

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)	

JACKSON PURCHASE ENERGY CORPORATION’S MOTION FOR REHEARING

Comes now Jackson Purchase Energy Corporation (“Jackson Purchase”), by counsel, pursuant to KRS 278.400 and respectfully requests the Kentucky Public Service Commission (“Commission”) grant rehearing on its February 28, 2025 Order (“Final Order” or “the Order”) in the above-styled case. In support of this motion, Jackson Purchase respectfully states as follows:

BACKGROUND

On May 1, 2024, Jackson Purchase filed an application requesting an adjustment of rates.¹ On May 14, 2024, the Commission entered an order that suspended the effective date of Jackson Purchase’s proposed rate increase and tariffs for five months, up to and including November 1, 2024.² Jackson Purchase responded to multiple rounds of discovery issued by Commission Staff and the Attorney General’s Office of Rate Intervention (“Attorney General”).³ A hearing was held

¹ Application (filed May 1, 2024).

² May 14, 2024 Order (Ky. PSC. May 14, 2024).

³ Jackson Purchase’s Response to Staff’s First Request for Information (filed May 14, 2024); Responses to Staff’s Second Request for Information (filed June 12, 2024); Responses to Staff’s Third Request for Information (filed July 10, 2024); Jackson Purchase’s Responses to Staff’s Post-Hearing Request for Information (filed January 6, 2025); Jackson Purchase’s Response to the Attorney General’s First Request (filed June 12, 2024); Responses to the Attorney

on December 16, 2024.⁴ On February 28, 2025, the Commission issued its Final Order approving seven (7) of Jackson Purchase’s fifteen (15) proposed adjustments. The Commission modified eight (8) of Jackson Purchase’s adjustments and allowed a revenue increase of \$3,993,497, and a customer charge of \$26.00.⁵ Jackson Purchase now requests rehearing, pursuant to KRS 278.400, on three (3) issues in the February 28, 2025 Order: 1) the institution of a Right-Of-Way tracker; 2) the decision to remove rodeo expenses and a terminated contract from the pro forma adjustments; and, 3) the decision to set the customer charge at \$26.00.

APPLICABLE LAW AND STANDARD OF REVIEW

KRS 278.400 governs motions for rehearing, which provides the Commission with the ability to correct findings based on material errors or omissions, or to correct findings that are unreasonable or unlawful.⁶ The statute states, in its entirety:

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three (3) days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing.

General’s Second Request (filed July 10, 2024); and Jackson Purchase’s Response to the Attorney General’s Post-Hearing Request (filed January 6, 2025).

⁴ Hearing Video Transcript (HVT) of the December 16, 2024 Hearing.

⁵ See February 28, 2025 Order.

⁶ *Electronic Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity for the Construction of a High-Speed Fiber Network and for Approval of the Leasing of the Network’s Excess Capacity to an Affiliate to be Engaged in the Provision of Broadband Service to unserved and Underserved Households and Businesses of the Commonwealth*, Case No. 2021-00365, Order (Ky. PSC May 19, 2022) at 1–2.

Upon the rehearing, the commission may change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.

A Commission Order is unreasonable when “the evidence presented leaves no room for difference of opinion among reasonable minds.”⁷ An Order of the Commission is unlawful when it is deemed to be in violation of a state or federal statute, or a constitutional provision.⁸

ARGUMENT

A Right-of-Way Tracker is Not Supported by Evidence or Commission Precedent and is Therefore Unreasonable

Jackson Purchase requested \$4.7 million for right-of-way (“ROW”) management, including an additional increase of \$758,989 in its Application. Jackson Purchase maintains approximately 1,800 miles of ROW and attempts to clear the circuits in a five-year cycle which necessitates clearing 358 miles of circuit line per year. Due to budgetary restraints, Jackson Purchase could not clear 358 miles of circuit line per year.⁹ Throughout the proceedings the Attorney General argued Jackson Purchase should be subject to a ROW tracker because it alleged Jackson Purchase was not appropriately managing its ROW program.¹⁰

The Commission permitted Jackson Purchase to collect \$4,523,870 for ROW expenses.¹¹ The Commission also found that Jackson Purchase should track its ROW expenses annually for twelve (12) full calendar months and that Jackson Purchase should record a regulatory liability or

⁷ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

⁸ *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

⁹ Jackson Purchase’s Response to the Attorney General’s Second Request for Information, Item 53 and HVT at 9:27:04.

