

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROY G. COLLINS	)	
	)	
COMPLAINANT	)	
V.	)	CASE NO.
	)	2013-00052
JACKSON PURCHASE ENERGY	)	
CORPORATION	)	
	)	
DEFENDANT	)	

ORDER

On January 30, 2013, Complainant Roy G. Collins ("Complainant") filed a complaint against Jackson Purchase Energy Corporation ("JPEC") requesting the Commission to order JPEC to refund to \$6,065.94 for an extension of a service fee he paid, alleging that because JPEC incorrectly applied its commercial tariff to Complainant's building, located at 1400 Carrsville Road, Hampton, Kentucky. As discussed herein, the Commission agrees with Complainant's position and requires JPEC to refund \$6,065.94 to Complainant.

PROCEDURAL BACKGROUND

There are no intervenors in this case. On March 13, 2013, Commission Staff issued its First Requests for Information ("Staff's First Request") to JPEC and Complainant. On April 23, 2013, Commission Staff issued a Second Request for Information (Staff's Second Request") to JPEC. The parties responded to Staff's First

Request on March 27, 2013.<sup>1</sup> JPEC responded to Staff's Second Request May 6, 2013.

On July 1, 2013, Commission Staff held an Informal Conference ("IC") at which the parties agreed to submit memoranda stating their preferences for procedural options the parties could choose following the IC. Thereafter, Complainant requested that a procedural schedule be issued and that he be heard on this matter. JPEC asked that the parties be permitted to file briefs on the issues and that the matter be submitted for decision.

In an Order issued October 17, 2013, the Commission found that there were outstanding issues of fact and that a hearing was necessary for the resolution of the case, and, therefore, issued a procedural schedule. On November 1, 2013, Complainant submitted a request for information to JPEC, to which JPEC responded on November 25, 2013. JPEC filed a request for information to Complainant on November 4, 2013, to which Complainant responded on November 12, 2013. On December 17, 2013, JPEC filed written testimony. Complainant did not file any written testimony.

The hearing began on February 11, 2014. Citing Complainant's failure to pre-file written testimony, JPEC filed a motion to dismiss on February 11, 2014. This motion was denied from the bench. Due to a sudden illness of one of the witnesses, the hearing was continued to April 28, 2014. The parties filed post-hearing briefs on May 29, 2014. JPEC submitted a response brief on July 1, 2014. The matter now stands submitted for decision.

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<sup>1</sup> JPEC filed an amended initial response to Staff's First Request on March 29, 2013. Complainant filed amended responses to Staff's First Request on May 1, 2013; May 29, 2013; October 30, 2013; December 5, 2013; and March 3, 2014, in which he updated the frequency and duration of his visits to the 1400 Carrsville Road property.

## BACKGROUND

On January 30, 2013, Complainant filed a formal complaint with the Commission requesting that JPEC refund \$6,065.94 that he had been required to pay to JPEC to extend a service line to his building. Complainant's property is a 1,600-square-foot, three-bay garage, which is attached to an 1,800-square-foot residence.<sup>2</sup> The bottom floor is a walk-out basement with an adjacent gun room.<sup>3</sup> The basement is 900-square-feet of poured concrete and solid walls.<sup>4</sup>

JPEC is a rural electric cooperative corporation which furnishes electric service in Ballard, Carlisle, Graves, Livingston, McCracken, and Marshall counties<sup>5</sup> and serves 29,313 customers.<sup>6</sup>

Complainant contends that he initially referred to the structure as a "barn with living quarters." Complainant points to a note written by a JPEC representative, dated August 9, 2012, stating that the extension would "serv[e] for a hu[n]ting lodge ... will have living qtrs."<sup>7</sup> Complainant averred that as construction on the structure continued, he decided it would be a second home for his family. However, JPEC classified the

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<sup>2</sup> Roy Collins Video Testimony at 14:55:50 ("Collins Testimony").

<sup>3</sup> *Id.* at 14:56:44.

<sup>4</sup> *Id.* at 14:56:46.

<sup>5</sup> *Annual Report of Jackson Purchase Energy Corporation to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2012* at 19.

<sup>6</sup> *Id.* at 13.

<sup>7</sup> JPEC's Response to Staff's First Request, Exhibit I (filed Mar. 27, 2013) at 41.

building under its light load commercial tariff and charged Complainant \$6,065.94 to extend service to the structure. Unable to complete construction of the structure without electric service, Complainant paid the installation charge. Service to the structure began on or about January 16, 2013.

