cable mill, and we've mentioned that in this testimony.

MR. KING:

Okay. Thank you.

MR. KURTZ:

I have a few more questions.

RECROSS EXAMINATION

BY MR. KURTZ:

Q. Mr. Stanley, if the adder to the industrials was too high to start with, there wouldn't be any reason to raise it further in any of the pass through cases that your counsel asked you about; would there be?

A. If it were too high, that's correct. If it were too low, I mean, that's a two-sided coin, it seems to me.

Q. Now, what I understand you to say in response to your counsel's question is that the direct served industrials pay $2.3 million a year, which is about 10 percent of the total distribution costs that Kenergy earns but that Kenergy has no investment in any direct distribution facilities to serve these transmission voltage customers.

A. I would not agree with that.

Q. Okay. Well, if they're transmission voltage customers, what investment do you have?

A. Let me describe it this way.

Q. Excuse me. Direct investment and you can talk about sort of a general allocation of office buildings, and whatnot, also.

A. But I do believe those are direct investments.

Q. Okay.

A. As I've said earlier, we do not own transmission. We own a distribution system, and a good many of these large industries are served directly off of that transmission. There's not any reason why Kenergy could not have owned transmission. We're not prohibited from owning it. It's simply an arrangement with our power supplier that we felt like brought a more efficient cost to the customer, and we've done it that way, but it is Kenergy's responsibility to serve those large industries. We do have buildings. This entire distribution system, these large industries are a part of. We can't go in and pick out costs for Mr. King, if he was one of our customers. We don't have a customer out there that we could identify each and every cost associated with that. Traditionally, through these cost of service studies, we allocate by class, but these are large customers. They're under special contracts, and, in my view, they are essentially - virtually each one of them are a class in and of themselves.

Q. Okay. Let me go back to my question, then. These custo system, and they pay Big Rivers a transmission charge for that service which the Commission sets?

A. They pay Kenergy a rate. Kenergy's rate then includes, to Big Rivers - our payment to Big Rivers includes the transmission charge.

Q. Yes, that's right. So we pay Big Rivers a charge - we pay you a charge which is a cost you incur for G&T from Big Rivers which is set by the Commission. Let me go back to my question. What direct investment do you have in the transmission facilities to serve these transmission voltage customers?

A. I have answered that. We do not own any transmission.

Q. So these customers pay 10 percent of your total distribution revenue. You don't have any transmission investment in facilities to serve them. Big Rivers does. Big Rivers reads the meter. Big Rivers prepares the bill which is then sent. So, if these adders were too high to start with, there certainly wouldn't be any reason to reduce them or to raise them further in any of these cases your counsel asked you about; would there?

A. Well, I don't think I want to agree that those are the only costs associated with those contracts. I think you know, I think the Commission knows, and I know that dealing with these large industries is a far different setting and it has a far different risk than being associated and serving residential customers. Our involvement in those proceedings, contractual proceedings, legal proceedings, you name it, is significantly different with these large industries than other customer classes. Surely you recognize that.

Q. Some of these large industrials pay you minimum bill charges? They have minimum contract demands in their contracts to help mitigate some of that exposure; isn't that right?

A. We have a few that might have a minimum provision in them.

Q. One last question. What is your total legal budget on average for the Kenergy Corporation? Does it approach $2.4 million a year?

A. It does not.

Q. What is it, about?

A. Mr. Kurtz, I don't recall that right off. Our legal cost in this situation may be at $150,000.

Q. So you . . .

A. In bankruptcy proceedings, as we were involved in the negotiation of agreements with the smelters, an entirely different amount.

Q. So, even . . .

A. It does vary from year to year.

MR. KURTZ:

Okay. I think that's enough. Thank you, Your Honor.

CHAIRWOMAN HELTON:

Mr. Wuetcher?

MR. WUETCHER:

I have just a couple more.

RECROSS EXAMINATION

BY MR. WUETCHER:

Q. Mr. Stanley, there has been mention made about the last rate proceeding that both Green River and Henderson-Union had involving the flow through of Big Rivers' rate adjustment. Since you were, I guess, President of Green River at the time, do you recall whether the industrial customers intervened in Green River's proceeding?

A. Mr. Wuetcher, I can't right off the bat, but I can't recall a time they haven't intervened in our proceedings.

Q. Well, let me phrase it this way, then. Do you recall any objection being made to the adder that - or the rates that Green River had proposed?

A. I do not.

MR. WUETCHER:

Okay. Thank you. That's all we have.

CHAIRWOMAN HELTON:

Thank you, Mr. Stanley.

A. Thank you.

CHAIRWOMAN HELTON:

Mr. King?

MR. KING:

Our next witness is Steve Thompson.

WITNESS SWORN

The witness, STEPHEN J. THOMPSON, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KING:

Q. State your name, please.

A. Stephen J. Thompson.

Q. What is your occupation?

A. I'm the Vice President of Finance and Accounting for Kenergy Corp.

Q. Business address being?

A. 6402 Old Corydon Road, Henderson, Kentucky.

Q. Mr. Thompson, has testimony been filed on your behalf in this proceeding, direct testimony?

A. Yes, it has.

Q. Are there any changes that you desire to make in that

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testimony today?
A. No.
Q. If those questions were asked of you today, the answers would be the same; is that correct?
A. Yes.
MR. KING:
Okay. I move that the testimony of Mr. Thompson be introduced in the record of this hearing.
CHAIRWOMAN HELTON:
So ordered.
MR. KING:
Pass the witness.
CHAIRWOMAN HELTON:
Mr. Kurtz?

CROSS EXAMINATION

BY MR. KURTZ:
Q. Good morning, Mr. Thompson.
A. Good morning.
Q. Your former position with Green River Electric was?
A. Supervisor of General Accounting.
Q. Okay. And your current position with Kenergy is?
A. Vice President of Finance and Accounting.
Q. Were you part of the management decision to allocate or propose to allocate none of this rate reduction to the large industrials?

A. Yes, I was.
Q. What was your role in that decision-making process?
A. My role was mainly, along with Mary Pinkston at Henderson-Union at the time, who was the, I think, Director of Finance there, we were asked by Mr. Stanley and Mr. West to prepare financial forecast scenarios that would assess the viability of the 4 percent reduction overall.
Q. Did you prepare a forecast that looked at a 3 percent reduction, a 4 percent reduction, and a 5 percent reduction?
A. No.
Q. Is that . . .
A. I only prepared the 4 percent reduction scenario.
Q. And it looked at what Kenergy's earnings, etc., would be if that 4 percent reduction went into place?
A. Yes.
Q. Now, when you ran that 4 percent scenario, you excluded the large industrials from the rate reduction in your model run; didn't you?
A. Correct. Yes, I did.
Q. So it was an assumption going in, of your analysis, that the large customers would be excluded from that rate reduction?
A. That was an assumption included in that particular

forecast run; yes.

Q. Did you do any analysis to justify, in the first instance, excluding the large industrials?

A. No, sir.

MR. KURTZ:

Thank you.

CHAIRWOMAN HELTON:

Mr. Wuetcher?

MR. WUETCHER:

No questions.

REDIRECT EXAMINATION

BY MR. KING:

Q. Mr. Thompson, were you looking for a way to pass a reduction, a rate reduction, to the large industrial customers in your work that Mr. Kurtz has asked you about?

A. My role mainly was to assess the overall financial viability of a 4 percent reduction for Kenergy.

Q. As far as Kenergy was concerned, who made the determination of what request would be made to the Commission and the manner in which a rate reduction would be requested?

A. It was a recommendation by management to the Board, which was approved by the Board.

Q. And so, pursuant to that, you did your work; correct?

A. Yes.

MR. KING:

All right. Thank you.

CHAIRWOMAN HELTON:

Questions, Gary? Commissioner Holmes? Thank you, Mr. Thompson. Mr. King?

MR. KING:

Mr. Gaines, Jack Gaines.

WITNESS SWORN

The witness, JACK GAINES, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KING:

Q. State your name, please.

A. Jack Gaines.

Q. What is your occupation?

A. Vice President of Southern Engineering Company, 1800 Peachtree Street, Atlanta, Georgia.

Q. Okay. So you have stated your business address. Mr. Gaines, have you filed direct testimony in this proceeding?

A. Yes, sir.

Q. And have you reviewed that testimony and are there any changes that you desire to bring to the attention of the Commission this morning?

A. Just a couple of typographical corrections.
Q. What's the first one, please?
A. Exhibit 8, Page 3 of 4, Line 5, the word "of" should be "by," so that that would read ". . . exceeds the annual gross margin by $751,000."
Q. All right, sir.
A. At the bottom of the same page, Line 43, the word "smaller" should be "smelter."
Q. Any others?
A. No, sir.
Q. Subject to those changes, if these questions were asked of you today, your answers would be the same; is that correct?
A. Yes, sir.
MR. KING:
I move that the testimony be introduced in the record of this hearing.
CHAIRWOMAN HELTON:
So ordered.
MR. KING:
Pass the witness.
CHAIRWOMAN HELTON:
Mr. Kurtz?
MR. KURTZ:
Thank you.

