

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

In the Matter of:

**THE ELECTRONIC APPLICATION OF)
KENERGY CORP. FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY)
FOR THE CONSTRUCTION OF A HIGH-SPEED)
FIBER NETWORK AND FOR APPROVAL OF THE)
LEASING OF THE NETWORK'S EXCESS CAPACITY)
TO AN AFFILIATE TO BE ENGAGED IN THE)
PROVISION OF BROADBAND SERVICE TO)
UNSERVED AND UNDERSERVED HOUSEHOLDS)
AND BUSINESSES OF THE COMMONWEALTH)**

Case No. 2021-00365

**KENERGY CORP.'S RESPONSES TO
KENTUCKY BROADBAND AND CABLE SECOND REQUEST
FOR INFORMATION**

KENERGY CORP. responds to **KENTUCKY BROADBAND AND
CABLE'S** Second Request for information as follows:

11. Kenergy's response to KBCA's Data Request No. 1 provides maps of areas within Kenergy's electric service territory that it believes to be unserved or underserved. With respect to these areas, please confirm each of the statements below. If you are unable to confirm any of these statements, please provide a detailed explanation setting forth why you are unable to do so.

a. Please confirm that the location of Kenergy's proposed fiberoptic facilities will not be limited to the areas that Kenergy believes to be unserved or underserved set forth in the maps accompanying its response to KB's Data Request No. 1.

RESPONSE: Kenergy and Kenect object to the entirety of this KBCA Data Request No. 11, including all subparts. The Commission's Order granting KBCA intervention in this matter specifically limited KBCA's intervention to "the issue of maps depicting whether service areas are underserved or unserved." To the extent that Data Request No. 11 seeks to elicit information to further KBCA's November 15, 2021 hearing testimony and legal arguments regarding which customers may be served from the subleased network, KBCA seeks only to gain a competitive advantage for its members by advocating for artificial barriers to entry in violation of KRS 278.5462 and other applicable law. Consequently, this Data Request No. 11 is outside the scope of KBCA's limited right of intervention.

Subject to and without waiver of the foregoing objection, Kenergy's smart grid will be overbuilt onto its existing distribution infrastructure in order to provide fiber communications between Kenergy's substations and its control center, to enable its members to take advantage of smart grid services in the future that will provide two way communications between the member and Kenergy and to facilitate the deployment of rural broadband, which is not available throughout Kenergy's service territory. Maps depicting those distribution facilities were provided in response to initial Data Requests 5 & 6.

WITNESS: Counsel as to the Objection and Jeff Hohn

b. Please confirm that the locations of Kenergy's proposed fiberoptic facilities are represented by the maps provided in its response to KBCA's Data Request No. 5.

RESPONSE: Please see the responses to the preceding portions of this KBCA Data

Request No. 11.

WITNESS: Jeff Hohn

c. Please confirm that Kenergy's proposed lease and sublease of its proposed fiberoptic facilities will not be limited to areas identified as unserved or underserved in the maps accompanying its response to KBCA's Data Request No. 1.

RESPONSE: Kenergy proposes to lease the excess capacity of the entire smart grid fiber network to Kenect. Kenergy is not a party to the sublease. Please also see the responses to the preceding portions of this KBCA Data Request No. 11.

WITNESS: Jeff Hohn

d. Please confirm that Kenergy's proposed lease of its proposed fiberoptic facilities will be for the proposed fiberoptic system in its entirety, as identified in the maps provided in its response to KBCA Data Request No.5.

RESPONSE: Please see the responses to the preceding portions of this KBCA Data Request No. 11.

WITNESS: Jeff Hohn

e. Please confirm whether Kenergy's proposed sublease of its proposed fiberoptic facilities will be for the proposed fiberoptic system in its entirety, as identified in the maps provided in its response to KBCA Data Request No. 5. If not, please identify the area covered by the proposed sublease.

RESPONSE: Kenergy is not a party to the sublease. Please also see the responses to the preceding portions of this KBCA Data Request No. 11.

