

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROGER D. SHOCKLEE)	
)	
COMPLAINANT)	
)	CASE NO.
V.)	2023-00421
)	
KENERGY CORP.)	
)	
DEFENDANT)	

ORDER

On December 23, 2024, Roger D. Shocklee filed a motion, pursuant to KRS 278.400, requesting reconsideration of the Order entered December 4, 2024 (Final Order).

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearing, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”¹

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An order can only be unlawful if it violates a state or federal statute or constitutional provision.²

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

DECEMBER 4, 2024 ORDER

Mr. Shocklee filed his complaint on December 18, 2023, alleging that Kenergy Corp. (Kenergy) improperly rejected his two applications for interconnection of two proposed solar power facilities pursuant to KRS 278.465 and Kenergy's net metering tariff.³ Mr. Shocklee is a Kenergy customer who takes service under two accounts with two meters at the same service address.⁴ According to his complaint, he is a lessee and lawful occupant of the premises located at said service address.⁵ Mr. Shocklee filed, with his complaint, a letter from Kenergy dated November 30, 2023, stating that "Mr. Shocklee's application was rejected because he is not the owner of the property where the proposed solar facility was to be installed. KRS 278.465(1) defines an "[e]ligible

² *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

³ Complaint at 3–4.

⁴ Complaint at 2; Exhibits B and C (Applications for Interconnection); Answer (filed Jan. 12, 2024) at 7.

⁵ Complaint at 5.

customer-generator” as one who owns and operates an electric generating facility . . . located on the customer’s premises.”

Mr. Shocklee acknowledged that Scott Heath of Kenergy spoke with him and indicated that “even if Mr. Shocklee qualified as an approved generating facility, the transmission line supplying his farm was only capable of supporting a 45 KW system. Mr. Heath stated that it was due to Kenergy’s tariff that only allowed 15 percent of said line’s capacity.”⁶ Kenergy claimed that splitting the solar project into two applications was intended to circumvent the 45 kW capacity limit for net metering facilities found in its tariff and KRS 278.465(2)(c).⁷ Kenergy also provided calculations regarding the requirement known as the “15 percent rule” included its tariff: “For interconnection to a radial distribution circuit, the aggregated generation on the circuit, including the proposed generating facility, will not exceed 15% of the Line Section's most recent annual one hour peak load.”⁸ The calculations indicated that the aggregate generation on the applicable circuit was already in excess of 15 percent of the Line Section's most recent annual one hour peak load.⁹

In the Final Order, the Commission denied Mr. Shocklee’s complaint on the basis that his proposed construction did not meet the 15 percent rule requirement. The Commission determined that since the proposals could not meet this requirement, denial

⁶ Complainant’s Response to Commission Staff’s First Request for Information (filed Feb. 15, 2024), Item 1(d).

⁷ Kenergy’s Response to Complainant Motion for Summary Disposition and Memorandum (filed Feb. 23, 2024), Exhibit A at 8.

⁸ P.S.C. First Revised Tariff, Sheet 46C(1) (issued Apr. 1, 2009), effective Apr. 30, 2009.

⁹ Kenergy’s Response to Commission Staff’s Second Request for Information (Staff’s Second Request) (filed Oct. 4, 2024), Item 1.

of the applications was appropriate, and the ownership issue and 45 kW capacity issue were deemed moot.¹⁰

MOTION

Mr. Shocklee's motion for rehearing alleges that the Final Order is unlawful and unreasonable for two reasons. First, Mr. Shocklee alleged that the Final Order failed to adjudicate the "sole legal issue raised by the Complaint," namely, whether Kenergy properly rejected the applications because Mr. Shocklee was not the fee simple owner of the property upon which the solar facilities were to be located.¹¹ As a result, Mr. Shocklee was unable to determine whether he should "incur the expense of preparing and tendering Level 2 applications for net metering interconnection . . . "¹²

Second, Mr. Shocklee claimed that "[t]he Order is unlawful and unreasonable because it relates forward and enlarges the scope of this admission to include other 'technical issues' identified by Kenergy *after* the November 13, 2023 telephone call and Mr. Shocklee's filing of the instant Complaint."¹³

NET METERING TARIFF

Tariff Sheet 46 includes the threshold requirements for availability of net metering service (Tariff Sheet 46 or net metering tariff), including that the generating facility be "located on the customer's premises."¹⁴ Although the net metering tariff states [a]t its sole discretion, Kenergy may provide Net Metering to other customer-generators not meeting

¹⁰ Order (Ky. PSC Dec. 4, 2024) at 6-7.

¹¹ Motion at 2.

¹² Motion at 15-16.

¹³ Motion at 12-13.