CROSS EXAMINATION

BY MR. KURTZ:

Q. Good morning, Mr. Gaines. You work for the Southern Engineering Company?

A. Yes.

Q. What does Southern Engineering do?

A. Southern Engineering is a full service consulting firm primarily for electric cooperatives, also municipal utility systems.

Q. Okay. Does Southern Engineering ever do cost of service studies for its clients?

A. Yes.

Q. How many cost of service studies has Southern Engineering performed, say, in the last five years, approximately?

A. Numerous. I don't - 100 maybe.

Q. What purpose is generally made of those cost of service studies that Southern Engineering performs?

A. Used as a guideline for apportioning revenues among and within customer classes.

Q. Approximately how much does it cost to get a cost of service study done by Southern Engineering?

A. Oh, $15,000 to $20,000.

Q. Now, you understand Kenergy is one of the largest electric distribution cooperatives in the country;

don't you?

A. Relatively speaking, they are a large cooperative; yes.

Q. In your opinion, would spending $15,000 to $20,000 on a cost of service study for a rate reduction case of $2.3 million annually be an excessive cost?

A. That's a pretty far-reaching question. I think it depends on a variety of circumstances.

Q. Did you propose to do a cost of service study for Kenergy in this case?

A. No.

Q. Did they ask you how much it would cost? Did they inquire to you about you performing a cost of service study?

A. They have inquired about performing a cost of service study going forward with respect to aligning and merging the rates as a result of the consolidation, but specifically for this case they did not.

Q. May I ask you to look at your rebuttal testimony, please? On Page 1, Line 20, you state that - do you have it, Mr. Gaines?

A. Yes.

Q. Okay. You state that, "In reaching its past decisions, the Commission has recognized Kenergy's assertions that there are unquantified, administrative costs associated with service to the direct served loads," and then you go on to state that such costs vary and include legal and consulting fees as well as costs associated with staff and management time; is that accurate?

A. Yes.

Q. Okay. What proportion of this $2.3 million proposed rate reduction is made up of unquantified administrative costs; do you know?

A. No.

Q. If these unquantified administrative costs include legal and consulting fees as well as associated staff and management time, do you know what Kenergy's total legal and consulting fees on an average annual basis amount to?

A. No.

Q. Would they be less than $2.3 million a year?

A. I don't know, but I think Mr. Stanley testified in that regard a moment ago.

Q. On Line 28 of Page 1, you say, "Furthermore, there is no evidence to indicate that such costs are directly impacted by the consolidation." When you say "such costs," do you mean the unquantified administrative costs, which include legal and consulting and staff and management time?

A. Yes.

Q. Okay. Would you agree that, as a result of this merger, one of the General Manager positions will be eliminated?

A. Yes.

Q. So wouldn't the consolidation impact that aspect of staff and management time? In other words, if the adders include legal and consulting and staff and management time and the merger will result in one General Manager position being eliminated, wouldn't that mean that part of the merger will reduce the costs behind the adders, at least to that extent?

A. All other things being equal, the reduction of one Manager could have that effect, but, by the same token, it could possibly result in the Manager that remains having to spend more time than he otherwise would.

Q. But, in any event, there will be one General Manager looking into all of these 21 direct served customer issues rather than two General Managers dividing it up?

A. Yes, but conceivably his time devoted to these customers would be doubled.

Q. Now, as a result of the merger, won't there be one less Chief Financial Officer for the remaining co-op? There were two but now there will be one.

A. I'm not sure, but I would suspect that's the case.

Q. Isn't one of the goals to reduce the number of Board of

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Director members over time?
A. I don't know the answer to that.
Q. Do you know any other staff and management positions that will be eliminated as a result of the consolidation?
A. Not specifically, no.
Q. Okay. Now, you say there's no evidence to indicate that such costs, and we've talked about those, are directly impacted by the consolidation. What evidence has Kenergy produced that such costs will not be directly impacted by the consolidation?
A. There has not been any specific evidence generated other than the representations that these costs exist. They will continue to exist, and the amount of time that's devoted to dealing with these customers will continue to be required on a going-forward basis, . . .
Q. But there . . .
A. . . . but there has been no quantified evidence or analytical evidence provided to demonstrate that.
Q. No quantified or analytical evidence?
A. Yes.
MR. KURTZ:
Okay. Thank you, Your Honor. Those are all my questions.

CHAIRWOMAN HELTON:

Mr. Wuetcher?

MR. WUETCHER:

Thank you, Your Honor.

CROSS EXAMINATION

BY MR. WUETCHER:

Q. Good morning, Mr. Gaines.

A. Good morning.

Q. Is it a correct reading of your testimony that the 4 percent rate reduction should not be applied to direct served customers because (1) the manner in which the prior flow throughs of Big Rivers' power costs were assigned among customer groups, and (2) the fact that the adders of the direct served customers were subject to contract negotiations?

A. I take it you're reading from my testimony.

Q. Well, I'm just trying to summarize it.

A. Okay.

Q. Would that be a correct summary?

A. Now, what was the first one, again?

Q. The first one was the manner in which prior flow throughs of Big Rivers' power costs were assigned among customer groups, and the second was the fact that the adders of the direct served customers were the subject of contract negotiations.

A. I think the second one is accurate, but I don't think the first one is exactly accurate. Reading from Page 3 of Exhibit 8, Line 11, I think it cites basically the reason you're referring to, but it says, "Green River increased rates, beyond that necessary to flow through power cost, to its regular tariff classes, and primarily its single-phase class, as part of the three rate cases prior to Case No. 97-219," and I think my point is it's not so much looking back at the prior flow through cases; it's looking back at all the cases that were not flow throughs . . .

Q. Okay.

A. . . . and reviewing how those increases were applied.

Q. Okay. Would you agree with the statement that the 4 percent rate reduction reflects a decision by Kenergy's management to begin passing through to its customers now some of the potential savings that should result from the consolidation of Green River and Henderson-Union?

A. Yes.

Q. Would you agree that the adder to the direct served customers' bills reflects Kenergy's operating costs associated with serving those customers?

A. Ask that question again.

Q. Would you agree that the adder to the direct served

customers' bills reflects Kenergy's operating costs associated with serving those customers?
A. It includes those costs.
Q. Okay. Would you agree that direct served customers are members of Kenergy?
A. Yes.
Q. Would you agree with the following statement: "To the extent possible, all members of Kenergy should share in any savings resulting from the consolidation of the operations of Green River and Henderson-Union"?
A. Say again.
Q. Would you agree with the following statement: "To the extent possible, all members of Kenergy should share in any savings resulting from the consolidation of the operations of Green River and Henderson-Union"?
A. To the extent possible.
Q. How is the past assignment of Big Rivers' power cost relevant to whether direct serve customers who are members of Kenergy should receive a portion of the savings and operation expenses resulting from the consolidation?
A. I don't think that I've testified that it is relevant.
MR. WUETCHER:
Okay. That's all. Thank you.

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CHAIRWOMAN HELTON:

Mr. King?

REDIRECT EXAMINATION

BY MR. KING:

Q. Mr. Gaines, regarding the question that Mr. Wuetcher just asked you about, do you agree that all members should share in the savings, as far as what we're talking about there today, what is Kenergy's position as far as whether the large industrial customers should share proportionately in this 4 percent rate reduction?

A. The position is they should not.

Q. Okay. So, to the extent that that is set forth in our application, that would be reflected in your answer; would it now?

A. That's correct.

Q. All right. Now, in going forward, though, assuming that these savings that are being projected, assuming those savings are, in fact, realized, won't all members of Kenergy benefit in the future? For instance, isn't the likelihood of a rate increase lessened by these savings?

A. Certainly.

Q. So, although the large industrial customers are not included in today's proposal, there is a universal benefit here across the board; would you agree with that?

A. Well, to the extent the cooperative is strengthened, then all members will benefit, so yes.

Q. You were asked by Mr. Wuetcher about whether the adders for the large industrial customers reflect the appropriate costs, and I believe your answer was they include the appropriate costs; correct?

A. Yes.

Q. In your opinion, based on - well, let me ask you this; for Green River Electric, how long have you done rate analysis work?

A. Since the seventies.

Q. Since the seventies?

A. Yes, sir.

Q. And for Henderson-Union?

A. This last go-around was my first time for Henderson-Union.

Q. Okay. Based on your prior involvements and based on your involvement in this case, do you have an opinion as to whether the adders for the large industrial customers are fair?

