

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF JACKSON)	
PURCHASE ENERGY CORPORATION FOR)	CASE NO.
GENERAL ADJUSTMENT OF RATES)	2021-00358
AND OTHER GENERAL RELIEF)	

JACKSON PURCHASE ENERGY CORPORATION’S REPLY BRIEF

Comes now Jackson Purchase Energy Corporation (“Jackson Purchase” or “Cooperative”), by counsel, pursuant to the February 25, 2022, Order of the Kentucky Public Service Commission (“Commission”) setting forth a post-hearing procedural schedule in the above-styled docket, and does hereby tender its Reply Brief responding to the Initial Post-Hearing Brief of the Attorney General (“AG”) filed March 15, 2022, respectfully stating as follows:

I. INTRODUCTION

The majority of the AG’s Brief addressed three issues: Right-of-Way Management Expense, TIER and the requested Customer Charge. While the AG’s Brief also made passing reference to other contested pro forma adjustments, Jackson Purchase will directly and succinctly address the above three issues only.

II. ARGUMENT IN REPLY

A. The AG’s Advocation of a Reduced Pro Forma Adjustment for Right-of-Way Management Expense and for a Management Audit would be Damaging to Jackson Purchase and is not Supported by the Greater Weight of Evidence in the Case Record.

The AG’s position on right-of-way issues is essentially that: (1) Jackson Purchase’s requested pro forma adjustment for right-of-way expense of \$3.316 million is inflated and Jackson Purchase is to blame¹; (2) Jackson Purchase can’t be trusted to see that future right-of-way trimming will actually be completed²; (3) Jackson Purchase’s decision not to sue its long-standing and otherwise dependable contractor amounted to a dereliction of duty to its members³; and, (4) because Jackson Purchase is incapable of responsibly completing a goal-specific right-of-way program the Commission should immediately initiate a focused management audit⁴. Jackson Purchase takes exception to every one of these charges.

1. Pro Forma Adjustment for Right-of-Way Expense

Several pages of Jackson Purchase’s initial Brief were devoted to how and why the Cooperative’s pro forma adjustment for right-of-way expense is reasonable, is based on known and measurable information and should be adopted by the Commission in deciding this case. Jackson Purchase will not rehash those reasons here except to remind the Commission that the per circuit mile price of \$10,760 which forms the basis for the \$3.316 million adjustment is based on an actual and reliable Request for Proposal (“RFP”) process undertaken in late 2020 for 2021 trimming work where bids were received and the lowest price accepted.

¹ See AG’s Brief (March 15, 2022), p. 2: “The Company’s proposed right-of-way expense is excessive and could have been lower but for the Company’s actions.”

² See *id.*, p. 6: “However, based on recent history, it is reasonable to have significant doubts that this work [right-of-way maintenance] will, in fact, be performed.”; See also, p. 7: “...the AG is focused on ensuring that JPEC actually performs the right-of-way work it has historically failed to complete either by neglect or calculated business decision.”

³ See *id.*, p. 3: “The Company did not pursue legal remedies available to it under the contract...by failing to enforce its rights under the contract, hundreds of miles...were not trimmed.”

⁴ See *id.*, pp. 7-8 “...the Company’s failure to act in its ratepayers’ best interest by failing to enforce its contract rights, its proposal of costs that are higher than those costs experienced by other similarly situated utilities, and its presentation of an...unrepresentative data set as the basis for costs for the entire system...support a Commission-directed study of this issue through a focused management audit.”

The AG asserts that this per circuit mile price is invalid and unreliable because it is based on only 80 miles of right-of-way, and it is higher than neighboring cooperatives. There is a simple reason why the 2020 for 2021 right-of-way RFP was limited to 80 miles---with the exponential cost increases seen between 2018 and 2020, that was all Jackson Purchase could afford to trim in 2021. It designated three specific circuits, Clinton Road, Airport and Wickliffe, for completion and that is exactly what occurred. These circuits were trimmed on time and within budget. Jackson Purchase could have easily put out an RFP in 2020 for 2021 work requesting bids to trim one-fifth of its entire system, or 358 miles. However, with the cost structure it was facing at the time management knew that was completely unrealistic. Moreover, had Jackson Purchase requested and obtained such bids and ultimately was able to pay for only 80 miles of trimming, the AG would instead be claiming here that Jackson Purchase fell 278 miles short of its 2021 goal.

