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September 1, 2006

MS. BETH O'DONNELL
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RECEIVED

SEP 05 2006

Re: *Post-Hearing Brief*
Ballard Rural Telephone Cooperative Corporation, Inc.
v.
Jackson Purchase Energy Corporation
PSC Case No. 2004-00036

PUBLIC SERVICE
COMMISSION

Dear Ms. O'Donnell:

Please find enclosed an original and ten (10) copies of the Post-Hearing Brief. I have also enclosed an additional copy for file-stamping, which I would ask that you return to me in the enclosed self-addressed, stamped envelope.

Should you need any further information from me regarding this filing, please do not hesitate to contact me.

Respectfully,



Melissa D. Yates
Attorney for Jackson Purchase Energy Corporation

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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IN THE MATTER OF:

SEP 05 2006

BALLARD RURAL TELEPHONE
COOPERATIVE CORPORATION, INC.

PUBLIC SERVICE
COMMISSION

PSC CASE NO. 2004-00036

v.

JACKSON PURCHASE ENERGY CORPORATION

POST-HEARING BRIEF OF JACKSON PURCHASE ENERGY CORPORATION

Comes Jackson Purchase Energy Corporation (hereinafter "JPEC"), by and through Counsel, and for its Post-Hearing Brief, states as follows:

In late 2002, JPEC proposed to charge Ballard Rural Telephone Cooperative Corporation (hereinafter "Ballard Rural") joint use rates of \$13.79 or \$17.75 per pole, depending upon the height of the pole. Ballard Rural refused any increase in its pole attachment rates and on February 2, 2004, filed its Complaint in this action asking that the Public Service Commission require JPEC to make its poles available for attachment by Ballard Rural at fair, just, and reasonable rates. An evidentiary hearing was held on July 20, 2006, before the Public Service Commission of the Commonwealth of Kentucky. The issue before this Commission is whether the rates proposed by JPEC for Ballard Rural's joint use of JPEC's poles are fair, just, and reasonable.

I. THE FORMULA PROPOSED BY JPEC FOR CALCULATING THE JOINT USER RATE ESTABLISHES A FAIR, JUST, AND REASONABLE RATE.

The formula proposed by JPEC, as calculated by Richard T. Sherrill, P.E., would establish a rate which is fair, just, and reasonable and should, therefore, be adopted to determine

the joint use pole attachment rate between the parties.¹ The formula reflects carrying charges associated with owning a pole which is subject to joint use such as maintenance of the pole facilities, depreciation, interest, expenses, operations and maintenance, customer service expenses, administrative and overhead expenses. It also takes into account the weighted average installed cost of the plant facilities which is then adjusted downward by a factor of 0.95 to reflect that the JPEC accounting methods may book items other than the pole itself into the pole accounts. Further, it includes the cost of the pole ground, found on virtually all JPEC poles, which the joint user is required to attach to.

In determining the carrying charge, JPEC's formula takes into account the costs avoided by a joint user in attaching to a pole belonging to someone else, which would include items such as emergency replacements. (See the pre-filed testimony of Richard T. Sherrill, response to question 23) Both Parties agree that avoided cost is a fair basis for determining the joint user fees. (See the testimony of Harlan Parker, p. 63). While the formula provides for a significant increase from the current rate of \$3.00 per pole, the new rate represents current economic conditions better than a rate which was established over thirty years ago. The evidence shows that under the current rate Ballard Rural has enjoyed substantial savings over the years by attaching to JPEC poles rather than building its own plant facilities. Harlan Parker testified that Ballard Rural has saved approximately \$2.9 million dollars by being able to attach to JPEC's poles rather than building its own outdoor plant facilities. (See testimony of Harlan Parker, pp. 70-71). This is especially true in light of the fact that only two rate increases for joint use have been implemented since the parties entered into the 1954 agreement. (See testimony of Harlan

¹ The rates previously requested by JPEC were based on 2003 data. JPEC submits that the data should be updated to reflect increases in JPEC's costs, if any, based on the most recent financial data available.

