

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF JACKSON)	
PURCHASE ENERGY CORPORATION)	
FOR A GENERAL ADJUSTMENT OF)	Case No. 2021-00358
RATES AND OTHER GENERAL RELIEF)	

POST-HEARING RESPONSE BRIEF OF THE ATTORNEY GENERAL

The intervenor, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (“Attorney General”), provides the following Post-Hearing Response Brief pursuant to the Commission’s Order of February 25, 2022 and in response to the Post-Hearing Brief filed by Jackson Purchase Energy Corporation (“JPEC” or the “Company”) on March 15, 2022.

The Attorney General agrees with JPEC that an increase in base rates is justified. The amount of increase is where the parties differ based on “divergent positions and more than a few disagreements over the merits and amounts of several *pro forma* adjustments.”¹ The parties agree that the largest adjustments at issue in this case are the adjustments related to right-of-way management and the Times Interest Earned Ratio (“TIER”).²

I. Right-Of-Way Management

In general, JPEC argues that its right-of-way expense has increased, but those increases are in line with and driven by industry-wide trends.³ The Attorney General has provided substantial evidence that JPEC’s proposed right-of-way expense dramatically exceeds that of its neighboring

¹ JPEC’s Brief at 2.
² JPEC’s Brief at 8.
³ JPEC’s Brief at 14.

utilities on a per-mile basis and is unreasonable.⁴ The Attorney General also has provided substantial evidence that the Company's calculation of the proposed adjustment based on a per-mile cost is excessive and unreasonable.

While JPEC argues that its proposed expense is in line with the market, it acknowledges its right-of-way management has been "unsettled" in recent years.⁵ JPEC argues that it has, "reformed oversight and execution of right-of-way maintenance issues," and the Commission should fully approve the expense it proposed.⁶ Respectfully, there is no evidence in the record that JPEC has fully addressed its right-of-way management issues and is appropriately controlling those expenses at this time. The disparity between its proposed expenses and those of its neighboring utilities are exorbitant. Nonetheless, the Company is essentially asking the Commission to trust its statements when its actions have yet to demonstrate that it has this issue under control. Further study of this issue through a focused management audit, while possibly uncomfortable for the Company, could provide both the Commission and the Company with valuable insight into this issue, including ways to achieve savings to the benefit of ratepayers. The Attorney General's Post-Hearing Brief provides a thorough treatment of this issue, but responses to several specific statements from the Company's Brief are necessary.

First, the Company argues, "[i]t is very important for the Commission to understand that Townsend was the lowest bidder under the 2021 RFP at \$10,760.28. Other bids were received from three right-of-way trimming contractors with two of them being more than double Townsend's bid. These three bids were \$11,132.00, \$21,592.95 and \$26,938.73 per mile."⁷ While JPEC attempts to use this information to support its position that the proposed per-mile cost is

⁴ AG's Post-Hearing Brief at 2-8.

⁵ JPEC's Brief at 15.

⁶ JPEC's Brief at 15.

⁷ JPEC's Brief at 11. The exhibit cited as evidence, JRW-4, actually lists the bids as "Bids for 2020 Circuits."

reasonable, the information is actually more probative of whether the three circuits at issue totaling less than 5% of the system are a sufficient barometer for the expense for the other 95% of the system. Those alternate bids are not consistent with the per-mile expenses that other utilities are incurring for vegetation management on a system-wide basis. Thus, those bids are simply further evidence that those circuits likely are not representative of the entire system.

Second, in describing its right-of-way management operations in 2020, JPEC acknowledged that its contract with Townsend was “unwritten.”⁸ It is problematic that, not even two years ago, a utility was making large payments to a major vendor without contractual safeguards. This supports the recommendation for a focused management audit.

Third, JPEC’s position regarding the proposed focused management audit is troubling. “A management audit focused on this issue is unnecessary and would not generate any suggestions or recommendations beyond what Jackson Purchase is already doing to address the problem.”⁹ This dismissive response suggests that JPEC has all of the answers with regard to right-of-way management and is incapable of improving its situation with help from outside consultants. The Company’s protestations make it more important that the recommendation for a focused management audit be adopted.

