

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF KENERGY)	CASE NO.
CORP. FOR APPROVAL OF SPECIAL)	2023-00036
CONTRACTS)	

ORDER

On January 26, 2023, Kenergy Corp. (Kenergy) filed, through the Commission's electronic tariff filing system, special contracts between it, Century Marketer, LLC (Century Marketer), Century Aluminum Company (Century Aluminum), Century Aluminum Sebree, LLC (Century Sebree), Century Aluminum of Kentucky General Partnership (Century Hawesville) (collectively, Century Subsidiaries), and Big Rivers Electric Corporation (BREC) in order to effectuate a change in the market participant for Century Sebree and Century Hawesville from EDF Trading North America, LCC (EDF) to Century Marketer. On January 30, 2023, Kenergy filed two additional proposed special contracts; on February 2, 2023, Kenergy filed redlined versions of the proposal special contracts to assist in the requested expedited review. The proposed special contracts are set to become effective May 31, 2023. The parties asked that the Commission issue an Order by March 1, 2023 to ensure a smooth transition and allow time for additional required approvals to be obtained.¹

On February 8, 2023, the Commission initiated an investigation into the reasonableness of the special contracts. The opening Order included a data request as

¹ Read First Letter (filed on Jan. 26, 2023) at 3.

an Appendix. Kenergy responded to the data request on February 14, 2023. The record is now complete, and the matter is now submitted for a decision.

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.² Kentucky law provides that a utility may demand, collect and receive fair, just and reasonable rates³ and that the service it provides must be adequate, efficient and reasonable.⁴ KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

BACKGROUND

Kenergy is a rural electric cooperative corporation organized pursuant to KRS Chapter 279. It is a utility subject to the Commission's jurisdiction under KRS Chapter 278. Kenergy has approximately 58,690 customers⁵ in Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean, Muhlenberg, Ohio, Union, Webster counties, Kentucky.⁶

The original agreements executed by BREC and Kenergy were approved by the Commission effective August 20, 2013,⁷ and January 31, 2014.⁸ Approximately eight

² KRS 278.040(2).

³ KRS 278.030(1).

⁴ KRS 278.030(2).

⁵ *Annual Report of Kenergy to the Public Service Commission for the Year Ending December 31, 2021* (2021 Annual Report) at 32.

⁶ 2021 Annual Report at 52.

⁷ Case No. 2013-00221, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order* (Ky. PSC, Aug. 14, 2013).

⁸ Case No. 2013-00413, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order* (Ky. PSC, Jan. 30, 2014).

years ago, the Century Subsidiaries were allowed to exit the BREC system and access power through Kenergy from the Midcontinent Independent System Operator (MISO) wholesale market acquired by a market participant. The initial market participant was BREC, but EDF later entered into arrangements to perform those obligations.⁹ EDF has served notice to the Century Subsidiaries that it is terminating the contracts to serve as market participant, effective May 31, 2023. As a result, Kenergy must enter into new arrangements to obtain the power requirements of the Century Subsidiaries from a replacement market participant and resell that power to the Century Subsidiaries.

According to the Kenergy filing, the change in market participant requires the parties to execute the following six contracts (Century New Market Participant Transaction Agreements):

- 1) Arrangement and Procurement Agreement – An agreement between Kenergy and Century Marketer under which Century Marketer will replace EDF as the market participant and provide wholesale electric service to Kenergy for resale and delivery to the applicable Century Subsidiary.

⁹ Case No. 2014-00370, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts* (Ky. PSC Nov. 25, 2014).

2) A Lock Box Agreement¹⁰ – An agreement between Kenergy, BREC, Century Marketer, each Century Subsidiary and the bank handling the payment of the monthly power bill for each subsidiary. The agreement will relate to each Century Subsidiary's obligation to pay certain amounts due under the applicable Electric Service Agreement to an account of Kenergy at a depository bank. The applicable Century Subsidiary will continue to make its power bill payments to Kenergy's depository bank. The depository bank will disburse amounts due and owing to Kenergy and BREC before paying remaining amounts to Century Marketer, as the new market participant. All amounts in the lockbox will be disbursed monthly.

