

W. DAVID DENTON
THOMAS J. KEULER
WILLIAM E. PINKSTON
LISA H. EMMONS
DAVID L. KELLY
THEODORE S. HUTCHINS*
GLENN D. DENTON*
STACEY A. BLANKENSHIP
MELISSA D. YATES*
NEAL D. OLIPHANT
DOUGLAS R. MOORE
*Also Licensed To Practice in Illinois



ATTORNEYS AT LAW
A Limited Liability Partnership

PADUCAH BANK BUILDING SUITE 301
555 JEFFERSON STREET
P.O. BOX 929
PADUCAH, KENTUCKY 42002-0929

TELEPHONE
(270) 443-8253

FACSIMILE
(270) 442-6000

REAL ESTATE FACSIMILE
(270) 442-6034

WEB SITE: www.dklaw.com

RECEIVED
DEC 10 2007
PUBLIC SERVICE
COMMISSION

December 7, 2007

MS. BETH O'DONNELL
EXECUTIVE DIRECTOR
KENTUCKY PUBLIC SERVICE COMMISSION
211 SOWER BLVD.
FRANKFORT KY 40602
VIA US MAIL AND FAX AT (502)564-3460

**Re: Ballard Rural Telephone Cooperative Corporation, Inc., v. Jackson Purchase
Rural Electric Corporation
Case No. 2004-00036**

Dear Ms. O'Donnell:

Please find enclosed an original and ten (10) copies of Jackson Purchase Energy's Response to BRTCC's Motion to Reject JPEC's BRTCC Tariff and to Order JPEC to File a Complaint Tariff in the above-referenced matter. An original and four (4) copies of JPEC's Revised Tariff are also enclosed herein.

I have 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.

Sincerely,

A handwritten signature in cursive script, appearing to read "Melissa D. Yates".

Melissa D. Yates
Attorney for Jackson Purchase Energy Corporation

96676

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

DEC 10 2007

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

BALLARD RURAL TELEPHONE
COOPERATIVE CORPORATION, INC.

PSC CASE NO. 2004-00036

v.

JACKSON PURCHASE ENERGY CORPORATION

**RESPONSE OF JACKSON PURCHASE ENERGY CORPORATION
TO BALLARD RURAL TELEPHONE COOPERATIVE
CORPORATION INC.'S MOTION TO REJECT JACKSON
PURCHASE ENERGY CORPORATION'S BRTCC TARIFF
AND TO ORDER JPEC TO FILE
A COMPLAINT TARIFF**

Comes Jackson Purchase Energy Corporation ("JPEC"), by and through counsel, and for its Response to Ballard Rural Telephone Cooperative Corporation, Inc.'s ("Ballard Rural") Motion to (1) Reject JPEC's BRTCC Tariff and (2) to Order JPEC to File a Complaint Tariff, states as follows:

FACTS

Ballard Rural filed the instant Complaint claiming that JPEC was attempting to charge excessive rates for attaching to poles belonging to JPEC. Ballard Rural then filed a Motion for Summary Judgment claiming there was no genuine issue of material fact. In an order dated March 23, 2005, which order denied Ballard Rural's Motion, this Commission formally asserted jurisdiction over the Complaint. A formal hearing was held on the Ballard Rural's Complaint on July 20, 2006, and a final order in the matter was issued on August 2, 2007. Pursuant to the order dated August 2, 2007, the parties were instructed to file a tariff in compliance with the order dated August 2, 2007, which tariff was to be calculated according to the methodology

established in Administrative Case No. 251. Ballard Rural filed its tariff as an amendment to its existing CATV tariff which was applicable to any utility wishing to attach to its poles. Believing it was complying with the Commission's Order dated August 2, 2007, JPEC filed a tariff which was available exclusively to Ballard Rural.

ARGUMENT

I. JPEC'S BRTCC TARIFF COMPLIES WITH ALL ORDERS OF THE COMMISSION AND, THEREFORE, BALLARD RURAL'S MOTION TO REJECT JPEC'S TARIFF SHOULD BE DENIED.

JPEC filed a tariff which was compliant with this Commission's Order dated August 2, 2007. As such, Ballard Rural's Motion must be denied. The record in this case is replete with the Commission's references to the non-binding effect of this case to any parties other than Ballard Rural and JPEC.

Most recently, in the Commission's Final Order dated August 2, 2007 (hereinafter the "Final Order"), the Commission stated, in the first paragraph, that:

"By this Order, the Commission establishes the methodology that Ballard and Jackson Purchase shall use to calculate the rates each will charge each other for pole attachments."