¹⁰ Direct Testimony of Gregory Meyer at 10 and Office of the Attorney General Post-Hearing Brief at 9.

¹¹ February 28, 2025 Order.

regulatory asset for each 12-month period to the extent its actual ROW expense is lower than or exceeds the \$4,523,870.¹² Jackson Purchase must also include a report detailing its ROW spending and how a regulatory asset or regulatory liability should be reflected in rates when it next files a rate case.¹³

The decision to subject Jackson Purchase to a regulatory tracker is unreasonable because it is unsupported by the evidence in the record. The Attorney General alleged, and the Commission found, Jackson Purchase spends revenue on costs that should be excluded from rate recovery.¹⁴ However, nowhere in the record is there any evidence that Jackson Purchase is spending revenue imprudently. The costs excluded from rate making in this case are the same costs that are removed from rate making in every distribution cooperative case and most cases involving any Kentucky regulated utility. Jackson Purchase should not be penalized when there is no evidence in the record that Jackson Purchase is engaging in unusual or inappropriate spending. The Commission did not make any findings on this issue and merely restated the allegation from the Attorney General.¹⁵ Using the Attorney General's unsupported allegations as a basis for a regulatory tracker is unreasonable.

ROW trackers are unprecedented. No other cooperative has had its ROW spending subject to a regulatory tracker, and by entering such an order, the Commission ruled Jackson Purchase is not taking its obligations to its members seriously when the evidence is to the contrary. Rising ROW costs have been an issue in every rate proceeding before the Commission, whether it is an

¹² February 28, 2025 Order 12-13.

¹³ February 28, 2025 Order at 13.

¹⁴ February 28, 2025 Order at 11.

¹⁵ February 28, 2025 Order at 11.

electric cooperative or an investor-owned electric utility. Jackson Purchase is not taking the position that the costs are insurmountable; rather, Jackson Purchase provided evidence that it spent years grappling with its ROW costs and sought to follow the Commission's directives in Case No 2021-00358.¹⁶ Mandating a ROW tracker where a cooperative has not shown any impropriety would undo years of precedent.

Furthermore, the Commission did not address evidence in the record presented by Jackson Purchase on rebuttal explaining that the proposed ROW expense tracker mechanism constitutes single issue ratemaking and should not be approved. The Commission does not often create trackers that are not directed by statute or regulation. The Commission typically orders trackers when the underlying costs are large and quite volatile, so it is difficult to predict their expected level accurately over time, and when the underlying costs are largely beyond the utility's control, for example, market conditions in the wholesale fuel and power markets that individual utilities do not choose or influence. These criteria are not met here because the ROW maintenance costs, while large, are not particularly volatile. The ROW costs are simply increasing for every electric utility. In the instant case there is no evidence that the base rate recovery of ROW maintenance costs should be abandoned in favor of a tracker, which itself would likely increase costs due to the complexity of administration, accounting, and billing associated with such a mechanism.¹⁷

The Commission's directive in this case is that Jackson Purchase should record a monthly regulatory asset or regulatory liability and, when another rate case is eventually filed, explain how those monthly regulatory assets and liabilities should be treated. This violates the Commission's precedent on regulatory assets where there is no evidence in the record that Jackson Purchase is

¹⁶ Case No. 2021-00358, April 8, 2022 Order.