An audio recording of Complainant's initial conversation in which he spoke to a JPEC representative about extending service to the premises was tendered to the Commission on May 8, 2014.<sup>8</sup> In that conversation, the JPEC representative asked Complainant if the structure was a hunting lodge with living quarters inside. Complainant agreed that it was a hunting lodge with living quarters, and that he planned to use it about 30 days a year.<sup>9</sup> He further described the structure as "a barn slash place for me and my crazy buddies to deer hunt."<sup>10</sup> However, in subsequent conversations Complainant referred to the building as a residence.

JPEC argued, *inter alia*, that because Complainant initially characterized the building at 1400 Carrsville Road as a barn, service should be extended under the "New Service to Barns, Camps, Pumps and Miscellaneous Service Not Considered Permanent Premises" tariff Provision.<sup>11</sup>

#### Complainant's Position

Complainant argues that the structure built at 1400 Carrsville Road is a second residence, and as such, JPEC should apply the residential tariff to service provided to

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<sup>8</sup> JPEC's Response to Commission Staff's Post-Hearing Data Requests and Motion for Confidentiality (filed May 8, 2014).

<sup>9</sup> Conversation between Complainant and JPEC Representative, March 15, 2013, 8:16 a.m.

<sup>10</sup> *Id.*

<sup>11</sup> Answer of JPEC at 2 (filed Feb. 21, 2013).

the building. Therefore, he requests a refund of the \$6,065.94 from JPEC for installation of a single-phase extension to the subject property.

In support of his claim, Complainant states that that the structure is a permanent premises, with a poured concrete basement, storm shelter, and has central heat and air that will be utilized throughout the year. Although Complainant initially described the building as a barn with living quarters or as a "hunting cabin,"<sup>12</sup> he now avers this structure is actually a "second home/home office."<sup>13</sup>

Complainant contends that, pursuant to Section 34 of JPEC's tariff, the single-phase service line extension should have been provided at no charge. This tariff states, in relevant part:

A single phase extension to a permanent premises of one thousand (1,000) feet or less shall be made by JPEC to its existing distribution line without charge for a prospective Member who shall apply and agree to use the service for one year or more and provides guarantee for such service ... This distribution line extension shall be limited to service where the installed transformer capacity does not exceed 25 kVA.

Complainant cites to testimony from the hearing which indicated that the structure is permanent in nature and that the line extension was less than 1,000 feet. He notes that there is no language in JPEC's tariff requiring that a premises be an applicant's "primary residence" in order to qualify for a line extension installation without charge.<sup>14</sup>

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<sup>12</sup> Collins Testimony at 14:53:53

<sup>13</sup> Complaint of Roy G. Collins, Exhibit A (filed Jan. 30, 2013).

<sup>14</sup> Complainant's Brief at 2.

Additionally, Complainant disputes JPEC's contention that service to his property should be classified under Section 33 of the tariff, titled "New Service to Barns, Camps, Pumps and Miscellaneous Services not Considered Permanent Premises." Section 33 states, in pertinent part, that:

A. This rule shall apply to services where the amount of consumption and/or the permanency of service cannot be reasonably assured as determined by JPEC.

. . .

C. A contribution-in-aid of construction shall be required from the Applicant/Member for all facilities installed to provide service under this section. Aid of construction payment shall be estimated and received by JPEC before construction is begun. When construction is completed, the Member shall be billed for the actual cost of construction and credit for advance payment shall be given.

Complainant contends that Section 33 is not applicable for service to the premises because the section applies only to service to non-permanent premises.<sup>15</sup> Additionally, he states that his property should not be classified under Section 33 because JPEC has stated that it classifies its customers according to tariff description, not kilowatt-hour usage.

Complainant requests that the Commission order JPEC to refund \$6,065.94 to Complainant that he paid for the installation of a single-phase extension to his property located at 1400 Carrsville Road.

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<sup>15</sup> *Id.*

### JPEC's Position

JPEC claims that service was properly extended under Section 33, based on Complainant's initial description of the building as a "barn with living quarters".<sup>16</sup> JPEC notes that Complainant initially stated that he would only be at the structure 30 days a year, and that it would be used primarily for hunting. Based on Complainant's initial description of the property, JPEC classified Complainant's property as a hunting cabin under Section 33 of its tariff for the purposes of extensions of service, and determined that Complainant owed a contribution in aid of construction of \$6,065.94 for installation of the line extension.<sup>17</sup> JPEC also determined that the premises would receive service under its C-1 tariff provision.

