

**COMMONWEALTH OF KENTUCKY**  
**PUBLIC SERVICE COMMISSION**

**IN THE APPLICATION OF )**  
**KENERGY CORP. FOR A )**  
**GENERAL ADJUSTMENT )**  
**OF RATES )**

**CASE NO. 2015-00312**

**KENERGY CORP.'S SUPPLEMENTAL COMPLIANCE WITH**  
**ORDER OF SEPTEMBER 15, 2016**

**KENERGY CORP.** (Kenergy) hereby submits its supplemental compliance with the order of September 15, 2016, page 24, item 4 (unclaimed capital credits).

In the past Kenergy had maintained a list of unclaimed capital credit accounts that resulted when members had left the system and the checks mailed to them had been returned.

Since the entry of the order Kenergy has reviewed the list of unclaimed credit accounts in excess of \$1,000.00 to determine if the companies or individuals are still in the area. Kenergy has contacted local counsel for Island Creek Coal Company and Alumax. Island Creek Coal Company has submitted documentation to claim its capital credit (\$322,000.00) and Alumax is in the process of submitting documentation to show that it is now part of Alcoa. In addition, some of the individuals on the list were still in the area and they were directed to contact Kenergy to make their claim.

Kenergy filed previously its policy for handling unclaimed capital credits. This policy involves a cross-check to determine if any of the members on the unclaimed list have returned to the system. Additionally, Kenergy is proposing to place on its website a list of the larger capital credit accounts and an e-mail address for inquiry by former members of smaller accounts that are not on the list. Placing all the unclaimed capital credit accounts on the website would be unduly burdensome.

Additionally, Kenergy will seek out a service that aids in finding unclaimed or “lost” assets. The service would be one that charges the former member a finder’s fee for obtaining the asset.

Finally, Kenergy will monitor the progress of the foregoing steps and evaluate what is appropriate for the unclaimed credits that cannot be located after diligent search and effort.

As to KRS 272.291, Kenergy believes its application is misplaced. First, the statute is in the chapter of the Kentucky Revised Statutes that applies to agricultural cooperatives. The parenthetical reference to KRS Chapter 279 makes no sense in a statute involving agricultural cooperatives. About one-half of agricultural cooperatives in the United States are taxable<sup>1</sup>. Kenergy is a tax exempt cooperative. It is doubtful that unclaimed capital credits were taxed by a taxable agricultural cooperative when assigned and distributed. Bringing those unclaimed accounts on to the books of a taxable

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<sup>1</sup> The Farmer’s Cooperative Yardstick: Should your cooperative be “exempt” or “non-exempt,” Williamson, U. of Ky. College of Agriculture Extension Publication No. AEC – 53, April 1987.

cooperative makes sense – the income should be recognized and the tax should be paid at some point.

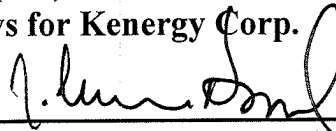
However, when Kenergy assigns capital credits, those capital credits result from margins. Of course, margins are income less expenses. For Kenergy to then claim unclaimed capital credits again as income is to count them twice. The unclaimed credits result from income and to count them as income again is duplicative. The better method of recapture of the permanently unclaimed amount is to show them as undistributed equity. As the Commission is aware, a cooperative must maintain a certain minimum equity to satisfy its lenders. Once equity from margins increase equity to a certain point, capital credits are distributed. However, the base level of capital credits below the minimum threshold is never distributed. Therefore, these unclaimed credits should form the permanent foundation in the equity “tank” thereby pushing the distributable capital credits to the top and out to the members more quickly.

Further, to convert these unclaimed capital credits to income results in a forfeiture of the rights of these former members. The effect of treating this forfeiture as “income” will be to re-allocate these amounts to other members. In essence, this becomes a dividend or payment not in proportion to the member’s contribution. Not only does this violate cooperative principles but this may create issues with the entity’s tax exempt status.

Kenergy is amenable to further discussion and conference with PSC staff should there be any question regarding this report.

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