

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENERGY CORP. FOR)
APPROVAL OF FLOW THROUGH RATES) CASE NO. 2013-00385
PURSUANT TO KRS 278.455)

ORDER

On December 3, 2013, Kenergy Corp. (“Kenergy”) filed an application, pursuant to KRS 278.455(2), to flow through any wholesale rate adjustment granted to its wholesale power supplier, Big Rivers Electric Corporation (“Big Rivers”) in Case No. 2013-00199.¹ Kenergy is requesting to allocate any potential increase in Big Rivers’ wholesale rates to each of Kenergy’s customer classes and within each tariff on a proportional basis that will result in no change in Kenergy’s current rate design. In Case No. 2013-00199, Big Rivers is proposing to increase its wholesale rates for power sold to its three distribution cooperative members, one of which is Kenergy, and to accelerate the use of the Rural Economic Reserve (“RER”) funds to offset the impact of its proposed wholesale rate increase. The RER funds were required by the Commission to be established in Case No. 2007-00455² as a condition of approving the early termination of Big Rivers’ lease of its generating facilities. The generation lease termination approved in Case No. 2007-00455 is commonly known as the “unwind

¹ Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period*, filed June 28, 2013.

² Case No. 2007-00455, *Applications of Big Rivers Electric Corporation for: (1) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation; (2) Approval of Transactions; (3) Approval to Issue Evidences of Indebtedness; and (4) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc. for Approval of Transactions* (Ky. PSC Mar. 6, 2009).

transaction.” The Commission has not issued a decision on Big Rivers’ proposed rates, and Case No. 2013-00199 is currently pending before the Commission.

On November 7, 2013, Kentucky Industrial Utility Customers, Inc. (“KIUC”)³ filed a Motion to Treat All Consumers Equally with Respect to the Commission-Created Reserve Funds or in the Alternative to Require a Full-Blown Distribution Rate Case. KIUC argues that approval of Big Rivers’ proposal to use RER funds could disproportionately change Kenergy’s current rate design because the RER funds, as established by the Commission in Case No. 2007-00455, would provide a “rate credit” to Big Rivers’ Rural Class but not to the Big Rivers’ Large Industrial Class. KIUC contends that the current application of the RER funds would unreasonably discriminate against Big Rivers’ Large Industrial customers because there is no valid justification for the application of the RER funds for the exclusive benefit of Big Rivers’ Rural customers. Accordingly, KIUC argues that the flow-through of a wholesale rate increase authorized in KRS 278.455(2) is not applicable if the rate design is changed.

Kenergy filed a response on November 15, 2013, to KIUC’s motion. Kenergy objects to KIUC’s argument regarding how the proposed use of the RER funds should be applied to the rates to be established in this proceeding. Kenergy contends that the issue raised by KIUC is before the Commission in Case No. 2013-00199, and that the issue should be decided in Case No. 2013-00199, not in this case. Kenergy argues that this case should not be a general rate case, and that it is only requesting that any wholesale rate increase granted to Big Rivers be passed proportionately to Kenergy’s customers without altering the rate design of any of its customer classes.

³ KIUC is also an intervenor in Case No. 2013-00199.

KIUC filed a reply on November 21, 2013, and argues that if Big Rivers' proposed rate increase is approved and if the RER funds are ultimately applied only for Big Rivers' Rural customers' benefit, then a flow-through of the rate increase will disproportionately change Kenergy's rate design. KIUC contends that unless the Commission remedies this purported undue discrimination in Case No. 2013-00199 by requiring the RER funds to be applied to all Big Rivers' customers, the Commission should require Kenergy to file a full-scale distribution rate case.

On December 11, 2013, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, ("AG") filed a response to KIUC's November 7, 2013 motion. The AG argues that the RER funds were established by the Commission in Case No. 2007-00455 to exclusively protect Big Rivers' Rural customers from the inherent rate impact associated with the unwind transaction. The AG notes that the Commission has been steadfast in maintaining that the RER funds should be used only for the benefit of Big Rivers' Rural customers. The AG asserts that the Commission should not alter the purpose for which the RER funds were created, particularly in light of the significant rate impacts to the Rural class as a result of Big Rivers' rate cases in Case No. 2012-00535⁴ and Case No. 2013-00199. The AG also agrees with Kenergy that the issue surrounding the use of the RER funds should be decided solely within the confines of Case No. 2013-00199.

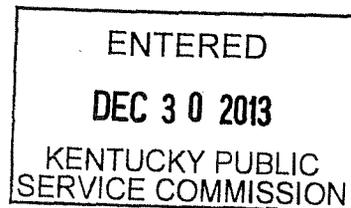
Having considered the motion and the responses and reply thereto, and being otherwise sufficiently advised, the Commission finds that the use of the RER funds for Big Rivers' Industrial and Rural customers, rather than only for its Rural customers, is

⁴ Case No. 2012-00535, *Application of Big Rivers Electric Corporation for an Adjustment of Rates* (Ky. PSC Oct. 29, 2013).

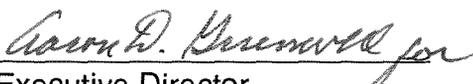
an issue raised by KIUC in Case No. 2013-00199 and should be determined in that case. It is Big Rivers, not Kenergy, that holds those funds and that has made the proposal for the accelerated use of those funds. Moreover, the issue of the appropriateness of a flow-through proceeding is not ripe, because a final determination has not been made in Case No. 2013-00199 concerning how the RER funds are to be applied. Further, KRS 278.455(2) provides that a flow-through case can be utilized if the distribution cooperative's rates are "revised on a proportional basis to result in no change in the rate design." KIUC's claim that Kenergy's proposed rates are not consistent with this statute raises questions of fact that cannot be decided at this early stage of this proceeding. Therefore, KIUC's motion will be ruled upon after all the evidence is taken and this case is submitted for a decision.

IT IS THEREFORE ORDERED that KIUC's motion shall be deferred until this case is submitted for a decision on the record.

By the Commission



ATTEST:


Executive Director

Case No. 2013-00385

Angela M Goad
Assistant Attorney General
OAG Office of Rate Intervention
1024 Capital Center Drive Suite 200
, 40601

J. Christopher Hoggood
Dorsey, King, Gray, Norment & Hoggood
318 Second Street
Henderson, KENTUCKY 42420

Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

Gregory J Starheim
President and CEO
Kenergy Corp.
6402 Old Carydon Road
P. O. Box 18
Henderson, KY 42419