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April 27, 2005

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APR 28 2005

PUBLIC SERVICE  
COMMISSION

Hon. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

**Re: Application of Jackson Purchase Energy Corporation for Adjustments in Existing Cable Television Attachment Tariff, before the Public Service Commission of the Commonwealth of Kentucky, Case No. 2004-00319**

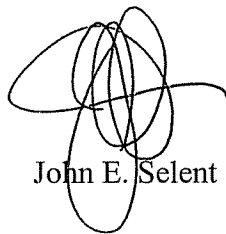
Dear Ms. O'Donnell:

Enclosed for filing in the above-stated case with the Public Service Commission of the Commonwealth of Kentucky is an original and twelve copies of the Response of Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural") to the Motions of Jackson Purchase Energy Corporation to (1) Dismiss Ballard Rural as an Intervenor and (2) Approve Settlement Agreement and Ballard Rural's Suggestion for *sua sponte* Consolidation of this Matter with Matter No. 2004-00036. Please return a file-stamped copy in the self-addressed, postage prepaid envelope furnished herewith.

Thank you, and please call me if you have any questions with respect to this matter.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/bmt  
Enclosures

Hon. Beth O'Donnell  
April 27, 2005  
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cc: All Parties of Record  
Holly C. Wallace, Esq.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION  
CASE NO. 2004-00319

*In the Matter of:*

APPLICATION OF JACKSON PURCHASE  
ENERGY CORPORATION FOR ADJUSTMENTS  
IN EXISTING CABLE TELEVISION  
ATTACHED TARIFF

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)

RESPONSE OF BALLARD RURAL TELEPHONE COOPERATIVE  
CORPORATION, INC. TO  
THE MOTIONS OF JACKSON PURCHASE ENERGY CORPORATION TO  
(1) DISMISS BALLARD RURAL TELEPHONE COOPERATIVE  
CORPORATION, INC. AS AN INTERVENOR AND  
(2) APPROVE SETTLEMENT AGREEMENT  
&  
SUGGESTION FOR CONSOLIDATION OF THIS MATTER  
WITH MATTER NO. 2004-00036

Ballard Rural Telephone Cooperative Corporation, Inc. (“Ballard Rural”) by counsel, hereby responds to the motions of Jackson Purchase Energy Corporation (“Jackson Purchase”): (1) to dismiss Ballard Rural as an intervenor; and (2) to approve settlement agreement.

1. Ballard Rural does not believe that the rates to which Jackson Purchase and the Kentucky Telecommunications Association have agreed are consistent with the methodology for the computation of pole attachment rates and conduit occupancy set forth by the Public Service Commission (the “Commission”) in Administrative Case No. 251 in its final order dated September 17, 1982, as amended.<sup>1</sup> For this reason alone, this case should not be dismissed and the settlement agreement should not be approved. *Stare decisis* requires that the rates approved

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<sup>1</sup> See “Submission of CTAT Calculations” filed with the Commission in this matter on February 25, 2005.

by the Commission herein must be consistent with the methodology of Administrative Case No. 251, and a hearing may be required to make this demonstration.

2. Both in this case, and in Case No. 2004-00036, Ballard Rural has moved the Commission to confirm that the cable television attachment tariff (“CTAT”) of Jackson Purchase is applicable both to cable television companies and to telephone companies. This motion has not been resolved. This case should not be dismissed until such time, at the very least, as that motion is resolved. (This motion was filed in this case, and Case No. 2004-00036, on April 13, 2005.)<sup>2</sup>

3. If this case is dismissed, Ballard Rural will not be provided with a full and fair opportunity to persuade the Commission of what it believes the CTAT of Jackson Purchase should be, consistent with the methodology of Administrative Case No. 251, and to persuade the Commission that those rates must be applicable to Ballard Rural (and all telephone companies), in order to avoid unlawful rate discrimination in violation of KRS 278.170(1), by Jackson Purchase in favor of cable television companies, and against telephone companies.<sup>3</sup> *See, Utility Regulatory Com’n v. Kentucky Water Service Co., Inc.*, Ky.App., 642 S.W.2d 591, 593 (1982) (“Due process requires, at a minimum, that persons forced to settle their claims of right and duty through the judicial process be given a meaningful opportunity to be heard.”) *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971). It has been said that no hearing in the constitutional sense exists where a party does not know what evidence is considered and is not given an opportunity to **test, explain or refute**. 16 Am.Jur.2d *Constitutional Law* §848. In

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<sup>2</sup> Ballard Rural has requested Jackson Purchase to confirm that its CTAT tariffs are applicable to Ballard Rural, but Jackson Purchase has declined to do so, and, as a matter of fact, has expressly disclaimed that those tariffs are applicable to Ballard Rural.

<sup>3</sup> See the motion filed by Ballard Rural in this matter on April 13, 2005.

*Bowman Transportation v. Arkansas-Best Freight System*, 419 U.S. 281, 287, 95 S.Ct. 438, 442, 42 L.Ed.2d 447 (1974) the Supreme Court of the United States stated: “A party is entitled, of course, to know the issues on which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids any agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation.” *Ohio Bell Telephone Company v. Public Utilities Commission*, 301 U.S. 292, 81 L.Ed. 1093, 57 S.Ct. 724 (1937) (emphasis supplied); *see also, Public Service Com’n v. Warren County*, Ky.App., 642 S.W.2d 594, 595. (“We have recently rendered a decision in the case of *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky.App., 642 S.W.2d 591 (1982) which involves an issue almost identical to the issue in the case before us. In that case, as in this one, the public utility company did not have an opportunity to be heard and to introduce evidence as to the issues underlying one of the determinations of the regulatory commission. This situation arose because the company was not aware, prior to issuance of the commission order, of the issue under consideration and the action contemplated. In both instances, petitions for rehearing were denied.”) Ballard Rural is constitutionally entitled: (i) to "test, explain or refute" why the proposed settlement rates are inconsistent with the 251 methodology and are therefore unfair, unjust and unreasonable within the meaning of KRS 278.030(1); as well as (ii) to "test, explain or refute" why the rates that result from this matter must be applied equally to both cable television companies and telephone companies in order to avoid offending KRS 278.170(1). *Id.*

4. There is no authority, and Jackson Purchase cites no authority, for the proposition that the Commission may revoke intervenor status, once granted. And, there is no reason to do

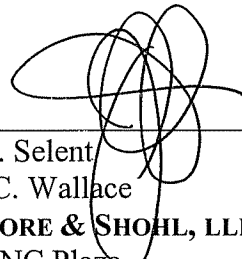
so; the reason for which intervention was granted, because Ballard Rural was “likely to present issues and develop facts that will assist the Commission in fully considering this matter,” remains true. (Order of the Commission in this matter dated December 6, 2004.) *See, e.g.*, Paragraph 2 hereof.

5. If anything, this case, and Case No. 2004-00036 should be consolidated. That would accomplish the goals of administrative economy and efficiency, and serve these same two goals for the parties to these two matters.

In conclusion, for the reasons set forth above, the motions of Jackson Purchase should be **DENIED** and Ballard Rural’s intervenor status should not be revoked and this case should not be dismissed as settled.

**Instead, this case and Case No. 2004-00036 should be consolidated and Ballard Rural suggests, respectfully, that the Commission do so, *sua sponte*.**

Respectfully submitted,



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CORPORATION, INC.**

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and accurate copy of the foregoing was served via First Class United States Mail, postage prepaid, to the following individuals this 27<sup>th</sup> day of April, 2005:

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Hon. Beth O'Donnell  
Executive Director  
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