WITNESS: Jeff Hohn

f. Please confirm that the terms of Kenergy's proposed lease of its proposed fiberoptic facilities will not prohibit Kenect from using the system to offer broadband services outside of the areas identified by Kenergy as unserved or underserved.

RESPONSE: Please see the responses to the preceding portions of this KBCA Data Request No. 11. Kenect's principal goal is to bring broadband services to the significant portions of Kenergy's territory that remain unserved or underserved. To the extent that the pursuit of this goal results in some competition with an existing broadband provider in the isolated areas of Kenergy's territory that do have access to broadband service, Kenect intends to provide broadband service to those members desiring to receive such services, as is permitted by federal law, KRS 278.5462, and KRS 278.5464.

WITNESS: Jeff Hohn

g. Please confirm that the terms of Kenergy's proposed sublease of its proposed fiberoptic facilities will not prohibit Conexon Connect from using the system to offer broadband services outside of the areas identified by Kenergy as unserved or underserved.

RESPONSE: Kenergy is not a party to the sublease. Please also see the responses to the preceding portions of this KBCA Data Request No. 11.

WITNESS: Jeff Hohn

12. Please identify which steps, if any, Kenergy and/or Kenect intend to take to ensure that the proposed fiberoptic facilities are used to offer broadband services only in areas identified as unserved or underserved.

RESPONSE: Kenergy and Kenect object to (and reject) KBCA's implicit legal conclusion that KRS 278.5464 should be construed to protect KBCA's members from competition in the broadband marketplace.

Kenergy and Kenect further object to this request because the Commission has already expressly cautioned that KBCA's intervention is limited to "the issue of maps depicting whether the service areas are underserved or unserved." Order on Intervention at p. 5. Nevertheless, KBCA continues to unreasonably disrupt and delay this proceeding by focusing on issues involving Kenect's business plans for providing broadband service to rural Kentuckians whose communities have been neglected by KBCA and its largest members for 20+ years.

As requests like this illustrate, KBCA's primary interest in this proceeding lies not in providing information about what small parts of Kenergy's territory may have

access to some broadband service. KBCA's interest lies in attempting to carve out what would amount to protected broadband service territories for some of its members. Not only do these self-protective views contravene all known legal authority prohibiting the regulation of broadband (whether through service territory designation or otherwise), they specifically violate the express policies and provisions of KRS 278.546-5464 which seek to promote the dual goals of competition and the expansion of rural broadband for the benefit of the Commonwealth's citizens.

Without waiving these objections, please see the responses to KBCA Data Request No. 11.

WITNESS: Counsel as to the objection and Jeff Hohn

DORSEY, GRAY, NORMENT & HOPGOOD
318 Second Street
Henderson, KY 42420
Telephone (270) 826-3965
Telefax (270) 826-6672
Attorneys for Kenergy Corp. and Kenect

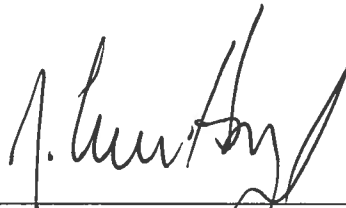
By



J. Christopher Hopgood
chopgood@dkgnlaw.com

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, and James W. Gardner and M. Todd Osterloh, Sturgill, Turner, Barker & Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, on this 14th day of January, 2022.



J. Christopher Hoggood

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(KBCA Second Data Requests B Items 11(a), 11(b), 11(c), 11(d), 11(e), 11(f), 11(g), &
12

I verify, state and affirm that the data request response attached hereto and filed with this verification is 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.



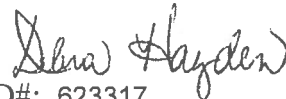
Jeff Hohn

STATE OF Kentucky
COUNTY OF Daviess

The foregoing was signed, acknowledged and sworn to before me by JEFF HOHN this 13th day of January, 2022.

My commission expires 2-24-2023

(seal)

Notary Public, 
Notary Public ID#: 623317