A. I think generally, overall, the adders applied on the Green River side of the ledger are fair, just, and reasonable. I think that, taken in light of comparable adders, that other systems charge under similar

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circumstances, that the adders are not excessive. There are other instances, other examples, of cooperatives who serve customers for whom they don't construct, build, or own any direct distribution facilities. In other words, this is somewhat unique on a national basis, but it's not unheard of. In many cases in which the rates are not regulated by the State Commission yet agreed-to adders are negotiated and accepted and agreed to and ranging anywhere from 1 to 5 percent of power cost, it's not uncommon, and I think, in this case, the adders for the smelters are about four-tenths of a percent of revenue. The adders for - for instance, the three-tenths of a mill adder that that applies to is about a percent of power cost, and I think the adder for Kimberly Clark is about 2 percent of power cost. So taken in the context of magnitude and taken in the context of relative to what other cooperatives do in unique but similar circumstances, I think that the adders are certainly reasonable. If there is an area where the adders are relatively high, it would be for the old Henderson-Union customers, and, as I've testified, there was a substantial step taken in the last Henderson-Union case to try and rectify the differential that exists there with a substantial shifting of dollars to the tune of an additional 4 percent decrease to that group which resulted in a shifting of dollars over to the residential class of Henderson-Union.

Q. How much was that amount that was shifted?

A. The dollar amount was $488,000. It was 4 percent of the direct served revenue from the Henderson-Union group. I don't recall what the percentage impact was on the Henderson-Union rural customers.

Q. As a result of that, what reduction did the non-direct served customers receive percentage-wise in comparison to the large industrial customers as far as Henderson-Union was concerned?

A. I don't recall the differential, but it was a greater percentage reduction . . .

Q. It was greater? The 6 percent . . .

A. . . . over and above the power cost due to an additional 4 percent taken off for shifting of the distribution adder away from the industrials to the residentials.

Q. So this was an amount that was not enjoyed or realized by the non-direct served customers, because it was shifted over to the industrial customers and increased the decrease of their rates; correct?

A. Yes.

Q. In your testimony, you mentioned unquantifiable costs

that Kenergy has. Is risk an element?
A. Yes, it is.
Q. And what do you mean by that?
A. Well, primarily, it would be the risk of nonpayment.
Q. And I guess, the larger the bill, the bigger the risk?
A. That would be true.
Q. In your prepared direct testimony, Exhibit 8, Page 4 of 4, did you address, in Question 15, the reasons that you felt that a cost of service study was not indicated at this time?
A. Yes.
Q. I draw your attention to your fourth point: ". . . Kenergy is planning to prepare a consolidated cost of service study to support further rate consolidation after it has accumulated at least twelve months of consolidated history." As far as the consolidation of Kenergy, that became effective when; July 1 of last year?
A. Yes. I think I was told that June of this year would be the cutoff for a 12 month history.
Q. So, then, after July 1 of 2000, this would become applicable as far as you understand?
A. Yes.
VICE CHAIRMAN HOLMES:
I have just a follow-up to that because I did have

a question on that point. Will Southern Engineering be doing that cost of service study or have you started preparing for that cost of service study for 12 months?

A. Is that for me to answer?

MR. KING:

Yeah, he hopes so.

MR. STANLEY:

If it's appropriate for me to respond, Dean Stanley, it would be our intent, at this point in time, to utilize Southern. They are familiar with Green River's system in view of having performed previous cost of service studies. They most recently did one for Henderson. So our view, at this point, is that we will utilize Southern, and we've initiated just the very preliminaries of that process and expect to fully get underway probably about midyear.

MR. KING:

Okay. That's all I have for Mr. Gaines.

CHAIRWOMAN HELTON:

Recross?

MR. KURTZ:

Yeah, just a few.

RECROSS EXAMINATION

BY MR. KURTZ:

Q. Mr. Gaines, in this forthcoming or upcoming cost of service study, that could very well come after a decision in this rate case; couldn't it?

A. Yes, it could.

Q. How would that help the large industrial customers in terms of setting rates in this case? The rates will be set, won't they, and then we'll get a cost of . . .

A. It would not affect the rates in this case.

Q. Now, you testified that, in your opinion, the adders are fair, and you did not base that opinion upon any cost of service evidence; did you?

A. No specific cost of service evidence, that's right.

Q. And you base that based upon your comparison of adders which are applied in other states to similar customers?

A. That would be one basis; yes.

Q. I didn't catch any others. What was your other basis? I thought you were just comparing general nationwide trends for adder costs.

A. Well, the fact that there are costs associated with providing the service and the fact that the Commission has deemed these adders to be fair, just, and reasonable in past cases based upon similar evidence or lack thereof, as the case may be.

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Q. Now, you're generally familiar that electric rates in Kentucky are substantially below national average; aren't you?
A. Yes.
Q. You're not suggesting it would be a reasonable way to set rates in Kentucky to look at what the costs are for the cooperatives in Alabama or New York or anywhere else and set fair, just, and reasonable rates based upon what those cooperatives charge; would you?
A. I think comparison is always a valid tool in evaluating rate levels. If the Commission were to adopt that, wouldn't the rates in Kentucky go up?
A. I didn't say it was the only thing to consider. I think it is a fair tool in evaluating rates.
Q. If you're below the average cost and you look at other people to set your rates, wouldn't the rates in Kentucky go up under that scenario?
A. If that's the only thing you considered, it would; yes.
Q. Now, you could have done an analysis to determine whether the adders were fair, just, and reasonable by performing a cost of service study if Kenergy had been willing to pay this $15,000 to $20,000 for this rate case; isn't that right?
A. Perhaps, but the thing that you would run into if you did do a "cost of service study," which would

essentially entail a time study to determine how much time was - look at history and see what the legal fees and all the costs were that were associated with serving these customers were, what you would find is that you would have a level of expense that is whatever it is, and then everything else would fall into the margin category, and then it would become the responsibility of the co-op to propose what that margin level should be, and then the Commission to decide whether the margin level proposed is reasonable. The problem is that, for loads like this, there is not a traditional tool, that being, say, a relative rate of return on rate base that a co-op can use to establish what that margin level should be. So therefore you, inevitably, even when you get into a cost of service, you, inevitably, come down to a somewhat subjective determination of how much margin should loads of the magnitude of these loads, how much margin should they contribute, and, by the way, all of that margin is assignable to the capital accounts of these customers over time and any margin contributed does get returned.

Q. Now, you've testified that, over the last five years, Southern has done approximately 100 cost of service studies and . . .

A. That was a wild guess. A lot of them.

Q. A lot. You testified that, over the past several years, five years, Southern Engineering has done a lot of cost of service studies. Now, whatever the short-comings may be of those cost of service studies, they still are a valuable decision-making tool, are they not, for setting rates?

A. Yes. Yes.

MR. KURTZ:

Tank you.

CHAIRWOMAN HELTON:

Mr. Wuetcher?

EXAMINATION

BY COMMISSIONER GILLIS:

Q. Let me just follow up with one question on that. In preparing a cost of service study, isn't it possible that some classes would go up perhaps and some would go down in the final analysis of your decisions?

A. Well, in preparing a cost of service study, what you would typically find is that some classes are not returning as high a margin or return as other classes. Then, in the ratemaking process, taking in a variety of factors, including customer impact, you would then make decisions as to how to reapportion revenues using the cost of service as a guideline which that then could result in some classes' rates going up while others go down.

Q. Okay. But, if you did things across the board, for instance, a 4 percent adder across the board, you would have some classes that would naturally move upward and some would move down so that you achieve parity?

A. I think that, if I understand your question, an across the board 4 percent generally would not serve to reduce rate disparity or rate inequities, because, if you're not equitable at the current level, 4 percent across the board would lower the entire bar but would lower each class given that 4 percent proportionately, and therefore that would somewhat maintain whatever inequities existed at the time to the extent they're there.

COMMISSIONER GILLIS:

Okay.

MR. WUETCHER:

No questions.

CHAIRWOMAN HELTON:

Thank you, Mr. Gaines. Do you want to take a break? Let's take a ten minute break.

OFF THE RECORD

CHAIRWOMAN HELTON:

Mr. Kurtz?

MR. KURTZ:

I think Mr. King wants to put Mr. Stanley back on for a moment.

CHAIRWOMAN HELTON:

Okay.

MR. KING:

Yes, ma'am. There's one item of testimony that he would like to correct, if we could have leave to do that, please.

CHAIRWOMAN HELTON:

Sure.

The witness, DEAN STANLEY, after having been previously duly sworn, testified further as follows:

REDIRECT EXAMINATION

BY MR. KING:

Q. Mr. Stanley, regarding your testimony about preparation of the bills by Big Rivers and the in-house preparation by Kenergy, is there a correction that you want to make in your testimony?

A. Yes, there is. Mr. Thompson, who deals with this on a regular basis, reminded me that, of the 21 large industries that we were talking about and Mr. Kurtz asked me if those bills were prepared by Big Rivers, I had indicated that all 21 - or 14 of those Mr. Thompson reminds me are prepared in house by Kenergy. So there is some prepared in house and some prepared through the computer process at Big Rivers and that's the correction I would like to make.