¹⁴ P.S.C. First Revised Tariff, Sheet 46 (issued Oct. 14, 2022), effective Sept. 7, 2022.

all the conditions listed above on a case-by-case basis,” all six numbered elements are included as requirements in KRS 278.465 and therefore if any of these requirements are not met, an application should be rejected. In addition, the net metering tariff states that “Kenergy may reject an Application for violations of any code, standard, or regulation related to reliability or safety; however, Kenergy will work with the Customer to resolve those issues to the extent practicable.”¹⁵

If an application is not rejected, and the proposed facility is inverter-based and is certified by a nationally recognized testing laboratory to meet the requirements of Underwriters Laboratories (UL) Standard 1741, it moves on to the Level 1 application analysis.¹⁶ Level 1 includes technical requirements, including the 15 percent rule. Tariff Sheet 46D states:

If the generating facility does not meet all of the above listed criteria, Kenergy, in its sole discretion, may either: 1) approve the generating facility under the Level 1 Application if Kenergy determines that the generating facility can be safely and reliably connected to Kenergy’s system; or 2) deny the Application as submitted under the Level 1 Application. Kenergy shall notify the customer within 20 business days whether the Application is approved or denied, based on the criteria provided in this section.

Kenergy must notify the customer within 20 business days whether the application is approved or denied.¹⁷

If the proposed facility is not inverter-based, is not certified by a nationally recognized testing laboratory to meet the requirements of Underwriters Laboratories (UL)

¹⁵ P.S.C. First Revised Tariff, Sheet 46B (issued Apr. 1, 2009), effective Apr. 30, 2009.

¹⁶ P.S.C. First Revised Tariff, Sheet 46B-46C (issued Apr. 1, 2009), effective Apr. 30, 2009.

¹⁷ P.S.C. First Revised Tariff, Sheet 46D (issued Apr. 1, 2009), effective Apr. 30, 2009.

Standard 1741, or the application is denied for failure to meet any other Level 1 requirement, a customer may resubmit its application under Level 2 analysis. Tariff Sheet 46E states that “Kenergy will approve the Level 2 Application if the generating facility meets Kenergy's technical interconnection requirements, which are based on IEEE 1547.”

Kenergy must notify the customer within 20 business days whether the Level 2 application is approved or denied and:

If construction or other changes to Kenergy's distribution system are required, the cost will be the responsibility of the Customer. Kenergy will give notice to the Customer and offer to meet to discuss estimated costs and construction timeframe. Should the Customer agree to pay for costs and proceed, Kenergy will provide the Customer with an Interconnection Agreement to sign within a reasonable time.

DISCUSSION AND FINDINGS

The Commission finds that rehearing should be granted on the issue of mootness of the ownership issue, and as a purely legal question, should be resolved herein. The Final Order contained a material omission by not ruling on threshold application issues, which if resolved in his favor, would permit Mr. Shocklee to submit a Level 2 application. However, this finding requires the Commission to also address other threshold issues, namely the 45 kW capacity limit per facility and the 15 percent rule.

While granting rehearing, the Commission does not find that Kenergy improperly rejected Mr. Shocklee's application. The net metering tariff states that “Kenergy may reject an Application for violations of any code, standard, or regulation related to reliability or safety; however, Kenergy will work with the Customer to resolve those issues to the

extent practicable.”¹⁸ Mr. Shocklee acknowledged that Scott Heath of Kenergy spoke with him and indicated that “even if Mr. Shocklee qualified as an approved generating facility, the transmission line supplying his farm was only capable of supporting a 45 KW system. Mr. Heath stated that it was due to Kenergy’s tariff that only allowed fifteen (15) percent of said line’s capacity.” The Commission previously found that:

The 15 percent threshold is intended to mitigate possible unsafe conditions that can be caused when distributed generation continues to feed excess power back into the grid after the utility source of power is de-energized, which can result in an unintentional “island,” a condition can pose a risk to utility equipment, personnel, and to appliances.¹⁹

Kenergy also indicated that further capacity added to the circuit could affect reliability.²⁰ Therefore, the lack of remaining capacity on the distribution circuit permitted Kenergy to reject Mr. Shocklee’s application as it violated a standard related to reliability or safety under Tariff Sheet 46B. However, this tariff provision, like the Level 2 review, allows the customer opportunity to resolve those issues, assuming such resolutions are reasonable and the customer is willing to pay for any infrastructure requirements. The Commission finds that the Level 2 review procedure requires it to rule on all other threshold application questions at issue, including ownership and the 45 kW capacity limit, so that both parties know their rights and duties.

¹⁸ P.S.C. First Revised Tariff, Sheet 46B (issued Apr. 1, 2009), effective Apr. 30, 2009.

¹⁹ Case No. 2023-00309, *Electronic Petition of Kenergy Corp. for a Declaratory Order* (Ky. PSC Aug. 6, 2024), Order at 7–8.

²⁰ Kenergy’s Response to Staff’s Second Request, Item 1.

Ownership Interest

The term “customer’s premises” utilized in KRS 278.465(1), it is not defined in Chapter 278, nor is the Commission aware of any precedent interpreting the term in the context of this statute. In other contexts, ownership of real property has been defined as including tenants.²¹ Kenergy asserted that the plain meaning of the term limits it to fee simple ownership.²² The Commission disagrees—the plain language of the statute does not indicate any reason for it to exclude other interests in real property from the commonly understood meaning of “customer’s premises.”

