

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

PUBLIC SERVICE
COMMISSION

BALLARD RURAL TELEPHONE)
COOPERATIVE CORPORATION, INC.)

Complainant)

v.)

Case No. 2004-00036

JACKSON PURCHASE ENERGY)
CORPORATION)

Defendant)

**BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.'S MOTION
TO (1) REJECT JACKSON PURCHASE'S BRTC TARIFF AND (2) TO ORDER
JACKSON PURCHASE TO FILE A COMPLIANT TARIFF**

Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural"), by counsel, and pursuant to KRS 278.030, 278.040, 278.260, 278.280 and the August 2, 2007 Order of the Public Service Commission of the Commonwealth of Kentucky (the "Commission") in the above-referenced case, hereby moves the Commission: (1) to reject the "BRTC (Ballard Rural Telephone Cooperative Corporation, Inc. tariff)" filed by Jackson Purchase Energy Corporation ("Jackson Purchase") on October 15, 2007; and (2) to order Jackson Purchase to file a Utility Service Attachment Tariff compliant with the Commission's August 2, 2007 Order.

INTRODUCTION

On February 2, 2004, Ballard Rural filed a formal complaint against Jackson Purchase seeking the Commission to order Jackson Purchase to permit Ballard Rural to attach to Jackson Purchase' poles at fair, just, reasonable and non-discriminatory rates. A formal hearing in the matter was held on July 20, 2006. The parties filed post-hearing briefs, and on August 2, 2007 the Commission issued a final order. Pursuant to the August 2, 2007 Order (the "Order"), the

parties had 30 days to file tariffs consistent with the Order. The parties were subsequently granted extensions to file compliant tariffs pursuant to the Commission's September 24, 2007 and October 11, 2007 Orders. Ballard Rural filed its compliant Utility Service Attachment Tariff on Friday, October 12, 2007. Jackson Purchase filed its "BRTC Tariff" on or about Monday, October 15, 2007. Jackson Purchase's tariff is not consistent with the Order and violates KRS 278.170. Accordingly, Ballard Rural moves the Commission to: (1) reject Jackson Purchase's BRTC Tariff; and (2) order Jackson Purchase to file a Utility Service Attachment Tariff consistent with the Commission's Order.

ARGUMENT

I. JACKSON PURCHASE'S BRTC TARIFF ESTABLISHES AN UNREASONABLE CLASSIFICATION.

KRS 278.170 provides:

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

Pursuant to the express language of the statute, Jackson Purchase is prohibited from filing a tariff that establishes unreasonable classifications for the provision of service. When evaluating whether a classification for service is reasonable, the Commission may consider "the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and any other reasonable consideration." KRS 278.030. The Commission already considered these factors when it held that the provision of pole attachment services to Ballard Rural, Jackson Purchase, and cable television companies constitute a like service. Order, p. 7.

Having determined that the provision of space on a utility pole is a "service," the Commission has reviewed the evidence of record to

determine what that service entails for the parties hereto and compared it to the service provided to cable television customers. The Commission finds that the pole attachments made by these parties constitute a like service made under the same or substantially the same conditions and that it would constitute a violation of KRS 278.170(1) for the parties to charge each other attachment rates based on a different methodology than that it uses to calculate the rate they charge their cable customers.

Order, p. 7 (emphasis added). Thus, the Commission has already held that with regard to pole attachment services, there is no reasonable distinction in classification between Ballard Rural, Jackson Purchase and cable television operators.

Nonetheless, rather than amend its Cable Television Attachment Tariff (“CTAT”) to apply to all electric, cable television, and telecommunications companies, as Ballard Rural did, Jackson Purchase filed a new tariff—the BRTC Tariff—that applies only to Ballard Rural.¹ Jackson Purchase’s BRTC Tariff violates KRS 278.170 because, in accordance with the Commission’s holding articulated in the Order, it creates an arbitrary and unreasonable classification. A utility cannot establish an unreasonable classification “for doing a like and contemporaneous service under the same or substantially the same conditions.” KRS 278.170(1). Accordingly, the Commission should reject Jackson Purchase’s BRTC Tariff and order Jackson Purchase to file a utility service attachment tariff that is consistent with the Commission’s Order and applies to cable television companies, electric utilities and other telecommunications utilities that do not have a pole attachment agreement in effect with Jackson Purchase as of the effective date of the tariff.

¹ Ballard Rural’s Utility Service Attachments Tariff provides that it is applicable to “the provision of attachment space for cable television utility facilities, electric utility facilities or other telecommunication utility facilities on poles” of Ballard Rural. (General Subscriber Services Tariff, Section X, First Revised Sheet 2.) Jackson Purchase should be required to use this same language to specify that its tariff is applicable to cable television companies, electric utilities and other telecommunications utilities.

II. JACKSON PURCHASE'S BRTC TARIFF IMPOSES GREATER BURDENS ON BALLARD RURAL THAN JACKSON PURCHASE'S CTAT IMPOSES ON CABLE TELEVISION COMPANIES.

In addition to establishing an unreasonable classification, Jackson Purchase's BRTC Tariff discriminates against Ballard Rural by imposing additional and more burdensome terms on Ballard Rural as compared to Jackson Purchase's CTAT. As a result, Jackson Purchase's BRTC Tariff violates KRS 278.170 and the Commission's Order and should be rejected.

Jackson Purchase's BRTC Tariff imposes several new and burdensome requirements on Ballard Rural for simply receiving the same services cable television companies receive under the CTAT.² The additional terms and conditions are specified below.