If the Commission had intended for JPEC's tariff to apply to all joint users, then the Commission would have stated that it was establishing the methodology to be used by all joint users in determining rates rather than limiting the order to JPEC and Ballard Rural. Further, in the last paragraph of the Final Order, the Commission stated:

"The Commission also finds that the attachments made by these parties should be the same as those made by the parties CATV customers and that the approved CATV methodology should be used by these parties to calculate the rate they will charge the other for pole attachments"

Clearly the Commission's Final Order contemplates only the two parties who are involved in this case. As the Commission did not choose to include all other joint users in its order, JPEC is not required to include parties outside of this litigation.

Ballard Rural is attempting to make a ruling which has been clearly limited by the Commission generally applicable to all joint users in JPEC's territory and, perhaps, to all joint use contracts across the state. This is in direct contravention of not only the Commission's Final Order, but all of the previous rulings of the Commission in this case.

Jackson Energy Corporation ("Jackson Energy") raised the issue of the ramifications of this case as it may apply to joint users around the Commonwealth in its Motion for Leave to Intervene. However, in its order dated February 8, 2006, which order denied Jackson Energy's Motion, the Commission specifically stated this ruling would bind **only** JPEC and Ballard Rural. Further, the Commission reinforced this by quoting from its previous order dated March 23, 2005, stating that:

"All joint users of pole attachments may continue to negotiate the rates and terms under which they will make poles available to others. In the event the parties cannot reach an agreement, the matter shall be submitted to the Commission for resolution."

The Commission further stated in its March 23, 2005, Order, that, "the rates, terms, conditions, and for providing joint user pole attachments are within the jurisdiction of the Commission and shall be established on a case-by-case basis." It should be noted that, until now, Ballard Rural did not object at any time throughout the proceedings to the clear limitations which the Commission placed on the applicability of this case.

All of the Commission's Orders in this case, make clear that the Commission did not intend to set a precedent which required JPEC to allow all of its joint users access to its pole at the same rate which Ballard Rural will enjoy under the new tariff. Requiring JPEC to file the

tariff as requested by Ballard Rural, would interfere with contractual relationships which JPEC enjoys with other joint users.

Finally, JPEC asserts that Ballard Rural does not have standing to assert such a claim on behalf of all other utilities which may wish to have access to JPEC's poles. In such regard, Ballard Rural will suffer no injury by the fact that JPEC does not allow any and all utilities to access its poles under the same tariff as Ballard Rural. Accordingly, Ballard Rural's claims regarding other users should not be given any weight or merit.

II. JPEC'S FILING OF REVISED BALLARD RURAL TARIFF.

Ballard Rural has also filed an objection to JPEC's tariff on the grounds that the terms and conditions in the previously filed Ballard Rural tariff differ from the CATV tariff. By way of background, JPEC's Ballard Rural tariff was filed in anticipation of JPEC's upcoming rate case. JPEC had intended to revise the terms and conditions in its CATV tariff as part of said rate case. Assuming JPEC's Ballard Rural tariff was approved, upon completion of the rate case including approval of the revised CATV tariff, JPEC's CATV tariff would have included the exact same terms and conditions which the previously filed Ballard Rural tariff contained. However, in light of Ballard Rural's objections, and in an effort to assist with resolution of both this case and JPEC's upcoming rate case, JPEC hereby withdraws its previously filed Ballard Rural tariff and files herewith, a revised tariff which contains language which is identical to JPEC's current CATV tariff. A copy of said tariff is attached hereto as Exhibit "A." However, the revised tariff is still limited to Ballard Rural and is not applicable to any other party which may desire to attach to JPEC's poles. JPEC will not seek to change either its CATV tariff or the Ballard Rural tariff in its upcoming rate case.

Wherefore, JPEC hereby prays that the Commission enter an order denying Ballard Rural's Motion to Reject JPEC's tariff and enter an order approving JPEC's Revised Tariff.