¹⁷ Rebuttal Testimony of John Wolfram at 4.

being imprudent or unreasonable in its vegetation management or spending. This accounting treatment could also violate Generally Accepted Accounting Principles (“GAAP”) and the United States Department of Agriculture, Rural Utility Service (“RUS”) accounting principles. RUS Bulletin 176B-1 sets forth requirements for electric cooperative accounting treatment of regulatory assets and liabilities, including the requirement that it is “probable” that the amounts will be collected or refunded in a future period.¹⁸ The Commission’s order does not establish a degree of certainty around this probability upon which Jackson Purchase may rely to ensure compliance with the RUS requirements. Aside from the uncertainty in how the Commission will ultimately treat these expenses, booking the expense every month will negatively impact Jackson Purchase’s financial position each month, including its OTIER and TIER ratios which are used to determine Jackson Purchase’s compliance with loan covenants with RUS and other lenders.

Finally, and perhaps most importantly, the Commission’s order assumes that Jackson Purchase will have the \$4,523,870 permitted for ROW maintenance. Jackson Purchase must first have revenue and cash flow sufficient to cover the \$4,523,870 in ROW maintenance funds as well as enough revenue to pay for its purchased power, labor, and all other operating expenses as well as the capital purchases required to maintain Jackson Purchase’s distribution system. If Jackson Purchase does not have sufficient revenue or positive cash flow, it will not have money to spend on ROW maintenance. Revenue is dependent on sales. Jackson Purchase provided evidence that sales are decreasing and also provided evidence that it has recently lost the revenue associated with

¹⁸ See RUS Bulletin 1767B-1, Uniform System of Accounts – Electric, page 118

https://www.rd.usda.gov/files/UPA_Bulletin_1767B-1.pdf

“The amounts included in this account are to be established by those credits which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that: (1) such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services; or (2) refunds to customers, not provide for in other accounts, will be required.” RUS used the same language for regulatory assets.

a large customer with a large minimum bill on its system, resulting in approximately \$238,000 in lost revenue to cover these expenses and capital purchases. In addition, if the weather is mild, or if other customers leave the system, or if energy sales decrease further, Jackson Purchase will not have the revenue to spend on ROW. Similarly, Jackson Purchase may also experience unavoidable increases in expenses. One of the most common examples of an unavoidable expense that Jackson Purchase (and all electric utilities) experience at some point is severe weather events. When there is a severe weather event, Jackson Purchase must use its revenue and cash flow to pay for labor and materials necessary to repair its system and restore power outages in a safe, efficient manner. The ROW tracker does not account for revenue shortfalls or uncontrollable increases in costs. If either or both scenarios take place in a given month and the utility has to record a regulatory liability for its ROW maintenance in that same month, Jackson Purchase would find itself in a strained financial position. The tracker forces Jackson Purchase to book a regulatory asset or liability each month and does not take into account the amount of cash that may or may not be available for ROW in that particular month. By affecting Jackson Purchase's operating and net margins, the booking of a regulatory asset or liability will directly affect Jackson Purchase's OTIER and TIER ratios. If Jackson Purchase does not earn a 1.10 and 1.25 OTIER and TIER ratio, respectively, it would technically be outside its loan covenants with lenders. This could mean that Jackson Purchase may be limited in its borrowing capabilities that are crucial in a capital-intensive industry, and at worst could force Jackson Purchase to default on its outstanding loan covenants. These scenarios further support the prohibition of single-issue ratemaking noted before and demonstrate the hazards of treating one expense separately from all others in and after the rate case. Creating a regulatory asset or liability monthly is unreasonable and not supported by the

record in this case and therefore the Commission should grant this Motion for rehearing in accordance with KRS 278.400.