MR. KING:

Okay. That's it. Thank you.

CHAIRWOMAN HELTON:

Mr. Kurtz?

MR. KURTZ:

We call Mr. Klepper.

WITNESS SWORN

CHAIRWOMAN HELTON:

Mr. Kurtz?

MR. KURTZ:

Thank you.

The witness, RUSSELL L. KLEPPER, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KURTZ:

Q. Mr. Klepper, do you have in front of you a document marked "Direct Testimony and Exhibits of Russell L. Klepper"?

A. Yes.

Q. Was this document prepared by you or under your supervision?

A. Yes.

Q. If I were to ask you the same questions that are contained herein, would your answers be the same?
A. Yes.
Q. Do you have any corrections or additions you would like to make?
A. May I make a couple to the Data Responses?
Q. Oh!
A. There were just a couple of typos. On KIUC's Response to Item 3 of the Commission's Request, at Page 6, in the third paragraph, six lines down, the number that says "105.53 percent" should be "10.53 percent." So it would read, "For a weighted average decrease in total power costs of 10.53 percent." Then, in KIUC's Response to the Commission's Request for Information, Item 5, the very last word on the page is "Alcan" and it should say "Commonwealth."
Q. Are those all the changes you have for your testimony or Data Responses?
A. They are.

MR. KURTZ:

Your Honor, I ask that Mr. Klepper's testimony be admitted subject to cross.

CHAIRWOMAN HELTON:

So ordered. Mr. King?

MR. KING:

Thank you, ma'am.

CROSS EXAMINATION

BY MR. KING:

Q. Good morning, Mr. Klepper.

A. Good morning, Mr. King.

Q. Let me call your attention to your testimony, Page 11, starting at Line 22. That is a direct quote from the Electric Service Agreement between what is now Kenergy and each of the smelters; is that correct, sir?

A. Actually, it's a direct quote from the tariff part, the Appendix X, and then it's repeated again in substantially the same words within the body of the agreement, but this quote is exactly as it appears in the tariff.

Q. As the tariff? Okay. And the tariff, I believe, incorporated by reference the provisions of Schedule A; correct?

A. It's the Appendix A to the Agreement for Electric Service.

Q. Okay. And this does say, does it not, starting on the third line, ". . . provided that after December 31, 2000, the fee shall be subject to change by order of the Kentucky Public Service Commission upon application by either or both of . . ." and it would be Kenergy and

smelter. That is correct; is that right?
A. That's exactly what it says.
Q. Now, is it the thrust of your testimony, though, that you take the position that the Commission can make an earlier Order to be effective on and after January 1, 2001?
A. Well, I want to say it's not the entire thrust of my testimony. It's the thrust on this point that they can make a decision that would change the distribution fee paid by a smelter and that that change would not become effective until January 1, 2001.
Q. Okay. So then you disagree that this says that the application must be filed after December 31, 2000?
A. Yes.
Q. You disagree with that?
A. The plain English says that the fee may be subject to change after December 31, and the qualifier is upon application of either or both, but it doesn't say when the application needs to be made. It just says when the fee is subject to change.
Q. So, in order to clarify that, Kenergy asked questions about background information and about intent, and you provided some information on that; did you not?
A. I did.
Q. And you talked about the fact that there was a meeting

in Washington, I think, or a meeting in Washington where this was discussed, and your information on that is included in the KIUC Response to Kenergy's Request for Information; correct, sir?

A. That's correct.

Q. And then is it further correct that, in Mr. Stanley's rebuttal testimony, he addresses that same point; correct?

A. Yes. Yes.

Q. And that you and Mr. Stanley have different recollections about the background and about the intent of what this language means; would you agree with that?

A. Well, I don't know what Mr. Stanley's recollection is.

Q. Well, it's set forth in his rebuttal testimony; is it not?

A. Well, I will say that his testimony on the point differs from mine.

Q. That's the point I'm developing; that you all have a difference of recollection about the background that occurred at the time . . .

A. Yes, but . . .

Q. . . . that this was being discussed and at the time that this language was agreed upon for inclusion in the agreement?

A. Yes, but I believe I explained, in my expansive answer that you requested, the reason that I'm so certain that my recollection is the correct one, because it followed the fact that this sitting Commission was unhappy with - when it issued its Order of April 30, that it specifically said that the smelters may not direct the - and they cited the law, that they didn't believe that it was within the law for the smelters to direct their own purchase of Tier 3. So Mr. Stanley came and said, "It's possible that I can incur costs," and so he wanted to have a mechanism that, at the same time that there would be essentially market access Tier 3, he would have the ability to collect it. So it was clearly his intent, at the time that we discussed that, sitting on the 18th floor in Dewey Ballantine's office, that he wanted a mechanism so that, as soon as Tier 3 market power became available, which is 1-1-01, that he would have an ability to collect associated costs that he had incurred. So, I mean, I don't see how there can be any question that it was our intent that a new rate could become effective 1-1-01.

Q. Okay. All right. Now, would you agree that, as far as the expense to Kenergy and the time that Kenergy is going to have to spend in contracting for Tier 3 power is an unknown at this time?

A. Yes, I would agree it's unknown.

Q. And the only way that we're going to find that out is through a period of experience after January 1, 2001?
A. Well, I wouldn't agree with that, because, in fact, I don't think it would be a secret that I can't reveal that I've been working with Mr. Stanley on a regular basis right now trying to acquire a small amount of Tier 3 power for Southwire so it will have full power for its potlines effective as of January 1, 2001, and so, in fact, we're having some experience right now with working through the issue, and then so we won't have to wait until 2001 to know.
Q. Okay. Let me call your attention to KIUC's Response to Kenergy's Request for Information, Item 12, Page 18.
A. If you would give me a second, please.
Q. Do you have that?
A. I'm sorry. Mr. Kinloch, would you give me the - you want the Response to Kenergy's Request for Information?
Q. Yeah, do you have it in front of you?
A. Well, I missed the number. I was . . .
Q. Okay. It is KIUC's Response to Kenergy's Request for Information.
A. Yes, and what item number?
Q. Page 18, Item 12.
A. Yes, sir, thank you.
Q. Okay. The (b) part of the question, "Does KIUC agree

that, for Tier 3 service for the smelters after December 31, 2000, Kenergy will incur additional expense and have added financial exposure and risk? If the answer is in the negative, please explain fully." Do you agree that that is the question stated there?

A. Yes.

Q. Response, first paragraph, "Kenergy will incur additional expense in an unspecified amount in order to provide Tier 3 service to the smelters after December 31, 2000, but the amount of that additional expense cannot be determined at this time or even estimated with any degree of accuracy." Do you agree that I properly read what was stated there?

A. Yes.

Q. That being true, doesn't it make sense that the intent here was that we would have to go through a trial period to see what the expense is going to have to be, to see what the time consumption is going to be that's going to be required, before application could be made to the Commission for a meaningful Order on this?

A. I don't think so.

Q. How can the Commission, based on what information it has today, make any sort of an adjustment in the adder when these are pertinent items that need to be addressed?

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A. Well, there's an underlying assumption in what you say, that the costs of performing that function need to be included in the adder. I don't necessarily agree that that's so. Just as the smelter has done - let's talk about the Southwire situation. Southwire, with this Commission's approval already, has entered into a two year contract and a five year contract for 107 megawatts of power. Kenergy will incur no incremental expense with respect to those two contracts. If Southwire were then to enter into a ten year contract, Kenergy would incur a one time expense perhaps to facilitate that, but, after that, they would have no administrative expense with respect to that item. There's an underlying assumption in your question that that cost must be included in the adder, and I'll say, quite frankly, that I believe that a cleaner, fair way to handle that expense increment would be to treat it like a reimbursable project expense.

Q. But, there, you're getting into the pluses and minuses of what should be considered as far as an adjustment of the adder, if anything, and I'm talking about the fact, as far as timing is concerned, how can any meaningful Order be entered when these important elements are inexperienced at this time?

A. Well, it's like any other utility expense. You may sometimes know that a new cost will occur at some point in time and you change the rates at that point in time in contemplation of the future costs, but you can't say, "Oh, I will incur costs in 2002, so I just can't change the rates. I can't do anything because I don't know what the level of that expense is going to be down the road." You deal with it as it crops up.

Q. Okay. All right, sir. So, then we will move away from the smelters. Let me direct you now, if I could, please, to Page 10 of your testimony. Do you have that?

A. Yes, sir.

Q. Okay. You are saying, and I start with Line 1, "In the absence of any evidence that shows that the merger savings will affect only those costs incurred for the benefit of the non-direct serve customers of Kenergy, it must be assumed that the merger savings will arise from cost reductions that are realized across all components of Kenergy's distribution costs." So you are making that assumption in your testimony, are you not, "it must be assumed"?

