

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

ROY G. COLLINS

PSC CASE NO. 2013-00052

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 pursuant to the briefing schedule established at the close of the formal hearing in the above referenced case on April 28, 2014, hereby submits its post-hearing brief.

In December of 2012, Roy Collins called JPEC to request electrical service to premises which Mr. Collins was building at 1400 Carrsville Road. During that initial call to customer service, Mr. Collins referred to the premises as a barn with living quarters.<sup>1</sup> He described the premises as a place which would be used for hunting approximately thirty days a year.<sup>2</sup> JPEC made a determination that Mr. Collins' use would be correctly classified as a hunting cabin under Section 33 ("New Service to Barns, Camps, Pumps, and Miscellaneous Services Not Considered Permanent Premises") of the Rules and Regulations of its filed Tariff. Pursuant to that section, JPEC determined that Mr. Collins would owe a contribution in aid of construction totaling \$6,065.94, to extend the service line approximately 700 feet to the new premises at 1400 Carrsville Road (the "premises"), and that the premises would be served under its C-1 tariff.<sup>3</sup>

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<sup>1</sup> See recording provided in JPEC's Resonse to Staff's Post Hearing Data Request and Motion for Confidentiality  
<sup>2</sup> *Id.*

<sup>3</sup> Direct testimony of Chuck Williamson at Page 6, Line 19 and Page 7, Lines 3-9.

After finding out about the contribution in aid of construction, Mr. Collins once again called JPEC and this time claimed that this property would now be used as a second home.<sup>4</sup> As a second home or hunting lodge, JPEC still believed the premises was correctly classified under Section 33 (“New Service to Barns, Camps, Pumps, and Miscellaneous Services Not Considered Permanent Premises”) of the Rules and Regulations of its filed Tariff. Throughout these proceedings, the premises have consistently been referred to by all parties as either a hunting cabin or a second home. Mr. Collins disagreed with JPEC’s classification of the property and believed that it should be classified under Section 34 (Distribution Line Extensions) of the Rules and Regulations of JPEC’s tariff. If Section 34 of the Tariff is applied, Mr. Collins is entitled to an extension of the line at no charge to him.<sup>5</sup> Mr. Collins paid the contribution in aid of construction under protest and filed the instant complaint with the Commission. An evidentiary hearing was held on two separate days, February 11, 2014, and April 28, 2014, before Hearing Officer James R. Wood. The issue before this Commission is whether JPEC’s application of its tariff was fair, just, and reasonable.

Mr. Collins was correctly charged the contribution in aid of construction pursuant to Section 33, and he is correctly served under a commercial rate. Section 33 provides as follows:

**“(33)New Services to Barns, Camps, Pumps and Miscellaneous Services not Considered to be Permanent Premises.**

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

B. All wiring shall be in accordance with JPEC’s Rules and Regulations and the most recent edition of NFPA 70, National Electrical Code

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<sup>4</sup> See recording provided in JPEC’s Resonse to Staff’s Post Hearing Data Request and Motion for Confidentiality.  
<sup>5</sup> Kelly Nuckols’ hearing testimony, 4/28/2014 at 14:18:30.

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 in 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.

D. The member requesting service may clear right-of-way, to JPEC specifications, inspection(s) and approval, for initial installation in order to reduce cost.

As stated by JPEC's witnesses, JPEC believes Section 33 applies where a structure is temporary or where the amount of consumption cannot be reasonably assured, such as the use found in a hunting cabin or second home.<sup>6</sup> This provision attempts to ensure that where the usage is indeterminate, such as in the case of a second home or hunting lodge, JPEC is able to recover the amounts it has invested in establishing the service.<sup>7</sup> This is an attempt to be fair to all of JPEC's members.<sup>8</sup> Such a situation is in contrast to Section (34), where distribution lines to permanent premises, if under 1,000 feet, are constructed without charge for a prospective member. JPEC has never believed this to be a temporary structure and has always asserted that this classification is because the usage of electricity at the premises is indeterminate. In fact, Mr. Collins has never asserted that he resides at the premises on a full-time or even near full-time basis and has admitted his primary residence is in Manchester, Kentucky.<sup>9</sup>

As noted, Mr. Collins initially described the premises at issue to JPEC personnel as a hunting cabin or a "barn with living quarters."<sup>10</sup> Mr. Collins' claims that there was a subsequent change in design in the premises—so that it is now a second home that is nicer than his primary residence—are irrelevant, because his electrical usage at the premises remains indeterminate and

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<sup>6</sup> Direct testimony of Chuck Williamson at Page 4, Lines 18-23.

<sup>7</sup> Kelly Nuckols' hearing testimony, 4/28/2014 at 14:17.

<sup>8</sup> Kelly Nuckols' hearing testimony, 4/28.2014 at 14:17.

<sup>9</sup> Roy Collins' hearing testimony, 4/28/2014 at 14:59:56 and 15:01.

he does not meet the standard of full-time occupancy required by Section 34. Interestingly, this alleged change occurred only after Mr. Collins was informed of the necessity that he pay the contribution in aid of construction.<sup>11</sup>

Mr. Collins argues that the absence of a definition for the term “permanent premises” as it is used in Section 34, means that a “permanent residence” is not necessarily the same thing as a “primary residence” and accordingly, does not have to be occupied on a full-time basis. However, as noted by Kelly Nuckols, President and CEO of JPEC, Section 34 cannot be looked at in isolation because the term is fleshed out by Schedule R of the tariff which describes the living arrangements to which it applies.<sup>12</sup> Schedule R of JPEC’s tariff 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>13</sup> No tariff can possibly cover every word used within the tariffs in its definitions sections. Any assertion to the contrary is simply ludicrous. It must simply be written in a way that an individual reading the tariff may ascertain what charges will apply. The tariffs at issue do exactly that.