Respectfully Submitted,

Denton & Keuler, LLP
PO Box 929
Paducah KY 42002-0929
Phone: (270) 442-8253
Fax: (270) 442-8542

By: 

Melissa D. Yates

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

BETH O'DONNELL EXEC DIR
PUBLIC SERVICE COMMISSION
215 SOWER BLVD
P O BOX 615
FRANKFORT KY 40601
Fax: (502) 564-3460

True and correct copies of the foregoing have been mailed to:

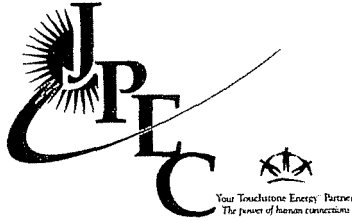
HON ANITA MITCHELL ATTY
PUBLIC SERVICE COMMISSION
215 SOWER BLVD
P O BOX 615
FRANKFORT KY 40602

HON JOHN E. SELENT
DINSMORE & SHOHL LLP
1400 PNC PLAZA
500 W. JEFFERSON STREET
LOUISVILLE, KY 40202

on this 7th day of December, 2007

By: 

Melissa D. Yates



Jackson Purchase Energy Corp.
 FOR Entire Territory Served
 Community, Town or City _____
 P.S.C. KY NO. 2
 SHEET NO. 62
 CANCELLING P.S.C. KY NO. Original
 SHEET NO. _____

CLASSIFICATION OF SERVICE
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION (BRTC) TARIFF

Applicability

In all territory of Ballard and McCracken counties jointly served by JPEC and Ballard Rural Telephone.

N
N

Availability

To Ballard Rural Telephone Cooperative Corporation, Inc. (BRTC) only.

N
N

Rental Charge

The yearly rental charges shall be as follows:

Two-party pole attachment	\$4.84	
Three-party pole attachment	\$4.09	
Two-party anchor attachment	\$5.88	
Three-party anchor attachment (not available)		
Two-party ground attachment	\$0.24	
Three-party ground attachment	\$0.16	

N
N
N
N
N
N

Billing

Rental charges shall be billed yearly based on the number of pole attachments. The rental charges are net, the gross rate being five percent (5%) higher. In the event the current bill is not paid on or before the date shown on the bill, the gross rates shall apply. Failure of BRTC to receive a bill or a correctly calculated bill shall not relieve BRTC of its obligation to pay for the service it has received.

N
N
N
N

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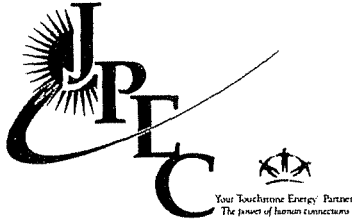
DATE EFFECTIVE February 1, 2008
 Month / Date / Year

ISSUED BY *G. Kelly Nuckols*
 G. Kelly Nuckols

TITLE President & CEO

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION

IN CASE NO. 2007-00116 DATED _____



Jackson Purchase Energy Corp.
FOR Entire Territory Served
Community, Town or City

P.S.C. KY NO. 2

SHEET NO. 63

CANCELLING P.S.C. KY NO. Original

SHEET NO.

CLASSIFICATION OF SERVICE
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION (BRTC) TARIFF

Specifications

- A. The attachment to poles covered by this tariff shall at all times conform to the requirements of the National Electrical Safety Code, latest edition, and subsequent revisions thereof, except where the lawful requirements of public authorities may be more stringent, in which case the latter will govern. N
- B. The strength of poles covered by this agreement shall be sufficient to withstand the transverse and vertical load imposed upon them under the storm loading of the National Electrical Safety Code assumed for the area in which they are located. N

Establishing Pole Use

- A. Before BRTC shall make use of any of the poles of JPEC under this tariff, they shall notify JPEC of their intent in writing and shall comply with the procedures established by JPEC. BRTC shall furnish JPEC detailed construction plans and drawings for each pole line, together with necessary maps, indicating specifically the poles of JPEC, with the number and character of the attachments to be placed on such poles, and rearrangements of JPEC's fixtures and equipment necessary for the attachment, any relocation or replacements of existing poles, and any additional poles that BRTC intends to install. N

JPEC shall, on the basis of such detailed construction plans and drawings, submit to BRTC a cost estimate (including overhead and less salvage value of materials) of all changes that may be required in each such pole line. Upon written notice by BRTC to JPEC that the cost estimate is approved, JPEC shall proceed with the necessary changes in pole lines covered by the cost estimate. Upon completion of all changes, BRTC shall have the right hereunder to make attachments in accordance with the terms of the application of this tariff. BRTC shall, at its own expense, make attachments in such manner as not to interfere with the service of JPEC. N

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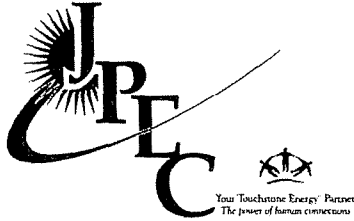
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ISSUED BY *G. Kelly Nuckols*
G. Kelly Nuckols

