

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF JACKSON)	
PURCHASE ENERGY CORPORATION FOR A)	CASE NO.
GENERAL ADJUSTMENT OF RATES AND)	2024-00085
OTHER GENERAL RELIEF)	

POST HEARING RESPONSE BRIEF

Comes now, Jackson Purchase Energy Corporation (“Jackson Purchase” or the “Company”), by counsel, pursuant to the Kentucky Public Service Commission’s (“Commission”) December 18, 2024 Order in this proceeding setting forth the post-hearing procedural schedule and the deadline for submitting a post-hearing response brief in support of its position in this matter, and respectfully states as follows:

INTRODUCTION

Through extensive discovery, a formal hearing, and a brief, each of Jackson Purchase’s assertions and claims have been explored stringently by Commission Staff (“Staff”) and the Kentucky Attorney General’s Office of Rate Intervention (“Attorney General”). As is normal in any contested rate case, there are differing positions on the revenue requirement, customer charge, and pro forma adjustments. However, in the end Jackson Purchase has supported its position with a cost-of-service study (“COSS”) and the methodologies employed for calculation of its requested pro forma adjustments are accurate and reliable and should provide the basis for a Commission decision granting the requests in this case.

ARGUMENT IN REPLY

The Attorney General's Position on Pro Forma Adjustments is not Supported by the Evidence in the Record

Right-Of-Way (Vegetation Management) Pro Forma Adjustment

The Attorney General recommended the Commission not accept Jackson Purchase's requested \$4.7 million for ROW management, including an additional increase of \$758,989 in its Application. Even though the Attorney General concedes that ROW maintenance costs are continually increasing,¹ the Attorney General recommends the Commission only award Jackson Purchase \$3,560,154 for ROW expenses.² This is a reduction in the revenue requirement of \$1,113,716.³

The Attorney General is correct in noting that Jackson Purchase has fallen behind on its goal of a five-year cycle for the 1,800 miles of ROW.⁴ The Attorney General asserts this is a simple problem and that Jackson Purchase should be capable of clearing the required ROW to maintain the five-year cycle.⁵ What the Attorney General is failing to take into consideration is the reason Jackson Purchase has fallen behind – lack of money.

Every year Jackson Purchase attempts to maintain the five-year ROW cycle. Jackson Purchase provided evidence that for every dollar of revenue, Jackson Purchase only controls \$0.25.⁶ There was also evidence presented that the current rate design is contributing to this

¹ Office of the Attorney General Post-Hearing Brief at 11.

² Office of the Attorney General Post-Hearing Brief at 10.

³ Office of the Attorney General Post-Hearing Brief at 10.

⁴ Office of the Attorney General Post-Hearing Brief at 9; Jackson Purchase's Response to the Attorney General's Second Request for Information, Item 53 and HVT at 9:27:04.

⁵ Office of the Attorney General Post-Hearing Brief at 9-10.

⁶ HVT at 10:26:01.

problem. The rate design is based on volumetric sales. If there are not sufficient energy sales, because of weather or declining usage, then revenue goes down.⁷ Vegetative management then becomes the only impactful area where Jackson Purchase can make changes to the budget to provide for the other needs of the cooperative.⁸ Jackson Purchase does not do this for any imprudent reasons, as suggested by the Attorney General,⁹ but to maintain the financial health of the cooperative. The Attorney General had access to all of the information Jackson Purchase provided in this case, including ledgers and budgets for the test year and the previous years. The Attorney General did not provide any evidence that Jackson Purchase was acting improperly or the funds that were diverted were used for reasons that are not normally recoverable.

Additionally, the Attorney General implied that Jackson Purchase did not take the Commission's directive in Case No. 2021-00358, to address vegetative management seriously.¹⁰ However, Jackson Purchase did take the Commission's instructions seriously and has discussed regional bids with Big Rivers Electric Corporation ("Big Rivers") and the two other Big Rivers member distribution cooperatives.¹¹ The outcome was that the contractors simply do not have the resources to take on large scale projects.¹² The economies of scale do not provide any savings because the cost of materials and labor for the ROW contractors do not decrease no matter how many miles are to be cleared. The Attorney General did not provide any evidence to refute this

⁷ HVT at 10:25:22.

