

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)	
NETWORK AND FOR APPROVAL OF THE)	CASE NO.
LEASING OF THE NETWORK'S EXCESS)	2021-00365
CAPACITY TO AN AFFILIATE TO BE)	
ENGAGED IN THE PROVISION OF)	
BROADBAND SERVICE TO UNSERVED AND)	
UNDERSERVED HOUSEHOLDS AND)	
BUSINESSES OF THE COMMONWEALTH)	

ORDER

This matter arises on Kenergy Corp.'s (Kenergy) motion to amend and supplement its application in this matter. On September 10, 2021, Kenergy filed an application requesting Commission approval of a Certificate of Public Convenience and Necessity (CPCN) to construct a high-speed fiber network and approval to lease a portion of the fiber network to a non-jurisdictional affiliate of Kenergy. On October 7, 2021, Kenergy filed a motion requesting to amend the September 10, 2021 application to supplement it with additional direct testimony. Concurrently with the motion, Kenergy also filed the direct testimony of Jonathan Chambers, who is a partner in Conexon, LLC, an internet service provider who will assist in operating and managing the proposed fiber network.

As a basis for its request, Kenergy argued that Chambers’s direct testimony was not available when the application was filed on September 10, 2021, due to “time constraints” that were beyond Kenergy’s control.¹

LEGAL STANDARD

Commission regulation 807 KAR 5:001, Section 4(5), provides that the Commission should allow an application to be amended upon a party’s motion and showing of good cause. The regulation further states that, unless the Commission orders otherwise, the amendment shall not relate back to the date of the original paper.

DISCUSSION AND FINDINGS

The Commission notes that the filing requirements for CPCN applications, set forth in 807 KAR 5:001, Sections 4, 7, 8, and 14, do not expressly require an application for a CPCN to be supported by direct testimony. However, most CPCN applications include direct testimony as evidence provided to establish the applicant’s burden of proof of the reasonableness of its application.

The Commission also notes that in Case No. 2020-00215, Kenergy tendered late-filed direct testimony outside of the procedural schedule, subsequently filing a belated motion to incorporate the late-filed testimony two months after the application was accepted for filing.² Due to the late-filed direct testimony in Case No. 2020-00215, the Commission had to amend the procedural schedule to accommodate the late-filed testimony.

¹ Kenergy’s Motion to Amend and Supplement Application with Testimony of Jonathan Chambers (filed Oct. 7, 2021).

² Case No. 2020-00215, *Electronic Application of Kenergy Corp. for a Waiver Pursuant to KRS 278.2219* (filed September 11, 2020).

Here, Kenergy attributed the late-filed direct testimony to time constraints, but failed to identify with specificity what time constraints prohibited Kenergy from timely filing the direct testimony. Given the brevity of Mr. Chambers's testimony, which largely mirrors the testimony he provided in Case No. 2020-00215, the Commission questions what "time constraints" would have delayed timely filing Mr. Chambers's testimony. However, in the interest of developing a complete record, the Commission will allow Kenergy to amend the application to include Mr. Chambers's testimony. Based upon 807 KAR 5:001, Section 4(5), the Commission further finds that the amendment will not relate back, and thus the filing date of Kenergy's application is deemed to be October 7, 2021.

Because the application is now deemed filed on October 7, 2021, the Commission finds that an amended procedural schedule must be issued. The amended procedural schedule is attached as an appendix to this Order.

Filing direct testimony substantially after an application results in inefficient use of time and resources for Commission Staff and intervening parties. The Commission puts Kenergy on notice that any future applications should be thoughtfully prepared and filed only when Kenergy has completed gathering all evidence in support of its application. The Commission will look with strong disfavor on any future late-filed direct testimony.

Finally, in his testimony, Mr. Chambers referenced documents filed in Case No. 2020-00215, and contended that he incorporated them by reference into his testimony. However, Kenergy did not move to incorporate the documents into this matter. The Commission finds that, in the interest of administrative efficiency, Kenergy should file the feasibility study documents referenced by Mr. Chambers into this case.

IT IS THEREFORE ORDERED that:

1. Kenergy's motion to amend its application is granted.
2. Kenergy's application is deemed filed as of October 7, 2021.
3. Within five days of the date of this Order, Kenergy shall file the feasibility study referenced in the direct testimony of Johnathan Chambers into the record of this proceeding.
4. The procedural schedule established on September 22, 2021, is stricken and replaced with the procedural schedule attached as an appendix to this Order.

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By the Commission



ATTEST:

Linda C. Bridwell

Executive Director

Case No. 2021-00365

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00365 DATED OCT 22 2021

Last day for intervention requests to be accepted.....	11/01/2021
All initial requests for information to Kenergy shall be filed no later than.....	11/17/2021
Kenergy shall file responses to initial requests for information no later than.....	12/03/2021
All supplemental requests for information to Kenergy shall be filed no later than	12/22/2021
Kenergy shall file responses to supplemental requests for information no later than	01/07/2022
Intervenor testimony, if any, in verified prepared form shall be filed no later than	01/21/2022
All requests for information to Intervenors shall be filed no later than.....	02/14/2022
Intervenors shall file responses to requests for information no later than.....	03/04/2022
Kenergy shall file, in verified form, its rebuttal testimony no later than	03/11/2022
Public Hearing to be held in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses of Kenergy and Intervenors	To be scheduled

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*J. Christopher Hopgood
Dorsey, Gray, Norment & Hopgood
318 Second Street
Henderson, KENTUCKY 42420

*Jeffrey Hohn
President
Kenergy Corp.
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42419

*John Horne
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Kenergy Corp.
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42419

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204