The Commission's Decision to Remove Rodeo Expenses and a Terminated Contract is Unreasonable

The Commission made numerous changes to Jackson Purchase's pro forma adjustments. Jackson Purchase believes two of these adjustments are not supported by the evidence in the record. First, the disallowance of the rodeo expenses for employee wages is unreasonable because Jackson Purchase did not include this in the wages and salaries pro forma adjustment.¹⁹ The Commission disallowed \$101,039 in expenses for the lineman's rodeo that was hosted by Jackson Purchase in the test year. The Commission stated it removed the \$101,039 from the revenue requirement because it was a nonrecurring expense.²⁰ The Commission noted that allowing recovery of the \$101,039 in addition to the salary and labor expenses would allow Jackson Purchase to over recover for salaries and wages.²¹

However, the amount will not constitute an over-recovery of wages. The disallowance of the rodeo expenses is unreasonable because Jackson Purchase did not include this amount in the wages and salaries pro forma adjustment.²² The adjustment only includes the incremental amounts for wages and salaries, associated with changes to those amounts that have occurred since the end of the test period. Jackson Purchase included the wages for the lineman's rodeo because those are hourly expenses that would have been included in the test year even if Jackson Purchase did not host the lineman's rodeo. Jackson Purchase simply booked those wages and salary costs in a

¹⁹ Application, Exhibit 10, Direct Testimony of John Wolfram, Exhibit JW-2. Jackson Purchase Energy's Response to Staff's Post-Hearing Request for Information), Item 2.

²⁰ February 28, 2025 Order at 7.

²¹ February 28, 2025 Order at 7.

different account instead of the account the costs would normally have been booked had the labor been spent on normal, day-to-day activities. It is not double-counted or double-booked. Removing the \$101,039 does not avoid double-counting those wages; instead, it excludes the wages from the revenue requirement outright. .

Second, the Commission disallowed the adjustment of \$238,485 from the loss of a large customer's minimum monthly bill on Jackson Purchase's system.²³ The Commission stated the adjustment was unreasonable because Jackson Purchase did not provide evidence as to expense and revenue changes due to the customer leaving the system.²⁴ Jackson Purchase provided a letter from the large industrial customer confirming that it is terminating its contract with Jackson Purchase and leaving the system.²⁵ Jackson Purchase also provided an updated revenue requirement based upon this reduction in revenue due to the loss of the industrial customer.²⁶ There is no additional information that could be developed. The only item affected is revenue, since the adjustment removes revenue associated with the member's minimum bill. The customer left the system and therefore there is a loss in revenue, but since the member did not use power during the test year, there are no other expense or revenue impacts. Jackson Purchase supplemented the record, as requested by the Attorney General and Commission Staff in Requests for Information, as soon as the information was developed. Disallowance of this reduction in revenue is unreasonable as it is unsupported by the evidence and therefore the Commission should grant this Motion for rehearing in accordance with KRS 278.400.

²³ February 28, 2025 Order at 35.

²⁴ February 28, 2025 Order at 35.

²⁵ Jackson Purchase's Updated Response to Attorney General's First Request, Item 10.

²⁶ Jackson Purchase's Updated Response to the Attorney General's First Request, Item 10, JPEC 2023 REV REQ RevDec9.

The Customer Charge Ordered by the Commission Does Not Move Enough Towards Cost-Based Rates

Jackson Purchase requested to increase its residential customer charge from \$20.35 to \$30.35.²⁷ Jackson Purchase engaged the services of Catalyst Consulting LLC (“Catalyst”) to perform a comprehensive cost of service study (“COSS”) to assist Jackson Purchase in designing its proposed rates. Mr. John Wolfram, Principal of Catalyst, conducted the COSS which showed that residential and small commercial class warranted increases.²⁸ The COSS supported a residential customer charge of up to \$53.45.²⁹ Through the proceedings the Attorney General argued the customer charge of \$30.35, presented by Jackson Purchase, was unreasonable.³⁰ The Attorney General presented no actual evidence on how or why the customer charge was unreasonable³¹ and merely stated that some of Jackson Purchase’s customers fall below the poverty line.³²

In the Final Order, the Commission noted it gave substantial weight to the COSS³³ and stated that Jackson Purchases proposed revisions to the customer charge would help mitigate under recovery of fixed costs.³⁴ The Commission cited the principle of gradualism and only permitted a

²⁷ Application paragraph 5.