⁸ HVT at 9:27:03.

⁹ Office of the Attorney General Post-Hearing Brief at 10.

¹⁰ Case No. 2021-00358, April 8, 2022 Order.

¹¹ Jackson Purchase's Response to the Attorney General's First Request for Information, Item 26; Jackson Purchase's Response to the Attorney General's Second Request for Information, Item 13; and HVT 9:31:04 – 9:39:00.

¹² Jackson Purchase's Response to the Attorney General's Second Request for Information, Item 13 and HVT 9:31:04-9:39:00.

position, nor did the Attorney General provide any evidence that Jackson Purchase was trying to avoid regional bidding.

The Attorney General also proposed a one-way ROW expense tracker. The Attorney General proposed that any unspent money from ROW should be recorded as a regulatory liability, with any lesser annual amount spent below the Commission authorized amount to be used for future ROW expenses or returned to the members.¹³ No other electric cooperative in Kentucky is subject to a one-way ROW tracker, a fact the Attorney General recognizes.¹⁴ As stated previously, there is no evidence in the record to assume that Jackson Purchase is making imprudent decisions regarding ROW management. Jackson Purchase is responding to the local and national pressures regarding ROW for electric utilities. Jackson Purchase is managing its ROW maintenance in an adequate, efficient and reasonable manner. Further, the proposed ROW expense tracker mechanism constitutes single-issue ratemaking and should not be approved. The Commission should accept Jackson Purchase's requested pro forma increase of \$758,989 for a total of \$4.7 million in ROW expenses.

The Commission should not accept any of the Attorney General's recommendations regarding ROW. The costs for vegetative management continue to rise, through no fault of Jackson Purchase. The reduction in the amount of \$1,113,716 is a greater reduction than the increase Jackson Purchase requested. It will not even place Jackson Purchase in the same position it is in today; this reduction in the pro forma adjustment would put Jackson Purchase in the position of moving backwards, not forward, ensuring Jackson Purchase is never able to make headway into

¹³ Office of the Attorney General Post-Hearing Brief at 9.

¹⁴ Attorney General's Response to Jackson Purchase's Request for Information, Item 3.

the five-year ROW cycle. The only way to ensure Jackson Purchase is able to complete the five-year cycle is to allow Jackson Purchase the requested amount for ROW maintenance.

Wages and Benefits Pro Forma Adjustments

The Attorney General requested the Commission not allow Jackson Purchase's pro forma adjustments for various wages and benefits expenses.¹⁵ The Attorney General first argument that Jackson Purchase's request to base its revenue requirement on 70 full time employees even though it only currently had 68 employees is unreasonable.¹⁶ Jackson Purchase provided evidence throughout the proceeding that it needs 70 employees to continue to provide safe and reliable service to its members.¹⁷ The Attorney General never provided evidence that Jackson Purchase does not need 70 employees, it merely stated that Jackson Purchase admitted staffing was low.¹⁸ The Commission should not accept this argument from the Attorney General. Just because Jackson Purchase has kept staffing low to minimize costs does not mean this is what should be done going forward. There has been nothing presented that Jackson Purchase's use of 70 employees is unreasonable.

The Attorney General also argued that Jackson Purchase's pro forma adjustment for overtime was incorrect.¹⁹ Jackson Purchase provided in written testimony and at the hearing that the low level of employees results in a large amount of overtime.²⁰ The Attorney General cannot state that Jackson Purchase needs fewer employees and that Jackson Purchase is overstating the

¹⁵ Office of the Attorney General Post-Hearing Brief at 16.

¹⁶ Office of the Attorney General Post-Hearing Brief at 13.

¹⁷ Jackson Purchase's Response to the Attorney General's Second Request, Item 20 and HVT at 10:18:26

¹⁸ Direct Testimony of Gregory Meyer at 14.

¹⁹ Office of the Attorney General Post-Hearing Brief at 13-14.

