

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF JACKSON)
ENERGY COOPERATIVE CORPORATION) CASE NO. 2019-00066
FOR A GENERAL ADJUSTMENT)
IN EXISTING RATES)

ATTORNEY GENERAL’S COMMENTS

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“Attorney General”), and hereby tenders his comments to the Kentucky Public Service Commission (“Commission”) in the above-styled proceeding.

STATEMENT OF THE CASE

Jackson Energy Cooperative Corporation (hereinafter “JEC” or the “Cooperative”) is a non-profit electric cooperative corporation organized under KRS Chapter 279, and which provides distribution electric service to member/customers in Jackson, Rockcastle, Estill, Laurel, Clay, Lee, and Owsley counties.

JEC filed an application for an adjustment in rates on March 28, 2019 (“Application”) along with a motion to proceed as a revenue neutral streamlined rate case pursuant to the pilot program as set forth by Commission order in Case No. 2018-00407. The Attorney General submitted his electronic service response on April 5, 2019, to maintain his intervention status under the streamlined rate process. One round of discovery was conducted, with JEC providing responses to the Attorney General’s and Staff’s data requests on May 13, 2019. Following the submission of these comments, the case will stand submitted for a decision on the record on May 21, 2019.

ARGUMENT

I. JEC's Filing Is Not Revenue Neutral

Throughout this proceeding, JEC has maintained that its proposal is “revenue neutral,”¹ including in the styling of its Application. Further, the Application and associated testimony served to support such a proposition, stating as follows to indicate the utility was not seeking a change in its revenue requirement, but merely in its rate design:

- “Since this is a revenue neutral rate application Jackson Energy has not supplied” certain information listed in the order in Case No. 2018-00407;²
- “In addition to the automatic deviations in a streamlined rate case as set forth in the preceding paragraph, pursuant to the Order in Case No. 2018-00407, since this is an application for a revenue neutral rate adjustment, Jackson Energy hereby moves the Commission for an order granting it a deviation from [certain] requirements of 807 KAR 5:001, Section 16”;³
- “Jackson Energy is filing a revenue neutral rate application utilizing the Commission’s streamlined rate case pilot project”;⁴
- “JEC is not seeking an increase in revenue requirements, but rather a change in rate design so as to more accurately recovery fixed costs”;⁵ and,
- “Since this is a revenue neutral rate application, Jackson Energy has not adjusted its historical test year to exclude the items listed in Section V of the order in Case No. 2018-00407 which are typically excluded for recovery in rate cases.

¹ See Application, paragraphs 4, 5, 6, 8.b, 9, 16, 17, 22, 23, 24,

² Application at 7.

³ Application at 7.

⁴ Application, Exhibit D, Wright Direct Testimony, at 2.

⁵ Application, Wolfram Direct Testimony, at 5.

Adjustments to the test year would seem to be irrelevant since no increase in rates is sought. However, if the Commission would like to review the items listed in that Section, Jackson Energy is certainly willing and prepared to submit this information for the Commission's review."⁶

Despite JEC's assertions to the contrary, the Application is not revenue neutral, particularly insofar as it seeks a revenue requirement not based on the annual level approved in JEC's last base rate application,⁷ but rather, based on JEC's 2017 pro-forma actual revenues. JEC's expert, Mr. Wolfram describes how he determined the rates proposed in this Application. First, Mr. Wolfram took the "actual financials of JEC for the test period [2017] from the utility's official books and records."⁸ After determining the test year 2017 expenses and revenues, Mr. Wolfram prepared an embedded class cost of service study "based on pro forma operating results for the test year."⁹ These pro forma adjustments are not explained anywhere in the Application, but are evidenced on page 19 of 38 of Exhibit JW-5. The pro forma adjustments include, but are not limited to:

- Retirement Plan & 401(k);
- Board of Directors Fees;
- Employee Healthcare;
- Employee Life Insurance Premiums; and,
- Wages and Salaries

⁶ Application at 7.