²⁸ Application, Exhibit 10, Direct Testimony of John Wolfram, at 20.

²⁹ See Application, Exhibit 10, Direct Testimony of John Wolfram, at 20 for the results of the COSS, which was revised to \$51.71 in Jackson Purchase’s Response to the Attorney General’s Post-Hearing Request for Information, Item 3(a).

³⁰ Attorney General Brief at 5-6.

³¹ Attorney General Brief at 5-6.

³² Attorney General Brief at 5-6.

³³ February 28, 2025 Order at 46.

³⁴ February 28, 2025 Order at 46.

customer charge of \$26.00.³⁵ However, the principle of gradualism does not only apply to the customer charge. Gradualism applies to the entirety of the cooperative's revenue needs. When viewed as a whole, Jackson Purchase provided evidence that the overall increase to the average customer's bill was only 8.1%, with the proposed customer charge of \$30.35. Allowing Jackson Purchase to recover more of its costs through the fixed customer charge would allow Jackson Purchase to have less volatility in its monthly revenues and customers to have less volatility in their monthly bills.

The Commission did not perform or rely upon its own COSS or use the data supplied by Jackson Purchase in making the determination that the customer charge should be \$26.00. The Commission provided no reasoning for why \$26.00 is appropriate nor did it try to challenge Jackson Purchase's expert or the results of the COSS.³⁶ Jackson Purchase provided the only evidence in the record of the fixed costs to serve the residential class.³⁷ The uncontroverted evidence in the record is that the actual cost to serve the residential class is \$51.71.³⁸ Jackson Purchase, cognizant of the Commission's desire for gradualism, only requested a customer charge of \$30.35³⁹ and did not move closer to the actual cost-based rate of \$50.71. This demonstrates support for the concept the gradualism the Commission desires while also moving toward cost based rates. The Commission not allowing the requested customer charge of \$30.35, and instead

³⁵ February 28, 2025 Order at 47.

³⁶ February 28, 2025 Order at 46-47.

³⁷ Application, Exhibit 10, Direct Testimony of John Wolfram, at 20.

³⁸ Jackson Purchase's Response to the Attorney General's Post-Hearing Request for Information, Item 3(a).

³⁹ Application paragraph 5 and Jackson Purchase's Post-Hearing Brief at 9.

arbitrarily choosing \$26.00 without providing any evidentiary support for that amount is unreasonable.

The only issue the Attorney General, or the Commission, raised was that the customer charge would be “high” compared to other electric distribution cooperatives in Kentucky. This point is not relevant to the fixed costs prudently incurred by Jackson Purchase in order to provide service to its members. However, multiple electric cooperatives currently have rate proceedings pending before the Commission, most with customer charge requests close to that requested by Jackson Purchase. For example, eleven days after the Commission issued an order denying Jackson Purchase’s request the Commission entered an order granting an over \$5 million dollar increase in rates with a \$30.50 customer charge⁴⁰ where its COSS showed the fixed customer charge should be \$36.48,⁴¹ These inconsistent rulings are further evidence that the Commission’s decision in this matter was arbitrary and unreasonable. Therefore, the Commission should grant this Motion for rehearing in accordance with KRS 278.400

CONCLUSION

WHEREFORE, on the basis of the foregoing, Jackson Purchase respectfully requests that the Commission grant rehearing on the issues contained herein.

This the 20th day of March, 2025.

⁴⁰ Case No. 2024-00324, *Electronic Application for an Alternative Rate Adjustment for Jackson Energy Cooperative Pursuant to 807 KAR 5:078*, March 11, 2025 Order at 14-15 (Ky. PSC March 11, 2025).

⁴¹ Case No. 2024-00324, March 11 2025 Order at 13.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the electronic filing was transmitted to the Commission on March 20, 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.

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