Parker, p. 76). It is well documented that Ballard Rural has enjoyed substantial profits over the past several years by adding to the types of services it provides, most of which are provided through additional cables attached to JPEC poles. (See testimony of Harlan Parker, pp. 43-55). In fact, based on filings Ballard Rural made with the Commission, it appears that over the past five years Ballard Rural's profits have ranged from \$722,575 to \$1,521,614. (See testimony of Harlan Parker, pp. 43-55). Regardless of the source of the income, many of the services which constitute that income are being provided by services provided by cables attached to poles owned by JPEC. Further, Mr. Parker's assertion, in his pre-filed testimony in this case, that an increase in the joint user fees would cause an increase of six-percent (6%) in Ballard Rural's rates does not hold up. In fact, during the hearing, Mr. Parker could not identify how or why an increase in joint user fees would cause a six-percent (6%) increase in Ballard Rural's fees. (See testimony of Harlan Parker, pp. 56-57). Accordingly, while Ballard Rural may not agree with the proposed rate methodology or any increase in its joint use rates, it does not prove that the rates requested by JPEC are unreasonable.

II. THE 251 METHODOLOGY HAS NOT BEEN ESTABLISHED AS THE FAIR, JUST, AND REASONABLE RATE FOR BALLARD RURAL'S ATTACHMENTS

Ballard Rural asserts that it is entitled to a rate established pursuant to Administrative Case No. 251. However, Ballard Rural has not proven that: 1) the 251 methodology establishes a fair, just, and reasonable rate as applied to a telephone utility rather than a cable company; and 2) that the 251 methodology is the exclusive means of determining a fair, just, and reasonable rate.

As to the first item, Ballard Rural completely neglected to address the fact that cable companies have no power of eminent domain and, therefore, must place their attachments on the

poles of others. This is a significant distinguishing factor between the relative bargaining power of Ballard Rural and cable companies. Ballard Rural may, if it does not like the rates for jointly using a JPEC pole, erect its own poles or take its plant facilities underground. The testimony presented demonstrates that Ballard Rural, while perfectly capable of installing its own poles for joint use with JPEC, is unwilling to do so. When pressed to explain why Ballard Rural could not install the poles for joint use with JPEC, Mr. Parker indicated that his staff did not have the training or equipment to install the taller poles, but then admitted the staff could get training and Ballard Rural could purchase the appropriate equipment. (see testimony of Harlan Parker, p. 113-114). Mr. Parker also testified that Ballard Rural could hire a contractor to install a pole capable for joint use by JPEC, but it had not done so. (See testimony of Harlan Parker, p. 114). It can be inferred that one reason Ballard Rural has not done these things is that it is less expensive for Ballard Rural to attach to JPEC's poles than to erect its own plant facilities.

The intended purpose of joint use, as reflected in the 1954 Agreement for Joint Use of Poles between JPEC and Ballard Rural and the Ballard Rural Agreement with Kentucky Utilities, both of which were admitted as exhibits 8 and 9, respectively, during the hearing on July 20, 2006, was that the parties would each own the number of poles necessary to achieve parity. Ballard Rural has indicated that it does not want to place poles for joint use with JPEC. Ballard Rural has also indicated that it could probably purchase poles from JPEC but that it is not likely to do so. (See testimony of Harlan Parker, p. 73). As indicated by the testimony of Richard T. Sherrill, if the parties achieved parity very little money, if any, would actually change hands between the parties. (See testimony of Richard T. Sherrill, p. 151).

Because Ballard has avoided the costs associated with pole ownership its customers have enjoyed a substantial savings while Jackson Purchase customers have been required to pay for

the expenses associated with installing and owning jointly used poles. This is patently unfair to the customer's of JPEC and serves as a windfall to the customers of Ballard Rural. Even Ballard Rural's own expert, James K. Sharpe, testified that if a company is not receiving full rental value for the use of its poles that the extra costs have to be passed on to its ratepayers. (See testimony of James K. Sharpe at p. 26) Accordingly, any rate which does not reflect all costs incurred by the owner of the pole and the costs avoided by the joint user is patently unfair to the ratepayers of the owning utility.

As to its evidence that it should be treated like the cable companies, Ballard Rural identified one pole where the attachments of the cable and telephone company appear to be very similar. However, as evidenced by the testimony of Richard T. Sherrill, that attachment is not representative of all attachments which Ballard Rural may have on JPEC's poles. (See testimony of Richard T. Sherrill, p. 141). The evidence presented showed that Ballard Rural continues to add cables and services to JPEC's poles while continuing to pay one low rate, regardless of the number of attachments.

