

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION  
CASE NO. 22-00133

Electronically filed.

BIOFUEL MINING, INC.

COMPLAINANT

**V. AMENDED COMPLAINT AND REQUEST FOR ONE DAY ENLARGEMENT OF TIME**

KENTUCKY POWER COMPANY

DEFENDANT

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Comes the Complainant, Biofuel Mining, Inc., by counsel, and respectfully requests one (1) additional day including today, 5/17/22, to submit its Amended Complaint. In support of its request, Biofuel would show the Court that counsel was out of the office for meetings all day, and that counsel's assistant was unexpectedly and unavoidably absent. Counsel expected the Answer to be filed, but as nobody was in the office, did not know it had not been. While timely filing is the responsibility of counsel, counsel would show that no prejudice to Defendant will result from the one day extension.

AMENDED COMPLAINT

Biofuel restates the allegations in its initial complaint as if fully recited herein.

1. The communications between Kentucky Power and Biofuel, attached as Exhibit B to the initial Complaint, show that Kentucky Power failed to give Biofuel more than seven (7) days notice of a multi-million dollar deposit it claimed was due.

2. Exhibit B also indicates that Kentucky Power gave Biofuel only a two (2) day extension when Biofuel explained that it could not come up with 2.8 million dollars on a week's notice. This extension was not reasonable, given that no power was required until August, 2022.

3. Kentucky Power's calculation of the deposit sum does not include the bulk discount/reduction in rate agreed upon by the parties.

4. Kentucky Power's calculation of the deposit sum is not based on the proposed power usage of Biofuel or the rate agreed upon by the parties.

5. The rate schedule appended as Exhibit B is not the rate agreed upon by the parties.

6. There is nothing in statute or regulation that permits Kentucky Power to change the agreed upon rate without notice and reason therefore.

7. There is nothing in statute or regulation that permits Kentucky Power to give a customer only seven (7) days to come up with a multi-million dollar deposit for service that will not begin for three months.

8. The applicable law shows that Kentucky Power acted arbitrarily and without basis in determining the rate it would charge and in modifying the parties' rate agreement.

9. Kentucky Power's demand for payment of 2.8 million dollars on seven days notice is patently insufficient.

10. The actions of Kentucky Power render it impossible for the customer to comply and are neither equitable nor reasonable.

11. Every contract in Kentucky has a basic requirement of good faith and fair dealing.

12. Kentucky Power has failed to act in accordance with those requirements of Kentucky law.

13. The foregoing details were contained in the original Complaint, and are affirmed herein.

14. 807 KAR 5.006 requires the utility to provide a reasonable deposit request. Kentucky Power did not do so in the present case, as outlined above. The deposit was not at the agreed upon rate, or based on current customer bills for Biofuel or on estimated usage by similar customers, of which there are none in the region. The communications from Kentucky Power do not provide an appropriate basis for the rate sought.

15. There is no evidence in the record or in Kentucky Power's communications with Biofuel that support a finding that 2.5 months' service would cost 2.8 million dollars. Therefore, the deposit demanded is unreasonable.

16. There is no evidence in statute or regulation that giving a customer seven days to pay a massive deposit, three months before service is to start, is customary or usual.

For the foregoing reasons, Biofuel asserts that its complaint is well founded and that the case should not be dismissed.

Respectfully submitted,

Anna Stewart Whites

**ANNA STEWART WHITES**

*Attorney at Law*

327 Logan Street

P.O. Box 4023

Frankfort KY 40601

(502) 352-2373/FAX 352-6860  
[Annawhites@aol.com](mailto:Annawhites@aol.com)