1. Jackson Purchase does not require cable television companies to provide it with advance notice of proposed modifications to its attachments. Nonetheless, in its BRTC Tariff, Jackson Purchase requires Ballard Rural to provide it with advance notice of any proposed modification. (*See* BRTC Tariff, Specifications, paragraph A; Establishing Pole Use, paragraph A, p. 2.) The notice requirement places a prerequisite on Ballard Rural's receipt of service that cable operators do not endure.

2. Under Jackson Purchase's CTAT, cable television companies may bring into conformity any non-conforming attachments "as soon as practicable." Ballard Rural, however, must rectify any non-conforming attachments within 48 hours of written notice from Jackson Purchase. (*See* BRTC Tariff, Maintenance of Poles, Attachments and Operations, paragraph C, p. 4.) This time restriction places a significantly greater burden on Ballard Rural as compared to cable operators.

² A copy of Jackson Purchase's BRTC Tariff with the additional terms and conditions highlighted in yellow is attached as Exhibit A.

3. Pursuant to Jackson Purchase's CTAT, cable television companies "will be billed [for unauthorized or unreported attachments] at a rate of two (2) times the amount equal to the rates that would have been due, had the installation been made the day after the last *previously required* inspection." In its BRTC Tariff, however, Jackson Purchase deleted the words "previously required" so that Jackson Purchase will begin double billing Ballard Rural from the date of the last inspection, whether that inspection was required or not. (*See* BRTC Tariff, Inspections, paragraph A, p. 5). While Ballard Rural has no intention of making any unauthorized or unreported attachments, it objects to Jackson Purchase imposing different terms on Ballard Rural as compared to cable operators.

4. Remarkably, Jackson Purchase's BRTC Tariff would require Ballard Rural to indemnify Jackson Purchase "from any and all damage, loss, claim, demand, suit, liability, penalty or forfeiture of any kind and nature" by reason of terrorist attacks suffered by Jackson Purchase because of third-party claims related to Ballard Rural's receipt of pole attachment services. Jackson Purchase does not impose a similar liability on cable television companies. In other words, cable television companies are not required to indemnify Jackson Purchase for damages resulting from terrorist attacks (*See* BRTC Tariff, Insurance or Bond, paragraph A, p. 5.) Once again, Jackson Purchase is discriminating against Ballard Rural by subjecting it to greater liability as compared to cable operators.

5. Jackson Purchase's BRTC Tariff imposes significantly greater insurance coverage requirements on Ballard Rural than Jackson Purchase's CTAT imposes on cable television companies. Jackson Purchase increased the personal liability coverage from \$100,000 to \$500,000, the coverage per accident from \$300,000 to \$1,000,000, property damage coverage per person from \$25,000 to \$500,000, and total property coverage per accident from \$100,000 to

\$500,000. (*See* BRTC Tariff, Insurance or Bond, paragraph B, pp. 5-6.) The increase in coverage requirements is discriminatory.

6. The bond insurance coverage requirement for cable television companies is determined by the number of poles to which they attach, regardless of how many attachments they have on each pole. For Ballard Rural, however, the coverage is determined by the number of individual attachments Ballard Rural has, not the number of poles to which it is attached. Thus, Ballard Rural is subjected to stricter bond insurance coverage requirements than cable operators. For the sake of clarity, the applicable paragraphs in Jackson Purchase's CTAT and BRTC Tariff are recited below, and the differences are italicized.

CTAT

The CATV operators 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) until such time as the CATV operator shall *occupy 2500 poles* of the Cooperative. Thereafter the amount thereof shall be increased in increments of One Thousand Dollars (\$1,000) for each one hundred (100) *poles (or fraction thereof) occupied by* the CATV operator, evidence of which shall be presented to the Cooperative 15 days prior to beginning construction.

(CTAT, Bond or Depositor Performance, paragraph A, p. 10.8.)

BRTC TARIFF

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) until such time as *BRTC shall have twenty-five hundred (2,500) attachments on poles of JPEC* and thereafter the amount thereof shall be increased in increments of One Thousand Dollars (\$1,000) for each one hundred (100) *attachments of BRTC on JPEC's poles*, evidence of which shall be presented to JPEC 15 days prior to beginning construction.


(BRTC Tariff, Bond or Depositor Performance, paragraph A, p. 7.)

As evidenced above, the terms and conditions pursuant to which Ballard Rural may receive pole attachment services from Jackson Purchase are more burdensome than the terms and conditions placed on cable television companies. Pursuant to the Commission's Order and KRS 278.170, Jackson Purchase shall not "give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage." As the Commission found in its August 2, 2007 Order, Ballard Rural's attachments and the attachments of cable television companies constitute a like service. Thus, Jackson Purchase cannot justify imposing more burdensome terms on Ballard Rural than it imposes on cable television companies. Accordingly, the BRTC Tariff discriminates against Ballard Rural in violation of KRS 278.170 and the Commission's Order.

CONCLUSION

For the reasons stated above, Jackson Purchase's BRTC Tariff violates the Commission's Order and KRS 278.170. Accordingly, the Commission should reject Jackson Purchase's BRTC Tariff and order Jackson Purchase to file a Utility Service Attachment Tariff that is consistent with the Commission's Order and applies to cable television companies, electric utilities and other telecommunications utilities that do not have a pole attachment agreement in effect with Jackson Purchase as of the effective date of the tariff.

Respectfully submitted,



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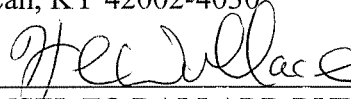
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COOPERATIVE CORPORATION, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing was served, via United States mail, first class, postage prepaid, this 20th day of November, 2007 on the following:

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