Further, Ballard Rural failed to prove that the CATV tariff is the only fair, just, and reasonable rate. In his pre-filed testimony, Harlan Parker indicated that Ballard Rural would be willing to accept rates established pursuant to the 1954 agreement or the CATV tariff. During the hearing on July 20, 2006, Mr. Parker testified that he wanted the CATV rate applied to Ballard Rural, but did not testify that he believed it was the only fair, just, and reasonable rate. (See testimony of Harlan Parker, p. 106). While Mr. Parker may desire to have the CATV tariff rate applied to his company, that desire, without more, does not make that a fair, just, and reasonable rate as applied to Ballard Rural.

Administrative Case No. 251 should not be applied to Ballard Rural as it has no relevancy to the current situation of Ballard Rural in comparison to the situation of cable companies at the time Administrative Case No. 251 was decided. When Administrative Case No. 251 was decided, cable companies were, generally speaking, small businesses rather than the large corporations which run the cable industry today. (See testimony of Richard T. Sherrill, pp. 134 – 137). In an effort to assist the development of cable television, a decision was made to assist the cable companies in their dealings with the telephone and electric utilities. (See testimony of Richard T. Sherrill, pp. 135). The 251 methodology was the result of this. However, the 251 methodology fails to address the allocation of safety space between the utilities and allocates all of the safety space to the owner of the pole facility. This can hardly be considered fair in light of the fact that but for the presence of the joint user no safety space is required. Further, it does not fairly allocate the length of the pole which is required to get the CATV lines into the air. Administrative Case No. 251 allocates only 1/8 of the first 25 feet of the pole to the pole-owning utility, which is unfair when it is considered that the cable company's lines have to be raised off the ground approximately 20 feet.

Further, the 251 methodology requires an adjustment downward of 0.85 in order to determine the bare pole cost, or put another way, to discount for all appurtenances which the owning utility may have attached to the pole such as cross arms, etc. That multiplier was chosen at a time when most utilities could not accurately account for what their facilities consisted of, but under today's accounting methods, many utilities, such as JPEC, are able to determine with great accuracy the types of facilities they have. (See testimony of Richard T. Sherrill p. 139). Accordingly, it seems only fair to calculate the adjustment based on actual data rather than an arbitrary factor of 0.85.

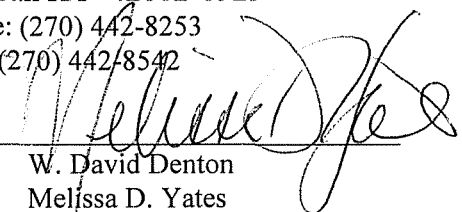
Additionally, under Administrative Case No. 251, the rates are based on a per attachment basis with a separate charge for grounds. Traditionally, joint users have based their rates on a per pole basis. Accordingly, the issue of a per pole or per attachment basis would have to be addressed if Administrative Case No. 251 was utilized as the basis for the rate JPEC is allowed to charge Ballard Rural. Making such an adjustment would require JPEC to conduct additional pole counts to determine the number of attachments, thereby spending thousands of dollars and man hours, which would be a burden on JPEC's ratepayers. Requiring an additional count would be unfair to JPEC's ratepayers as an accurate count of all jointly used poles was recently completed at the expense of JPEC's ratepayers.

Both parties agree that any rate which is implemented must be fair, just, and reasonable. However, this implies that the rate must be fair, just, and reasonable to both the pole owning utility and the joint-user of the pole. A rate which is based on a benefit to only one side and ignores the realities of the costs incurred by the pole owning utility is not fair, just, and reasonable.

WHEREFORE, Jackson Purchase Energy Corporation respectfully requests that this Commission enter an order approving the formula and rates proposed by Jackson Purchase Energy Corporation as fair, just, and reasonable and denying Ballard Rural Telephone Cooperative Corporation's request for application of the methodology of Administrative Case No. 251.

Respectfully Submitted,

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I hereby certify that 10 copies of the foregoing were filed with the Public Service Commission by mailing via Federal Express to:

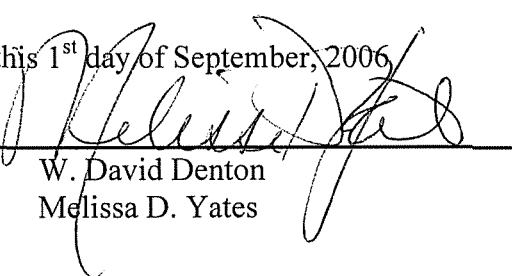
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on this 1st day of September, 2006

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