Instead of relying on the most recent actual RFP/Bid/Contract results upon which to base the pro forma adjustment the AG recommends that the Commission should rely on Jackson Purchase's right-of-way maintenance costs for 2020 of \$5,556 per circuit mile.⁵ The AG would like to convince the Commission that this is the most appropriate data upon which to base the adjustment. This is reinforced in the AG's Brief when it sought to specifically compare Jackson Purchase's per circuit mile right-of-way maintenance expense with that of its neighboring cooperative, Kenergy Corporation, in its 2021 streamlined rate case which, like Jackson Purchase in this case, employed a December 31, 2019 test year.⁶ The AG states that Kenergy "had rates approved that included right of way maintenance expense of \$4,910 per circuit mile. The \$10,760 per circuit mile cost prepared by [Jackson Purchase] here is 119% greater than Kenergy's approved

⁵ See *id.*, p. 8.

⁶ See Case No. 2021-00066, *In the Matter of: Electronic Application of Kenergy Corporation for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407.*

costs on a per-mile basis.”⁷ This specific cost comparison made by the AG is unreliable for two very important reasons. First, the \$4,910 per circuit mile cost referenced by the AG is incorrect. According to Kenergy’s own data the 2021 per circuit mile cost upon which its pro forma adjustment is based should be \$5,080 ($\$4,633,480$ [2021 ROW maintenance budget] \div 912 [2021 miles of ROW to be cleared] = $\$5,080$).⁸ Second, and most important, Kenergy’s Vegetation Management Request for Proposal of July 17, 2020 only specifies a 14 foot under-phase clearance for both single-phase and multi-phase conductors on primary circuits.⁹ In other words, the \$5,080 per circuit mile cost which formed the basis for Kenergy’s pro forma adjustment was for only a partial trim. Conversely, Jackson Purchase’s 2021 cost of \$10,760 per mile upon which its pro forma adjustment is based was for a complete ‘ground-to-sky’ cut.¹⁰ Without question the costs associated with a complete ‘ground to sky’ cut such as the one specified by Jackson Purchase are substantially more than the partial trim specified by Kenergy as contained in its 2021 rate case.

Similarly, the AG’s recommendation that the Commission should base the pro forma adjustment for right-of-way expense on 2020 costs is illogical and unreasonable. First, in the recent case discussed above, Kenergy employed a December 31, 2019 test year and the Commission accepted a pro forma adjustment of \$1,879,927¹¹ based on a 2020 RFP for 2021 right-of-way trimming, exactly as Jackson Purchase has proposed in this case. Moreover, it is puzzling why the

⁷ See AG’s Brief, p. 4.

⁸ See Case No. 2021-00066, *In the Matter of: Electronic Application of Kenergy Corporation for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407*, Application Exhibit *_Vegetation_Management_Adjustment_Detail.xlsx* (March 11, 2021); See also, Vegetation Management spreadsheet attached to Kenergy’s Response to PSC-DR-01-15 c-d (April 29, 2021).

⁹ See *id.*, Kenergy’s Response to PSC-DR-01-15f, p. 3 of 17.

¹⁰ See hearing testimony of Greg Grissom, Hearing Video Record (HVR) 11:49:00 through 11:54:30 (Feb. 24, 2022).

¹¹ See Case No. 2021-00066, Final Order (June 24, 2021).

AG failed to ask Kenergy a single question about its pro forma adjustment for right-of-way maintenance¹², nor even mention, much less object to, Kenergy's use of 2021 bids in a 2019 test year case.¹³ The AG's disparate treatment of the identical issue in these two cases is unexplainable.

In any economic cycle where inflation is trending upward the best estimate of what something will cost tomorrow is what it actually cost last week, not last year. It is universally accepted that in the current financial climate of higher costs for fuel, equipment, parts and labor right-of-way maintenance has become more expensive by the year and the best estimate for what it will cost Jackson Purchase this year should be based on what it cost last year not what it cost two years ago. As pointed out in Jackson Purchase's brief the AG has recommended an arbitrary December 31, 2020 cut-off for all pro forma adjustments, including right-of-way maintenance.¹⁴ That works well for the AG's position because 2020 was the pandemic year where the economy was uncharacteristically in flux and navigating in uncharted waters. The full effect of the pandemic on the economy had not yet played out, including, for purposes of this case, issues such as payroll and right-of-way maintenance expense. It is illogical to arbitrarily base such an important expense as this one on stale data just because it happens to fit into the AG's desire to reduce revenues. Notwithstanding the AG's attempt to do so, Jackson Purchase respectfully recommends that the Commission should base the right-of-way adjustment on 2021 actual bid data just as it did in Kenergy's recent rate case.