TITLE President & CEO

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CLASSIFICATION OF SERVICE
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION (BRTC) TARIFF

- B. Upon completion of all changes, BRTC shall pay to JPEC the actual cost (including overhead and less salvage value of materials) of making such changes. The obligations of BRTC hereunder shall not be limited to amounts shown on estimates made by JPEC hereunder. An itemized statement of the actual cost of all such changes shall be submitted by JPEC to BRTC, in a form mutually agreed upon. N
N
N
N
- C. Any reclearing of existing rights-of-way and any tree trimming necessary for the establishment of pole line attachments hereunder shall be performed by BRTC. N
N
- D. All poles to which attachments have been made under this tariff shall remain the property of JPEC, and any payments made by BRTC for changes in pole lines under this tariff shall not entitle BRTC to the ownership of any of said poles. N
N
N
- E. Any charges necessary for correction of substandard installation made by BRTC, where notice of intent had not been requested, shall be billed at a rate equal to twice the charges that would have been imposed if the attachment had been properly authorized. N
N
N

Easements and Rights-Of-Way N

JPEC does not warrant nor assure to BRTC any rights-of-way privileges or easements, and if BRTC shall at any time be prevented from placing or maintaining its attachments on JPEC's poles, no liability on account thereof shall attach to JPEC. Each party shall be responsible for obtaining its own easements and rights-of-way. N
N
N

Maintenance of Poles, Attachments and Operation N

- A. Whenever right-of-way considerations of public regulations make relocation of a pole, or poles, necessary, such relocation shall be made by JPEC at its own expense, except that each party shall bear the cost of transferring its own attachments. N
N
N
- B. Whenever it is necessary to replace or relocate an attachment, JPEC shall, before making such replacement or relocation, give forty-eight (48) hours written notice (except in cases of emergency) N
N

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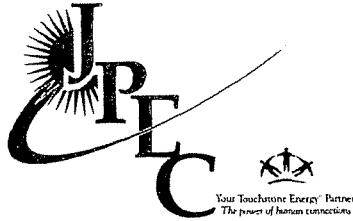
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ISSUED BY *G. Kelly Nuckols*
 G. Kelly Nuckols

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SHEET NO. 65

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SHEET NO. _____

CLASSIFICATION OF SERVICE
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION (BRTC) TARIFF

to BRTC, specifying in said notice the time of such proposed replacement or relocation, and BRTC shall, at the time so specified, transfer its attachments to the new or relocated pole. Should BRTC fail to transfer its attachments to the new or relocated pole at the time specified for such transfer of attachments, JPEC may elect to do such work and BRTC shall pay JPEC the cost thereof. In the event BRTC fails to transfer its attachments and JPEC does such work, JPEC shall not be liable for any consequential damages such as loss of service to BRTC customers.

C. Any existing attachment of BRTC, which does not conform to the specifications set out in this tariff hereof, shall be brought into conformity therewith as soon as practical. JPEC, because of the importance of its service, reserves the right to inspect each new installation of BRTC on its poles and in the vicinity of its lines or appurtenances. Such inspection, made or not, shall not operate to relieve BRTC of any responsibility, obligation, or liability assumed under the tariff.

D. JPEC reserves to itself, its successor and assigns, the right to maintain its poles and operate its facilities thereon in such manner as will, in its own judgment best enable it to fulfill its own service requirements. JPEC shall not be liable to BRTC for any interruption of service of BRTC or for interference with the operation of the cables, wires and appliances of BRTC arising in any manner out of the use of JPEC's poles hereunder.

JPEC shall exercise reasonable care to avoid damaging the facilities of BRTC, make an immediate report to BRTC of the occurrence of any such damage caused by its employees, agents or contractors, and, except for removal for non-payment or for failure to post or maintain the required "Performance Bond", agrees to reimburse BRTC for all reasonable cost incurred by BRTC for the physical repair of facilities damaged by the negligence of JPEC.