⁷ See Case No. 2013-00219.

⁸ Wolfram at 9.

⁹ Wolfram at 9-10.

Therefore, it is obvious that the rates requested in this case are not based on the revenue requirement approved by the Commission in JEC's 2013 rate case, but rather, are based on a test year from 2017, which has distinct and different revenues and expenses than those reviewed 6 years ago. This case is not a request to change the rates used to determine a commission-approved revenue requirement, but rather is a request to change the rates so as to allow JEC an opportunity to earn a revenue requirement which has never been explicitly approved by the Commission. What JEC proposes is to set rates based on a test year with revenues and expenses which the Commission has neither reviewed nor approved. This Application is a far cry from revenue neutral—JEC is requesting rates to recover a revenue requirement without direct Commission approval.

II. JEC's Refusal To Fully Answer Discovery Has Resulted In An Incomplete Record

As stated *supra*, on April 29, 2019, the Attorney General submitted his Initial Data Requests to JEC, totaling 26 questions with subparts. Of these, JEC objected to almost half, either in whole or in part, and did not attempt to provide any substantive response.¹⁰ In support of its objections, JEC stated that the requests in question are overreaching, unduly burdensome, and not likely to lead to the discovery of admissible evidence. JEC also stated that since it is not seeking an increase to its revenues, the type of information requested by the Attorney General is not relevant to this proceeding, and the requests do not align with the objectives of the streamlined rate case procedure for revenue neutral filings.¹¹ JEC makes these blanket objections without any explanation as to how the objections are actually applicable to the requests made.

The Commission approved the pilot program using the streamlined rate case procedure for electric distribution cooperatives in Case No. 2018-00407, in part to better facilitate incremental rate increases by reducing certain minimum filing requirements and increasing the flow of

¹⁰ See JEC Responses to AG Questions 1, 2, 4.b, 6, 6.a, 16, 17, 18, 19, 21, 21.a.

¹¹ *Id.*

communication between the utility, Commission Staff, and intervenors when applicable.¹² In its March 26, 2019 order approving the pilot program, the Commission specified certain requirements for those utilities seeking to avail themselves of the streamlined procedure.¹³ Among those requirements are the items listed in Appendix A, Section D. of the order, titled “Excluded Items for Ratemaking Purposes”—items which “shall be excluded from the pro forma test-year income statement and supporting documentation included in the application.” These exclusions include, *inter alia*, the contributions for the least generous plans of employer retirement contributions for employees participating in multiple benefit packages, life insurance premiums for coverage above the lesser of an employee’s annual salary or \$50,000, and Directors fees.¹⁴ These are issues upon which the Commission has established strong recent precedent.¹⁵

The same order provides that for revenue neutral cases under the streamlined procedure, cooperatives are exempted from the requirements in Appendix A, Section C.3, but the order does not provide an exemption from the requirements in Section D.¹⁶ Since the revenue requirement sought by JEC, along with its associated revenues and expenses, has never been reviewed and approved by the Commission, JEC should not actually be exempted from Section C.3, and JEC should be required to disclose the information listed therein. In objecting to multiple of the Attorney General’s data requests regarding relevant issues, including items for which *JEC actually makes certain adjustments for in its Application*, JEC failed to provide the information necessary to determine whether it has properly removed certain expenses for ratemaking purposes.¹⁷ Again,

¹² The Attorney General sent representatives to each meeting of the working group on streamlining rate cases for cooperatives prior to the administrative case and order. Jackson Energy did not.

¹³ Commission Order, Case No. 2019-00066, Appendix A, pages 5-6 (March 26, 2019).

¹⁴ *Id.* (The excluded items also include prohibited advertising expenses, charitable and political contributions, nonregulated activities, and salary or company-paid expenses for lobbying).

¹⁵ See Commission Order, *Application of Inter-County Energy Cooperative Corporation for a General Adjustment of Existing Rates*, Case No. 2018-00129 (Ky. Commission January 25, 2019).

