

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

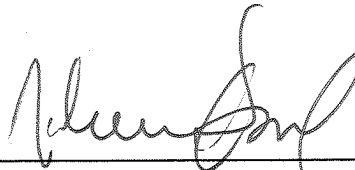
ELECTRONIC
APPLICATION OF KENERGY CORP.
FOR A WAIVER PURSUANT
TO KRS 278.2219

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) CASE No. 2020-00215

VERIFICATION

(Second Supplement to Staff Data Requests – Item 5)

I verify, state and affirm that the data requests responses attached hereto and filed with this verification are true and correct to the best of my knowledge and belief formed after a reasonable inquiry, and I ask that I be added as a witness for this information.



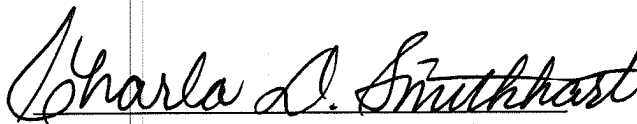
J. Christopher Hopgood

STATE OF KENTUCKY

COUNTY OF HENDERSON

The foregoing was signed, acknowledged and sworn to before me by J. CHRISTOPHER HOPGOOD this 5th day of October, 2020.

My commission expires _____



Notary Public, State of Kentucky at Large

(seal)

Charla D. Smithhart
NOTARY PUBLIC
State at Large, Kentucky
ID # 586953
My Commission Expires 9/29/2021

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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

**APPLICATION OF KENERGY CORP. FOR A) CASE NO.
WAIVER PURSUANT TO KRS 278.2219) 2020-00215**

**KENERGY CORP.'S SECOND SUPPLEMENTAL RESPONSES TO
COMMISSION'S STAFF'S FIRST REQUEST FOR INFORMATION**

Kenergy Corp. ("Kenergy"), by counsel, submits the following second supplemental response to Staff Data Request 5:

Item 5) Refer to the Application, pages 5-6. Explain in detail and with specificity how the provisions of KRS 278.2201 to 278.2713 are impracticable or unreasonable as applied to the circumstances which are the subject of this proceeding.

RESPONSE) There are two avenues for Kenect to startup. First, Kenergy can guarantee a letter of credit that Kenect needs to obtain funding. The alternative is that Kenergy can invest \$3,000,000 of its equity in Kenect to enable Kenect to obtain its own letter of credit from CoBank.

The first alternative involves placing Kenergy's assets at risk to support the letter of credit guarantee. From an accounting standpoint, a letter of credit guarantee is not on the balance sheet. It is an inchoate loan. While no assets are affected by the guarantee, in the worst case scenario, then Kenergy must be prepared to satisfy the letter of credit should Kenect fail.

The second alternative involves placing \$3,000,000 in current assets (cash) into Kenect. While not a loan, it does transfer \$3,000,000 of Kenergy's equity to Kenect.

While Kenergy expects to fully recoup its investment in Kenect, either scenario presents at least a theoretical initial subsidy by Kenergy into Kenect.

1 Because KRS 278.2201 bars the subsidy of a non-regulated venture by a
2 regulated utility, a waiver is sought.

3
4 Additionally, KRS 278.2213 states that “[a] utility shall not enter into any
5 arrangements for financing nonregulated activities through an affiliate that
6 would permit a creditor upon default to have recourse to the assets of the
7 utility.” Kenergy needs a waiver from this under the Kenergy letter of credit
8 guarantee scenario because, theoretically, Kenergy’s assets are necessary to
9 support the parent letter of credit guarantee

10
11 Both KRS 278.2201 and KRS 278.2213 are impractical and unreasonable
12 obstacles to Kenergy providing broadband service through a subsidiary. In
13 order for Kenect to become viable, Kenergy must prime the pump with either
14 a cash infusion or by using Kenergy’s financial wherewithal to enable Kenect
15 to obtain the credit support it needs to obtain government subsidies.
16 Depending upon the success of Kenect, the subsidy might not be long term,
17 but there is no practical way to establish a subsidiary without either infusing
18 cash (a subsidy) or guaranteeing a letter of credit (both a subsidy and placing
19 the assets of Kenergy subject to recourse). Per KRS 278.2219(1), the need
20 for the waiver or deviation is that there is no practical or reasonable way for
21 Kenect to develop the broadband project without Kenergy’s initial
22 assistance.

