

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF KENERGY CORP.)
FOR ACCEPTANCE AND EXPEDITED)
IMPLEMENTATION OF A SPECIAL)
RETAIL CONTRACT) CASE NO. 2008-00125

O R D E R

Kenergy Corp. ("Kenergy") is an electric distribution cooperative organized under KRS Chapter 279. On March 21, 2008, Kenergy filed a special retail electric contract between Kenergy and Patriot Coal Company, L.P. ("Patriot Coal"). The details of the contract are as follows:

1. Kenergy agrees to sell and deliver to Patriot Coal, and Patriot coal agrees to purchase, electric power and energy, up to 5.5 MW, subject to certain terms.
2. Kenergy agrees to use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy to Patriot Coal.
3. The terms of the contract shall remain in effect for 12 years and 6 months following the start of the initial billing period.

Pursuant to KRS 278.180(1), Kenergy must give the Commission 30 days' notice prior to implementing this retail contract. Kenergy has requested that the notice period be reduced, as permitted by the statute. Since the only retail customer affected by this contract has consented in writing to all of the contract terms, the Commission finds good

cause to reduce the notice period to 20 days. Consequently, the retail contract will become effective on April 10, 2008.

IT IS THEREFORE ORDERED that the retail electric contract between Kenergy and Patriot Coal, as described in the findings above, is accepted for service effective April 10, 2008.

Done at Frankfort, Kentucky, this 10th day of April, 2008.

By the Commission

ATTEST:

Executive Director

DORSEY, KING, GRAY, NORMENT & HOPGOOD

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
S MADISON GRAY

TELEPHONE
(270) 826-3965
TELEFAX
(270) 826-6672
www.dkgnlaw.com

March 19, 2008

FEDEX

Ms. Elizabeth O'Donnell
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RECEIVED

MAR 21 2008

PUBLIC SERVICE
COMMISSION

2008-125

Re: Kenergy Corp./Big Rivers Electric Corporation
Special Contract with Patriot Coal Company, L.P.

Dear Ms. O'Donnell

Enclosed for acceptance by the Commission please find the original and one copy of the following:

Agreement for Electric Service between Kenergy Corp. and Patriot Coal Company, L.P. dated January 18, 2008 (retail service)

Letter Agreement between Big Rivers Electric Corporation and Kenergy Corp. dated March 10, 2008 (wholesale service)

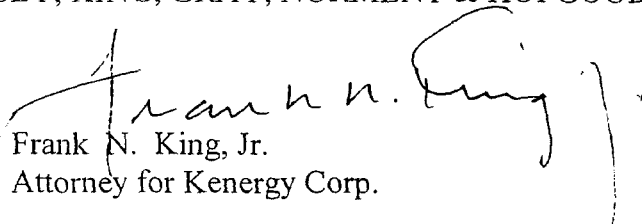
The customer would like to get this service as soon as possible so we request that the notice period be shortened to 20 days for acceptance of both the retail and the wholesale agreements.

Your assistance in this matter is appreciated.

Very truly yours,

DORSEY, KING, GRAY, NORMENT & HOPGOOD

By


Frank N. King, Jr.
Attorney for Kenergy Corp.

FNKJr/cds

Encls.

COPY/w/o/encls.: Mr. David Hamilton, Kenergy Corp.



Henderson, Kentucky

FOR ALL TERRITORY SERVED

Community, Town or City

PSC NO. 1

First Revised SHEET NO. 31

CANCELLING PSC NO.

Original SHEET NO. 31

CLASSIFICATION OF SERVICE

(T)

Schedule 31 - Dedicated Delivery Point Class C

AVAILABLE

(T)

This rate shall apply to large customers where service is provided through a dedicated substation connected to the 69 kv. transmission system of Big Rivers or other accessible system.

CONDITIONS OF SERVICE

An "Agreement for Purchase of Power" shall be signed by any new customer prior to service under this rate.

CHARACTER OF SERVICE

Service shall be the 60 Hz, 3-phase, at voltage as mutually agreed by the Seller.

DETERMINATION OF BILLING DEMAND

(T)

For all delivery points, the Billing Demand in kilowatts shall be the highest of: a) The customer's maximum integrated thirty-minute demand at such delivery point during each billing month, determined by meters which record at the end of each thirty-minute period the integrated kilowatt demand during the preceding thirty minutes; or b) the Contract Demand.