Fourth, JPEC misconstrues the Attorney General’s reliance on 2020 data for setting a reasonable baseline expense. “The AG’s assertion that the Commission should somehow not look beyond the cost per circuit mile for 2020 is illogical and unreasonable, not only because it imposes a completely artificial adjustment cut-off period, but also because it disregards the current environment of unprecedented year-over-year right-of-way expense increases.” To the contrary, the Attorney General has not argued that the Commission should simply base rates on the 2020

⁸ JPEC’s Brief at 9.

⁹ JPEC’s Brief at 13.

cost and end the inquiry there. Instead, the Attorney General has suggested an in depth study of this issue through a focused management audit in order to figure out exactly why JPEC appears to be such an outlier when it comes to vegetation management. The Attorney General’s proposals, including the focused management audit, reserve accounting, and regular reporting on right-of-way expense are all proposals calculated at “looking beyond” the 2020 cost per circuit mile to ensure the work gets completed and at a price fair to ratepayers.

Fifth, JPEC’s assertion that it is “convenient” for the Attorney General to use 2020 right-of-way expense, “since it reduces the Cooperative’s ask by \$1.824 million,” also misses the mark. The Attorney General’s recommendations are not calculated at achieving the lowest possible rates, irrespective of the basis for those rates. The Attorney General recognizes that utilities need to be compensated fairly so that they can recover reasonable costs. The Attorney General is focused on ensuring that rates are fair, just, and reasonable. If the Company had demonstrated through its case that its right-of-way expenses were reasonable, there would be no issue.

Sixth, as previously discussed in the Attorney General’s Initial Post-Hearing Brief, JPEC’s historical practice has been to control costs through trimming less miles. In its Post-Hearing Brief, JPEC indicates it will likely continue that practice. JPEC states Commission approval of the Attorney General’s recommendation of a lower per-mile expense, “would extend Jackson Purchase’s system right-of-way trimming cycle from five years to nine or ten years.”¹⁰ It is highly problematic that a utility would neglect to perform required maintenance if the Commission reduced the amount of expense that could be collected due to the Commission finding that the proposed expense was unreasonable. JPEC is essentially saying that, even if the Commission determined that a certain amount of funding through rates is sufficient and reasonable to perform

¹⁰ JPEC’s Brief at 13.

the necessary right-of-way maintenance task, if that amount is less than the amount the Company proposed in its application, the Company might not perform that work. Indications like this further justify the importance of a focused management audit and consistent reporting requirements ensuring that ratepayers get the service they pay for in rates.

For these reasons, the Attorney General requests that the Commission authorize rates which recover only reasonable right-of-way expense, order a focused management audit, and consider the other protective measures the Attorney General recommended on this issue, including deferral accounting and periodic reporting.

II. TIER

Without citing to any specific case, JPEC argues that:

For decades virtually every electric distribution cooperative appearing before the Commission seeking rate relief has based its underlying request on the ability to earn revenues sufficient to achieve a 2.00 TIER. Jackson Purchase is no different. However, inexplicably the AG's witness, Mr. Kollen, believes this is too high and the Commission should determine Jackson Purchase is only entitled to earn revenues sufficient to achieve a 1.50 TIER.

Respectfully, Mr. Kollen's basis for his recommendation has been explained, and thoroughly.¹¹ Conversely, the Company asserts that it, "it would be a waste of resources for an electric distribution cooperative to employ a rate expert to provide the [sic] type of support for a TIER of 2.00."¹² JPEC has the burden to make its case that what it has proposed results in fair, just, and reasonable rates. If it declines to include certain information in the record, the Commission should consider whether JPEC has met its burden.

JPEC also argues, "[i]f the AG's position that distribution cooperatives should prospectively support their TIER requests with substantive analysis and testimony is sustained, the

¹¹ See Direct Testimony of Mr. Kollen at 35-43.

¹² JPEC's Brief at 17.