A. Yes.

Q. Okay. And, when you talk about the distribution costs, I believe that you itemize four categories in your testimony or perhaps in your Response to Request for

Information, Item 6, Page 7, you itemize what you meant by the distribution costs; did you not? Item 6, Page 7, do you have that?
A. Yes.
Q. "Kenergy incurs and collects through retail electric service rates four basic types of expenses as discussed below," and then you have them categorized into four parts?
A. Yes, and there's a difference when I say "distribution costs." Distribution cost is inclusive of the last three groups. It's everything except the wholesale cost of purchased power.
Q. Although that is a cost that is incurred by Kenergy and passed on to the ultimate consumer; correct?
A. Yes.
Q. Okay. All right. So, when you talk about distribution costs in this part of your testimony, you're referring to these costs?
A. The wholesale cost of purchased power not changing as a result of the merger.
Q. Okay. All right. Then you come to the conclusion - and I'm going back and forth. Now, I'm back to your testimony, . . .
A. Okay.
Q. . . . and I have to do this in order to explain what

you're talking about here.
A. Sure.
Q. Then you come to the conclusion, the way I read it, "Therefore, the appropriate allocation of merger savings among customers would be an equal percentage decrease in the distribution component of the rates of every customer class." That's your conclusion?
A. Yes.
Q. Correct?
A. Yes.
Q. Let me call your attention to, for instance, under distribution, operation, and maintenance costs, and this, again, is back to KIUC's Response to Kenergy's Request for Information, the second category of cost you have distribution, operation, and maintenance costs, and do you agree that Kenergy incurs no cost whatsoever for distribution, operation, and maintenance that are allocable to direct served customers?
A. Yes.
Q. I mean, you make that statement. That's your position; correct?
A. It is my position.
Q. Okay. But, yet, the savings are coming from that part of the distribution component; would you agree with that?

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A. Yes.

Q. Okay. So, if the large industrial customers do not participate in this component and the savings are coming from this component, how can you justify a proportionate decrease in the rates for the large industrial customers?

A. Because the costs - as I testified just a moment ago, there's a difference between distribution, operation, and maintenance costs as I stated in No. 2 of Item 6 of my Data Response and distribution costs in the aggregate that I refer to on Page 10 of my testimony. The difference is Kenergy will have cost reductions across the three types of expenses that it incurs. It will have - it should have economies of scale. I mean, that's why you merge, is to gain efficiencies through merger and scale economies. So they should have reductions in the cost of distribution, operations, and maintenance, and they should have reductions in the cost of customer accounting, and they should have reductions in A&G, and the direct served customers only pay - as you've cross examined or reexamined Mr. Stanley on, the distribution customers only pay about 10 percent of the total distribution related revenues of Kenergy because they don't cause distribution costs or customer accounting costs in the same way. So they are a much smaller fraction of the total cost. They only are responsible for an appropriate share of the administrative and general costs, but, if the administrative and general costs go down, like all other components of cost, then they should get a benefit. So they would get, in dollar terms, a much smaller benefit, but it would be proportional to the amount of the distribution fees.

Q. I understand what you're saying, but I think that you're getting away from my question. Let's go to Page 3 of your testimony. Do you have that?

A. Yes.

Q. All right. Let's see. Line 17, "Accordingly, my testimony provides analytical support for an alternative rate reduction to all Kenergy customers (including the direct served industrial customers) in the amount of 9.52% of the distribution component included in the rates of each customer class." Now, that's your statement and that is a position that you're taking in this proceeding; is that correct, sir?

A. It is.

Q. All right. The line of questions that I am on right now, and perhaps I need to maybe back up and reload and come again, I'm talking simply about your position that the large industrial customers are entitled to a proportionate rate reduction. That's all I'm talking about. The point that I want to develop with you is this; that, if the large industrial customers do not participate in, for instance, distribution, operations, and maintenance costs, as you have said, they do not, and, if a portion of the savings comes from that, then how can you conclude that they would be entitled to a proportionate reduction?

A. Because you have produced no evidence, even in response to our Request, as to where the merger savings will occur.

Q. We have produced no evidence, but I'm talking about your . . . .

MR. KURTZ:

I . . .

MR. KING:

Excuse me.

MR. KURTZ:

I will object here. I don't think the witness was done answering the question.

MR. KING:

You think what, now?

MR. KURTZ:

I don't think he was finished answering, and you immediately jumped in with another question.

MR. KING:

Excuse me.

MR. KURTZ:

I'm sorry. Were you . . .

CHAIRWOMAN HELTON:

You're accustomed to that, aren't you, Mr. Kurtz?

MR. KURTZ:

Well, . . .

MR. KING:

Yeah.

Q. Were you . . .

CHAIRWOMAN HELTON:

Would you finish your answer, please, Mr. Klepper?

Q. Was there something else you wanted to say?

A. What I was saying is that I recognize that there are three components of costs over which Kenergy has control. Only one of those three components is properly allocable to the direct served customers in my view, and the direct served customers are only entitled to a reduction in their costs with respect to that one of the three components, but Kenergy has produced no evidence as to whether all of the savings will be distribution, operations, and maintenance savings or whether it will all be customer accounting savings or whether it will all be A&G savings.

Q. Okay. So Kenergy has produced no proof, and I understand your position on that. So you're making an assumption, and my question is intended to be a follow-up to your assumption. Let's assume or let's go with your assumption that the savings are realized across the board for these costs right here, distribution, operations, and maintenance costs, customer accounting costs, administrative and general, A&G costs. Let's assume - I mean, for the purposes of my question, I'm going along with your assumption that the savings are proportionate across the board with these three categories of expenses; okay?
A. Okay.
Q. My next question is this; that, if the large industrial customers, the direct served customers, do not participate in one of these categories at all, how can you then conclude that they should be entitled to a proportionate reduction?
A. Because . . .
Q. This savings right here does not . . .
A. May I answer?
Q. . . . apply to them.
A. You asked the question, and you started arguing before I even . . .
Q. Well, I'm sorry.

A. . . . answered the question.

Q. I'm sorry, Mr. Klepper; excuse me. Go right ahead.

A. The reason is, because, in the first instance, if they don't participate in that cost, then the rates don't reflect that cost, and the best example is the direct served customers clearly pay a lower distribution component than a non-direct serve customer. Their cost per unit is lower because they do not include - within their basic rate that exists today, they don't have a component for distribution, operations, and maintenance. So, if all components of cost, if there's $25 million of cost and there's $2.5 million of cost reductions, it is possible that only 10 percent of that cost reduction will occur in the A&G category, and then the direct served customers are entitled to their appropriate percentage of just the A&G category, but the rates, presumably, are already proportional among those three categories reflecting the costs that they incur in each of those three categories.

Q. True.

A. So, if the rates are already proportional and then we have proportional decreases in each of the three categories, then all of the customers whose rates reflect the costs that are incurred in those categories should all be entitled to proportional decreases.

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Q. Even if the large industrial customers do not participate in one of these categories of expenses that the savings are being realized from? Again, I'm just talking . . .
A. Yes.
Q. . . . about your conclusion that . . .
A. Okay,
Q. . . . the proportionate reduction is something for the Commission to consider here.
A. Well, let me use a numerical example so that we can be clear. Suppose, and this is probably pretty close to correct, that 50 percent of the $25 million in costs is distribution, operations, and maintenance related, and suppose that 30 percent is customer accounting related and 20 percent is administrative and general.
Q. All right, sir.
A. All right. So the costs that are already paid by the direct served customers are probably 80 percent of the A&G costs, and let's just assume that this is the way that the rates are made so that they've got $25 million of costs, and, if 20 percent of those costs are A&G costs, then we have $5 million of A&G out of the $25 million, and, because they paid $2.3 million - so that I can do it in my head, let's say that 50 percent of the A&G costs are the costs that are allocable to the

direct served customers. So the direct served customers pay around $2.5 million in distribution fees. Well, when that whole $25 million gets reduced by 10 percent, then that $2.5 million component that is the A&G component that is chargeable to direct served customers gets reduced by 10 percent and that is the portion that they're entitled to. They're not entitled to any of the reduction in customer accounting. They're not entitled to any of the reduction in distribution operations. They're only entitled to their proportion, but they're not paying 10 percent of the A&G costs. They might be paying 50 percent of the A&G costs and zero percent of the other two categories.

Q. Well, again, I'm just talking about your hypothesis here and your conclusion, and I don't think I'm going to belabor that any more, but I will leave that to the Commission on your testimony and this information right here. Let's move now to Commonwealth and Kimberly Clark. You will agree that these are - well, Commonwealth, there's not even a written contract in existence as far as Commonwealth is concerned; is that correct? Is that your understanding?

A. At least, unless they recently entered into one, I'm not aware of one.

Q. Right. So we could say maybe there's an oral contract, maybe an implied contract, but actually there's no written document?