POWER FACTOR ADJUSTMENT

The customer agrees to maintain a power factor as nearly as practical to unity. The company will permit the use of apparatus that shall result, during normal operation, in a power factor not lower than 90%. At the Company's option, in lieu of the customers providing the above corrective equipment when power factor is less than 90%, the Company may adjust the maximum measured demand for billing purposes in accordance with the following formula:

Max. Measured KW x 90% / Power Factor (%)

The power factor shall be measured at time of maximum load.

PUBLIC SERVICE COMMISSION OF KENTUCKY EFFECTIVE 6/14/2005 PURSUANT TO 807 KAR 5:011 SECTION 9 (1) June 14, 2005

DATE OF ISSUE June 27, 2005 DATE EFFECTIVE June 14, 2005

ISSUED BY Mark A. Bailey SIGNATURE OF OFFICER TITLE By [Signature] it and CEO Executive Director

ISSUED BY AUTHORITY OF PSC ORDER NO. 2004-00446.



Henderson, Kentucky

FOR ALL TERRITORY SERVED
Community, Town or City

PSC NO. 1

Second Revised SHEET NO. 31A

CANCELLING PSC NO. _____

First Revised SHEET NO. 31A

CLASSIFICATION OF SERVICE
Schedule 31 – Dedicated Delivery Point – Class C

(T)

METERING

Electrical usage will be metered at the transmission voltage supplied or at the customer's secondary voltage with a 1.9% adder to the metered KWH to account for transformer losses, as determined by Seller.

MONTHLY RATE

Customer Charge per delivery point.....\$100.00
Demand Charge per KW of Billing Demand\$ 10.15

Energy Charges:

(R) Per KWH 0.016715

Monthly Facilities Charge per Assigned Dollar 1.35%
of Investment by Kenergy in substation,
transformer, feeder, etc.

TAXES AND FEES

School Taxes added to bill if applicable.
Kentucky Sales Taxes added to bill if applicable.

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.

MINIMUM DEMAND CHARGE

The minimum demand charge shall be no less than the amount as specified in the "Agreement for Purchase of Power."

TERMS OF PAYMENT

The above rates are net, the gross rate being five percent (5%) greater. In the event the current monthly bill is not paid within twenty (20) days from the date of the bill, the gross rate will apply.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE
6/14/2005
PURSUANT TO 807 KAR 5:011
SECTION 9 (1)

DATE OF ISSUE June 27, 2005 DATE EFFECTIVE June 14, 2005

ISSUED BY Mark A. Barbey TITLE President and CEO
SIGNATURE OF OFFICER By [Signature] Executive Director

ISSUED BY AUTHORITY OF PSC ORDER NO'S. 2004-00446.



201 Third Street
P.O. Box 24
Henderson, KY 42419-0024
270-827-2561
www.bigrivers.com

March 10, 2008

RECEIVED

MAR 21 2008

PUBLIC SERVICE
COMMISSION

Mr. Sandy Novick
Kenergy Corp.
6402 Corydon Road
P.O. Box 18
Henderson, KY 42419-0018

Re: Retail Electric Service Agreement
Patriot Coal Company, L.P.

Dear Sandy:

This letter agreement ("Letter Agreement") will evidence Big Rivers' concurrence with the terms of Kenergy's electric service agreement with Patriot Coal Company, L.P. (the "Retail Customer") dated January 18, 2008, a copy of which is attached hereto as Exhibit 1 (the "Retail Agreement"), and the agreement between Big Rivers and Kenergy with respect thereto.

(1) **Existing Agreement and Tariffs.** The terms and conditions of the June 11, 1962, wholesale power agreement, as amended, and Big Rivers' filed tariffs shall continue in full force and effect except as expressly modified by this Letter Agreement.

(2) **Additional Rights and Obligations of Big Rivers.** Big Rivers shall make available to Kenergy the electric power required during the term of the Retail Agreement to perform the power supply obligations assumed by Kenergy in the Retail Agreement and Big Rivers shall have the benefit of Retail Customer's covenants in such agreement. Big Rivers will supply the facilities required to deliver power to the delivery point, as defined in the Retail Agreement, and to meter electrical usage by Retail Customer.

(3) **Obligations of Kenergy.** Kenergy shall take and pay for electric power and energy delivered by Big Rivers in accordance with Big Rivers' Rate Schedule 7, with demand and energy being measured in accordance with the Retail Agreement.

