

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

In the Matter of:	)	
	)	
ELECTRONIC APPLICATION OF KENERGY	)	
CORP. FOR A CERTIFICATE OF PUBLIC	)	
CONVENIENCE AND NECESSITY FOR THE	)	
CONSTRUCTION OF A HIGH-SPEED FIBER	)	CASE NO.
NETWORK AND FOR APPROVAL OF THE	)	2021-00365
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	)	
<u>BUSINESSES OF THE COMMONWEALTH</u>	)	

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**KBCA’S REPLY IN SUPPORT OF ITS  
MOTION TO AMEND THE PROCEDURAL SCHEDULE**

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On December 22, 2021, the Kentucky Broadband and Cable Association (“KBCA”) moved for an amendment of the procedural schedule in this matter. Kenergy Corp. (“Kenergy”) filed a response on December 27, 2021. KBCA, by counsel, submits the following Reply:

An amendment of the procedural schedule is necessary because Kenergy did not file its responses to KBCA’s initial request for information by the December 3, 2021, deadline, as set forth by the Order dated October 22, 2021. Rather, Kenergy waited until after KBCA was granted intervention and filed the responses on December 20, 2021—merely two days before the deadline for supplemental requests to be submitted.<sup>1</sup>

Kenergy does not object to an extension to the deadline for submission of supplemental requests and a corresponding extension to the deadline for submission of responses thereto. But

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<sup>1</sup> As previously mentioned, Kenergy forwarded a courtesy copy of its anticipated responses to KBCA at 5:48pm EST on the evening of Friday, December 17, 2021.

Kenergy objects to an extension to other future deadlines.<sup>2</sup>

Kenergy's position is unreasonable. It would require intervenors to file their testimony on the same day that Kenergy responds to their supplemental data requests, effectively nullifying any value that Kenergy's responses might add to this proceeding. It would require KBCA and the Attorney General to prepare testimony without the benefit of knowing what information Kenergy provided in response to those supplemental requests for information. This would be a disservice to KBCA and the Attorney General, as well as the Commission, which benefits from comprehensive testimony.

KBCA also takes issue with Kenergy's claim that KBCA's motion would "unduly complicate or disrupt" the proceeding. First, there is no statutory deadline by which the Commission must issue a decision in this matter, and Kenergy provides no explanation as to why this modest extension would cause any undue prejudice. In contrast, KBCA has explained that the reasonable extension to future deadlines is necessary in order to ensure the ability to analyze the responses, including objections and whether those objections were appropriate and reasonable. Moreover, KBCA does not believe that the requested extension to future deadlines will negatively impact the recently issued hearing date of March 31, 2022. If the deadlines for Kenergy's responses to supplemental requests and all subsequent deadlines are extended for two-week periods, Kenergy's rebuttal testimony would be due no later than March 25, 2022.<sup>3</sup>

Second, KBCA's contention that KBCA's Motion to extend the procedural deadlines

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<sup>2</sup> Communications with Kenergy's counsel prior to the filing of the Motion to Amend the Procedural Schedule led the undersigned counsel to believe that Kenergy had no objection to the request for an extension of all future deadlines, which is why the motion contained a statement of "no objection." As Kenergy's position is now clearly stated in the record, this discrepancy need not be resolved.

<sup>3</sup> The current procedural schedule has two three-week periods between (1) the filing of the Intervenor testimony and data request to the Intervenor and (2) those data requests and the Intervenor's responses thereto. In consideration of the recently established hearing date, and as an alternative, KBCA would have no objection if the Commission shortened those periods each to two weeks, resulting in no change to the deadline for rebuttal testimony as it is currently set on March 11, 2022.

“corroborates an intent to ... pursu[e] issues ancillary” to KBCA’s participation is unfounded. The Commission specifically found that “that KBCA is likely to present issues or develop facts regarding underserved and unserved areas in Kenergy’s service territory.”<sup>4</sup> The purpose of KBCA’s present motion is to ensure that it will have a meaningful opportunity to participate in supplemental discovery so that KBCA can appropriately “present issues [and] develop facts” regarding this topic in its testimony. KBCA’s ability to do so requires a meaningful opportunity to seek information from Kenergy pertinent to this topic, to analyze Kenergy’s responses, and to bring to the Commission’s attention any subjects on which Kenergy has failed to provide adequate responses to KBCA’s data requests so that the Commission can develop an adequate record. Absent the requested extension, this opportunity would be foreclosed.<sup>5</sup>

Accordingly, KBCA respectfully requests this extension to the future dates in the procedural schedule, whereby supplemental requests for information to Kenergy shall be filed on or before January 7, 2022, and subsequent deadlines have corresponding adjustments.

RESPECTFULLY SUBMITTED,

STURGILL, TURNER, BARKER & MOLONEY, PLLC

/s/ M. Todd Osterloh

James W. Gardner

M. Todd Osterloh

333 West Vine Street, Suite 1500

Lexington, KY 40507

Phone: (859) 255-8581

E-mail: [jgardner@sturgillturner.com](mailto:jgardner@sturgillturner.com)

E-mail: [tosterloh@sturgillturner.com](mailto:tosterloh@sturgillturner.com)

*Counsel for KBCA*

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<sup>4</sup> Order at 4, 5 (Ky. PSC Dec. 9, 2021).

<sup>5</sup> KBCA has serious concerns with Kenergy’s December 20, 2021 responses to KBCA’s first set of data requests. The responses fail to provide the necessary information regarding whether Kenergy’s planned broadband deployment actually aligns with unserved and underserved areas in its service territory. This proceeding will benefit greatly from providing the parties—and the Commission—a meaningful opportunity to develop the factual record on this topic.