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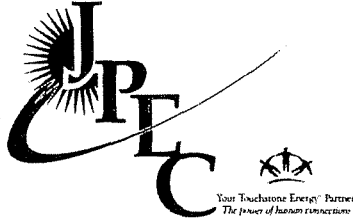
DATE EFFECTIVE February 1, 2008
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 G. Kelly Nuckols

TITLE President & CEO

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Jackson Purchase Energy Corp.
 FOR Entire Territory Served
 Community, Town or City _____
 P.S.C. KY NO. 2
 SHEET NO. 66
 CANCELLING P.S.C. KY NO. Original
 SHEET NO. _____

CLASSIFICATION OF SERVICE
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION (BRTC) TARIFF

Inspections

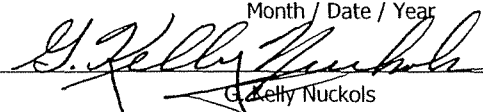
- A. Periodic Inspection: Any unauthorized or unreported attachment by BRTC will be billed at a rate of two (2) times the amount equal to the rate that would have been due, had the installation been made the day after the last inspection. N
N
N
- B. Make-Ready Inspection: Any "make-ready" inspection or "walk-through" inspection required of JPEC will be paid for by BRTC at a rate equal to JPEC's actual expenses, plus appropriate overhead charges. N
N
N

Insurance or Bond

- A. BRTC agrees to defend, indemnify and save harmless JPEC from any and all damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including but not limited to, costs and expenses of defending against the same and payment of any settlement or judgment therefore, by reason of (a) injuries or death to persons, (b) damages to or destruction of properties, (c) pollutions, contaminations of or other adverse effects on the environment, (d) terrorist attacks, or (e) violations of governmental laws, regulations or orders whether suffered directly by JPEC itself, or indirectly by reason of claims, demands or suits against it by third parties, resulting or alleged to have resulted from acts or omissions of BRTC, its employees, agents or other representatives or from their presence on the premises of JPEC, either solely or in concurrence with any alleged joint negligence of JPEC. JPEC shall be liable for sole active negligence. N
N
N
N
N
N
N
N
N
N
- B. BRTC will provide coverage from a company authorized to do business in the Commonwealth of Kentucky: N
N
 - 1. Protection for its employees to the extent required by Worker's Compensation Law of Kentucky. N
 - 2. Public Liability coverage with separate coverage for each town or city in which BRTC operates under this contract to a minimum amount of \$100,000.00 for each person and \$300,000.00 for N
N

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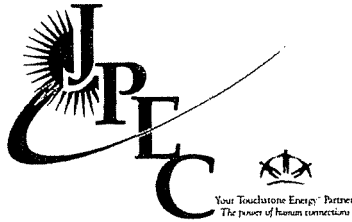
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ISSUED BY 
 G. Kelly Nuckols

TITLE President & CEO

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION

IN CASE NO. 2007-00116 DATED _____



Jackson Purchase Energy Corp.
 FOR Entire Territory Served
 Community, Town or City

P.S.C. KY NO. 2

SHEET NO. 67

CANCELLING P.S.C. KY NO. Original

SHEET NO. _____

CLASSIFICATION OF SERVICE
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION (BRTC) TARIFF

each accident or personal injury or death, and \$25,000.00 as to the property of any one person, and \$100,000.00 as to any one accident or property damage. N
N

Before beginning operations under this tariff, BRTC shall cause to be furnished to JPEC a certificate for such coverage evidencing the existence of such coverage. Each policy required hereunder shall contain a contractual endorsement written as follows: N
N
N

"The insurance or bond provided herein shall also be for the benefit of Jackson Purchase Energy Corporation, so as to guarantee, within the coverage limits, the performance by the insured of any indemnity agreement set forth in this tariff. This insurance or bond may not be cancelled for any cause without thirty (30) days advance notice being first given to Jackson Purchase Energy Corporation." N
N
N
N
N
N

Change of Use Provision N

When JPEC subsequently requires a change in its poles or attachment for reasons unrelated to BRTC operations, BRTC shall be given forty-eight (48) hours written notice of the proposed change (except in case of emergency). If BRTC is unable or unwilling to meet JPEC's time schedule for such changes, JPEC may do the work and charge to BRTC its reasonable cost for performing the change of BRTC attachments. N
N
N
N

Abandonment N

- A. If JPEC desires at any time to abandon any pole to which BRTC has attachments, it shall give BRTC notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, JPEC shall have no attachments on such pole, but BRTC shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of BRTC, and BRTC shall save harmless JPEC from all obligation, liability, damages, cost, expenses, or charges incurred thereafter; and shall pay JPEC for such pole an amount equal to JPEC's depreciated cost thereof. JPEC shall further evidence transfer to BRTC of title to the pole by means of a bill of sale. N
N
N
N
N
N
N