²⁰ HVT 11:24:01.

amount of overtime needed. Overtime is necessary for electric cooperatives. There will always be outages. Oftentimes outages do not occur during normal business hours. Jackson Purchase must restore service as quickly as possible and must abide by its overtime procedure as well as contractual obligations with union employees in order to do so. Additionally, if the Commission accepts the Attorney General's recommendation to lower the amount requested for ROW, outages could increase due to untrimmed trees. The Commission should accept Jackson Purchase's pro forma adjustment because it is reasonable and accounts for known and measurable changes.

The Attorney General also argued that the pro forma adjustment related to the labor contract should be rejected because it was filed "extremely late"²¹ and because Jackson Purchase did not provide "updated revenues"²² related to the adjustment. These claims do not invalidate the adjustment. The adjustment was provided in an updated response to a data request, which Jackson Purchase is under an obligation to update throughout the pendency of the case. Discovery pertaining to the adjustment took place at the hearing. The adjustment amounts to a contractual revision to union wages, which is a simple matter and is also one that does not impact revenues in any way. It is a "standalone" adjustment that has no impact on the test year but for the related increase to wages; it does not affect any other expenses, revenues, or rate base items. The amount stems from a contractual agreement reached during the case and prior to the hearing, is known and measurable, and should be approved by the Commission.

The Attorney General made similar arguments about the pro forma adjustment for the termination notice of a large customer; the same response applies because the matter is straightforward – the revenue will simply cease – and has no impact on the test year financials but

²¹ Office of the Attorney General Post-Hearing Brief at 21.

²² Office of the Attorney General Post-Hearing Brief at 22.

for the retail revenue and associated wholesale purchased power expense, both of which were provided in the updated data response. That adjustment should also be approved.

The Attorney General also argued that the CEO's salary was unreasonable,²³ claiming that the increase from 2017 to 2024 was unreasonable. However, what the Attorney General fails to mention is that the CEO in 2017 is not the same CEO as today. There was testimony provided that Jackson Purchase struggled to find a CEO in 2018.²⁴ A key component of finding a CEO was to increase the salary.²⁵ Since the current CEO was hired in 2018, the raises for each contract negotiation have resulted in consistent increases in salary.²⁶

Additionally, the Attorney General argued that the benefits provided to the CEO should be considered incentive compensation or Supplemental Executive Retirement Plan ("SERP") and should be excluded from the revenue requirement.²⁷ Jackson Purchase provided evidence that the additional compensation paid to the CEO is not incentive compensation, nor SERP which has a legal definition from the Internal Revenue Service, which the amounts paid clearly do not fit. The additional compensation is simply deferred compensation.²⁸ It should also be noted that the CEO's contract included this deferred compensation in the last general adjustment of rates before the Commission and it was awarded.²⁹

²³ Office of the Attorney General Post-Hearing Brief at 14-15.

²⁴ HVT at 1:53:23.

²⁵ Jackson Purchase's Responses to Commission Staff's Post-Hearing Requests for Information, Item 3.

²⁶ Jackson Purchase's Response to Commission Staff's Post-Hearing Requests for Information, Item 3.

²⁷ Office of the Attorney General Post-Hearing Brief at 15-16.

²⁸ Jackson Purchase's Response to Commission Staff's Post-Hearing Requests for Information, Item 3.

²⁹ Case No. 2021-00358, *Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief*, April 8, 2022 Order (Ky. PSC April 8, 2022).

The Attorney General also argued Jackson Purchase’s health insurance benefits are unreasonable and should not be accepted by the Commission.³⁰ Jackson Purchase pays 82.5% of the health insurance premiums for union employees and 92% of the cost for non-union employees.³¹ This health insurance policy is specifically negotiated in the contract with the union employees. The Attorney General argued this amount should be reduced to the Bureau of Labor Statistics (“BLS”) amounts of 80% for single coverage and 68% for family coverage.³² However, in Jackson Purchase’s last rate proceeding the same insurance with the same percentages were approved by the Commission.³³ Nothing has changed in this proceeding. Jackson Purchase compared multiple policies before determining which policy to provide for its employees. The ability to provide the best insurance benefits while also ensuring its employees are not overpaying is very important to maintain a qualified workforce. The Commission should accept these costs are reasonable and allow Jackson Purchase to recover the cost of providing health insurance benefits to its employees.