A. I don't think that there's a contract at all. I think that they're served under tariff.

Q. Okay. All right. They have adders that they pay, both of these companies; correct?

A. Yes.

Q. Negotiated adders?

A. I'm not sure whether you would call it negotiated. As far as I know, I don't know and I have no knowledge of any negotiations between Green River Electric and either of those companies that produce that adder.

Q. Agreed upon adders that, at one time, . . .

A. At one time, they were agreed upon.

Q. Agreed upon, . . .

A. Pursuant to contract.

Q. . . . pursuant to a written contract, contract submitted to the Kentucky Public Service Commission and accepted and/or approved by the Commission; correct?

A. Certainly, I'll agree to that.

Q. All right, sir. Now, are you aware that with neither of these large industrial customers is there any security deposit?

A. I was not aware. I don't know whether they've tendered any other kind of credit in lieu of a security deposit either.

Q. Okay. There being no security deposit, subject to your check on that and accepting my word on that, would you agree that there's an element of risk for Kenergy as far as service to these two customers?

A. I don't think it's a very great element of risk, but I'll agree that there is an element of risk.

Q. But there is an element of risk. As far as the Kimberly Clark contract, are you aware that there is an economic development incentive rate that Kimberly Clark is paying?

A. Yes, I'm aware.

Q. All right. Again, that is either a negotiated matter or something agreed upon that was given to them; would you agree with that?

A. Well, the economic development rate that they received, and I'm not sure what the status of that is, but that was a component where the benefit was provided through Big Rivers, not through - Kenergy is responsible for buying the power and reselling it, but the economic essence of that was under a prior Big Rivers rate where they had a - I'm not even sure that this Commission is aware of the structure of that economic development rate, because I don't believe it exists any more.

Q. Okay. But you're not sure about that?

A. I'm not certain.
Q. Well, subject to your check and my word that it does exist, would you agree that certainly was not based on any cost of service?
A. I'm not aware what the basis for the discount that's inherent in an economic development rate is.
Q. And it is a discount that's given to the customer?
A. Well, I think it's one that's earned by the customer.
Q. All right. Okay. KIUC is a what, a voluntary association; is that correct?
A. I certainly believe it to be voluntary.
Q. Okay. And KIUC, in this case, has intervened on behalf of four large industrial customers; is that correct?
A. That's correct.
Q. The two smelters, Commonwealth, and Kimberly Clark; correct?
A. That's correct.
Q. And we know, do we not, that the other, well, it would be 17 large industrial customers, were notified about this filing? I believe that's in the record of this case. Are you aware of that?
A. I have no knowledge that they were notified.
Q. Okay.
A. If you say that they were, then we'll accept your representation.

Q. Okay. All right.
A. I have no knowledge that they were.
Q. Assuming that they were notified, then we have a situation here where 17 of them elected not to participate in this proceeding and four elected to come forward; would that be correct?
A. Yes.
Q. Okay.
A. But the four that decided to participate constitute probably more than 80 percent or let me say probably more than 70 percent of the 22 or the 21, and there was no invitation to participate. KIUC did not make an effort to contact the non-KIUC members and solicit their participation.
Q. As far as you know?
A. Yes, as far . . .
Q. You're not an officer or an official of KIUC?
A. I am not.
Q. Okay. But we do know that there are 21 large industrial customers affected by this proposed rate reduction and only four of them are represented by KIUC in this proceeding; is that correct?
A. That's a correct statement.
MR. KING:
Okay. I thank you very much.

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CHAIRWOMAN HELTON:

Mr. Wuetcher?

MR. WUETCHER:

Thank you, Your Honor.

CROSS EXAMINATION

BY MR. WUETCHER:

Q. Good morning, Mr. Klepper.

A. Good morning, Mr. Wuetcher.

Q. Do you have KIUC's Responses to the Commission's Request for Information?

A. I do.

Q. If you would turn to Item 5, at Item 5a., the Commission posed the following question: "Do the adders calculated for Alcan Aluminum Corporation, Southwire Company, and Commonwealth Industries, Inc., follow exactly the same formula with identical variables and assumptions?" You prepared a Response to that question; did you not? I think you're listed as the witness for it.

A. Yes, I prepared it.

Q. Okay. Could you respond to that question in a yes or no answer? We're not quite certain what your Response was; is it yes or no?

A. My answer is no.

Q. Okay. If you would turn to KIUC's Response to

Kenergy's Request for Information, Item 1, in your discussion concerning the first merger initiative, you make mention of the process of voting, that it was changed as a result of a change in Henderson-Union's by-laws?

A. Yes.

Q. At the time that you prepared your Response, were you aware that, after the first merger initiative, there were changes made? Well, were you, first, aware that the Kentucky Revised Statutes required voters to appear in person at these cooperative . . .

A. I was not.

Q. Okay. Were you aware that, after the first merger initiative, the statutes were changed to allow balloting by mail?

A. No.

Q. Okay. Okay. Could you turn to Item 2, the Response to Kenergy's Request for Information No. 2? In your Response, you briefly discuss the problems with retroactive ratemaking, and you make a reference, in the first paragraph of your Response, to the Kentucky statutory prohibition against retroactive ratemaking. What statute are you referring to?

A. I'll defer - if we're going to have legal argument, we would be happy to brief it if this case comes down to a retroactive ratemaking issue.

Q. Well, I take it, as of today, you're not aware of what that statute is?

MR. KURTZ:

We can provide the citation for that in a post-hearing Data Response. I don't have the statute with me; otherwise I could turn to it.

MR. WUETCHER:

The witness refers to that statutory prohibition, and I was curious as to what it was.

Q. I take it that your interpretation of retroactive ratemaking is that the Commission cannot correct or amend any real or perceived deficiency in a prior ratemaking decision; is that correct?

A. Absent fraud.

Q. Absent fraud. Now, when you talk about a deficiency in a prior ratemaking decision, are you talking about the Commission prospectively making changes in existing rates going forward, or are you talking about the Commission going back to rates already charged and changing those rates?

A. I'm talking about it is not - it is construed to be retroactive ratemaking to change rates going forward on the basis that there was an over or undercollection during a prior period. Retroactive ratemaking is when the basis for a prospective decision is an inequity that existed under a prior decision that established rates. It's presumably saying that the prior rate wasn't fair, and so we're going to recorrect it and make it fair.

Q. Okay. Let me give you a situation.

A. Okay.

Q. Assume for the moment the Commission, for several years, has been setting rates in a manner that would base the rates that are applied to residential customers in a lower manner than what the cost of service would suggest, and the rates that are applied to industrial customers and commercial customers are set at a higher rate reflecting perhaps the notion that the value of service that those customers get from a particular service is worth more to those industrial or commercial customers, and so they pay a higher rate, although the cost of service may be virtually identical.

A. Can I suggest . . .

Q. Okay. Well, . . .

A. Can I suggest the first part without the second part?

Q. Well, no, let me finish my example, first. I'm sorry it's evolved, but, now, assume the Commission determines that it's going to change its policy and gradually correct the situation to permit the cost of service that is paid by the residential customers to reflect the cost of service, and it issues, over a series of years, changes in the rates that would gradually bring the residential customers' rates into line with the cost of service or close to it. In your mind, is that retroactive ratemaking?

A. No.

Q. Okay. Even though it may have been designed or viewed as correcting a deficiency in the initial policy?

A. It would be retroactive ratemaking if, in order to correct the prior policy, they were to charge the residential customers more than their cost of service and charge the industrial customers less, if they were to flip-flop such that they gave the industrials back some of the prior subsidy that they had been forced to pay. If they move more towards a cost of service base, they're making a new decision that rates need to more closely reflect the cost of service than the prior Commission has made. That's exactly what we're requesting here.

Q. So, to the extent that the Commission may perceive or take into account prior decisions in, for lack of a better word, rebalancing rates or looking at - that's not retroactive ratemaking?

A. The Commission, in a general rate case, may use existing rates as a starting point, but the idea of a general rate case is to have a clean slate as to how the costs that underlie rates should be allocated for a revenue burden to the customers. It's a new decision every time. In your example, where the residential customers were paying less than full cost of service so that industrial customers would pay more, it would also not be retroactive ratemaking if they decided that residential customers should even pay less of the cost of service. In other words, at one time, they were paying 90 percent of cost of service. Now they're paying 80 percent of cost of service. That's just a new decision. If the Commission decides they should pay 95 percent of the cost of service, that's a new decision.

Q. Okay. Other than the rate reduction and adjustment for the generation and transmission capital credit write-offs, what revenue or expense adjustments have been proposed by Kenergy in this proceeding?

A. They've only proposed that they have an anticipated reduction of approximately $2.5 million in expense, in unspecified expense, that will occur in their body of expense other than wholesale power costs. So they've not functionalized whether expense reductions will

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occur.

