

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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JUN 09 2005

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

BALLARD RURAL TELEPHONE
COOPERATIVE CORPORATION, INC.

PSC CASE NO. 2004-00036

v.

JACKSON PURCHASE ENERGY CORPORATION

VERIFIED RESPONSE TO MOTION TO APPLY CTAT RATES TO BALLARD RURAL

Comes the defendant, Jackson Purchase Energy Corporation (“JPEC”), through counsel, and for its response to Ballard Rural Telephone Cooperative Corporation, Inc.’s (“Ballard Rural”) Motion to Apply CTAT Rates, states as follows:

I. TELEPHONE COMPANIES AND CATV COMPANIES RENT ATTACHMENT SPACE FROM JPEC UNDER DIFFERENT CONDITIONS, WHICH DIFFERENCES DISFAVOR THE APPLICATION OF THE CTAT RATES TO BALLARD RURAL.

In its Motion to Apply CTAT Rates, Ballard Rural states that the PSC *must*, based on both the Kentucky Constitution and previous court decisions, apply CTAT rates to telephone attachments. This is a change from Ballard Rural’s previous position that previous court decisions give the PSC broad authority over utilities. Ballard Rural declares that the only option for regulating the relationship between these utilities in this case is the same methods it used in the early eighties when regulating CATV rates between cable utilities and utility pole owners. This assertion denies the PSC its natural ability to carefully craft solutions to complex regulatory problems, which the very reason why courts have traditionally awarded great deference to government agencies such as the PSC.

Additionally, even if the PSC chose to use a tariffed rate for pole attachments between utilities, there is no reason it should be restricted to its previous methodology used for calculation

of CTAT rates. That methodology was used considering the specific set of facts for the parties at hand (involving cable TV providers). An undeniably important factor in setting that formula was the fact that CATV companies lack the power of eminent domain and, therefore, do not have the ability to erect their own poles.

II. BALLARD RURAL HAS MADE A BUSINESS DECISION TO REFRAIN FROM ERECTING ITS OWN POLES AND NOW, SEEMINGLY EXPECTS JPEC TO SUBSIDIZE BALLARD RURAL'S COSTS IN EXPANDING BALLARD RURAL'S SYSTEM, EVEN THOUGH THIS ENTIRE ISSUE COULD HAVE BEEN AVOIDED THROUGH PARITY BETWEEN THE PARTIES.

In the present situation between JPEC and Ballard Rural, the rate could actually be made largely irrelevant if the Ballard Rural would attempt to achieve parity with JPEC in regard to pole construction and ownership. The rate for attachments would be almost a nullity, since the rates would simply cancel each other out and leave the parties sharing each others poles. However, Ballard Rural has made a business decision to construct and own fewer poles than JPEC. JPEC does not feel it should have to subsidize and bear all the risks of the business decisions of Ballard Rural. This economic situation is inherently different from that found in previous matters dealing with cable television providers. It is simply nonsensical that a competent business organization like Ballard Rural might need to shift the costs of pole construction and maintenance onto another utility, while simultaneously paying a hopelessly inappropriate and outdated rate for the privilege of doing so. Surely Ballard Rural does not need such charity in order to function properly and conduct its work effectively.

Additionally there is no authority for restricting the PSC to a single methodology or system of rates, provided that any methodology it does approve is within its legal guidelines as outlined in KRS 278. Ballard Rural's counsel has not presented any alternative proof supporting

the relative usefulness of the CTAT rate as the correct rate in this case. Instead, Ballard Rural has taken the position that because CATV and telephone service providers *might* supply the same types of services that they must be treated identically, thereby failing to recognize the inherent differences between the relative positions of CATV and telephone service providers.

III. THE IMPACT OF INFLATION THROUGH THE APPLICATION OF THE CONSUMER PRICE INDEX TO THE PREVIOUSLY AGREED UPON RATE JUSTIFIES A HIGHER RATE THAN THE CTAT RATES.

Ballard Rural's calculations and desired rates do not even keep pace with the rate of inflation from the date of the last rate increase in 1974, which increased the rate to \$3.00 per pole. Simply applying an inflation calculator to the rates paid by Ballard Rural for its pole attachments from 1974 through 2005 results in a figure of \$12.47 per pole. Accordingly, it seems absurd that Ballard Rural would be able to purchase the use of space on JPEC's poles at anywhere near the current rate of \$3.00 per pole, if one takes into account only inflation and adjusts the current rate accordingly. Further, use of only the inflation rate does not take into account the factors such as pole construction and maintenance. Therefore the application of the inflation rate is still quite low in comparison to a cost-based rate.

IV. BALLARD'S MOTION TO APPLY CTAT RATES SHOULD BE DENIED AS THE COMMISSION HAS ALREADY RULED ON THIS ISSUE THROUGH THE ENTRY OF ITS ORDER DATED MARCH 23, 2005.

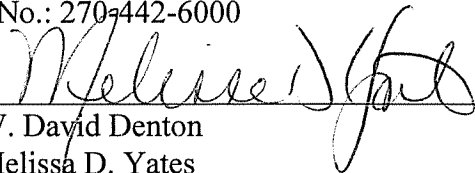
Finally, the Commission has already ruled on the issue of whether it would apply the CTAT rates to Ballard Rural in its order dated March 23, 2005. In that order, the Commission declined to grant the motion for summary judgment and held that a genuine issue of fact does exist with regard to the appropriate rate for JPEC's provision of pole attachments to Ballard Rural. Ballard Rural's Motion to Apply CTAT Rates is an obvious attempt to get a second bite at the apple on this issue. Further, the Commission's order dated March 23, 2005, makes it quite

clear that if the parties cannot agree on a rate for pole attachments that it will hold a hearing on the issue of what rates should apply.

WHEREFORE, JPEC respectfully requests that Ballard Rural's Motion to Apply CTAT Rates be denied for the reasons stated herein.

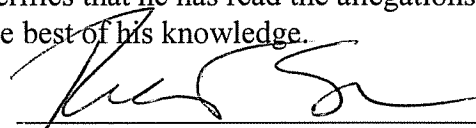
Respectfully Submitted,

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By 
W. David Denton
Melissa D. Yates

VERIFICATION

The undersigned, Rich Sherrill, Vice President of Engineering and Operations for Jackson Purchase Energy Corporation, hereby verifies that he has read the allegations as contained above, and that the same are true to the best of his knowledge.



Rich Sherrill

STATE OF KENTUCKY)

COUNTY OF McCracken)

Subscribed, sworn to, and acknowledged to before me this 8th day of June, 2005, by Rich Sherrill, Vice President of Engineering and Operations for Jackson Purchase Energy Corporation, on behalf of said corporation.

My commission expires 7-8-2008.


Notary Public, State at Large

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 8th day of June, 2005.

By: _____

W. David Denton
Melissa D. Yates