(4) **Obligation of Kenergy for Minimum Billing Demand Charge.** Kenergy agrees to bill Retail Customer for any minimum billing demand charges in excess of measured demand, and agrees to pay over to Big Rivers all funds actually collected under such billings. The terms of this paragraph do not affect the obligation of Kenergy to pay Big Rivers in accordance with Big Rivers' tariff as and when billed for the wholesale charges for electric power and energy

Mr. Sandy Novick
March 10, 2008
Page Two

actually consumed by Retail Customer.

(5) **Division of Any Partial Payments.** Kenergy will pay to Big Rivers a pro rata share of any partial payment made to Kenergy by or on behalf of Retail Customer.

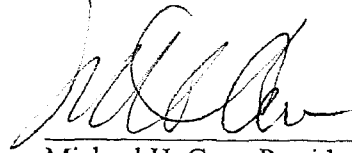
(6) **Effective Date.** This Letter Agreement will become effective upon approval or acceptance by the Public Service Commission of Kentucky.

(7) **Entire Agreement and Amendment.** This Letter Agreement represents the *entire agreement of the parties on the subject matter herein, and cannot be amended except in writing, duly authorized and signed by Big Rivers and Kenergy.* The Retail Agreement cannot be amended without the written approval of Big Rivers.

If this Letter Agreement is acceptable to Kenergy, please indicate that acceptance by signing in the space provided and returning four copies to us.

Sincerely yours,

BIG RIVERS ELECTRIC CORPORATION




Michael H. Core, President/CEO

MHC/ej
Attachment

ACCEPTED:

KENERGY CORP.



Sandy Novick
President/CEO

Date: 3/13/08

AGREEMENT FOR ELECTRIC SERVICE

AGREEMENT made January 18, 2008, between KENERGY CORP., 6402 Old Corydon Road, Henderson, Kentucky 42420 (hereinafter called the "Seller"), and Patriot Coal Company, L.P. with a service address at 19070 State Route 1078 South, Henderson, Kentucky 42420, (hereinafter called the "Consumer"), a Delaware limited partnership.

The Seller shall sell and deliver to the Consumer, and the Consumer shall purchase all of the electric power and energy, which the Consumer may need at the aforementioned location, up to 5,500 kilowatts, upon the following terms:

1. SERVICE CHARACTERISTICS

- A. Service hereunder shall be alternating current, 3 phase, sixty cycles, 69,000 volts.
- B. The Consumer shall not use the electric power and energy furnished hereunder as an auxiliary or supplement to any other source of power and shall not sell electric power and energy purchased hereunder.

2. PAYMENT

- A. The Consumer shall pay the Seller for service hereunder at the rates and upon the terms and conditions set forth in Schedule 31, as it may be amended from time to time. A copy of Seller's current Schedule 31 is attached to and made a part of this Agreement as Exhibit "A." Notwithstanding any provision of the Schedule 31 and irrespective of Consumer's requirements for or use of electric power and energy, the demand for billing purposes hereunder shall be not less than 3,300 kilowatts for any billing period (per month). In any event, based upon Seller's current rates the Consumer shall pay the Seller not less than \$33,595 per month for service or for having service available hereunder during the remainder of the term hereof.
- B. The initial billing period shall start when Consumer begins using electric power and energy, or 30 days after the Seller notifies the Consumer in writing that service is available hereunder, whichever shall occur first; subject, however, to conditions of section 8.B., below.
- C. Bills for service hereunder shall be paid at the office of the Seller at Kenergy Corp, 6402 Old Corydon Rd., Henderson, KY 42420.

Such payments shall be due on the 25th day of each month for service furnished during the preceding monthly billing period.

If the Consumer shall fail to make any such payment within fifteen (15) days after such payment is due, the Seller may discontinue service to the Consumer upon giving fifteen (15) days' written notice to the Consumer of its intention so to do, provided, however, that such discontinuance of service shall not relieve the Consumer of any of its obligations under this Agreement.

- D. The Consumer agrees that if, at any time, the rate under which the Seller purchases electric service at wholesale is modified, the Seller may make a corresponding modification in the rate for service hereunder.

3. MEMBERSHIP

The Consumer shall become a member of the Seller, shall pay the membership fee and be bound by such rules and regulations as may from time to time be adopted by the Seller.

4. CONTINUITY OF SERVICE

The Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail or be interrupted, or become defective through act of God, Governmental authority, action of the elements, public enemy, accident, strikes, labor trouble, required maintenance work, inability to secure right-of-way, or any other cause beyond the reasonable control of Seller, the Seller shall not be liable therefore or for damages caused thereby.