23
24 The cost and benefit of Kenergy’s compliance under KRS 278.2219(2) is
25 best answered in the negative. The cost of strict compliance with KRS
26 278.2201 and 278.2213 is the loss of the opportunity to obtain significant
27 subsidies and supply needed broadband service. Kenergy does not believe it
28 can explore broadband through a subsidiary in compliance with KRS
29 278.2201 and KRS 278.2213; consequently, there is no benefit to
30 compliance. The benefit to the waiver or deviation is stated in these
31 responses and in the plethora of public comment received in support of the
32 Application.

33
34 As to why Kenergy in its regulated business needs a waiver or deviation, the
35 need for broadband is directly related to the need for Kenergy to ensure that
36 its territory is economically viable. If Kenergy’s territory had large swaths
37 of unserved electrical areas, there would be no question as to the need to do
38 whatever is necessary to remedy the problem. Other companies have had
39 plenty of opportunity to remedy the broadband problem and have neglected
40 to do so.

41
42 Now that Kenergy has the opportunity to obtain significant federal subsidy
43 to provide broadband, it would be derelict in not doing so to enhance

1 Kenergy's regulated business. The proof is in the record that lack of
2 broadband is inimical to economic growth. Kenergy's member growth has
3 been anemic overall and paltry in the unserved broadband areas. Further,
4 lack of population density in unserved areas drives up the cost of electricity
5 by having fewer members per mile.

6
7 To be redundant, these economic factors have been magnified by Covid.
8 While all hope and pray that Covid has exited our lives by the time broadband
9 is up and running, the effect of Covid will linger. Businesses and schools
10 will continue to provide opportunities for employees and students to work
11 from home. Simply, the affiliated entity statutes interfere with Kenergy's
12 ability to protect and enhance its regulated business. In summary, if the strict
13 application of the affiliated transaction statutes affect Kenergy's ability to
14 protect, preserve and enhance its ability to provide low cost power then the
15 statutes are impractical and unreasonable.

16
17 Neither "deviation" nor "waiver" are defined terms in KRS 278. To the
18 extent a deviation is more appropriate than a waiver, then Kenergy requests
19 a deviation as an alternative plea of relief. Kenergy's immediate need is
20 simply to be able to help Kenect obtain the letter of credit necessary to move
21 forward on the project.

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23
24 Regulated cooperatives providing broadband through a subsidiary in
25 Kentucky is a question of first impression and Kenergy submits that
26 thorough vetting by the Commission of this proposal is appropriate.

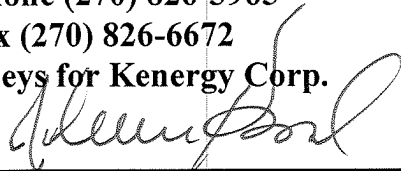
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28 For clarity, statutory areas where no waiver is needed are as follows. In
29 calculating the Kenect lease payment, services and products provided to
30 Kenect by Kenergy pursuant to a tariff will be at the tariffed rate, with
31 nontariffed items priced at the Kenergy's fully distributed cost but in no
32 event less than market, or in compliance with the utility's existing USDA,
33 SEC, or FERC approved cost allocation methodology. Services and
34 products provided to Kenergy by Kenect will be priced at the affiliate's fully
35 distributed cost but in no event greater than market or in compliance with
36 the utility's existing USDA, SEC, or FERC approved cost allocation
37 methodology. Kenergy will not provide any type of undue preferential
38 treatment to a nonregulated affiliate to the detriment of a competitor.

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42 WITNESS) J. Christopher Hopgood

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Respectfully submitted,

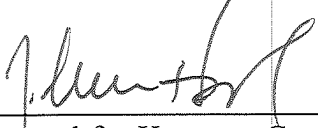
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Attorneys for Kenergy Corp.

By 

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served by electronic filing to the Kentucky Public Service Commission, 211 Sower Blvd., Frankfort, KY 40602 with a copy served electronically to the Kentucky Attorney General, Office of Rate Intervention, 700 Capital Avenue, Suite 20, Frankfort, KY 40601-8204, on this 5th day of October, 2020.



Counsel for Kenergy Corp.