2. Completion of Future Right-of-Way Trimming

¹² See *id.*, AG's Data Requests (March 14, 2021).

¹³ See *id.*, AG's Comments (May 6, 2021).

¹⁴ Inexplicably, the AG did not seek to impose this arbitrary cut-off to Kenergy's requested pro forma adjustment for right-of-way expense in Case No. 2021-00066.

Contrary to the AG's assertions Jackson Purchase is willing and able to follow through with a meaningful right-of-way maintenance program. Its President/CEO, Mr. Grissom, is a distribution cooperative veteran and has significant experience with right-of-way issues. Since taking over at Jackson Purchase he has created and implemented a Right of Way Maintenance Procedure¹⁵ which is intended as a guide to keep maintenance current. It establishes a reasonable trim cycle utilizing a 'ground-to-sky' protocol. In addition, Mr. Grissom has designated an individual within Jackson Purchase's Engineering and Operations Department to be responsible for administration of the Procedure, including assuring that right-of-way trimming goals are met on time and within budget. To the extent that Jackson Purchase has not met past annual circuit mile trimming goals, costs are to blame not lack of will or attention to the issue.¹⁶

3. Jackson Purchase's Decision not to Sue its Right-of-Way Contractor

The AG claims that the increase in right-of-way maintenance expense is "excessive and could have been lower but for the Company's actions"¹⁷ in declining to either sue its contractor or identify and obtain substitute performance and submit a bill to its contractor. Jackson Purchase fails to see the nexus between declining to sue or obtaining substitute performance in 2019, and the cost of 2021 right-of-way maintenance expense resulting from the RFP/Bid/Contract procedure completed in late 2020. The rationale for Jackson Purchase's decision not to pursue legal action against its contractor is discussed at length in Mr. Grissom's rebuttal testimony¹⁸ and will not be restated here. For the reasons stated Jackson Purchase firmly maintains that the decision it made

¹⁵ See Jackson Purchase's Response to AG-DR-01-40. The procedure became effective in 2020.

¹⁶ See Rebuttal Testimony of Greg Grissom, p. 5 (February 17, 2022), where Mr. Grissom discusses the importance of right-of-way trimming.

¹⁷ See AG's Brief, p. 2.

¹⁸ See Rebuttal Testimony of Greg Grissom, pp. 3-4 (February 17, 2022).

at the time after significant discussion and deliberation was prudent and has proven to be the correct one. However, while the decision not to pursue a ‘make-whole’ payment in 2019 could affect expense for that year, it has nothing to do with the type of cost increases seen two years later, especially in light of consistent increases seen elsewhere in the industry. The AG’s desire to play arm-chair quarterback on Jackson Purchase’s difficult real-time corporate decision not to pursue specific damages in 2019, followed by an attempt to tie that decision to subsequent yearly cost increases is illogical and should be disregarded.

4. Management Audit

The AG’s call for the Commission to initiate a management audit focused on right-of-way issues is addressed at length in Mr. Grissom’s rebuttal testimony.¹⁹ Mr. Grissom states that an audit focused on right-of-way issues would be excessive and unnecessary. As the Commission saw at the hearing, Mr. Grissom is on top of right-of-way issues and Jackson Purchase believes it would be highly inefficient to require the expenditure of tens of thousands of dollars in staff time and legal and consultant fees to address a management audit. Instead, those resources would be better utilized in paying for right-of-way maintenance expense and working the problem.

B. The AG’s Recommended TIER of 1.50 is Unreasonable and Could be Harmful to Jackson Purchase’s Continued Financial Health

The AG’s Brief maintains insistence that a TIER of 1.50 is more than adequate for several reasons but principally because it is “excessive compared to credit and financial metrics required by its lenders.”²⁰ Jackson Purchase’s rate expert, Mr. Wolfram, spends ten pages of his rebuttal

¹⁹ See Rebuttal Testimony of Greg Grissom, pp. 2-4 (February 17, 2022).