5. RIGHT OF ACCESS

Duly authorized representatives of the Seller shall be permitted to enter the Consumer's premises at all reasonable times in order to carry out the provisions hereof.

6. TERM

This Agreement shall become effective upon the approval or acceptance referred to below in section 8.B. and shall remain in effect for twelve years and six months following the start of the initial billing period and thereafter until terminated by either party giving to the other three (3) months notice in writing.

7. CONSUMER DEPOSIT

As security for payment of its monthly billing obligations and termination charges, Consumer shall be required to provide Seller a cash deposit or other sufficient guaranty in a sum representing two (2) months' estimated billing and projected termination charges, initially being the total amount of \$345,853, and Seller hereby acknowledges receipt of same. The portion of the deposit or guaranty representing termination charges estimated to be \$193,500, but actual costs shall be applied and shall be reduced by \$.90 per kW of demand the Consumer is billed and pays for each month beginning with the initial billing period (see attached Addendum 2), and annually the parties shall adjust the deposit or guaranty accordingly.

8. SUCCESSION AND APPROVAL

- A. This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the respective parties hereto.
- B. This contract shall not be effective unless approved or accepted in writing by the Kentucky Public Service Commission.

9. ADDENDA

The addenda to this agreement are attached hereto and incorporated herein as a part of this agreement for electric service.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement all as of the day and year first above written

KENERGY CORP., SELLER

By *Sanford Novick*
Printed Name SANFORD NOVICK
Title CEO

PATRIOT COAL COMPANY, L.P., CONSUMER

By *David H. Webb*
Printed Name David H. Webb
Title Vice President & Gen. Mgr.

*If other than president, vice president, partner or owner, a power of attorney must accompany contract.

ADDENDA TO AGREEMENT FOR ELECTRIC SERVICE

ADDENDUM 1

1.10 Facilities to be Provided by Consumer.

1.11 Consumer will provide or cause to be provided (without cost to the Seller) permanent easements upon Consumer's property which in the opinion of the Seller are necessary for the construction of facilities which the Seller or its wholesale power supplier must furnish to provide electric service under this agreement.

1.12 Except as provided in Section 1.20 of this Addendum, Consumer shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased hereunder at and from the point of delivery, including such protective devices as may be reasonably necessary in the opinion of the Seller to protect the systems of the Seller and its wholesale power supplier from disturbances caused by Consumer. Plans for equipment to be installed for such protection shall be submitted to Seller for prior approval.

1.20 Facilities to be Provided by Seller. Seller shall furnish and install, or cause to be furnished and installed, all of the facilities required for the delivery of electric power and energy to the point of delivery, including the following facilities.

1.21 Approximately 1.1 miles of 69,000 volt electric transmission line extending from Big Rivers Electric Corporation's existing transmission line system to Consumer's dead-end structure near Consumer's substation yard.

1.22 Metering, communications, relaying, and control circuits as mutually agreed upon and as necessary for proper measurement, control and coordination between Seller's and Consumer's facilities.

1.30 **Construction Standards.** Consumer shall construct and maintain any facilities it builds under an obligation created by this agreement in accordance with applicable provisions of the National Electric Safety Code of the American National Standards Institute (ANSI C2), and other applicable laws, codes and regulations, provided however Seller shall have no duty to inspect those facilities for conformance with such standards or have any responsibility for the means, methods or techniques employed by Consumer or its contractor in the construction of these facilities. Each party shall own, maintain and operate the facilities its purchases and installs.

1.40 **Electric Disturbances and Phase Balancing.**

1.41 Consumer shall not use the power and energy delivered under this Agreement in such manner as to cause a "System Disturbance." A System Disturbance is a use of electric power and energy which directly or indirectly results in a risk of harm to human beings or material damage to or interference with the transmission system of Seller's wholesale power supplier (the "Wholesale Transmission

System”), a system connected with the Wholesale Transmission System, or facilities or other property in proximity to the Wholesale Transmission System, or the plant, facility, equipment or operations of any other customer served directly or indirectly from the Wholesale Transmission System. A System Disturbance includes, but is not limited to: (a) Harmonic Distortion: a level of current harmonic total demand distortion (TDD) measured at a consumer’s point of delivery that exceeds the limits on TDD described in IEEE Standard 519, Section 10; and, (b) Phase Imbalance: a use of capacity and energy in such a manner that causes a current imbalance between phases greater than 5% at a retail customer’s point of delivery.