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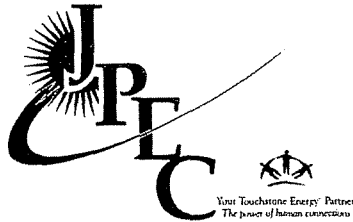
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ISSUED BY *G. Kelly Nuckols*
 G. Kelly Nuckols

TITLE President & CEO

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION

IN CASE NO. 2007-00116 DATED _____



Jackson Purchase Energy Corp.
FOR Entire Territory Served
Community, Town or City
P.S.C. KY NO. 2
SHEET NO. 68
CANCELLING P.S.C. KY NO. Original
SHEET NO. _____

CLASSIFICATION OF SERVICE
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION (BRTC) TARIFF

B. BRTC may, at any time, abandon the use of the attached pole by giving due notice thereof in writing to JPEC and by removing therefrom any and all attachments it may have thereon. BRTC shall, in such case, pay to JPEC the full rental for said pole for the then current billing period. N
N
N

Rights of Others N

Upon notice from JPEC to BRTC that the use of any pole or poles is forbidden by municipal or other public authorities or by property owners, the permit governing the use of such pole or poles shall immediately terminate and BRTC shall remove its facilities from the affected pole or poles at once. No refund of any rental will be due on account of any removal resulting from such forbidden use. N
N
N
N

Payment of Taxes N

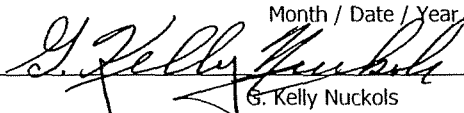
Each party shall pay all taxes and assessments lawfully levied on its own property upon said attached poles, and the taxes and the assessments which are levied on said property shall be paid by the owner thereof, but any tax, fee, or charge levied on JPEC's poles solely because of their fee by BRTC shall be paid by BRTC. N
N
N

Bond or Depositor Performance N

A. BRTC shall furnish a bond or satisfactory evidence of contractual insurance coverage for the purposes hereinafter specified in the amount of Twenty-Five Thousand Dollars (\$25,000.00) until such time as BRTC shall occupy twenty-five hundred (2,500) poles of JPEC and thereafter the amount thereof shall be increased to increments of One Thousand Dollars (\$1,000.00) for each one hundred (100) poles (or fraction thereof) occupied by BRTC, evidence of which shall be presented to JPEC fifteen (15) days prior to beginning construction. Such bond or insurance shall contain the provision that it shall not be terminated prior to six (6) months after receipt by JPEC of written notice of the desire of the Bonding or Insurance Company to terminate such bond or insurance. Upon receipt of such notice, JPEC shall request BRTC to immediately remove its cables, wires, and all other facilities from all poles of JPEC. N
N
N
N
N
N
N
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N
N
N

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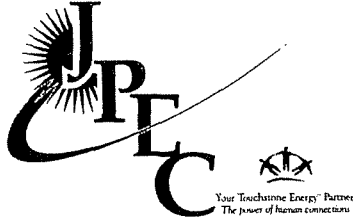
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G. Kelly Nuckols

TITLE President & CEO

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Jackson Purchase Energy Corp.
FOR Entire Territory Served
Community, Town or City

P.S.C. KY NO. 2

SHEET NO. 69

CANCELLING P.S.C. KY NO. Original

SHEET NO.

CLASSIFICATION OF SERVICE
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION (BRTC) TARIFF

If BRTC should fail to complete the removal of all its facilities from the poles of JPEC within thirty (30) days after receipt of such request from JPEC, then JPEC shall have the right to remove them at the cost and expense of BRTC and without being liable for any damage to BRTC's wires, cables, fixtures, or appurtenances. Such bond or insurance shall guarantee the payment of any sums which may become due to JPEC for rentals, inspections, or work performed for the benefit of BRTC under this tariff, including the removal of attachments upon termination of service by any of its provisions. N
N
N
N
N
N

B. After BRTC has been a customer of JPEC and not in default for a period of two years, JPEC shall reduce the bond by 50%, or, at JPEC's option, require a deposit in keeping with 807 KAR 5:006, Section 7. N
N
N

Use of Anchors N

JPEC reserves the right to prohibit the use of any existing anchors by BRTC where the strength or conditions of said anchors cannot be readily identified by visual inspection. N
N

Discontinuance of Service N

JPEC may refuse or discontinue serving an applicant or customer under the conditions set out in 807 KAR 5:006, Section 11 (1). N
N

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ISSUED BY *G. Kelly Nuckols*
G. Kelly Nuckols

TITLE President & CEO

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION

IN CASE NO. 2007-00116 DATED