¹⁶ *Id.*

¹⁷ See JEC Responses to AG Questions 1, 2, 4.b, 6, 6.a, 16, 17, 18, 19, 21, 21.a.

the only mention of adjustments to expenses in the test year are provided in Exhibit JW-5, but JEC provided no context, explanation, description or bases for the listed pro forma adjustments.¹⁸ Furthermore, as discussed, *supra*, JEC indicated that although it chose not to provide certain information in its Application, under its guise of a “revenue neutral” proposal, that “if the Commission would like to review the items listed in that Section, Jackson Energy is certainly willing and prepared to submit this information for the Commission’s review.”¹⁹ Apparently, JEC’s offer did not extend to intervening parties, and since the Attorney General was the one who asked to review those items, they *are not* included in the record “for the Commission’s review.”²⁰

Moreover, the mere fact that JEC (wrongly) claims its application is revenue neutral does not entitle it to any less transparency, and neither does the use of the streamlined rate case. As always, the Commission’s ultimate responsibility is to determine “fair, just and reasonable rates” to be charged in association with “adequate, efficient and reasonable service.”²¹ Streamlined rate case or not, the Commission cannot ignore its statutory obligations. With only one round of discovery to build a sufficient record and without the benefit of an evidentiary hearing or intervenor testimony, cooperatives must be as transparent as possible to ensure that this process works. JEC has declined to provide any such transparency here, and the paucity of the record asks the Commission to make a ruling without the benefit of being fully informed. If utilities continue to employ the streamlined rate procedure to effectively stonewall during the only round of data requests, having the effect of foreclosing upon meaningful discovery and inquiry, the Attorney General will be forced to object to such abuse of the process. The streamlined procedure will only work correctly if a utility is sufficiently candid in its application and its subsequent responses. The

¹⁸ Application, Wolfram Direct, Exhibit JW-5.

¹⁹ Application at 7.

²⁰ *Id.*

²¹ KRS 278.020.

pilot streamlined rate process depends on adequate utility involvement. The flow of information and evidence in these proceedings is solely within the control of the cooperative. If a utility, as JEC did here, refuses to provide the information necessary for the Commission to adequately review the proposed tariff changes, its application should be summarily denied.

III. The Impact Of The Proposed Rate Design Shift And Increased Customer Charge Disproportionately Falls On Residential Customers, And The Overall Proposal Is Unreasonable

Even if, *arguendo*, the filing was revenue-neutral, the proposed changes in rate design will increase rates for a substantial portion of JEC's residential customer base — those who use less than the monthly average amount of electricity.²² Although JEC's proposal ensures a steadier stream of revenue through the higher fixed charge, it does so at the expense of its customers and their ability to regulate their monthly bills. JEC maintains that the change in rate design will not make it any harder for customers to be conservation minded, stating that “[t]he rate may affect how much a member saves by conserving energy, but it does not make it any more or less difficult to conserve.”²³ However, disincentivizing conservation by reducing the amount that can be saved does, in a manner of speaking, make it more difficult to conserve because JEC customers will see less reward for the same amount of future conservation effort.

JEC further states in its Application that it chose not to address inter-class subsidization in the current filing, from which the residential class benefits.²⁴ However, that is of little solace since the rate design change, which is limited to this same class, moves residential customers halfway toward full “cost-based” rates in one fell swoop.²⁵ This is despite the fact that the COSS improperly allocates the cost of poles on the basis of the number of customers, especially since the number of

²² See JEC Response to AG 1-9.

²³ JEC Response to AG 1-20.

²⁴ Wolfram Direct Testimony, page 20.