3) A Consent and Agreement – An agreement between Kenergy, BREC, Century Marketer, each Century Subsidiary and the Century Parent company, and under which the applicable Century Subsidiary and the Century Parent consent to the change in the market participant from EDF to Century Marketer and acknowledge and accept the terms and conditions of the New Market Participant contracts with the unsigned Interim Arrangement and Procurement Agreement.

4) An Interim Arrangement and Procurement Agreement – An agreement between Kenergy and BREC that will be attached to the Consent and Agreement. The Interim Arrangement and Procurement Agreement will not be executed

¹⁰ The Lock Box Agreement has not been filed with the Commission as Kenergy is awaiting the signatures of the depository institutions. In its response to Commission Staff's First Request for Information (Staff's First Request), Item 7, Kenergy states that it does not believe that the new Lock Box Agreement requires Commission approval as it is a deposit/withdrawal method for handling funds. Kenergy states that the Lock Box Agreement is a Kenergy requirement that goes into effect after 11:00 p.m. Central Time on May 31, 2023, and is not a MISO requirement. See Case No. 2013-00221, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order* (Ky. PSC, Aug. 14, 2013); Case No. 2013-00413, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order* (Ky. PSC, Jan. 30, 2014); Case No. 2014-00370, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts* (Ky. PSC Nov. 25, 2014).

in connection with the closing of the new market participant contracts but may be entered into post-closing if Century Marketer defaults on the Arrangement and Procurement Agreement. The Interim Arrangement and Procurement Agreement is intended to be a temporary arrangement to provide electric services to the Century Subsidiaries if they cease commercial operations and need only a limited amount of power.

5) Consent to Appointment – Kenergy consents to Century Marketer as the new market participant.

6) Consent to Termination - Kenergy and EDF consent to the termination of EDF as the market participant.

DISCUSSION AND FINDINGS

The Commission finds that the special contracts should be approved as discussed below. According to the redline versions of the contracts provided by Kenergy, the substance of the contracts remained substantially unchanged.¹¹ Certain provisions were revised to address the change in market participant. Kenergy anticipates approximately \$70,000 in expenses related to this change in market participant.¹² However, the Century Subsidiaries will reimburse Kenergy for all expenses related to the market participant change.¹³ Therefore, the ratepayers of Kenergy will not bear the burden of this change.

Kenergy states that the structure of credit support from Century Hawesville and Century Sebree will continue as it was originally established in 2013 and 2014, respectively, and that Century Aluminum has guaranteed the obligations. Specifically,

¹¹ Opening Order (Ky. PSC Jan. 30, 2023), Appendix B.

¹² Kenergy's Response to Commission Staff's First Request for Information (Staff's First Request) (filed on Feb. 14, 2023), Item 1.

¹³ Kenergy's Response to Staff's First Request, Item 2.

under the current Electric Service Agreements and the proposed Arrangement and Procurement Agreements, Century Hawesville and Century Sebree release and indemnify Kenergy for the market participant's failure to perform an obligation to Kenergy. Kenergy states that if the costs of a Century Marketer default were allocated to MISO market participants, Century Hawesville and Century Sebree would be obligated pursuant to Section 2.1.10 of the Century Consent to pay or reimburse Kenergy and BREC for any and all costs relating to any MISO tariff default. In addition, Century Aluminum confirmed that those obligations also are subject to its guarantee.¹⁴

IT IS THEREFORE ORDERED that:

1. The Century New Market Participant Transaction Agreements are approved effective May 31, 2023.
2. Within 20 days of the date of this Order, Kenergy shall file with the Commission, using the Commission's electronic Tariff Filing System, the Century New Market Participant Transaction Agreements as approved herein, including the Lock Box Agreement.
3. This case is closed and removed from the Commission's docket.

¹⁴ Kenergy's Response to Staff's First Request, Item 6(b).

PUBLIC SERVICE COMMISSION

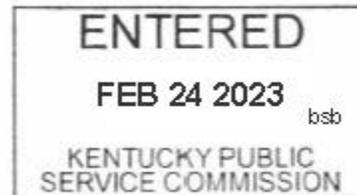


Chairman

Vice Chairman



Commissioner



ATTEST:



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