When establishing service to new premises, JPEC must almost always rely upon the representations of its members as to how a new property will be used. It is likely that a change based on the observation of a JPEC employee would only occur where the use of premises is open and obvious and the member is representing the use as something different.<sup>14</sup> However, in Mr. Collins case, JPEC was forced to rely upon his representations as it is nearly impossible to

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10 See recording provided in JPEC's Response to Staff's Post Hearing Data Request and Motion for Confidentiality

11 See recording provided in JPEC's Response to Staff's Post Hearing Data Request and Motion for Confidentiality

12 Kelly Nuckols' hearing testimony, 4/28/2014 at 14:06.

13 See Exhibit B of JPEC's Response to the Commission Staff's First Data Request

14 Direct testimony of Chuck Williamson at Page 8, Lines 3-9

know a structure's intended use when construction is just beginning. Accordingly, based on Mr. Collins' own representation, whether the property is a hunting cabin or a second home, JPEC determined in accordance with its tariffs that the property would not be used on a full-time basis and the amount of service used would be indeterminate.

Further, JPEC's classification is supported by the actual usage at the premises. Scott Ribble testified that the usage pattern of the premises is nearly identical to that of the mobile home where Mr. Collins previously had service.<sup>15</sup> Scott Ribble's testimony was further supported by the graphs he prepared which were entered into evidence.<sup>16</sup> Those graphs clearly demonstrated the similar usage patterns for the mobile home and the subject premises. While the minimum usage may not be the same, Mr. Ribble testified, based on his many years of engineering experience, that he believed that the difference in minimum usage could be due to the difference in size between the mobile home and the subject premises.<sup>17</sup> Mr. Collins also attempted to make JPEC appear to be applying its tariffs inconsistently because the mobile home was served under the residential tariff. However, as Scott Ribble testified, that initial classification for the mobile home was based on the initial application for service on the mobile home.<sup>18</sup> Further, as pointed out by Chuck Williamson, no member of management was employed by JPEC when the application for the mobile home was filled out. As such, the classification of the mobile home is largely irrelevant to the extent that no proof exists which can indicate what the previous owner explained to JPEC about their intended usage. As explained by Chuck Williamson, a change of classification usually occurs only where a change is warranted based on a change in ownership of a premises or where the change in use is open and obvious,

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<sup>15</sup> Scott Ribble's hearing testimony, 4/28/2014 at 13:53:27.

<sup>16</sup> See JPEC Hearing Exhibits 1 and 2.

<sup>17</sup> Scott Ribble's hearing testimony, 4/28/2014 at 14:00:36.

because it is nearly impossible to know how it is being used unless one of those circumstances occurs.<sup>19</sup>

JPEC's interpretation and application of its tariffs, as applied to Mr. Collins' circumstances, are fair, just, and reasonable and should be upheld. KRS 278.160(1) codifies the "filed rate doctrine." *In the Matter of: Leslie County Telephone Company, Inc., Investigation into the Alleged Violations of KRS 278.160*. 1996, PSC Decisions 95-00517. This doctrine requires utilities to file tariff schedules identifying all rates and conditions for service established by it and collected or enforced. KRS 278.160(2) further provides as follows:

- (2) No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules."

In previous cases, this language has been interpreted to mean that utilities must strictly adhere to their published rate schedules and may not, either by agreement or conduct, depart from them which ensures rate uniformity. *Id.* . The Commission has previously stated that "equality among customers cannot be maintained if enforcement of filed rate schedules is relaxed." *Id.* Further, this doctrine preserves the Commission's jurisdiction over the reasonableness of rates and ensures that regulated companies charge only those rates of which they have made the commission aware. *Id.* It can be assumed that filed rates have been reviewed and found reasonable by the Commission because, prior to becoming effective, they are examined and questioned. *Id.* In this instance, JPEC believed it would be violating its tariffs if it did not charge Mr. Collins the contribution in aid of construction. Further, as explained by Kelly Nuckols during his testimony, JPEC believes that this application of the tariff protects the other

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<sup>18</sup> See JPEC Response to Question 2 to Collins' Initial Data Request.

<sup>19</sup> See Direct Testimony of Chuck Williamson Page 8, Lines 3-9.

members from paying construction costs where the cooperative may not be able to recover those expenditures within a fixed period of time ensuring fairness to all members of the cooperative. <sup>20</sup>

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 Mr. Collins' request for a refund.

Respectfully Submitted,

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By: 

Melissa D. Yates

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

JEFF DEROUEN EXEC DIR  
PUBLIC SERVICE COMMISSION  
211 SOWER BLVD  
P O BOX 615  
FRANKFORT KY 40601

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

MR ROY G COLLINS  
109 DICKENSON STREET  
MANCHESTER KY 40962

on this 27<sup>th</sup> day of April, 2014.

By: 

Melissa D. Yates

20 Kelly Nuckols' hearing testimony at 14:17.