Commission should expect future cooperative TIER requests to be substantially higher than 2.00.”¹³ It is difficult to understand why this would be the case. Presumably, JPEC is arguing that it could justify a higher TIER if it was willing to invest in an analysis supporting such a request. Such an unfounded and speculative claim is immaterial to this matter. Further, cooperatives sometimes request a TIER greater than 2.0 already.¹⁴

Similarly, the Company argues that the approval of a TIER less than the requested 2.0 would be detrimental to the streamlined rate filing procedure and, “quickly unravel that body of work and immediately erect a barrier to future cooperative rate case filings initiated under the traditional process.”¹⁵ While the Commission must certainly consider the broader impacts of its decisions, it is important that the Commission, at least periodically, review the fundamental underpinning of the financial constructs on which regulated utilities operate. If the Commission is of the opinion that the award of a 2.0 TIER to cooperatives is a well-founded precedent, and that precedent should not be disturbed for policy reasons beyond this case, the Commission certainly has the authority to make such a finding. However, the Attorney General does not see a 2.0 TIER as sacrosanct; each rate case must stand on its own merits.

Notably, not all cooperatives request a TIER of 2.0; nor do all receive it. For example, Licking Valley RECC recently requested and was authorized a TIER less than 2.0 in a streamlined rate case.¹⁶ The Attorney General readily acknowledges that the Licking Valley case is distinguishable – it was a streamlined case involving caps on maximum requests, the Commission

¹³ JPEC’s Brief at 17-18.

¹⁴ See Case No. 2011-00096, *Application of South Kentucky Rural Electric Cooperative Corporation for an Adjustment of Electric Rates* and Case No. 2016-00174, *Electronic Application of Licking Valley Rural Electric Cooperative Corporation for a General Rate Increase*.

¹⁵ JPEC’s Brief at 20.

¹⁶ Case No. 2020-00338, *Electronic Application of Licking Valley Rural Electric Cooperative Corporation for General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407*, see Orders of April 8, 2021 and May 10, 2021.

approved an increase greater than the request, and the Commission required Licking Valley to file a general rate case within three years. Nonetheless, a cooperative requested and was authorized a TIER lower than 2.0. The Commission would not approve a request that it thought would result in unsafe and unreliable service to ratepayers or would damage the financial health of the cooperative. Thus, there is precedent supporting a finding that a 2.0 TIER is not always required to provide safe and reliable service to ratepayers and support a financially healthy cooperative.

Finally, contrary to JPEC's insinuations, the Attorney General has not asserted an equivalence between required financial and credit metrics and authorized TIER in rate filings. Nonetheless, for obvious reasons, those financial and credit metrics are worthy of consideration in an analysis of TIER.

For these reasons, in addition to those stated in its Initial Post-Hearing Brief, the Attorney General urges the Commission to authorize TIER at a rate which allows the Company to operate efficiently, provides safe and reliable services to ratepayers while not overburdening them, and allowing for the financial health of the cooperative. The recommended TIER of 1.5 achieves those ends.

III. Other *pro forma* adjustments

The Attorney General and JPEC continue to disagree on adjustments related to payroll expense, headquarters electric expense, and interest expense on long-term debt. JPEC's Brief provides no new treatment of those issues. As such, the Attorney General refers the Commission to its Initial Post-Hearing Brief for its position on those issues.

IV. Conclusion

For the foregoing reasons as well as those previously articulated in its Initial Post-Hearing Brief, the Attorney General requests that the Commission: (1) adjust the revenue requirement to

reflect reasonable right-of-way management costs and require a focused management audit on that issue, (2) review TIER to ensure it is set at the appropriate level, (3) adjust miscellaneous revenue requirement elements to correct errors, and (4) deny the Company's request to increase its base customer charge or approve some lesser increase to that value.

Respectfully submitted,

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Certificate of Service and Filing

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that, on March 22, 2022, an electronic copy of the forgoing was served by e-mail/electronic filing notification to the following.

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this 22nd day of March, 2022

A handwritten signature in blue ink, appearing to read "J. Michael West". The signature is written in a cursive style with a long horizontal stroke at the end.

Assistant Attorney General