JPEC contends that Section 33 of its tariff is applicable where a structure is temporary or where the amount of consumption and/or permanency of service cannot be reasonably assured. It avers that it never believed that Complainant's structure was temporary in nature, and that it based its classification of the premises under Section 33 because it considered the usage of electricity at the property to be indeterminate.<sup>18</sup>

JPEC acknowledges that Complainant claims his property should be classified under Section 34 of the tariff. However, JPEC argues that Section 34 must be interpreted in conjunction with Schedule R of its tariff. Schedule R states, in pertinent part, that:

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<sup>16</sup> Post-Hearing Brief of JPEC at 1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 3.

### **Availability of Service**

Available to all residential Members for use in the home and on the farm. Residential electric service is available for uses customarily associated with residential occupation, including lighting, cooking, heating, cooling, refrigeration, household appliances and other domestic purposes.

Residential rates are based on service to single family units and are not applicable to multi-family dwellings served through a single meter.

JPEC contends that Schedule R “provides that residential rates are available to those uses customarily associated with residential occupation which would include *full-time occupation* of the premises rather than an intermittent presence in the premises.”<sup>19</sup>

JPEC acknowledges that it “almost always” relies on the representations of its members regarding the use of a property in establishing service to the premises. It states that, based on Complainant’s description of the property, it determined that the structure would not be used on a full-time basis and that service would be used only intermittently.<sup>20</sup> Thus, JPEC contends it properly charged Complainant the entire cost of the extension of service and properly serves Complainant under Schedule C-1 of its tariff.<sup>21</sup>

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<sup>19</sup> *Id.* at 4. (Emphasis added.)

<sup>20</sup> *Id.*

<sup>21</sup> Schedule C-1, under which Complainant’s structure is served, states in relevant part:

### **Availability of Service**

To general lighting and small power commercial loads served at single phase available voltage levels.

Service under this schedule will be limited to maximum loads not exceeding 25 kW.



JPEC states that its interpretation and application of its tariffs in the instant matter are fair, just, and reasonable, and asks that Complainant's request for relief be denied.

### DISCUSSION

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that JPEC cannot deny Complainant's request for a refund on the basis that his structure is not a "primary residence or occupied full time" because neither this language nor requirement is contained in its tariff. KRS 278.160 prohibits a utility from imposing rates or conditions of services that are not contained in its tariff, Commission administrative regulations, or statutes. Additionally, under the plain language of JPEC's tariff, Complainant's building at 1400 Carrsville Road should be served under Schedule R, not under Schedule C-1. Therefore, Complainant's request that JPEC refund the \$6,065.94 he paid for the construction of facilities to supply electricity to the structure at 1400 Carrsville Road should be granted.

JPEC's position primarily relies upon its argument that a "permanent premises" as contained in its tariff is "one which is occupied as a primary residence or is occupied full time as a residence."<sup>22</sup> JPEC uses this interpretation of its tariff to justify requiring Mr. Collins to bear the cost of the extension of the distribution line.

The Commission has previously addressed a situation where an electric utility refused a normal extension of service because the structure to which the extension was

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<sup>22</sup> Reply Brief of JPEC at 1 (filed July 1, 2014); and Williamson direct testimony at 5, lines 18-23.

to be extended was not a “primary residence.” In *Rusty and Teresa Mullins v. Licking Valley Rural Cooperative Corporation*<sup>23</sup> (“Licking Valley”), the Complainants requested an extension or service of approximately 1,758 in length to a cabin which they were building.<sup>24</sup> Licking Valley refused to provide the first 1,000 feet of the extension at no cost because it had determined that the cabin was not a “primary residence.” Instead, Licking Valley proposed to charge the Complainants for the extension of service under its mobile home extension tariff provision.