Rate Design is Reasonable and It Is Supported By The Cost of Service Study

The Attorney General argued that Jackson Purchase’s proposed customer charge of \$30.35 is unreasonable and should be rejected.³⁴ This is incorrect. Jackson Purchase engaged the services of Catalyst Consulting LLC (“Catalyst”) to perform a comprehensive COSS to assist Jackson Purchase in designing its proposed rates. Based upon the adjustments agreed on in Rebuttal

³⁰ Office of the Attorney General Post-Hearing Brief at 16-18.

³¹ Application, Exhibit 9, Direct Testimony of Meredith Kendall at 9.

³² Office of the Attorney General Post-Hearing Brief at 17.

³³ Case No. 2021-00358, April 8, 2022 Order.

³⁴ Office of the Attorney General Post-Hearing Brief at 6-7.

Testimony and responses to Requests for Information, the COSS supported a residential customer charge of \$51.71.³⁵ Jackson Purchase chose to gradually move towards the cost-based rates and not seek the entire \$51.71 customer charge that was supported. Instead, Jackson Purchase proposed to increase the current customer charge of \$20.35 to \$30.35.³⁶

The Attorney General presented no evidence as to why increasing the customer charge to \$30.35 is unreasonable. The Attorney General merely asserted that the poverty levels in the territory, difficult economic conditions, and the fact that Jackson Purchase has had three rate cases makes the request unreasonable.³⁷ Additionally, the Attorney General argued that allowing a customer charge of \$30.35 would give Jackson Purchase the highest customer charge in the state and for some reason the Attorney General believes that makes the evidence supported COSS unreasonable.³⁸

Aside from the COSS, Jackson Purchase provided evidence that energy sales are stagnant, customer growth is slow, and at least one large customer has left the system. These three factors highlight some of the reasons more and more of the electric cooperatives in the state are moving closer and closer to cost based rates.³⁹ The customer charge reflecting cost based rates helps stabilize revenue and allows Jackson Purchase to provide safe and reliable service. Without movement toward the COSS supported customer charge, Jackson Purchase faces further declining

³⁵ Jackson Purchase's Response to the Attorney General's Post-Hearing Request for Information, Item 3(a).

³⁶ Application, Paragraph 5.

³⁷ Office of the Attorney General Post-Hearing Brief at 7.

³⁸ Office of the Attorney General Post-Hearing Brief at 5.

³⁹ Case No. 2024-00351, *Electronic Application of Shelby Energy Cooperative, Inc. for a General Adjustment of Rates* (filed December 5, 2024); Case No. 2024-00287, *Electronic Application of Big Sandy Rural Electric Cooperative Corporation for a General Adjustment of Rates* (filed October 1, 2024); Case No. 2024-00211, *Electronic Application of Licking Valley Rural Electric Cooperative Corporation for a General Adjustment of Rates and Other General Relief* (filed August 8, 2024).

revenue due to lagging energy sales. This will cause an undesirable and untenable financial situation requiring Jackson Purchase to file for an additional adjustment of rates.

The claim by the Attorney General that Jackson Purchase is not adhering to the principle of gradualism is also not correct. Jackson Purchase is only requesting to move the customer charge to the midpoint of the current customer charge and the amount the customer charge the COSS supported. This fact alone shows that Jackson Purchase is adhering to the principle of gradualism. In addition, Jackson Purchase is requesting to distribute the required rate increase more heavily in the customer charge, as opposed to the energy charge, because it was consistent with the COSS and would create the least negative impact on its members in the most vulnerable economic situations. Applying more of the rate increase to the customer charge, which is fixed, means that it is the least volatile option and based upon Jackson Purchase's experience, members who can least afford an increase typically use more energy, likely due to poorly insulated homes that use more energy. Therefore, placing more of the rate increase on the volumetric charge instead of the customer charge would place more of a financial burden on those that can least afford it.