²⁰ See AG’s Brief, p. 9.

testimony successfully deconstructing and illuminating fatal flaws in the AG’s argument.²¹ The AG’s attempt to directly tie Jackson Purchase’s revenue allowance from the Commission in this rate case to the TIER, OTIER and DSCR benchmarks contained in its loan covenants implies a “false equivalence” according to Mr. Wolfram.²² If the Commission accepted the AG’s recommendations on this issue there would be virtually no financial cushion for Jackson Purchase in the event of an unexpected decline in revenues or an unexpected increase in expenses. This could place Jackson Purchase in a precarious, if not dangerous, financial situation and is likely the reason the Commission has correctly and consistently approved rates based on an authorized TIER of 2.00 in many prior distribution cooperative traditional rate cases.²³

C. Jackson Purchase’s Request to Increase the Customer Charge is Necessary and Fully Supported by the Cost of Service Study

The AG objects to Jackson Purchase’s request to increase the monthly customer charge from \$16.40 to \$21.25, believing it is inimical to the Commission’s philosophy of gradualism in ratemaking.²⁴ (Note this objection was raised for the very first time in this case in the AG’s initial brief and lacks any support in the case record.) This issue is discussed at length in Mr. Wolfram’s testimony in support of the Application.²⁵ A COSS based on pro forma operating results for the test year was performed by Mr. Wolfram. Its purpose is to assess Jackson Purchase’s overall rate of return on rate base and to determine the relative rates of return that the Cooperative is earning from each rate class. It also provides an indication of whether each class is contributing its

²¹ See Rebuttal Testimony of John Wolfram, pp. 19-29 (February 17, 2022); See also, Jackson Purchase’s Brief, pp. 15-19, for a further discussion of its position on this issue.

²² See Rebuttal Testimony of John Wolfram, pp. 22-23 (February 17, 2022).

²³ See *id.*, pp. 27-28 (February 17, 2022).

²⁴ See AG’s Brief, pp. 14-15.

²⁵ See Direct Testimony of John Wolfram, Application Exhibit 10, pp. 21-22 (October 15, 2022).

appropriate share towards Jackson Purchase’s cost of providing service.²⁶ The COSS supports a fixed monthly charge of \$41.56 for the residential class.²⁷ Mr. Wolfram’s testimony calls this a “significant issue for JPEC because the current charge is so far below cost-based rates” and means “the current rate structure places too little recovery of fixed costs in the fixed charge, which results in significant under-recovery of fixed costs”.²⁸ Mr. Wolfram refers to this situation as a “fundamental challenge facing JPEC from a cost-recovery standpoint, and it is essential for JPEC’s financial well-being to address this issue.”²⁹ The testimony of Jackson Purchase’s Chief Financial Officer and Vice President of Finance and Accounting, Jeff Williams, addresses the AG’s concerns about the effect on low income customers of increasing the monthly customer charge.³⁰ Mr. Williams testified that in designing Jackson Purchase’s proposed rates their effect on low income customers was given substantial consideration.³¹ Ultimately, it was concluded that rate design should more accurately recover the costs of operating Jackson Purchase’s distribution system resulting in better alignment of cost-causers with cost-payers, avoidance of monthly bill volatility, and allowing operations to proceed under a more predictable and accurate budget.³²

Since the COSS supports a monthly customer charge increase to \$41.56 for the residential class Jackson Purchase believes that the requested incremental increase from \$16.40 to \$21.25 is consistent with the Commission’s philosophy of rate gradualism. The proposed charge is not

²⁶ *See id.*, pp. 14-15.

²⁷ *See id.*, p. 21.

²⁸ *See id.*, pp. 21-22.

²⁹ *See id.*, p. 22.

³⁰ *See* Direct Testimony of Jeff Williams, Application Exhibit 9, p. 13 (October 15, 2022).

³¹ *See id.*

³² *See id.*, pp. 13-14.

arbitrary as the AG claims.³³ Instead, the proposed increase closes 30 percent of the gap between the current rate and the cost-based rate, moving the charge between one-fourth (1/4) and one-third (1/3) of the way toward cost-based rates in a gradual manner, as Mr. Wolfram explained in his Direct Testimony.³⁴

IV. CONCLUSION

As stated in its original Brief, Jackson Purchase's proposal in this case is both measured and necessary for its continued financial health. It is based entirely upon a comprehensive and reliable COSS employing known and measurable changes to test year expense. It is fair, just and reasonable both in terms of the revenue request and the rate design chosen to implement it. For these reasons Jackson Purchase respectfully requests that the Commission enter a Final Order adopting its request in full.

This 22nd day of March, 2022.

Respectfully Submitted,

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³³ See AG's Brief, p. 15.

³⁴ See Direct Testimony on John Wolfram, Application Exhibit 10, p. 27 (October 15, 2022).

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing is a true and accurate copy of the same document filed electronically with the Commission on March 22, 2022; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and by virtue of the Commission's July 22, 2021 Order in Case No. 2020-00085, a copy of the filing in paper medium shall not be required.

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