Licking Valley’s tariff contained no reference to “primary residence,” but Licking Valley provided several factors that it considered when determining whether or not a structure was a primary residence. For example, Licking Valley stated that an employee would visit the property and conduct a visual inspection for signs of habitation.<sup>25</sup> The employee would look for such things as prior electrical service, yard care, beaten paths, garbage cans and porch furniture.<sup>26</sup>

The Commission determined that unless a utility’s tariff contains specific language requiring that an extension of service be to a “primary residence,” it cannot deny a normal extension of service if the structure is permanent (as opposed to mobile),

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<sup>23</sup> Case No. 2002-00176, *Rusty and Teresa Mullins v. Licking Valley Rural Cooperative Corporation* (Ky. PSC Nov., 22, 2002)

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.*

but not a primary residence.<sup>27</sup> The Commission directed Licking Valley to provide the extension of service under Licking Valley's normal extension of service policy.<sup>28</sup>

The issues presented in this case are similar to some of those presented in the Licking Valley case: refusal of an extension of service at no cost to a structure deemed not to be a primary residence; and absence of any tariff language requiring that a permanent structure be a primary residence to receive an extension of service of up to 1,000 feet at no cost to the customer. Similar to Licking Valley, JPEC attempts to establish a definition for what a "primary residence" is, though neither the term "primary residence" nor the characteristics defining a "primary residence" appear in JPEC's tariff. JPEC believes that a "primary residence" is one where the amount of usage can be reasonably assured.<sup>29</sup> According to JPEC, a hunting lodge or a second home that is not occupied full time does not provide this assurance and cannot be considered a "primary residence and subject to an extension of service under Section 34 of JPEC's tariff."<sup>30</sup>

KRS 278.160 prohibits a utility from imposing rates or conditions of services that are not contained in its tariff, Commission administrative regulations, or statutes. JPEC's tariff states that an extension of service less than 1,000 feet shall be made at no charge to a "permanent premises."<sup>31</sup> There is no language restricting the extension to a "primary residence or requirement of full time occupation." If JPEC wishes to include this condition as a precondition to receiving an extension of less than 1,000 feet at no

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<sup>27</sup> *Id.* at 6.

<sup>28</sup> *Id.*

<sup>29</sup> Prefiled Direct Testimony of Charles G. Williamson, III ("Williamson Direct") at 4, lines 20-22.

<sup>30</sup> *Id.*

<sup>31</sup> JPEC's tariff, Section 34.

charge, then it must seek to amend its tariff to include this requirement. Such amendment would necessarily require the approval of the Commission.

JPEC is reading language and meaning into the tariff that is not written there. Although it is undisputed that the structure is permanent,<sup>32</sup> there is no precedent, either before the Commission or Kentucky Courts, which equates a permanent premises and a primary residence. Although neither Kentucky statutes nor Kentucky Courts have defined “permanent premises,” the term “permanent premises” typically has been used to distinguish between a mobile and non-mobile structure.<sup>33</sup> This is further underscored by JPEC’s tariff, which contains a tariff provision specifically addressing extensions to mobile homes.<sup>34</sup>

There has been no allegation that JPEC could not assure the permanency of service of Complainant’s property. It is uncontested that Complainant has installed a HVAC system that requires a permanent supply of electricity. The record reflects that the service to the property has been supplied constantly since service was extended in January 2013. Therefore, there appears to be no question that JPEC cannot apply Section 33 of its tariff based upon a determination that the permanency of service could not be reasonably assured.

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<sup>32</sup> Williamson Direct at 5, lines 18-19.

<sup>33</sup> See, *Illinois v. Rodriguez*, 497 U.S. 177, 193 (1990). (“The search was of permanent premises, not of a movable vehicle . . . .”)

<sup>34</sup> JPEC’s tariff, P.S.C. KY NO. 19, Sheet No. 150, (35) Distribution Line Extension to Mobile Homes.

Additionally, JPEC's CEO, Kelly Nuckols, testified that the interpretation that a dwelling must be a primary residence was not in the tariff, and thus he had been mistaken about the language of the tariff.<sup>35</sup>

Mr. Nuckols further stated the tariff needed to be corrected.<sup>36</sup> Mr. Nuckols also asserted that other people in JPEC's territory who may winter elsewhere or who establish permanent residency in other states for tax or voting reasons receive service under Schedule R.<sup>37</sup>

The Commission must also examine the type of service Jackson Purchase Energy extended to Complainant's building. It is undisputed that the structure is permanent. The parties also agree that the type of service JPEC extended to Mr. Collins' structure was a single-phase distribution line where installed transformer capacity does not exceed 25 KVA. JPEC placed Complainant on Tariff Schedule C-1 Small Commercial Single Phase, which is available for general lighting and small power commercial loads with maximum loads not exceeding 25kW.

807 KAR 5:041, Section 11, states, in relevant part:

Normal extensions. An extension of 1,000 feet or less of single phase line shall be made by a utility to its existing distribution line without charge for a prospective customer who shall apply for and contract to use the service for one (1) year or more and provide guarantee for such service.