The Attorney General has presented no evidence as to why the COSS supported customer charge of \$30.35 is unreasonable. Jackson Purchase is sympathetic to its members facing economic hardships and has therefore requested to only move midway towards cost-based rates. The requested residential customer charge of \$30.35 is reasonable and should be approved by the Commission.

Historic Use of 2.0 TIER by Cooperatives is Reasonable and Should be Continued

The Attorney General has requested the Commission award a 1.85 Times Interest Earned Ration ("TIER") in this matter.⁴⁰ The Attorney General claims Jackson Purchase has not

⁴⁰ Office of the Attorney General Post-Hearing Brief at 23-25.

presented any evidence to support a 2.0 TIER, it is not necessary for Jackson Purchase's loan covenants, it is a disincentive for discretionary spending, it should be returned to members via capital credits; and it is a way to increase rates.⁴¹

Jackson Purchase provided evidence throughout these proceedings that a 2.0 TIER is necessary to maintain the financial health of the cooperative.⁴² Due to slow customer growth and lagging energy sales, Jackson Purchase has been unable to make a 2.0 TIER for many years.⁴³ However, Jackson Purchase's current rates approved by the Commission are based upon a 2.0 TIER.. While it is true Jackson Purchase's loan covenants require a 1.25 TIER, in order to actually achieve the required 1.25 TIER Jackson Purchase's authorized TIER has to be much higher than the required 1.25 TIER. This is evident in the information provided by Jackson Purchase showing its achieved TIER for the past several years.⁴⁴ During each of those years, Jackson Purchase's approved rates were based on a 2.0 TIER. If the Commission authorizes a lower TIER, Jackson Purchase would be in danger of not meeting the financial metric of a 1.25 TIER.

The Attorney General did not provide any evidence in this proceeding that Jackson Purchase would be able to achieve a 1.85 TIER if the rates were based on a 1.85 TIER. The Attorney General also did not provide any evidence that Jackson Purchase misuses its discretionary spending even though it alleges this is a valid reason for a lower TIER. Jackson Purchase's management and the Board of Directors thoughtfully and prudently manage the cooperative's

⁴¹ Office of the Attorney General Post-Hearing Brief at 23-25.

⁴² HVT at 11:10:00.

⁴³ Jackson Purchase Response to the Attorney General's First Request, Item 17(a) and Jackson Purchase's December 2024 Rate Case Monthly Update, TIER/OTIER (filed December 26, 2024).

⁴⁴ Jackson Purchase Response to the Attorney General's First Request, Item 17(a) and Jackson Purchase's December 2024 Rate Case Monthly Update, TIER/OTIER.

financials. The statement that a 2.0 TIER is not warranted because it will stop the misuse of discretionary spending is unwarranted.

The Attorney General is asking the Commission to undue decades of precedent with no evidentiary support. For at least a decade electric distribution cooperatives appearing before the Commission seeking a general adjustment of rates has been awarded a 2.00 TIER.⁴⁵ The Commission has said in prior cases, “the Commission finds that a 2.00 TIER is more appropriate and consistent with precedent,”⁴⁶ and, “the Commission notes that using a 2.00 TIER is consistent with precedent.”⁴⁷ As recently as 2024, the Commission has made the following observation, “the Attorney General did not contest a TIER of 2.00.”⁴⁸ Currently there are three other electric distribution cooperatives before the Commission for a general adjustment of rates that are also requesting a 2.0 TIER.⁴⁹