Q. Do you have a copy of the amended application?

A. I do, if I may be allowed to move.

Q. Okay. Mr. Klepper, let me refer you to Exhibit 1, Page 1 of 1 of the amended application, and the top part of it is styled, "Adjusted Income Statement Green River and Henderson-Union." Do you have that?

A. Yes.

Q. Okay. Now, follow along with me. The third column over, which is labeled "Per Form 7," lists, I guess, the actual expenses and revenues that were incurred for the 12 months ended December 31, 1998. Would that be a correct representation of that column?

A. Yes.

Q. Okay. The next column over is "Pro Forma Adjustments"; is that correct?

A. Yes.

Q. Okay. Am I correct in stating that there are only two adjustments that have been made to the income statement?

A. Without belaboring, there's one adjustment that is just reflecting something that happened, which is the write-off of almost $40 million in patronage capital. It's under "Pro Forma Adjustments." That's not a pro forma adjustment. It's just something that they didn't have on here, and the pro forma adjustment that they show is a reduction in cost.

Q. Isn't that a reduction in revenue?

A. Yes, and they show . . .

Q. And that represents the 4 percent credit that Kenergy has proposed to give to the non-direct serve customers; is that right?

A. Yes. They only show the reduction in revenue on here without any concomitant reduction in expense.

Q. Using this chart, can you tell us what revenue or expense adjustments have been proposed by KIUC in this proceeding? Have you proposed any adjustments?

A. To revenue?

Q. To revenue or expenses.

A. No. We've merely proposed a reallocation of the revenue reduction.

Q. Okay. If the Commission were to review and recalculate the adder charge to your clients, would you have any concerns about using the levels of revenues and expenses as of December 31, 1998?

A. No.

Q. Would you turn to Page 19 of your direct testimony? Okay. You've proposed that the Commission order Kenergy to make a compliance filing after this hearing but before issuing a final Order in the proceeding; is that correct?

A. I'm sorry. May I read where you're . . .

Q. Okay. I think it starts at about Line 6. You state, "Upon the conclusion of the hearings in this proceeding, but before the Commission has issued its rate order, the Commission should direct Kenergy to make a compliance filing." Then you go on to say what that filing should contain.

A. Yes.

Q. Is that compliance filing similar to basically a cost of service study?

A. Yes.

Q. Okay. Would that be somewhat at odds with the Commission's initial decision to waive or to grant the waiver of a cost of service study?

A. No, I think it would be consistent with their ruling that Kenergy continue to bear the burden of proof.

Q. Okay. One thing that I guess I'm curious about is this filing would be done after the hearing has been completed but there would be no opportunity for any of the parties to review the analysis or examine the results or conduct further discovery. Am I missing something here?

A. Usually a compliance filing is one in which the Commission - I'm not sure what the process is, generally, in a case because I've only been involved in the distribution cooperative or in the cooperative arena at Big Rivers or the distribution cooperatives, but, in many states, what will happen is that the Commission will establish an amount of revenue reduction without establishing rates, and then the utility . . .

Q. Well, let . . .

A. . . . will come back and file rates that comply, and then there's - it's a review to make sure that there has been a compliance with the Commission's Order.

Q. I don't mean to interrupt you, and I apologize. My question really is, you're asking the Commission to direct Kenergy to file certain information which you've said is similar or basically the same as a cost of service study. There does not appear to be any opportunity, based on the procedural schedule in this case, for KIUC or anyone else to respond or conduct additional discovery. Is it KIUC's position that it will accept whatever Kenergy would file as part of that compliance filing? I mean, you don't want the opportunity to question it?

A. Yes, I would like the opportunity to question it.

MR. WUETCHER:

That's all we have. Thank you, Mr. Klepper.

CHAIRWOMAN HELTON:

Redirect?

MR. KURTZ:

Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. KURTZ:

Q. Mr. Klepper, can you go back to your Data Response that Mr. King was asking you extensive questions about, No. 6, where you list the four types of expenses?

A. And, here, you're referring to my Item 6 to Kenergy's Request for Information rather than the Commission's?

Q. Yes. Do you have that?

A. Yes.

Q. Now, under Item 2, is this your definition of a category of costs that - let me just ask you this. Do you know precisely how these categories of costs are included in the existing adders?

A. No.

Q. Has Kenergy filed anything in this case to show what makes up the $2.4 million worth of adders, what costs underlie that $2.4 million expense?

A. I'm not aware of any background information that supports, in any analytical way, the amount of the adders and the underlying costs for those adders.

Q. So, as far as you know, the adder may include amounts

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of Items 2, 3, and 4 in any proportion, because you simply don't know what's in there?

A. That's correct; I don't.

Q. And you don't know if costs that should be in there are not in there or costs that should not be in there are in there?

A. That's also correct.

Q. Now, are you aware of any evidence that pinpoints or tries to direct where the projected merger savings - where those savings will occur in terms of cost categories?

A. No.

Q. Again, we don't know, from the information in this case, if all the projected merger savings are going to be in Category 4 or all in Category 1 or anything of the sort; do we?

A. No.

Q. And, because of that lack of information, does that underlie one of your recommendations for an across the board rate treatment?

A. Yes. What we do know is that all of the cost reduction will be merger related costs that occur - that there's not a reduction in wholesale power costs; that there's a reduction in the costs that Kenergy itself incurs through its own distribution, customer accounting, and

A&G operations.

Q. Okay. Let's talk about the negotiated adder. Do you remember Mr. King asking you some questions about that?

A. Yes.

Q. If, in these negotiations, the customer does not agree with the utility, what happens to the customer?

A. Well, I guess that their choice is just not to build here and there's no way to undo it. I mean, Kenergy is the gatekeeper to get to Big Rivers' power generation. So, if Scott Paper comes along and says, "Gee, I would like to build here because Kentucky is a low-cost state, and we think that this is a good place to build. We can have access to a good labor supply and a skilled labor supply," and then Kenergy says, "Well, you have to pay 5 cents per kw a month and half of a mill to get the power," they have little room to negotiate because Kenergy is the only power supplier here. It's completely unilateral. There's not fair bargaining power, so it's not a true negotiation.

Q. So their choice is to pay the adder or not get electricity?

A. Or not build here.

Q. Or not build here. Let's talk about the economic incentive rate that one of the customers is getting. Do you know if that's pursuant to an Administrative

Order issued by this Commission in the early 1990s?

A. The economic incentive rate was implemented in the late eighties, but I didn't know the - at least, there was a lot of discussion about this when rates were being renegotiated in the context of the Big Rivers' bankruptcy.

Q. Let me just ask you this. Do you know if there's a tariff on file by Big Rivers or there was, at one time, with economic development rates as part of the filed economic development rider?

A. I'm not aware of whether it was in a tariff or whether it was just contractual.

Q. Okay. Mr. King asked you about the 17 nonparticipating members of the large direct served class; do you recall that?

A. Yes.

Q. Do you know if any of those 17 are members of KIUC?

A. I don't.

Q. Do you know if all four members of KIUC are participating? In other words, 100 percent of KIUC's membership who are served by Kenergy are participating; do you know if that's true?

A. I know that the four who are participating are members of KIUC. I don't know who, if anybody, is a member of KIUC and elected not to participate.

Q. Mr. Wuetcher asked you some questions about retroactive ratemaking. Would it be in your definition of retroactive ratemaking if KIUC brought in evidence that Kenergy had been overearning for five years and we asked for some sort of surcredit to recoup that five years of overearnings? Would that be retroactive ratemaking?
A. Yes.
Q. And that would be prohibited by statute, in your opinion?
A. Yes, and that's really where the thrust of the statute is. It has other applications, but, if a utility was underearning or overearning, the new rates aren't supposed to adjust for either an overearning or an underearning.
Q. One last question about the compliance filing issue. Is it your general understanding that, in the jurisdictions where you are aware, that parties are generally given the opportunity to comment to see if the compliance filing does comply with the Order?
A. Yes.
MR. KURTZ:
Thank you, Your Honor. Those are all my questions.

CHAIRWOMAN HELTON:

Mr. King?

RECROSS EXAMINATION

BY MR. KING:

Q. Mr. Klepper, regarding the question about the negotiated adder, isn't it true that any aggrieved party or any party that felt it was aggrieved would have redress with the Commission?

A. Mr. King, I certainly think so, but I just didn't think that you thought so.

Q. Well, your example was Industry A maybe thinking about moving into Kentucky and that the adder that was put forth was unacceptable, and I just simply want to establish and want to see if you agree that Kenergy does not have the final say-so on that; does it?

A. Well, . . .

Q. Yes or no?

A. Well, that's not a yes or no question.

Q. Why isn't it a yes or no question?

A. Because the question is whether the party would have access to the Commission, not having a contract. That is, suppose Scott Paper had come to Kentucky and said, "We would like to be served by Big Rivers," but then they go to Kenergy, and they try to negotiate an adder, and they're unhappy with the amount of the adder that

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Mr. Stanley would like to receive from them. I'm not aware that they have a cause of action that they can bring before the Commission to get an adder adjudicated prior to their agreement to come. So the only way that they can get jurisdiction is to sign a contract to commit to power and then see if it's going to get approved, but they have no ability that they - there's no jurisdictional way that they can get to the Commission. If they're unhappy with what Kenergy wants, they can't come and bring a complaint to the Commission when they haven't . . .