The regulation further states, "This distribution line extension shall be limited to service where install transformer capacity does not exceed 25 KVA."

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<sup>35</sup> April 28, 2014 Hearing Transcript at 14:07.

<sup>36</sup> *Id.* at 14:11.

<sup>37</sup> *Id.* at 14:23.

JPEC's tariff, P.S.C. KY No. 19, Sheet No. 149, (34) Distribution Line Extension, appears to contain the same language as 807 KAR 5:041, Section 11. This further supports the position that the distribution line extension to Mr. Collins should have been at no cost to Mr. Collins, since the line extension was for less than 1,000 feet and the transformer capacity does not exceed 25 KVA. Mr. Nuckols admitted in his testimony at hearing that "if this had been his – where he was domiciled – this would have been at no cost to Mr. Collins."<sup>38</sup> Because where a customer is domiciled is not discussed in Section 34 or the regulation as a prerequisite for an extension of service at no charge, reliance on the plain language of both Section 34 and the regulation mandates that Complainant's extension should have been made without charge to Complainant, and that a refund should be issued.

Finally, the Commission must address JPEC's contention that Complainant's property is properly served under its C-1 tariff. In reading the C-1 tariff, it is clear that Complainant's structure does not fit the description of the customers served under the tariff. There is no evidence in the record that Complainant's premises is used for general lighting or small power commercial loads. The record, however, contains multiple references to the property's kitchen, heating, cooling, refrigeration, and household appliances. The structure is equipped with a three-ton heating/air conditioning unit.<sup>39</sup> At the hearing in this matter, Complainant presented photographic evidence of, among other things, the heating/air conditioning unit and the unit controlling

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<sup>38</sup> *Id* at 14:18.

<sup>39</sup> JPEC's Response to Staff's First Request at 2; *See* Collins Hearing Exhibit 1.

the heat and air in his structure. He also presented a photograph of his kitchen, equipped with a refrigerator and a stove.

Moreover, JPEC's Tariff Schedule R-Residential states, "Available to all residential Members for use in the home and on the farm". There is no requirement that the home or farm must be the member's primary place of residence.

Therefore, under the plain language of the tariff, Complainant's building at 1400 Carrsville Road should be served under Schedule R, not under Schedule C-1.

Based on the record and application of law, the Commission will grant Complainant's request that JPEC refund the \$6,065.94 he paid for the construction of facilities to supply electricity to the structure at 1400 Carrsville Road.

Section 34 of JPEC's Rules and Regulations states, in relevant part:

[A] single phase extension to a "**permanent premises**" of one thousand (1,000) feet or less shall be made by JPEC to its existing distribution line without charge for a prospective Member who shall apply for and agree to use the service for one year or more and provides guarantee for such service (emphasis added).

Complainant's residence is less than 1,000 feet from the existing distribution line. Moreover, the evidence showed that Complainant's structure is a permanent premise as required by the tariff served by a single-phase line extension. In looking at the property, it seems clear that the permanency of the structure and the guarantee of continuity of service from the use of the HVAC units, the appliances, and Complainant's visit to the structure, would qualify the structure for an extension of service under Section 34.

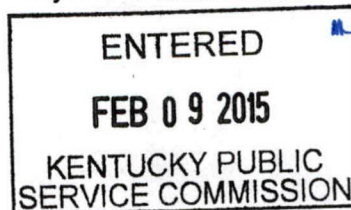
As discussed above, the plain language of the R-tariff and the C-1 tariff mandate that the structure be served under the R-tariff and not under the C-1 tariff. Therefore,

Complainant's property should be served under the R-tariff, not under the C-1 tariff under which it is currently served.


IT IS THEREFORE ORDERED that:

1. Complainant's request for relief is granted.
2. JPEC shall refund to Complainant, within 30 days of the date of this Order, the \$6,065.94 paid for the extension of service to Complainant's property at 1400 Carrsville Road.
3. Within ten days of issuing Complainant the refund, JPEC shall file with the Commission notice that the refund has been issued.
4. Documents filed in the future pursuant to ordering paragraph 3 of this Order shall reference this case number and shall be retained in the utility's general correspondence file.
5. The Executive Director is delegated authority to grant reasonable extensions of time for the filing of any documents required by this Order upon JPEC's showing of good cause for such extension.

By the Commission



ATTEST:

  
\_\_\_\_\_  
Executive Director



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