

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| 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

On December 22, 2021, Kentucky Broadband and Cable Association (KBCA) filed a motion requesting to amend the procedural schedule¹ to allow KBCA additional time to prepare supplemental data requests, which were due on December 22, 2021. KBCA requested an extension until January 7, 2022, to file a supplemental data request to KBCA, and that all subsequent procedural events be moved out 16 days. KBCA stated that it discussed its request with Kenergy Corp. (Kenergy) and with the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), and that they did not object to an amended procedural schedule.

¹ The Commission established a procedural schedule on September 22, 2021. Kenergy filed a motion to amend its application on October 7, 2023. In an October 22, 2021 Order approving the motion, the Commission ordered the September 22, 2021 procedural schedule be stricken and replaced with the procedural schedule attached to the October 22, 2021 Order.

As a basis for its motion, KBCA stated that it needed additional time until January 7, 2022, to prepare a supplemental data request. KBCA explained that Kenergy filed a response to KBCA's first data request on December 20, 2021, and that Kenergy provided a courtesy copy to KBCA counsel on December 17, 2021. KBCA further explained that, in accordance with the existing procedural schedule, Kenergy's response to the first data request was due on December 3, 2021, and that the Commission granted KBCA's motion to intervene on December 9, 2021. KBCA argued that Kenergy did not provide KBCA with sufficient time to review the responses to the first data request before the supplemental data request was due on December 22, 2021, and that granting the extension would not harm any party or the Commission.

On December 27, 2021, Kenergy filed a response to KBCA's motion, stating that it did not object to granting KBCA an extension of time to file supplemental data requests and would respond to the supplemental requests by January 21, 2022. However, Kenergy objected to amending the procedural schedule, arguing that no adjustments were necessary. Kenergy argued that KBCA was provided a copy of Kenergy's responses to KBCA's first data request five days before the supplemental data requests were due. Kenergy further argued that, in granting KBCA's request to intervene, the Commission limited KBCA to addressing the issue of maps depicting whether the areas are underserved or unserved. Kenergy maintained that it provided information pertaining to that issue and that KBCA's supplemental data requests should be limited to that sole issue.

On December 28, 2021, KBCA filed a reply, reiterating that because Kenergy failed to timely provide responses to KBCA's first data request, KBCA needed additional time

to prepare supplemental data requests. KBCA argued that, if the procedural schedule were not further amended, that KBCA would be required to file intervenor testimony on the same day that Kenergy responded to the supplemental data requests. KBCA maintained that, if the procedural schedule was not amended, then KBCA and the Attorney General would have to file testimony without prior knowledge of Kenergy's responses. KBCA argued that amending the procedural schedule would not unduly complicate or disrupt the proceedings.

The Attorney General did not file a response to KBCA's motion.

The Commission notes that, in its motion and reply, KBCA never addressed whether it had communicated with Kenergy regarding the response date for the first data requests. The Commission also notes that KBCA received a copy of Kenergy's responses five days prior to the date the supplemental data requests were due, and waited until the date that the supplemental data requests were due to request an extension. Finally, it is well established that the Commission does not look favorably upon motions for continuance, and thus motions for extensions of time or to amend an established procedural schedule will be granted only upon a showing of good cause.

Based upon a review of the motion, response, reply, and the case record, the Commission finds that KBCA's request to file its supplemental data request on January 7, 2022, should be granted, and that its request to amend the procedural schedule should be denied. When the Commission granted KBCA's request to intervene, the Commission stated that KBCA was limited to presenting issues or developing facts regarding maps depicting whether the service area is underserved or unserved, including those maps that are proprietary to KBCA or its members. The Commission will grant KBCA's motion for

an extension of time until January 7, 2022, to file KBCA's supplemental data request to afford KBCA the opportunity to build a robust and thorough record on the issue of mapping the service area. The Commission will also require Kenergy to file its response on January 17, 2022, which will allow for time for KBCA to file intervenor testimony on January 21, 2022, as scheduled.

The Commission concludes that KBCA did not establish good cause to amend the procedural schedule for the remaining procedural deadlines, and thus finds that the request to amend the procedural schedule should be denied. KBCA agreed to abide by the established procedural schedule when it was granted intervention. KBCA filed its first data request prior to being granted intervenor status. There is no evidence in the record that KBCA took any affirmative steps to timely receive Kenergy's response to the first data requests. By KBCA's own admission, it received a copy of the responses five days before they were due. While this is an abbreviated period for review, KBCA has not explained why it did not take prompt action to either prepare supplemental data requests or to timely request an extension of time to prepare and file supplemental data requests. It appears that KBCA sat on the issue of responses to data requests, and now requests to amend the procedural schedule to accommodate a delay that KBCA took no steps to address. The October 22, 2021 procedural schedule was developed after a review of multiple considerations, including the amount of time needed to process this case, and amending the procedural schedule would unduly complicate or disrupt the processing of this matter in light of the Commission's workload and resources.

IT IS THEREFORE ORDERED that:

1. KBCA's motion is granted in part and denied in part.

2. KBCA's request for an extension of time until January 7, 2022, to file its supplemental data requests to Kenergy is granted.

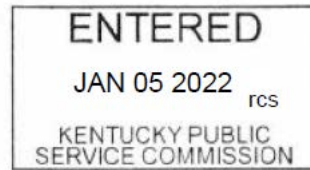
3. KBCA's request to amend the procedural schedule for the remaining procedural deadlines is denied.

4. KBCA shall file its supplemental data request on or before January 7, 2022.

5. Kenergy shall file its response to KBCA's supplemental data requests on or before January 17, 2022.

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By the Commission



ATTEST:


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