While KRS Chapter 278 does not define “customer’s premises,” viewing the term in the context of real property law in Kentucky, “customer’s premises” is akin to the customer having a right of possession in the real property. While each particular lease is different, generally lessees have a right of possession in the real property. For example, residential tenants typically refer to the dwelling they occupy pursuant to a lease as their house, not their landlord’s house. As explained by Kentucky’s the highest court at the time, “[f]or most practical purposes possession is ownership as against all but the legal titleholder.”²³ While the lease here is not set forth in the administrative record, presuming the Complainant’s rights include the right to possession, the real property at issue should be considered the “customer’s premises” for the purposes of KRS 278.465(1).

Kenergy has not provided any precedent or convincing policy reason for restricting “customer’s premises” to only those customers who property rights qualify as fee simple

²¹ See KRS 411.190(1)(b) regarding landowner liability of real property used for recreation; KRS 224.80-100 regarding environmental protection.

²² Kenergy’s Response to Motion for Summary Disposition at unnumbered 5.

²³ *Marinero v. Deskins*, 344 S.W.2d 817, 819 (Ky. 1961).

ownership. If the legislature had intended the statute to only apply to owners in fee simple, it could have specified so but did not. In fact, pursuant to Kentucky law, property rights holders who have a right to possession should be considered owners by all except the record owner. Moreover, the fact that KRS 278.466(8) states that such a generating facility is transferrable supports a liberal construction of the meaning of customer's premises. The existence of numerous types of holders of real property interests in real property outside of fee simple ownership and numerous bases that those non-fee simple real property interest holders also wish to install a solar facility supports a conclusion that the real property should be considered the "customer's premises."²⁴

The Commission finds that KRS 278.465(1) does not *per se* exclude a lessee interest in real property for purposes of defining "customer's premises" and that Mr. Shocklee's applications may not be denied solely on the basis that he is a lessee.

45 kW Limit on Rated Capacity

Kenergy argued that Mr. Shocklee filed two applications in order to circumvent the 45 kW capacity limit for a facility. Although this could be interpreted to prevent KRS 278.465(2)(c) from ever being enforced against an individual applicant, 807 KAR 5:041, Section 9(2) requires Kenergy to treat each meter as serving an individual customer. In the absence of clear statutory direction as to the application of the capacity limit, the Commission finds that as long as the facilities are on separate meters that individually do not exceed 45 kW in capacity on any one meter, Mr. Shocklee's applications may not be denied solely on this basis that his proposed facilities exceed the capacity limit.

²⁴ A lessee, licensee, agent, affiliate entity, estate administrator, trustee, receiver, or guardian are all examples of interest-holders that could have a legitimate interest in exercising such an interest.

15 Percent Rule

The Commission finds that although the ownership and capacity limit issues should be resolved in Mr. Shocklee's favor, his complaint should still be denied pursuant to the 15 Percent Rule. As stated above, the net metering tariff permits Kenergy to reject an application that violates a standard relating to safety or reliability, such as the 15 Percent Rule. Since the 15 percent rule is a tariff requirement triggering Level 2 application review, the Commission further finds that the tariff language stating "Kenergy will work with the Customer to resolve those issues to the extent practicable" is applicable and means that Kenergy should be required to take the same steps and perform the same analysis that it would under a Level 2 application review. If Mr. Shocklee wishes to continue the application process, he should submit a Level 2 application and Kenergy should process the application as indicated in tariff sheets 46E-46F.

The Commission rejects Mr. Shocklee's rehearing argument that his admission regarding "technical issues" was an unreasonable or unlawful finding. The Commission may consider any information or technical standards in its review of a complaint as long as they fall within the Commission's jurisdiction under KRS 278.260. The Commission is mandated to, and has jurisdiction under this statute to, ensure safe and reasonable utility service. Whether Kenergy asserted additional details or arguments regarding technical requirements after it provided notice of its decision regarding Mr. Shocklee's applications is irrelevant to the Commission's decision-making.

IT IS THEREFORE ORDERED that:

1. Mr. Shocklee's motion for rehearing is granted in part.

2. Mr. Shocklee's net metering applications may not be denied solely on the basis that he is a lessee of the property indicated in his applications. Kenergy may require Mr. Shocklee to submit a copy of his lease to establish his property rights prior to the application review requirements set out below.

3. Mr. Shocklee's net metering applications may not be denied solely on the basis that that the sum of his proposed and existing facilities exceed the 45 kW capacity limit; however, the sum of facilities on a single meter may not exceed 45 kW capacity.

4. Mr. Shocklee's complaint is denied because it seeks to establish that "Kenergy's rejection of Complainant's application for net metering service interconnection for review and processing (for approval or denial) was not based upon any claim of violation of any code, standard, or regulation related to reliability or safety" and Kenergy properly rejected Mr. Shocklee's applications because the applications violated a standard related to reliability or safety.

5. Mr. Shocklee may submit a Level 2 application (tariff sheet 46R) and Kenergy shall comply with tariff sheet 46E requirements for review and notice.

6. The remainder of the December 4, 2024 Order not in conflict with this Order remains in effect.

7. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

Chairman 

Commissioner *John Will Stacey*

Commissioner *Mary Pat Regan*

ATTEST:

Linda Bidwell 

Executive Director

ENTERED
JAN 10 2025 AH
KENTUCKY PUBLIC
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