⁴⁵ Case No. 2015-00312, *Application of Kenergy Corp. for a General Adjustment of Rates*, September 15, 2016 Order (Ky. PSC September 15, 2016); Case No. 2016-00169, *Application of Cumberland Valley Electric, Inc. for a General Adjustment of Rates*, February 6, 2017 Order (Ky. PSC February 6, 2017); Case No. 2016-00367, *Application of Nolin Rural Electric Cooperative Corporation for a General Rate Increase*, June 21, 2017 Order (Ky. PSC June 21, 2017); Case No. 2017-00374, *Application of Big Sandy Rural Electric Cooperative Corporation for a General Adjustment of Existing Rates*, April 26, 2018 Order (Ky. PSC April 26, 2018); Case No. 2018-00129, *Application of Inter-County Energy Cooperative for a General Adjustment of Existing Rates*, January 25, 2019 Order (Ky. PSC January 25, 2019); Case No. 2021-00358, *Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and other General Relief*, April 8, 2022 Order (Ky. PSC April 8, 2022); Case No. 2021-00407, *Electronic Application of South Kentucky Rural Electronic Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and other General Relief*, June 30, 2022 Order (Ky PSC June 30, 2022); Case No. 2023-00147, *Electronic Application of Taylor County Rural Electric Cooperative Corporation for a General Adjustment of Rates*, April 5, 2024 Order (Ky. PSC April 5, 2024); Case No. 2023-00223, *Electronic Application of Fleming-Mason Energy Cooperative for a General Adjustment of Rates*, June 28, 2024 Order (Ky. PSC June 28, 2024); and Case No. 2023-00276, *Electronic Application of Kenergy Corp. for a General Adjustment of Rates*, July 31, 2024 Order (Ky PSC July 31, 2024).

⁴⁶ Case No. 2023-00147, April 5, 2024 Order at 16

⁴⁷ Case No. 2023-00223, June 28, 2024 Order at 16.

⁴⁸ Case No. 2023-00276, July 31, 2024 Order at 20.

⁴⁹ Case No. 2024-00211, *Electronic Application of Licking Valley Rural Electric Cooperative Corporation for a General Adjustment of Rates and Other General Relief*, Application (filed August 8, 2024); Case No. 2024-00287, *Electronic Application of Big Sandy Rural Electric Cooperative Corporation for a General Adjustment of Rates*, Application (filed October 1, 2024); and Case No. 2024-00351, *Electronic Application of Shelby Energy Cooperative, Inc. for a General Adjustment of Rates*, Application (filed December 5, 2024).

Decreasing the TIER will put Jackson Purchase in jeopardy of not meeting its debt covenant requirements. The Attorney General's position in this proceeding is unreasonable and not supported by evidence. Additionally, if the Commission were to deviate from the 2.00 TIER it would be abandoning many years of precedent that cooperatives have come to rely upon, would be unreasonable and not supported by the evidence in the record of this proceeding.

CONCLUSION

Jackson Purchase has proposed fair, just and reasonable rates in this proceeding that are supported by a fully allocated COSS. The COSS supports an increase to the residential class alone and in particular to the residential customer charge. Jackson Purchase also increased the small commercial customer charge to align with the COSS. The pro forma adjustments that have been proposed by Jackson Purchase in this proceeding are known and measurable and should be approved by the Commission. In developing this case, Jackson Purchase has expended substantial energy to ensure that each adjustment would withstand Commission scrutiny under the known and measurable standard. Jackson Purchase's management and Board of Directors have pulled all the levers at their disposal to contain recurring costs to delay and mitigate the effect of this rate increase on residential members. As demonstrated by Mr. Wolfram's comprehensive COSS Jackson Purchase seeks to align its rates so that the customer class causing it to incur costs is the same customer class that pays those costs. While this rate adjustment will not fully address this disparity, the proposed rate design change will reduce the current misallocation of cost to cost-causer.

Jackson Purchase's proposal in this case is both measured and necessary for its continued financial health. It is based upon a comprehensive and reliable COSS employing both known and measurable changes to the test year. It is fair, just and reasonable both in terms of the revenue

request and the rate design. Jackson Purchase respectfully requests the Commission enter a final order adopting its request in full, including the recovery of rate case expenses amortized over a three-year period.

This 27th day of January, 2025.

Respectfully submitted,

Heather S. Temple

L. Allyson Honaker
Heather S. Temple
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite 1203
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com
heather@hloky.com

Counsel for Jackson Purchase Energy Corporation

CERTIFICATE OF SERVICE

This is to certify that the electronic filing was transmitted to the Commission on January 27, 2025, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be made.

Heather S. Temple

Counsel for Jackson Purchase Energy Corporation