1.42 Seller may require Customer, at Customer’s expense, to make such changes in its system as may be reasonably necessary to eliminate System Disturbances. If Customer’s use of power and energy creates an imbalance between phases that causes a System Disturbance, and fails to make changes in its system requested by Seller to correct such condition, in addition to any other remedies it has Seller make, in its determination of billing demand, assume that the load on each phase is equal to the greatest load on any phase.

ADDENDUM 2

2.10 **Termination.** If termination of this Agreement is requested by the Consumer, and granted by the Seller, or if Seller terminates the Agreement for nonpayment by Consumer, a termination charge shall be paid to the Seller by the consumer equal to the actual investment made by Seller's wholesale power supplier to erect the transmission line facilities described in paragraphs 1.21 and 1.22 of this Addenda, reduced by \$.90 per kw of demand the Consumer is billed and pays for each month beginning with the initial billing period. Consumer's obligation under the terms of this agreement shall cease upon such Termination and after reimbursement of termination charges.

ADDENDUM 3

3.10 **Force Majeure.** In the event performance of this Agreement is limited or prevented in whole or in part by Acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the Government (whether federal, state, or local, civil or military), civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines, or inability of either party hereto to obtain necessary materials, supplies, or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (whether federal, state, or local, civil or military), upon such party's giving notice and reasonably full particulars of such force majeure or uncontrollable force, in writing to the other party within a reasonable time after the occurrence of the cause relied on, the party whose

performance is so limited or prevented shall be excused, discharged and released from the performance to the extent such performance is limited or prevented, but only for the period when the performance is limited or prevented and thereafter all of the terms of this Agreement shall remain in effect except that the term of the Agreement shall be extended for a period equal to the duration of the aforesaid force majeure. A minimum bill due under Section 2 of the Agreement for a period in which a force majeure event disables the Consumer from receiving and using, in whole or in part, electric power and energy delivered by Seller, or that disables Seller from delivering, in whole or in part, electric power and energy to Consumer in accordance with this Agreement shall be prorated based upon the extent of that disability and the duration of the period of force majeure, but nothing contained herein shall excuse Consumer from the obligation of paying at the time provided herein, for any power consumed by it.

ADDENDUM 4

4.10 **Successors in Interest.** Consumer may with written approval of the Seller assign or transfer this Agreement and such approval shall not be unreasonably withheld. In such event such assignee or transferee shall assume all obligations or responsibilities of Consumer under this Agreement, and the consumer shall then become only secondarily liable for such obligations and responsibilities.

ADDENDUM 5

5.10 **Remedies of the Parties.** Waiver at any time by either party of rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter. Except

as specifically provided herein, this Agreement shall not be construed to abridge, limit, or deprive either party of any remedy for breach of the provisions herein which would otherwise be available at law or equity.

5.20 **Reports and Information.** Consumer shall furnish to the Seller such reports and information concerning its operations as the Seller may reasonably request from time to time.

5.30 **Notices.** Any written notice, demand or request required or authorized under this agreement shall be deemed properly given to or served on Seller if mailed to:

Kenergy Corp.,
Attention: President & CEO
Post Office Box 18,
Henderson, Kentucky 42419-0018

Any such notice, demand or request shall be deemed properly given to or served on Consumer if mailed to:

Patriot Coal Company, LP
c/o David Webb
19070 State Route 1078 South
Henderson, KY 42420

5.40 **Jurisdiction and Venue.** The terms, covenants and conditions herein contained constitute the entire Agreement between the parties and shall supersede all previous communications, representations, or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof, provided, however, that service to the Consumer is subject to the provisions of the Articles of Consolidation and Bylaws of Seller and is subject to the lawful orders of the Kentucky Public Service Commission. All respective rights and obligations of the parties shall be

governed by the laws of the State of Kentucky. Venue of any action, legal or equitable, having as its basis the enforcement or interpretation of this contract, shall be Henderson County, Kentucky.

5.50 **Severability.** Should any provision or provisions of this Agreement be declared void or illegal by any court of competent jurisdiction, then such void or illegal provision or provisions shall be severed from this agreement, and all other provisions hereof shall remain in full force and effect.

Seller: KENERGY CORP.

By

Printed Name:

Title:

Sanford Novick
SANFORD NOVICK
CEO

Consumer: PATRIOT COAL COMPANY, L.P.

By

Printed Name:

Title:

David L. Webb
Vice President & Gen. Mgr.
David L. Webb

**If other than president, vice president, partner or owner, a power of attorney must accompany contract.*

01-18-08