Q. That's your belief?

A. That is my belief.

Q. That's your belief. All right, sir. Isn't it true that, when KIUC responded to Kenergy's initial application in this case, the application that was based on KRS 278.455, that KIUC took the position that it was representing all 22 of those large industrial customers that were being excluded?

A. No, sir, I don't believe so.

Q. Isn't that the precise argument that was made?

A. The argument that was made is that there may be 22 disadvantaged parties, but KIUC only represents the members of KIUC.

Q. Well, we know that now, at this phase, but, initially,

they came in on behalf of all 22 of them; did they not?
A. No, they didn't.
Q. Well, that was the argument. That was your testimony. You filed an affidavit . . .
A. Yes, sir.
Q. . . . to that application . . .
A. Well, we . . .
Q. . . . and that was on behalf of all 22 of those; was it not?
A. No, sir, it wasn't.
Q. Well, . . .
A. Would you like to look at the affidavit?
Q. Well, the Commission can look at that. Let's go back to one Mr. Kurtz was following up on, your category of distribution expenses, and you were saying that you don't know about savings, how the savings are going to be realized in these various categories. Where does that appear in your testimony?
A. Well, I think that what you are trying to get back to is . . .
Q. It's the . . .
A. . . . KIUC's Response to Kenergy's Request for Information in its Item 6.
Q. Right. Right, Item 6, Page 7. In your category, distribution, operations, and maintenance costs, you do

make this statement; do you not? "Kenergy incurs no costs whatsoever for distribution, operations, and maintenance that are allocable to direct served customers." You do make that statement; do you not?
A. Absolutely.
Q. Now, are you vacillating on that now?
A. No.
Q. Okay. So that is still your position; right?
A. Yes. Now, whether they have any costs that have somehow glommed themselves into the making of rates is another question, but they absolutely incur no costs.
Q. So, if the savings - let's just say, and I'm not going to stay on this a long period of time, but let's just say the savings is all realized right there.
A. Yes.
Q. We don't know because you're assuming that savings are across the board.
A. Yes.
Q. But let's assume this. Let's assume the savings are all right there . . .
A. Yes.
Q. . . . and that the large industrial customers do not participate in that cost. Where is the logic in giving a proportionate reduction to the large industrial customers in the rates?

A. Are you finished with the question?
Q. Yes.
A. Okay. The answer is, unless it is shown that none of the distribution and operations costs underlie the rates, if you could show that there is no distribution cost included in the rates and that all the reduction was in distribution, operations, and maintenance costs, then it would be appropriate that they should not share.
Q. You agree with that; right?
A. You're not allowing me to finish my answer. However, it is not shown that there is no distribution - even if all of the costs, 100 percent of the costs, is in distribution - 100 percent of the cost reduction is in distribution, operations, and maintenance, it is still not appropriate to preclude the direct served customers unless it is shown that no part of the distribution, operations, and maintenance costs underlies the rates. It takes two elements; that there's no cost and there's no cost causation underlying the revenues that you derive.
Q. Right. Right. And my questions are directed simply at your conclusion that there should be an across the board proportionate reduction for the large industrial customers. I'm confining my question to that analysis

on your part; do you understand that?
A. That's how I answered it.
MR. KING:
Okay. I think that's all I have.
CHAIRWOMAN HELTON:
Mr. Wuetcher?
MR. WUETCHER:
Just one question.

RECROSS EXAMINATION

BY MR. WUETCHER:
Q. When you were preparing your testimony and when you were preparing the Responses to the various Information Requests and preparing yourself for today's cross examination, can you tell us what research or review of Kentucky laws you did concerning the utility's obligation to serve and the corresponding right of customers or prospective customers to bring complaints with the Commission for improper rates or unreasonable rates?
A. I didn't do any research specifically on that point.
MR. WUETCHER:
Thank you. That's all we have.
CHAIRWOMAN HELTON:
Thank you. Thank you, Mr. Klepper. Ms. Sewell, according to my calendar, the transcript should be

available May 2; is that correct?

MR. KING:

We have a couple of things . . .

CHAIRWOMAN HELTON:

Pending?

MR. KING:

. . . before we conclude.

REPORTER:

Yes, May 2.

CHAIRWOMAN HELTON:

Okay. The transcript will be available. Mr. King, you have other matters?

MR. KING:

Yes. Ms. Chairlady, we have not formally introduced into evidence the rebuttal testimony. I purposely waited until after the intervenor's case. We want to get that in the record. I think we could just do it with Mr. - there's rebuttal testimony on behalf of Mr. Stanley and Mr. Gaines. They can just remain seated, and I can ask them the pertinent questions, if that would be all right with the Commission, to get that testimony in the record. I plan no follow-up on that.

MR. WUETCHER:

Your Honor, we have no cross examination for those

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two witnesses on their rebuttal testimony, . . .

MR. KING:

On their rebuttal?

MR. WUETCHER:

. . . and, if Mr. Kurtz doesn't, then I would simply suggest that we stipulate that it be made part of the record of the hearing.

MR. KURTZ:

We can agree with that stipulation.

MR. KING:

Okay. There is one change I think we need to make to Mr. Stanley's rebuttal testimony. It's just a misspelled word. On Page 3, Line 4, it should be "the," t-h-e, rather than h-e, "he." Subject to that, though, we would like to have that made a part of the record of this hearing, and then . . .

CHAIRWOMAN HELTON:

With that change, we'll order the rebuttal testimony into this case.

MR. KING:

We want to make sure that, as far as the record is concerned, I guess the record of this hearing, that all of the Responses to the Data Requests are part of the . . .

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CHAIRWOMAN HELTON:

Yes.

MR. KING:

. . . evidence in this hearing and form . . .

CHAIRWOMAN HELTON:

Yes.

MR. KING:

. . . a basis for the Commission's decision in this case.

CHAIRWOMAN HELTON:

Yes.

MR. KING:

All right.

CHAIRWOMAN HELTON:

And there was one Data Request outstanding in the testimony; correct, Mr. Wuetcher?

MR. WUETCHER:

Your Honor, I'm not aware of any outstanding. I think there had been a suggestion made by KIUC that . . .

CHAIRWOMAN HELTON:

Yes.

MR. WUETCHER:

. . . there be a filing made, . . .

CHAIRWOMAN HELTON:

Right.

MR. WUETCHER:

. . . but I don't believe the Commission has taken any action on that.

CHAIRWOMAN HELTON:

Okay.

MR. KING:

Yeah. I think everything has been responded to.

CHAIRWOMAN HELTON:

Okay.

MR. KING:

Okay. That concludes our part of the case.

CHAIRWOMAN HELTON:

Any other matters, Mr. Kurtz?

MR. KURTZ:

Just that Mr. King and I have discussed the possibility of not submitting briefs and submitting the case just on the evidence. We will, I think, talk to each other and then get back to the Commission. I assume the Commission would probably have no objection to that.

CHAIRWOMAN HELTON:

That was going to be my next question.

MR. KURTZ:

What we may ask to do, however, is to submit some suggested issues for the Commission to consider, nonbinding, of course, but just so that each side can state what we think the issues in the case are to guide the Commission's decision but not necessarily file briefs.

CHAIRWOMAN HELTON:

Okay. And are you proposing also to change the procedural schedule that called for those briefs to be filed May 22?

MR. KURTZ:

Can we submit an Agreed Order after the hearing on that issue?

CHAIRWOMAN HELTON:

Certainly. If you could get the issues to us earlier than that date, it would certainly help us to meet the deadline.

MR. KURTZ:

What was the date for the briefs? I'm sorry.

CHAIRWOMAN HELTON:

I believe the procedural schedule calls for May 22.

MR. KURTZ:

Okay. Thank you.

CHAIRWOMAN HELTON:

Are there any other matters? We are adjourned.

MR. KING:

Okay. Thank you.

FURTHER THE WITNESSES SAITH NOT

HEARING ADJOURNED

OFF THE RECORD

STATE OF KENTUCKY
COUNTY OF FRANKLIN

I, Connie Sewell, the undersigned Notary Public, in and for the State of Kentucky at Large, do hereby certify the foregoing transcript is a complete and accurate transcript, to the best of my ability, of the hearing taken down by me in this matter, as styled on the first page of this transcript; that said hearing was first taken down by me in shorthand and mechanically recorded and later transcribed under my supervision; that the witnesses were first duly sworn before testifying.

My commission will expire November 19, 2001.

Given under my hand at Frankfort, Kentucky, this the 2nd day of May, 2000.

Connie Sewell

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