²⁵ JEC Response to AG 1-14.

the poles does not correlate with JEC's customer count based on the provided zero-intercept study.²⁶ When asked to explain the impact on class returns that would result if the accounts related to distribution plant in service—specifically poles, towers, fixtures, and line transformers—were allocated solely on demand, the utility simply stated that such a calculation would be inconsistent with the NARUC electric cost allocation manual, and provided no further attempt at an answer.²⁷ Because of this, JEC has not provided a compelling reason for pole cost allocation to be calculated according to the more subjective and blunt minimum system method. Additionally, given the utility's responses, or lack thereof, there was no evidence to counter JEC's proposals that borrow from the COSS and are used for rate design purposes, such as the inclusion of poles and wires in the calculation of the customer charge. JEC's continued refusals to respond and lack of candor unilaterally foreclosed on the Attorney General's opportunity to provide contrary evidence to that which was relied upon by JEC in its Application.

Finally, at no point during this proceeding has JEC provided evidence that it is unable to earn its Commission-authorized revenue requirement. Ignoring the fact that JEC has abandoned its Commission-authorized revenue requirement and has instead sought rates to earn revenues equal to its 2017 actuals, in 2017 JEC earned a 2.17 TIER. JEC's 2.17 TIER is in excess of the Commission's precedent of a 2.0 TIER, and provides significant evidence that a rate design change of the type proposed by JEC is unnecessary.

IV. JEC's Proposal Does Not Comport With The Commission's Preference For Gradualism

Furthermore, JEC has proposed to increase its residential fixed service charge from \$16.44 to \$24.00, a 48.74% move from the current charge toward the cost-based rate for the class of

²⁶ JEC Response to AG 1-22.

²⁷ JEC Response to AG 1-23, 1-24.

\$31.95.²⁸ Though JEC states that its proposal comports with gradualism because this charge only moves halfway toward the full residential cost to serve, if approved, JEC’s customer charge would be the highest of the 16 rural electric cooperatives on the EKPC system.²⁹ Such an increase to the fixed charge component of the rate compounds the burden on the residential customers on its system, and while a customer with average usage may not see an increase in their bill, anyone using less than the system average will.³⁰ Regardless, as discussed earlier, all customers will see an increased barrier to energy conservation and customers who receive bill assistance will receive \$8 less each month to defray usage—money which will now bypass customers and instead go directly into the utility’s coffers.

CONCLUSION

The Commission has often acknowledged its long history of reliance on the principle of gradualism in ratemaking in order to mitigate the financial impact of individual rate increases, or rate design changes on customers and Kentucky families.³¹ In the event that the Commission makes a decision to approve any or all of JEC’s proposals, the Attorney General asks that the Commission continue to follow that precedent here and to appropriately consider affordability.

However, the Commission need not even reach the merits of the proposal, because JEC has essentially asked the Commission to approve its Application in a truncated timeframe, which actually does request a brand new revenue requirement, without the benefit of a full record. By

²⁸ *Id.*

²⁹ *Id.*

³⁰ JEC Response to AG 1-9.

³¹ Case No. 2014-00396, *In the Matter of Application of Kentucky Power Company for: (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving its 2014 Environmental Compliance Plan; (2) An Order Approving its Tariffs and Riders; and (4) An Order Granting All Other Required Approvals and Relief*, Order (Ky. PSC June 22, 2014) (“the Commission has long employed the principle of gradualism”); *See also*, Case No. 2000-080, *In the Matter of: The Application of Louisville Gas & Electric Company to Adjust its Gas Rates and to Increase its Charges for Disconnecting Service, Reconnecting Service and Returned Checks*, Order (Ky. PSC September 27, 2000) (“the Commission is adhering to the rate-making concepts of continuity and gradualism in order to lessen the impact of these increases on the customers that incur these charges.”).

refusing to engage in the intervenor's only round of data requests, especially on issues the Commission has deemed important in recent decisions and which serve as a basis for JEC's proposal, JEC has forced the Commission into a position where it must either approve or deny the proposal upon an incomplete record. This has effectively denied the ratepayers from having any meaningful representation in this case. Accordingly, the Attorney General recommends that the Commission deny JEC's requested relief *in toto*.

WHEREFORE, the Attorney General requests that the Commission, based upon the evidentiary record, deny the proposed rates for the customers of Jackson Energy Cooperative Corporation.

Respectfully submitted,

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